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Kaczynski appeal will be heard

An appeals court said Friday that it will consider Theodore Kaczynski's bid to be put on trial for the Unabom crimes.

The 9th U.S. Circuit Court of Appeals ordered Kaczynski and government lawyers to submit briefs this winter on his contentions that he was coerced into pleading guilty, that he should have been allowed to defend himself without a lawyer and that he had a right to bar his court-appointed lawyers from presenting a defense based on mental impairment.



David Kaczynski said after his brother's sentencing that it was difficult to listen to the victims' testimony, "but it was so important." **Bee/Kim D. Johnson**

The Trial in Brief

COURT DOCUMENTS

The Unabomber
Major events in the life of Theodore Kaczynski

The case
Key events in the Unabomber case

The trial
A look back at significant developments in Kaczynski's



Gilbert Murray's widow, Connie, leaves after the sentencing. She had earlier left the courtroom when Kaczynski spoke, later explaining, "There was nothing he could say that I was willing to hear." **Bee/Laura Chun**

trial

The sentencing

What Kaczynski and his victims had to say

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Unabomber

Court Transcripts

These court transcripts represent the full daily court reporting in the trial of suspected Unabomber Theodore J. Kaczynski, dating back to beginning of jury selection Nov. 12, 1997, in Sacramento, Calif.

Transcripts are updated daily, or as soon as the documents are made available through the court.

Note: Some files are up to 300K, and may take several minutes to load.

Pretrial Hearings

Nov. 21, 1997-

- [Jan. 22, 1998](#)
U.S. District Court, Eastern District, Sacramento
Discussion on motions and change of plea
- [Jan. 21, 1998](#)
U.S. District Court, Eastern District, Sacramento
Defense motion for disclosure
- [Jan. 20, 1998](#)
U.S. District Court, Eastern District, Sacramento
Hearing regarding competency report and other matters
- [Jan. 15, 1998](#)
U.S. District Court, Eastern District, Sacramento
Discussion regarding scheduling matters
- [Jan. 13, 1998](#)
U.S. District Court, Eastern District, Sacramento
In chambers conference
- [Jan. 12, 1998](#)
U.S. District Court, Eastern District, Sacramento



Conference call regarding trial scheduling

- **Jan. 9, 1998**
U.S. District Court, Eastern District, Sacramento
Scheduling of Kaczynski's competency exam
- **Jan. 8, 1998**
U.S. District Court, Eastern District, Sacramento
Kaczynski requests to serve as his own defense
- **Jan. 7, 1998**
U.S. District Court, Eastern District, Sacramento
Redacted chambers proceeding (released Jan. 15, 1998)
- **Jan. 7, 1998**
U.S. District Court, Eastern District, Sacramento
The court denies Kaczynski's request to change attorneys
- **Jan. 5, 1998**
U.S. District Court, Eastern District, Sacramento
Redacted chamber proceeding (released Jan. 15, 1998)
- **Jan. 5, 1998**
U.S. District Court, Eastern District, Sacramento
Jury trial begins; Kaczynski requests a hearing
- **Dec. 31, 1997**
U.S. District Court, Eastern District, Sacramento
Government's 404b motion and motions to unseal transcripts
- **Dec. 24, 1997**
U.S. District Court, Eastern District, Sacramento
Redacted chamber proceeding (released Jan. 15, 1998)
- **Dec. 23, 1997**
U.S. District Court, Eastern District, Sacramento
Discussion on motions for mental examination and sanctions (released Jan. 16, 1998)
- **Dec. 22, 1997**
U.S. District Court, Eastern District, Sacramento
Scheduling discussion and peremptory challenges

- [Dec. 19, 1997](#)
U.S. District Court, Eastern District, Sacramento
Discussion following ex Parte in camera hearing
- [Dec. 16, 1997](#)
U.S. District Court, Eastern District, Sacramento
Discussion and rulings for on cause challenges
- [Dec. 11, 1997](#)
U.S. District Court, Eastern District, Sacramento
Chambers conference
- [Nov. 21, 1997](#)
U.S. District Court, Eastern District, Sacramento
Hearing on government's motion to preclude expert mental health testimony at
guilt phase

Jury Selection

U.S. District Court, Eastern District, Sacramento

Nov. 12-Dec. 10, 1997

- [Dec. 10, 1997](#)
- [Dec. 9, 1997](#)
- [Dec. 8, 1997](#)
- [Dec. 4, 1997](#)
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Unabomber

Court Documents

The following court documents represent a small part of those in use for the trial of suspected Unabomber Theodore J. Kaczynski.

These documents are public records and include warrants, indictments, evidence, affidavits, press interviews, declarations, court transcripts and motions to the court.

Kaczynski's trial began with jury selection on Nov. 12, 1997, in Sacramento, Calif.

Court transcripts and documents provided by:



Attorney's
Diversified
Services

[Psychiatric Competency Report of Dr. Sally C. Johnson](#)

U.S. District Court, Eastern District, Sacramento
Sept. 11, 1998

[Government's Sentencing Memorandum](#)

U.S. District Court, Eastern District, Sacramento
May 4, 1998

[Motion to Compel the Government to Disclose the Location and Other Relevant Information About Defendant's Secret Shack\(s\)](#)

U.S. District Court, Eastern District, Sacramento
Jan. 20, 1998

[Government's Motion for a Hearing on Issues Concerning the Defendant's Representation if He Is Found Competent](#)

U.S. District Court, Eastern District, Sacramento
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Declaration of Xavier F. Amador, Ph.D.

Nov. 16, 1997

Letters written by Theodore Kaczynski

Nov. 14, 1997

Defendant's Opposition to Motion to Preclude Expert Mental Health Testimony at the Guilt Phase and to Require Defendant to Undergo a Mental Examination Before Sentencing

U.S. District Court, Eastern District, Sacramento
Nov. 12, 1997

Declaration of David Vernon Foster, M.D.

U.S. District Court, Eastern District, Sacramento
Nov. 12, 1997

Government's Trial Brief (Redacted Version)

U.S. District Court, Eastern District, Sacramento
Nov. 12, 1997

Motion to Dismiss Government's Motion to Seek the Death Penalty

U.S. District Court, Eastern District, Sacramento
Oct. 25, 1997

Motion for Procedures to Protect Privacy Interests of Jurors and Integrity of Jury Selection Process

U.S. District Court, Eastern District, Sacramento
Sept. 26, 1997

Notice of Intent to Seek the Death Penalty

U.S. District Court, Eastern District, Sacramento
May 15, 1997

Declaration of Donald W. Foster, Ph.D.

Poughkeepsie, New York
April 11, 1997

Declaration of Wanda Kaczynski, Ted Kaczynski's mother

U.S. District Court, Eastern District, Sacramento
Feb. 27, 1997

Declaration of David Kaczynski, Ted Kaczynski's brother
U.S. District Court, Eastern District, Sacramento
Feb. 8, 1997

60 Minutes Interview with Kaczynski's family
Sept. 15, 1996

Bomb Parts & Descriptions

U.S. District Court, Montana District, Helena
April 3, 1996

- **Bomb #1** Chicago, Ill.
- **Bomb #2** Evanston, Ill.
- **Bomb #3** American Airlines Flight 444
- **Bomb #4** Lake Forest, Ill.
- **Bomb #5** University of Utah
- **Bomb #6** Nashville, Tenn.
- **Bomb #7** Berkeley, Calif.
- **Bomb #8** Berkeley, Calif.
- **Bomb #9** Auburn, Wash.
- **Bomb #10** Ann Arbor, Mich.
- **Bomb #11** Sacramento, Calif.
- **Bomb #12** Salt Lake City, Utah
- **Bomb #13** Tiburon, Calif.
- **Bomb #14** New Haven, Conn.
- **Bomb #15** North Caldwell, N.J.
- **Bomb #16** Sacramento, Calif.

Warrant of Arrest

U.S. District Court, Montana District, Helena
April 4, 1996

Affidavit of FBI Special Agent in Charge Terry D. Turchie

U.S. District Court, Montana District, Helena
April 4, 1996

Sherri Wood Interview

Lewis and Clark County Library, Helena, Mont.
April 2, 1996

Thomas L. Stell Interview, bus driver

Butte, Mont.
April 1, 1996

Wanda Kaczynski Interview

San Francisco
March 23, 1996

Larry D. Peterson Interview, bus driver

Great Falls, Mont.
March 16, 1996

Mark Lloyd Campbell Interview, bus driver
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March 15, 1996

David Kaczynski Interview
Yorktown Shopping Mall, Lombard, Ill.
March 12, 1996

Paper, Fingerprint and DNA Samples
FBI Lab Report, San Francisco
March 11, 1996

Dr. Carolyn Goren Interview
Missoula, Mont.
March 6, 1996

David Kaczynski Interview, Character Description of Ted Kaczynski
El Paso, Texas
Feb. 24-25, 1996

David Kaczynski Interview
Feb. 18, 1996

David Kaczynski Interview, Physical Description of Ted Kaczynski
Office of David's attorney, Anthony P. Bisceglie, Washington, D.C.
Feb. 17-18, 1996

Letter to Molly Flynn, FBI
Feb. 12, 1996

Anthony P. Bisceglie Interview
Jan. 31, 1996

Dr. Victor Ferkiss Interview
Aug. 7, 1995

Firearms Toolmarks and the DNA Examinations.
FBI Lab Report, San Francisco
Aug. 1, 1995

DNA Analysis

FBI Lab Report, San Francisco
Feb. 2, 1995

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PSYCHIATRIC COMPETENCY REPORT OF DR. SALLY C. JOHNSON

Sept. 11, 1998

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,

CR. NO. S-96-259
GEB

v.

THEODORE JOHN KACZYNSKI, ORDER
Defendant.

The attached redacted copy of the psychiatric competency report of Doctor Sally C. Johnson is unsealed.

IT IS SO ORDERED.

DATED: September 11, 1998

(signature)
GARLAND
E.
BURRELL,
JR.
United
States
District
Judge

FORENSIC EVALUATION

NAME: KACZYNSKI, Theodore John
DOCKET NUMBER: CR 5-96-259 GEB

DATE OF BIRTH: 05/22/42

DATE OF REPORT: 01/16/98

IDENTIFYING INFORMATION: Theodore John Kaczynski is a 55 year old white single male, currently housed in pretrial status at the Sacramento County Jail in Sacramento, California. He was most recently residing in Lincoln, Montana. On 01/09/97, the Honorable Garland D. Burrell, Jr., United States District Court Judge for the Eastern District of California, issued an Order that Mr. Kaczynski be examined by Bureau of Prisons physicians and others authorized by such physicians to assist in the study and examination to determine his mental competency to stand trial. The Order further indicated that the examining physicians are authorized to access all pertinent medical and collateral information, including psychiatric and medical records, and psychological testing. The examination was ordered to commence on 01/12/98. On 01/12/98, Judge Burrell issued a supplemental Order for Dr. Sally Johnson to travel to Sacramento to conduct the examination of the defendant at the Sacramento County Jail. The Order outlined that Dr. Johnson should prepare a report of the examination of the defendant pursuant to the provision of 18, U.S Code, Sections 4247(b) and (c). The examination should include: the defendant's history and present symptoms; a description of the tests employed and the results; the examiner's findings; and the examiner's opinions as to diagnosis, prognosis, and "whether the defendant is suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his own defense." Copies of the report were ordered to be provided to the Court, counsel for the defendant, and the Government by 7:00PM on 01/16/98. On 01/13/98, Judge Burrell issued an additional Order which directed that trial counsel for the defendant were to provide Dr. Johnson with copies of each of the letters admitted to the Court under seal by the defendant and all of the transcripts of ex parte and en camera hearings. If these materials were included in the competency report, that aspect of the report would not immediately be given to the Government. Rather, the Government would be provided the opportunity to petition the Court for access to the excluded materials at a later date. The trial judge and the defendant's counsel would be given a copy of the competency report in its entirety. In accordance with these Orders, the psychiatric evaluation was conducted between 01/12/98 and 01/16/98.

In the indictment filed 06/18/96, Mr. Kaczynski was charged with violations of 18, U.S. Code, Section 844(d), Transportation of an Explosive with Intent to Kill or Injure (four counts); 18, U.S Code, Section 1716 Mailing an Explosive Device in an Attempt to Kill or Injure (three counts); and 18, U.S. Code, Section 924 (c) (1), Use of a Destructive Device in Relation to a Crime of Violence (three counts). These charges involved use of an explosive device to kill Hugh Scrutton on or about 12/11/85; the use of an explosive device that injured Dr. Charles Epstein on or about 06/22/93; the use of an explosive device to injure Dr. David Gelernter on or about 06/24/93; and the use of an explosive device to kill Gilbert B. Murray on or about 04/24/95. Mr. Kaczynski is represented by Federal Defenders Quinn Denvir, Judy Clarke, and Gary Soward. Special Attorneys to the U.S. Attorney General assigned to this case are Robert J.

Cleary, Stephen P. Freccero, R. Steven Lapham, Bernard F. Hubley, and J. Douglas Wilson.

Extensive collateral information was available for review and use during this evaluation period. This included copies of Judge Burrell's Court Orders dated 01/09/98, 01/12/98, and 01/13/98; the indictment filed on 06/18/96; extensive information in regard to the charged offenses; medical records on Mr. Kaczynski, including a copy of his birth certificate from the State of Illinois; dental records from William Schauer, DDS, and Thomas Ditchey, DDS, through 1982; University Health Service records from Harvard University beginning in September 1958; hospital summary from Billings Hospital in Chicago, Illinois for hospitalization from 09/10/59 to 09/15/59; records from Dr. Walter Peschel in Missoula, Montana; records and correspondence from Carolyn C. Goren, M.D., April 1991 through January 1995; records from St. Peters Community Hospital in Helena, Montana; records from Glen Wielenga, M.D., of Lincoln, Montana for time periods between 1991 and 1993; records from the Sacramento County Jail for the time period between 1996 and 1998; and records from the Health Services Department at the Federal Correctional Institution (FCI) Dublin, California, for a period of detention from 09/03/97 to 11/06/97.

Collateral information provided by the prosecution included copies of the Government trial brief filed under seal; selected statements and writings by the defendant; a letter outlining the Proof of Uncharged Crimes dated 07/29/96 addressed to Quin Denvir, Federal Defender; statements concerning the charged bombs, information on disguises and aliases, and targeting of victims; a copy of Mr. Kaczynski's original autobiography (1979); the Unabomb correspondence and Manifesto; declarations from Park Elliott Dietz, M.D., M.P.H., Ph.D., dated 10/02/97, and Phillip J. Resnick, M.D., dated 10/02/97; and an Analysis of Neuropsychological Testing on Theodore Kaczynski by John T. Kenny, Ph.D., dated 12/29/97.

Collateral information provided by the defense included a chronology of charged and uncharged offenses; transcripts of court proceedings in United States vs. Theodore Kaczynski dated 11/21/95, 01/05/98, 01/07/98, and 01/08/98; Declarations of defense retained experts including David Foster, M.D., dated 11/11/97 and 11/17/97, Xavier Amador, Ph.D., dated 11/16/97; Karen Froming, Ph.D., dated 11/17/97; a letter to Elizabeth Gilbertson, M.D., from Theodore Kaczynski; the autobiography of Theodore Kaczynski prepared in accordance with participation in the Multiform Assessment of College Men Study, by Henry A. Murray at Harvard University; a typewritten transcript of Theodore Kaczynski; autobiographical notes 1979; a social history chronology of Mr. Kaczynski; and excerpts from correspondence between 1975 and 1991 and journals between 1957 and 1971. Also provided was a copy of the Refutation (a 15 chapter manuscript written by Mr. Kaczynski primarily between August and November 1997). Pursuant to a Court Order dated 11/13/97, the examiner was provided copies of the letters written by Mr. Kaczynski to Judge Garland D. Burrell, Jr., dated 12/18/97 and 01/05/98, and copies of the sealed reporter draft transcripts dated 12/18/97, 12/19/97, 01/05/98 and 01/07/98 (in camera proceedings).

The examiner also reviewed the complete set of writings obtained from Mr. Kaczynski's cabin in Montana. This included a series of journals spanning the time period of 1960 to present; extensive correspondence by Mr. Kaczynski and to Mr. Kaczynski; and detailed records of scientific experiments conducted by Mr. Kaczynski. In addition of review of the extensive collateral information, the examiner also had the opportunity to visit Mr. Kaczynski's cabin at the storage site outside of Sacramento and to review extensive photographs of the cabin contents.

Initial interviews were conducted with defense attorneys Quin Denvir, Judy Clarke and Gary Soward, and prosecuting attorneys Robert Cleary and Stephen Freccero on 01/11/98. Prosecuting attorneys were then interviewed separately on 01/11/98. Defense attorneys were interviewed on 01/12/98. Additional interviews with both defense and prosecuting attorneys took place throughout the week, in regard to obtaining necessary information and managing the boistics of the evaluation process. Personal interviews were conducted with Wanda Kaczynski, mother of the defendant, and David Kaczynski, brother of the defendant, on 01/13/98. Phone interviews were conducted with defense retained experts David Foster, M.D., Raquel Gur, M.D., Ph.D., Ruben Gur, Ph.D., and Karen Froming, Ph.D.; and prosecution retained experts Park Dietz, M.D., and Phillip Resnick, M.D. A phone interview was also conducted with Sherry Woods, librarian in Lincoln, Montana.

DATES OF CONTACT/PROCEDURES ADMINISTERED: During this evaluation, Mr. Kaczynski was interviewed by Sally C. Johnson, M.D., Chief Psychiatrist and Associate Warden of Health Services for the Federal Correctional Institution in Butner, North Carolina. During this evaluation, Mr. Kaczynski was interviewed by the examiner on eight occasions at the Sacramento County Jail, with a total interview time of approximately 22 hours. The interviews took place either in the line up room conference area or in confidential attorney visiting booths on the second or eighth floor. At the start of the initial interview and briefly during subsequent interviews on 01/12/98 and 01/13/98, the defense attorneys were present to answer Mr. Kaczynski's questions regarding the evaluation process. In addition to the clinical interviews, formal review was conducted of previous medical evaluations, as well as previous neuropsychological and psychological testing results. Additional psychological testing administered during this evaluation included the Minnesota Multiphasic Personality Inventory-2 (01/12/98), the Millon Clinical Multiaxial Inventory-II (01/12/98), the Beck Depression Inventory (01/15/98), and the Draw a Person Picking an Apple from a Tree projective drawing (01/15/98). Psychological testing administered during this evaluation was administered by Dr. Johnson. Scoring and interpretation of tests were accomplished with the assistance of psychology staff at FCI Butner.

At the outset of this evaluation and repeatedly throughout the week, the purpose of the evaluation and limits of confidentiality of information provided were discussed with Mr. Kaczynski. He was informed that the information and the observations made would provide the basis for completion of a report which would be available to the Judge, as well as the Defense and Prosecuting Attorneys. He was advised that a

provision was in place to protect the privacy of any en camera materials. He demonstrated an adequate understanding of this information.

BACKGROUND INFORMATION: The information outlined in this section is a composite of that obtained through interviews with Mr. Kaczynski, review of the extensive collateral information, and interviews with those individuals outlined above. Mr. Kaczynski was viewed as a relatively reliable historian in regard to most of the information that was provided. On advice of his attorneys, he provided only limited information regarding his activities immediately around the time of the currently charged offenses. Mr. Kaczynski tended to emphasize or minimize certain aspects of his history and recited descriptions of many events by rote, using the wording used in his writings. With encouragement, he was able to provide additional detail regarding some of those points. The information provided by Mr. Kaczynski was generally consistent with that provided by other sources.

Theodore John Kaczynski was born in Chicago, Illinois on 05/22/42. He is the oldest son born to Theodore Richard Kaczynski and Teresa (Wanda) Dombeck Kaczynski. He has one brother, David Kaczynski, who is seven years younger, born in 1949. His father is deceased, having died on 10/02/90 from a self-inflicted gunshot wound to the head. His father had been diagnosed shortly before his death with lung cancer with metastasis to the spine. His mother is 80 years old and resides in Schenectady, New York, near David and his wife Linda.

Mr. Kaczynski's father was initially employed as a sausage maker over the years. He spent part of his employment working for relatives in that business, but subsequently obtained employment with a food products company and then with several foam cutting companies in the Chicago area. He transferred with the latter job to Iowa and then back to Illinois. He reportedly provided adequately for the family, from a financial standpoint. He had no clear history of psychiatric illness, although it is noted that he committed suicide reportedly in response to his poor prognosis and significant pain related to the diagnosis of cancer. He had no criminal or substance abuse history. Wanda Kaczynski has spent most of her life working in the home, although earlier she completed approximately two years of college education. At a later point, when the family moved to Iowa, she completed her degree in teaching, and subsequently taught for a few years. Most recently, she was employed in an office situation on a part time basis. She has no history of diagnosed mental illness, (REDACTED).

Available reports indicate that the pregnancy with Mr. Kaczynski was full term with no significant problems prior to delivery. As a young child, he reached developmental milestones such as sitting up, walking, and talking within normal parameters. He was hospitalized at the age of approximately nine months, for several days, as the result of an allergic reaction. Hospital course was apparently uneventful and he was discharged without known medical sequelae. Conflicting reports exist as to the significance of that hospitalization. Records reviewed through notes kept in Mr. Kaczynski's baby book do not provide much information in regard to problems following that hospitalization. Information provided by Wanda Kaczynski, however, indicates her perception that his

hospitalization was a significant and traumatic event for her son, in that he experienced a separation from his mother (due to routine hospital practices). She describes him as having changed after the hospitalization in that he was withdrawn, less responsive, and more fearful of separation from her after that point in time. Mr. Kaczynski experienced usual childhood diseases including mumps and chicken pox, and underwent a tonsillectomy at age six and removal of a congenital cyst of his upper jaw at age 12 or 13.

Again somewhat conflicting accounts exist as to his early social development. He was viewed as a bright child and was described by his mother as not being particularly comfortable around other children and displaying fears of people and buildings. She noted that he played beside other children rather than with them. Her concern about him apparently led her to consider enrolling him in a study being conducted by Bruno Betleheim regarding autistic children. No detailed information is available about this, but Wanda Kaczynski indicated that she did not pursue that opportunity. Instead, she utilized advice published by Dr. Spock in attempting to rear her son.

Mr. Kaczynski describes his early childhood as relatively uneventful, until the age of eight or nine. He described memories of early play with other children, although he too recounts being somewhat fearful of people and describes himself as socially reserved. He recounts a few significant episodes in his early life referencing the hospitalization mentioned above, being scalded by boiling water, and falling and cutting his tongue. Mr. Kaczynski denies any history of physical abuse in his family. He does admit to receiving occasional spankings, but felt that this was not excessive or cruel. He does specifically describe extreme verbal and emotional abuse during his upbringing, although he did not identify this as a problem until he was in his 20s.

The family initially lived in a working class neighborhood in Chicago and Mr. Kaczynski described the family as having middle class aspirations but living only one step above the slums. He remembers his mother focusing on his dialect, encouraging him not to talk like the kids in the street, and responds that he complied by speaking one way at home and another way when interacting with the other children.

By the age of eight or nine, Mr. Kaczynski describes that he was no longer well accepted by the neighborhood children or his peers at school. The neighborhood children "bordered on delinquency" by his account, and he was not willing or interested in being involved in their activities. The family moved several times, bettering their housing status, eventually moving to Evergreen Park, Illinois, when he was approximately age 10. He describes this as a middle class suburb of Chicago.

Mr. Kaczynski attended kindergarten and grades one through four at Sherman Elementary School in Chicago. He attended fifth through eighth grade at Evergreen Park Central School. As the result of testing conducted in the fifth grade, it was determined that he could skip the sixth grade and enroll with the seventh grade class. According to various accounts, testing showed him to have a high IQ and, by his account, his parents were told he was a genius. He claims that his IQ was in the 160 to

170 range. Testing supposedly conducted at that time has not been made available for review. Mr. Kaczynski described this skipping a grade as a pivotal event in his life. He remembers not fitting in with the older children and being the subject of considerable verbal abuse and teasing from them. He did not describe having any close friends during that period of time.

He attended high school at Evergreen Park Community High School. He did well overall from an academic standpoint, but reports some difficulty with math in his sophomore year. He was subsequently placed in a more advanced math class and mastered the material, then skipped the 11th grade. As the result, he completed his high school education two years early, although this did require him to take a summer school course in english. During the latter years of high school he was encouraged to apply to Harvard, and was subsequently accepted as a student, beginning in the fall of 1958. He was 16 years old at the time.

Mr. Kaczynski completed his undergraduate degree in Mathematics, graduating in June 1962, at the age of 20. He began his first year of graduate study at the University of Michigan at Ann Arbor in the fall of 1962. He completed his Masters and Ph.D., by the age of 25. Following graduation, he accepted a position as assistant professor in the Math Department at the University of California at Berkeley, and remained in that position from September 1967 until June 1969.

During his high school years, Mr. Kaczynski was not involved in many activities. He did play the trombone and speaks with pride about the lessons he took from a well known trombone instructor. He denies any involvement in sports or interest in group activities. After starting college, he was hospitalized briefly and diagnosed as suffering from infectious mononucleosis. He recovered without significant sequelae.

Mr. Kaczynski describes being happy with the birth of his younger brother, and he and family report a relatively strong relationship between the boys (when age differences were taken into consideration), throughout Mr. Kaczynski's school years.

Mr. Kaczynski's employment history is somewhat limited and consists of a variety of jobs held for relatively short periods. In the summer before college, he was involved in part time activities in painting and repair at a local elementary school. The summer after his freshman year of college, he worked at a spice packing plant. During graduate school in Michigan, he worked as a teaching fellow for approximately three of the five years. As noted, he then accepted an assistant professor position in the Math Department at Berkeley. Following resignation from that position, he returned to live with his parents in Lombard, Illinois, and began looking for land, where he could establish a more isolated existence. In 1969 he had some temporary employment at warehouse jobs and factories while looking for the land. From 1971 until the time of his arrest, he was for the most part unemployed and living off the land, with some limited financial support from his family. Intermittently, he worked to obtain needed money, which included employment in the fall of 1972 and spring of 1973 in masonry and groundskeeping jobs. In 1978 and 1979, he worked a few months at a foam cutting

company in Lombard, Illinois, where his father and brother were employed. He was fired from that job after inappropriate behavior towards the female manager and subsequently worked briefly at the Prince Castle Restaurant Equipment Company.

Mr. Kaczynski had no periods of service in the military and indicated he was deferred from the draft due to his status as a student and later as a teacher.

Prior to his current legal situation, Mr. Kaczynski has had no significant criminal record of arrests or incarceration. He did receive a traffic ticket for passing a stopped school bus about 25 years ago. This required him to appear at the Justice of the Peace Court to resolve the ticket. No attorney representation was involved, he pled guilty, and paid a fine of \$30. He has never retained an attorney for any other reasons. He has never served as a juror nor been a plaintiff in a legal action.

Mr. Kaczynski denies any significant history of substance use or abuse, including alcohol or nicotine. This is confirmed by other sources of collateral information.

Mr. Kaczynski describes no religious affiliation. (REDACTED). Since living on his own, he has not affiliated with any religion.

(REDACTED).

Mr. Kaczynskj has no history of inpatient psychiatric hospitalizations or ongoing treatment. He does have a history of brief contacts with mental health systems in various places. Although he had interactions with guidance counselors around academic issues in junior high and high school, it appears he was not involved in any type of counseling. As referenced earlier, he underwent a battery of psychological testing in the fifth grade, the results of which initiated the decision for him to be advanced academically ahead of his peer group. After entering Harvard, he voluntarily became involved in a psychological study of young men. He underwent some psychological testing and completed a written autobiography at that time. Results from that study will be discussed in the psychological testing portion of this report.

While at the University of Michigan he sought psychiatric contact on one occasion at the start of his fifth year of study. As referenced above, he had been experiencing several weeks of intense and persistent sexual excitement involving fantasies of being a female. During that time period he became convinced that he should undergo sex change surgery. He recounts that he was aware that this would require a psychiatric referral, and he set up an appointment at the Health Center at the University to discuss this issue. He describes that while waiting in the waiting room, he became anxious and humiliated over the prospect of talking about this to the doctor. When he was actually seen, he did not discuss these concerns, but rather claimed he was feeling some depression and anxiety over the possibility that the deferment status would be dropped for students and teachers, and that he would face the possibility of being drafted into the military. He indicates that the psychiatrist viewed his anxiety and depression as not atypical. Mr. Kaczynski describes leaving the office and feeling rage, shame, and

humiliation over this attempt to seek evaluation. He references this as a significant turning point in his life.

Beginning in the spring of 1988, Mr. Kaczynski made several contacts with mental health systems around the issue of establishing relationships with women. He indicates that in 1988 he was suffering from insomnia and a renewed interest in getting advice and moral support to establish a relationship with a woman. He describes picking a psychologist's name out of the phone book and writing her a letter about his interest. He indicates that his decision to seek this type of counseling resulted after having a dream about a young woman. Upon awakening he had the idea that perhaps at age 45 it was not too late for him to establish a relationship, and at that point he thought of leaving his isolated life in Montana and finding a job and a female for himself. As noted, he sent a detailed letter to the therapist and saw her once. He had a positive experience in the session and subsequently sought employment. He states that during the session the therapist, Elizabeth Gilbertson, had mentioned the thought of her arranging a meeting with him and some of her female clients. He subsequently wrote her a letter with the hopes of reminding her to do so, but she did not pick up on his implied message. He also came to the realization that he could not afford to see her regularly, although he could have afforded one more visit. Subsequent to that session, he wrote to the Mental Health Center in Helena, requesting that he be assigned a therapist or counselor with whom he could correspond by mail. Mr. Kaczynski indicates that this could not be worked out and he remained depressed for the next several months. Although the depression lightened eventually, it remained there to some degree until 1994.

In 1991 Mr. Kaczynski contacted a local general practitioner, Dr. Glen Wielenga, in Lincoln, concerning insomnia. Mr. Kaczynski indicates the doctor suspected he was depressed, but he was somewhat dissatisfied with Dr. Wielenga's assessment. Dr. Wielenga did prescribe Trazadone at a dose of 50mg at bedtime. Mr. Kaczynski took it for three days. It made him sleep, but he experienced daytime drowsiness and gas from it, and discontinued the medication. He subsequently wrote to the Mental Health Center in Great Falls, asking for recommendation of a few people he could contact in regard to finding a psychiatrist, but did not follow through and his insomnia remitted without treatment.

Records indicate that Mr. Kaczynski saw Dr. Gilbertson as noted above. He also made contact via letter to Dr. Melnick, a psychiatrist in Missouri. He was subsequently unable to afford her fees.

Around this same time, in the spring of 1991, he set up an appointment with Carolyn Goren, M.D., in Missoula, Montana. He sought evaluation and treatment for symptoms of palpitations and stress. Prior to his visit, he sent Dr. Goren a letter outlining his concerns. He was seen on 04/29/91, and subsequently had one follow up visit some months later. After his initial visit, Mr. Kaczynski continued to monitor his blood pressure, which remained within normal limits, and provided these values to Dr. Goren on a semi annual basis for several years. No significant cardiac problems were

identified during his evaluation time. Collateral information also supports that Mr. Kaczynski sent a letter to the Director of the Golden Triangle Community Mental Health Center in October 1993 concerning his problem of insomnia and asking for location of a suitable psychiatrist that he could see on a reduced fee. There was no follow through with an appointment. Mr. Kaczynski had no other mental health contacts prior to the period after his arrest on the current charges. (REDACTED).

Following his visit to Dr. Goren and his belief that perhaps the potential of an ongoing relationship existed with her, he made the decision to acquire a more conventional career. He decided to attend school at the undergraduate level to obtain a degree in journalism. He corresponded with the University of Montana and subsequently was required to take the Graduate Record Exam. Even after he determined that there was not a possibility of an actual relationship with Dr. Goren, he took the exam anyway and reportedly scored quite well. He never matriculated to the University.

In reviewing available background information on Mr. Kaczynski's life, it was useful to review his two lengthy autobiographical documents. At the time he went to Harvard and became involved in a psychological study of students there, he was asked to write the first autobiography. He completed this in one or two days, in 1959. Twenty years later, over a period of several months, he wrote a 216 page autobiography of his life.

In the autobiography in 1959, Mr. Kaczynski describes an uneventful early childhood, and indicates that he was somewhat rebellious towards his parents, who were quite lenient with him. He describes his relationship with his parents as quite affectionate and denies any involvement in delinquent behavior. He notes the testing that occurred in fifth grade and the impact on his life of skipping the sixth grade. Despite that, he claims that he did establish a few friendships in junior high. (REDACTED). In addition to playing the trombone in the school band for a few years, he also collected coins. He denies any dating during junior high or high school. Upon entering Harvard, he was struck with the realization that he was no longer smarter than all the other students. Nonetheless, he did above average work, excelling in math. Later, he notes that during the last few years, his relationship with his parents had deteriorated and often resulted in arguments. He describes his mother as having a "an artist's temperament" and indicates he respected her more than his father. He describes his father as an extravert, who had a number of community interests. At the end of the autobiography, he lists a variety of information that he "forgot to include." Of note, he references quarrelling a lot with his brother, but generally having a friendly relationship, although he viewed himself as being superior in intellect and in strength of will. He noted he enjoyed building structures out of wooden blocks and playing with his chemistry set. He references one friend, whom he describes as a "rather dull fellow with average intelligence and not too interesting." He viewed himself as being collectively regarded as a shy, hard working student.

The autobiographical notes completed in 1979 provided a much more detailed account of Mr. Kaczynski's view of his history. This is divided into various age periods and separated into the periods zero through age nine; age 10 to 15; age 16 to 20; age 20 to

24; age 24 to 27; and then from age 27 on (to age 37). The original copy is handwritten.

It is of note that after leaving his job at the University of California at Berkeley, Mr. Kaczynski spent approximately two years attempting to locate a piece of wilderness land upon which he could live, isolated from society. In 1971 he succeeded in building a small cabin on a piece of land that he purchased in conjunction with his brother, in Lincoln, Montana. From 1971 until his arrest on 04/03/96, Mr. Kaczynski's primary residence was HCR 30, Box 27, Lincoln, Montana 59630. The cabin was situated a short distance off a road, but the approximately one and one-half acre of land provided him solitude and ready access to wilderness area. Although he had neighbors in the vicinity, he was able to maintain minimal contact with them if he so chose. During that time period, he made an effort to live off the land and over a period of years, developed increased sophistication with identification of edible plants, gardening, food preservation, hunting, and game preservation, and developed some necessary skills in the area of tool making and sewing. The cabin was not equipped with any plumbing and his water supply was provided by a creek located near the cabin. He did not have any electricity at the house, although hook up was available nearby. During the early years of his residence there, he had a car and subsequently for a short time a pick up truck. After that, he maintained a bicycle for transportation or walked into town, where he had access to public transportation. The cabin was located approximately four miles outside of Lincoln. Mr. Kaczynski remained there, except for several short periods where he traveled and sought employment to earn some money. He was provided with a minimal stipend from his parents throughout this time period and used the money he had originally earned at Berkeley and other intermittent jobs to support himself. He estimated that it generally cost him less than \$400 a year to live, after he became established in his routine.

In June 1969, after leaving his job at Berkeley, Mr. Kaczynski moved to Lombard, Illinois to stay with his parents. That summer he and David traveled to Canada, looking for a piece of wilderness land for Mr. Kaczynski to buy. He applied for permission to purchase land in British Columbia. During that time, David was enrolled at Columbia University. Following his graduation in 1970, David moved to Great Falls, Montana. Throughout the summer of 1970, Mr. Kaczynski continued to look for wilderness land in Alaska and subsequently learned that his application for land in Canada was denied. He had a short period of employment for a few months at the end of 1970 with Abbot Consultants in Elmherst, Illinois. In the summer of 1971 he purchased his land in Lincoln, where he built his cabin with minimal assistance from his brother. During the period of late 1972 until December 1973, Mr. Kaczynski worked at a variety of jobs in Chicago and Salt Lake City, Utah. He returned to his cabin in Montana in June 1973. In September 1974, for two to three weeks, he worked at a gas station in Montana, earning a few hundred dollars. In January 1975 he traveled to Oakland, California, and returned to his cabin in March. In May 1978 he returned to Chicago in search of work and obtained employment at Foam Cutting Engineers, where his father and brother were employed. He continued in that job for about a month, until he was fired. He was subsequently employed by Prince Castle from September 1978 until March 1979. After

quitting his job at Prince Castle, he lived with his parents in Lombard, Illinois and in the early summer of 1979 returned to his cabin in Montana. He remained there until mid 1980, when he traveled to Canada, again in search of wilderness land. Upon his return and with his lack of success in finding wilderness, he settled into his cabin where he remained in residence until the time of this arrest on the current charges.

While residing in his cabin, he would regularly travel to town for supplies, go to the Post Office, and use the Library. Periodically he would travel beyond Lincoln. This was usually accomplished by bus.

Sometime in the 1980s, Mr. Kaczynski decided to study Spanish. He claims he acquired an old Berlitz Spanish instruction book for a few dollars and used that as the basis for his studies. His writings show that he practiced his Spanish by doing translations and corresponded with an Hispanic, (REDACTED), to assist in practicing the language. Review of information from his cabin shows that he also translated material that he viewed to be more sensitive into Spanish in his journals.

Over the time period from 1969 until his arrest, Mr. Kaczynski recorded many of his thoughts, ideas, and activities in writing and maintained these writings in his cabin. He also maintained correspondence with his family over a number of years and saved much of that correspondence. Review of these extensive writings provides a narrative and his own analysis of his life and behaviors.

The following information is a composite of that obtained through review of the extensive writings completed by Mr. Kaczynski. Throughout his writings and conversations, he focuses on the fact that he was moved from the fifth to seventh grade. He identifies this as the cause of his lack of development of social skills, a problem that continues with him to the present. Between the seventh and 12th grade, he perceived "a gradual increasing amount of hostility I had to face from the other kids. By the time I left high school, I was definitely regarded as a freak by a large segment of the student body." He describes a number of incidents in his junior high and high school years, including a discussion of making a small pipe bomb in chemistry, which gained him some notoriety. He described himself as having "frustrated resentment towards school parents, and the student body" which often was given outlet through "snotty behavior in the classroom which often took a sarcastic or crudely humorous turn."

(REDACTED).

He admits that he was "probably a very difficult teenager to live with" and that his parents "were in some respect generous and unselfish." He describes developing a "system of morality that evolved into an abstract artificial construction that could not possibly be applied in practice" but never telling anybody about this system because he knew they would never take it seriously. At the same time, he describes looking for a way to justify hating people. At times in his writings, he focuses, in an extraordinary amount of detail, on passing or short lived relationships or potential relationships with

females. This is illustrated by his discussion of his relationships with (REDACTED) when he was 10, (REDACTED) when he was 16, (REDACTED) when he was 17, (REDACTED) when he was 32, "Ms. Z" when he was in graduate school, and (REDACTED) when he was 36.

Mr. Kaczynski writes about his experiences at Harvard and in essence describes a very isolated existence, with only infrequent interactions with other students. It was not until his sophomore year that he made a few brief friendships, but due to circumstances they did not persist. As noted, in his sophomore year he participated in a research study at Harvard, conducted by Professor Murray, which looked at the psychological functioning of young men at Harvard.

Mr. Kaczynski claimed in his writing, that during his college years he had fantasies of living a primitive life and fantasized himself as "an agitator, rousing mobs to frenzies of revolutionary violence." He claims that during that time he started to think about breaking away from normal society. He describes that beginning in college he began to worry about his health in particular ways, always having a fear that a symptom could result in something serious. He also claims that during high school and college he would often become terribly angry because he could not express that anger or hatred openly. "I would therefore indulge in fantasies of revenge. However, I never attempted to put any such fantasies into effect because I was too strongly conditioned ... against any defiance of authority. To be more precise, I could not have committed a crime of revenge even a relatively minor crime because of my fear of being caught and punished was all out of proportion to the actual danger of being caught." He describes that as a result, he had little comfort from his fantasies of revenge. He describes a vivid memory of a nightmare in his senior year at Harvard wherein he saw his trombone teacher standing in a room looking like a noble old man, he then saw a mist and heard angels, and when the mist cleared the teacher had been transformed into a bent, senile, old wreck. He describes at length his inability to figure out whether or not he was attractive to women and references a passing comment of a friend of his family's at the age of 15, that made him believe he was quite attractive.

During the time period after leaving Harvard, he began to study information about wild edible plants, and began to fear the possibility of being drafted. He spent some time hiking and learning about the wilderness.

Upon completion of his work at Harvard, Mr. Kaczynski chose to go to the University of Michigan because it was the only one of the three graduate schools to which he had applied that provided him with a teaching fellowship. He found the teaching experience difficult and the quality of the program not to his liking. He became involved in some research and succeeded in publishing several papers concerning mathematical theory and problem solving. He describes his work at Michigan as being viewed as exceptional by the instructors. Nonetheless, he also describes having virtually no social life there.

It was during that period of time that he was staying at a rooming house, managed by a

graduate student, (REDACTED). He began to experience difficulty with the noise from the other rooms, particularly the sounds resulting from sexual activity of other renters. He reported the noises he heard in the house to the University System, with the hope that action would be taken against Mr. (REDACTED). He describes three experiences where he perceived he overheard the landlord providing negative information about him which subsequently resulted in a negative outcome. The first involved an Engineering student by the name of (REDACTED), who was coming over to get help with math problems. Although Mr. Kaczynski couldn't clearly hear a conversation, he eventually heard a statement by (REDACTED) indicating that he had "only come to get help with math." He perceived that Mr. (REDACTED) must have said something negative to (REDACTED) about him. On the second occasion, he had given an individual information about rooms to rent at the house where he was residing. Again, he heard a voice which he thought belonged to the individual he had spoken with, but he never came up to see him, and the next time he saw him, he was snubbed by him. On the third occasion, he had received a letter from his mother referencing that the daughter of some of their friends was interested in the woods and might like to look him up; they had given her his address. Subsequently, several weeks later he thought he overheard a woman's voice in the foyer area of the house and Mr. (REDACTED) say "Oh hi (REDACTED)" and then he said something negative about him, and the woman left without ever visiting him.

(REDACTED).

He writes, "During my years at Michigan I occasionally began having dreams of a type that I continued to have occasionally over a period of several years. In the dream I would feel either that organized society was hounding me with accusation in some way, or that organized society was trying in some way to capture my mind and tie me down psychologically or both. In the most typical form some psychologist or psychologists (often in association with parents or other minions of the system) would either be trying to convince me that I was "sick" or would be trying to control my mind through psychological techniques. I would be on the dodge, trying to escape or avoid the psychologist either physically or in other ways. But I would grow angrier and finally I would break out in physical violence against the psychologist and his allies. At the moment when I broke out into violence and killed the psychologist or other such figure, I experienced a great feeling of relief and liberation. Unfortunately, however, the people I killed usually would spring back to life again very quickly. They just wouldn't stay dead. I would awake with a pleasurable sense of liberation at having broken into violence, but at the same time with some frustration at the fact that my victims wouldn't stay dead. However, in the course of some dreams, by making a strong effort of will in my sleep, I was able to make my victims stay dead. I think that, as the years went by, the frequency with which I was able to make my victims stay dead through exertion of will increased." In the same period of time he experienced low morale and mood.

In the summer after his fourth year, he describes experiencing a period of several weeks where he was sexually excited nearly all the time and was fantasizing himself as

a woman and being unable to obtain any sexual relief. He decided to make an effort to have a sex change operation. When he returned to the University of Michigan he made an appointment to see a psychiatrist to be examined to determine if the sex change would be good for him. He claimed that by putting on an act he could con the psychiatrist into thinking him suitable for a feminine role even though his motive was exclusively erotic. As he was sitting in the waiting room, he turned completely against the idea of the operation and thus, when he saw the doctor, instead claimed he was depressed about the possibility of being drafted. He describes the following, "As I walked away from the building afterwards, I felt disgusted about what my uncontrolled sexual cravings had almost led me to do and I felt humiliated, and I violently hated the psychiatrist. Just then there came a major turning point in my life. Like a Phoenix, I burst from the ashes of my despair to a glorious new hope. I thought I wanted to kill that psychiatrist because the future looked utterly empty to me. I felt I wouldn't care if I died. And so I said to myself why not really kill the psychiatrist and anyone else whom I hate. What is important is not the words that ran through my mind but the way I felt about them. What was entirely new was the fact that I really felt I could kill someone. My very hopelessness had liberated me because I no longer cared about death. I no longer cared about consequences and I said to myself that I really could break out of my rut in life and do things that were daring, irresponsible or criminal." He describes his first thought was to kill someone he hated and then kill himself, but decided he could not relinquish his rights so easily. At that point he decided "I will kill but I will make at least some effort to avoid detection so that I can kill again." He decided that he would do what he always wanted to do, to go to Canada to take off in the woods with a rifle and try to live off the country. "If it doesn't work and if I can get back to civilization before I starve then I will come back here and kill someone I hate." In his writings he emphasized what he knew was the fact that he now felt he had the courage to behave irresponsibly.

Mr. Kaczynski describes in his writing and on interview, that these thoughts went through his mind in the time it took to walk about one block. This new understanding persisted from that point on in his life. He developed a plan to complete his degree and to work for two years, so as to save enough money to live in the wilderness. As already noted, this plan was accomplished through teaching for two years in Berkeley and subsequently locating land and building his cabin in Montana. During that time period he writes that he would have to discipline himself to avoid reading newspapers except occasionally because if "I read papers regularly I would build up too much tense and frustrated anger against politicians, dictators, businessmen, scientists, communists, and others in the world who were doing things that endangered me or changed the world in ways I resented."

In the early 1970s Mr. Kaczynski wrote an essay summarizing some of his ideas and made an effort to circulate it to others who might share them. He received no responses. In essence, the essay outlined his response to a book written by Jacques Ellul called "The Technological Society." In correspondence to Professor Ellul, he describes reading the book at least six times. He discussed both that and ideas put forth in another book "Autopsy for Revolution." In his own essay, Mr. Kaczynski presented

his ideas that the continued scientific and technical progress within society would inevitably result in the extinction of individual liberty. He describes that the power of society to control the individual was rapidly expanding and references issues such as propaganda, educational guiding of children's emotional development, operant conditioning, direct physical control of emotions via electrodes and "chemitrodes," biofeedback training, memory pills and other drugs, genetic engineering, development of super human computers with intellectual capacities beyond anything humans are capable of, and electronic devices for surveillance. His proposal was to found an organization dedicated to stopping federal aid to scientific research, to prevent the inevitable outcome of the "ceaseless extension of society's powers."

He wrote in his journal about him not fitting into organized society and not wanting to fit into it, and seeking avenues of escape from it. In his words in the early 1970s, he wrote "True I would not fit into the present society in any case but that is not an intolerable situation. What makes a situation intolerable is the fact that in all probability, the values that I detest, will soon be achieved through science, an utterly complete and permanent victory throughout the whole world, with a total extrication of everything I value. Through super human computers and mind control there simply will be no place for a rebellious person to hide and my kind of people will vanish forever from the earth. It's not merely the fact that I cannot fit into society that has induced me to rebel, as violently as I have, it is the fact that I can see society made possible by science inexorably imposing on me."

Near the end of his autobiography in 1979, Mr. Kaczynski describes his motives for writing, to include that he intended to start killing people and that when caught, he was concerned people would perceive him to be a "sickie." His writings were an effort to prevent the facts of his psychology from being misrepresented. He also describes some type of relief, sexual or otherwise, he obtains by writing. He describes his sources of hatred as his perceived social rejection and the "fact that organized society frustrates my very powerful urge for physical freedom and personal autonomy." He also describes experiencing anger from other sources and then turning his hatred towards organized society.

Another continued description of Mr. Kaczynski's history and development is provided by a reading of the extensive correspondence with his family. After determining that a major cause of his frustration and discomfort in life was the psychological abuse by his parents, he carried on an very ambivalent relationship with them as evident through his letters. These show a wide range of affect and are often degrading, controlling, and yet at the same time continue over a number of years. He persistently seeks apologies from his parents for what they have done to him, but no type of apology they offer satisfies him or is viewed as sincere or acceptable. The relationship with his brother David, is also clearly outlined. Interspersed in the correspondence are letters to various local and national government agencies regarding requests for information about radiation, parasitic infections, sonic booms, etc.

Mr. Kaczynski's mother, Wanda, and his brother, David, were interviewed together

during the evaluation. They were allowed ample time to provide any information that they believed might be pertinent about Mr. Kaczynski's life prior to arrest. Evident was a sense of guilt on David's part, for feeling compelled to assist in having his brother arrested. Wanda Kaczynski clearly was experiencing significant distress as she tried to develop an understanding of what had happened with her son over the years. Both of them provided a significant amount of detail about various instances and events in Mr. Kaczynski's life. His mother identified her amazement that "out of the blue" Mr. Kaczynski would express extreme anger and go into excessive detail about relatively minor events. She used an example where she had yelled at both sons about their need to put dirty socks in a hamper. Twenty years later she received a letter from Mr. Kaczynski in which he scolded and demeaned her for not understanding that it was normal for adolescents to have sloppy rooms. Both Wanda and David Kaczynski recounted several periods of acute withdrawal by Mr. Kaczynski. The initial incident occurred on the plane, when Mr. Kaczynski and his father were returning from a visit to Harvard. Apparently he was angry and withdrawn and refused to talk. A second episode occurred while David and Mr. Kaczynski were on a trip, hiking in the woods. Mr. Kaczynski apparently sat down on a log, and by David's account, was essentially nonresponsive for several hours. After that period of time he seemed to resume normal activity. The third episode occurred when his parents were visiting in Montana, at David's apartment. Apparently Mr. Kaczynski experienced that episode in the living room and remained unresponsive throughout the late afternoon and evening hours. It is notable that the family may not have perceived this as particularly unusual at the time, in that they all went to bed without resolution of the situation. It was evident during my interview with them, that they have a tremendous need to try to understand the events that have happened, and in that light present material in a somewhat conclusory fashion. Nonetheless, they were able to provide additional detail about a variety of events Mr. Kaczynski had written about in his journals or had discussed on interview.

Collateral information indicates that over an extended period of time, ranging from the early 1970s, Mr. Kaczynski is alleged to have been involved in a variety of acts of vandalism and violence. A description of those events provides a complimenting view of the history described in his autobiography and journals. His writings obtained in the cabin also include detailed accounts of the activities alleged to have occurred. The materials are voluminous, organized, and some of them are in Spanish or coded with a complicated code allegedly developed by Mr. Kaczynski. After solidification of his ideas in the fall of 1966, it appears that he organized his life and behavior around his belief system. He reacted against individuals in the area by ruining equipment, stealing things, or attempting to harm individuals through use of wires and traps. His writings describe him thinking seriously about and planning to murder a scientist in 1971. During the later 1970s, he began experimenting to create explosive devices that could succeed in killing individuals. He also describes thoughts of harming people whom he felt had humiliated him. Specific examples of this described in collateral information and during interviews, include his plans to mutilate the face of (REDACTED), after he felt she degraded him by her lack of interest in a continuing romantic relationship.

His writings show him to be associated with placing a bomb at the University of

Illinois in May 1978 which partially exploded. It is alleged that in May 1979 he placed a bomb contained in a cigar box which exploded when John Harris, a student at Northwestern University, opened it. It is alleged that in November 1979 he succeeded in getting a bomb aboard American Airlines Flight 444 from Chicago; the bomb exploded en route, causing an emergency landing. It is alleged that in June 1980 he mailed a bomb to Percy Wood, which exploded causing injury. It is alleged that in October 1981 he placed a bomb at the University of Utah in Salt Lake City, which detonated without injury. It is alleged that in May 1982 he sent a bomb to Professor Patrick C. Fischer at Vanderbilt, which was opened by his secretary, Janet Smith, causing serious injuries. It is alleged that in July 1982 he placed a bomb that exploded when it was moved by Professor Diogenes Angelakos, Director of Research at the University of California at Berkeley. It is alleged that in June 1985 he mailed a bomb to Boeing, which was detonated without injury. It is alleged that in May 1985 he placed a bomb at the University of California at Berkeley which resulted in John Hauser being seriously injured. It is alleged that in November 1985 he mailed a bomb from Salt Lake City to Dr. James McConnell, who along with his assistant were injured. It is alleged that in February 1987 he placed a bomb disguised as a road hazard at CAAMS, Inc., in Salt Lake City which exploded and injured an employee. It is alleged that in December 1994 he mailed a bomb from San Francisco that exploded and killed Thomas Mosser in North Caldwell, New Jersey. It is also alleged that he mailed a variety of correspondence to individuals and newspapers describing the activities as perpetrated by an anarchist group called FC (Freedom Club). It is alleged that he mailed correspondence to several individuals and newspapers to outline demands to have the documented entitled "Industrial Society and Its Future" published.

In regard to his current offenses, he is charged with mailing a bomb to Rentech Computer Company which exploded on 12/11/85, killing Hugh Scrutton. He is also charged with seriously injuring Charles Epstein a geneticist at the University of California and Professor David Gelernter a professor of Computer Sciences at Yale in New Haven, Connecticut by bombs which exploded respectively on 06/22/93 and 06/24/93. He is charged with the death of Gilbert B. Murray, as the result of a bomb mailed to him which exploded in Sacramento, California. Extensive information regarding the nature of the bombs and intended use of the bombs was available from the writings of Mr. Kaczynski.

Mr. Kaczynski was arrested on 04/03/96 at his cabin in Montana. He was detained while the cabin was searched and was subsequently transported to a jail facility in Montana. Thereafter he was transferred to Sacramento County Jail in Sacramento, California.

In regard to his legal representation post arrest, it is noted that at the time of his arrest Mr. Kaczynski inquired about the process of obtaining a Federal Defender as his attorney. He was subsequently represented by Michael Donohoe until he was moved to Sacramento. At that time a defense team consisting of Quin Denvir, Judy Clarke, and Gary Soward was established to represent him on the charges discussed above. For a several month period in the fall of 1997, he was moved from the Sacramento County

Jail to FCI in Dublin, California due to his difficulty adapting to the noise of the jail in Sacramento. He was returned to Sacramento prior to trial so as to have closer access to his attorneys.

Prior to this evaluation, a number of other defense and prosecution retained clinicians had the opportunity to either interview Mr. Kaczynski, review his writings, or administer testing, and their declarations were made available. Data reviewed included copies of neuropsychological testing conducted by David Watkins, Ph.D, Karen Froming, Ph.D., and Ruben Gur, Ph.D.; a Summary of Neuropsychiatric Evaluation of Theodore Kaczynski dated 11/15/97, prepared by Raquel Cur, M.D., Ph.D., and Ruben C. Gur, Ph.D.; and a listing of the names, addresses, and phone numbers of the defense and prosecution retained experts. As noted, the examiner had the opportunity to speak by phone with several of these clinicians.

Shortly after Mr. Kaczynski's arrest while still housed in Montana, Dale Watson, Ph.D., administered a battery of psychological tests to Mr. Kaczynski. No report of his findings is available, but the test results were interpreted and expanded upon by two other defense experts, Ruben Gur, Ph.D., and Karen Froming, Ph.D. On 06/15/96 and 06/16/96, Mr. Kaczynski was interviewed by Raquel Gur, M.D., Ph.D., and neuropsychological testing was conducted by Ruben Gur. It was Dr. Raquel Gur's impression that Mr. Kaczynski met the diagnostic criteria for Schizophrenia, Paranoid Type, and Dr. Ruben Gur's impression that the testing was not inconsistent with this. After sharing their opinions with Mr. Kaczynski, he refused to talk with them further and expressed his wish for his defense attorney to avoid further use of their services or bringing their findings to light.

Dr. Froming also interviewed Mr. Kaczynski in February 1997 and complete additional neuropsychological testing. She also reviewed previous testing done after he entered Harvard. Phone interview revealed that Mr. Kaczynski also had been administered the TAT (Thematic Apperception Test) during that period, but it had never been scored. She scored it and indicated that the themes he presented throughout the test consisted of people being dominated by others, that his responses showed no personal interactions through any of the cards, and showed a complete absence of affiliation. She opined that Mr. Kaczynski was suffering from Paranoid Schizophrenia. She indicated that Mr. Kaczynski refused to talk with her further after she shared her opinion with him.

David Foster, M.D., evaluated Mr. Kaczynski in late 1997 and opined that Mr. Kaczynski had an aversion to evaluation by psychiatrists and he suffered from Paranoid Schizophrenia. Mr. Kaczynski refused to talk with him further after he shared his opinions and was absent over the Christmas holiday period.

The declaration of Xavier Amador, Ph.D., was also reviewed. Although he did not see Mr. Kaczynski, he opined that he suffered from Schizophrenia and claimed Mr. Kaczynski's reluctance to submit to psychiatric evaluations and treatment were a hallmark of Schizophrenia.

The prosecution retained experts Phillip Resnick, M.D., and Park Dietz, M.D., M.P.H., Ph.D., did not have access to Mr. Kaczynski for interview, but based on review of e-mails and interview of people in the Lincoln, Montana area, they opined that Mr. Kaczynski would be capable of being evaluated by government psychiatrists and they saw no evidence that he suffered from delusions. They viewed his psychiatric problems as falling in the Schizoid or Schizotypal range of personality disorders. John T. Kenny, Ph.D., critiqued the neuropsychological testing that had been conducted with Mr. Kaczynski. He did not view the results to be specific to a diagnosis of Schizophrenia.

Phone interview of Sherry Woods, a librarian in Lincoln, Montana, was conducted during this evaluation. She was given an opportunity to share her observations about Mr. Kaczynski. Ms. Woods described that she liked Mr. Kaczynski, but she recognized his discomfort around people and that others would perceive him as different. She indicated she told new staff about him in order to help accommodate his differences in support of his continued Library use. She described him as extremely polite, quite and soft spoken, although she initially found his appearance as somewhat frightening. She described his ability to identify with her young child, whom she indicated shared some of the kinds of problems that Mr. Kaczynski may have had himself as a child. She noted that he patted her son on the shoulder twice, which is the only physical contact she ever saw him display over the 13 years of their acquaintance.

She described Mr. Kaczynski as living a life style consistent with his beliefs and admired him for that. She enjoyed talking with him about his beliefs and indicated he had very strong feelings against government. Although she had the idea that their conversations never changed his opinions, he patiently listened to her ideas and made her feel that her thoughts were worthwhile. He would come to the Library on the average of every week or two, and usually stayed from one to two hours in the reference room. She would attempt to read his mood when he entered the Library and so there were times when it was clear he was willing to talk, and other times when he wanted to be left alone. He ordered numerous books through the inter library loan program, including some that she described as deeply intellectual. He read a wide variety of books and magazines on birds, wildlife, biographies, and hypnotism. On one occasion when she had been feeling particularly burdened, he brought to her attention that he had written a letter to the librarian in Helena, Montana, and decided he would request his books through her to save work for Ms. Woods.

It was her belief that in the year prior to his arrest, he started changing and this scared her. She viewed him as more intense and focused, and less interested in interacting. She believed that this change was due to his concern for a friend of his who was an illegal alien and had been hurt on the job and then deported. At one point he showed her a letter he was writing to some government official regarding this subject, and she was surprised he gave it to her. He indicated to her that he was meeting with friends in Colorado or California to try to help his friend. During that time period he appeared more withdrawn and would spend two to three hours at a time "writing like crazy" and

then he quit coming into the Library. She does indicate that over the years, he occasionally helped around the Library by boxing books, shoveling snow, cleaning up, or painting. At one point the Library planned an open house and Mr. Kaczynski came to that function. Ms. Wood indicated that she did visit Mr. Kaczynski in jail. He has been corresponding intermittently to her, but she indicates it is actually she who is trying to maintain the correspondence as a means of support. In the last several letters prior to Christmas, she perceived that he was feeling down so she has been writing more often. She believes that the significance of his situation is all "coming home to roost."

COURSE OF EVALUATION: This Court Ordered evaluation took place between 01/11/98 and 01/16/98. Medical examination was not completed by this examiner. Review of his records show that Mr. Kaczynski has undergone physical examination and laboratory studies both while in custody at FCI Dublin and the at Sacramento County Jail. Those records were available for review. In summary, Mr. Kaczynski is a 55 year old, white male, who is 5'9" tall and weighed 153 pounds as of 09/09/97. Blood pressure was noted to be 130/80 and pulse 54 . Outside of a refractive error and slight bradycardia, physical exam was within normal limits. Review of medical history indicated no known medication allergies. He had some history of seasonal allergies to ragweed, a tonsillectomy at age six, removal of congenital cyst of the upper jaw at age 13, removal of impacted wisdom teeth at age 22, removal of a benign skin lesion of the left neck in 1991, and fracture of the left fifth finger, resolved. He also gave a history of some palpitations but denied that this was a significant problem now except when he felt very anxious or stressed. Occasionally he has suffered from constipation but generally manages this with his diet. He intermittently suffers from insomnia. He also gave a history of hemorrhoids. Mr. Kaczynski denies any ongoing chronic medical problems, although he does indicate that over a period of approximately five years he monitored his blood pressure. This showed blood pressure values to be within an acceptable range. Family medical history is positive for cerebrovascular accident in his maternal grandmother at the age of 40 (REDACTED). His father was diagnosed as having metastatic lung cancer and prior to his death suffered from Reynauds Syndrome. (REDACTED). Mr. Kaczynski is currently on no medications but does take one multivitamin daily and uses ibuprophen for muscle pain secondary to exercise. He wears glasses for reading. He indicated that he generally felt well physically throughout this period of evaluation.

Review of medical records indicates that on 01/07/98, Mr. Kaczynski attempted suicide by asphyxiation. He used his underwear to fashion a tourniquet which he used in an attempt to asphyxiate himself. He suffered an abrasion to the right side of his neck. He describes getting dizzy and experiencing some dimming of his vision. At that point, he considered the negative potential outcome of being "brain damaged" and not succeeding in his suicide attempt and discontinued his efforts. It has been determined that he did not suffer any medical sequelae from that attempt. When this incident was discovered the following day by identification of the abrasion on his neck, he was moved from his housing status on the second floor to the eighth floor and placed on suicide watch. He was evaluated by Sacramento County Jail physicians at that time and

diagnosed as having an Adjustment Disorder with Depressed Mood secondary to stress from his legal situation. Other diagnoses were deferred.

Routine laboratory studies conducted following his suicide attempt were within normal limits, except for an elevated triglyceride level that was considered to be nonfasting. He remained on suicide watch until 01/12/98.

Pertinent history in regard to the suicide attempt included the fact that Mr. Kaczynski had felt frustrated and depressed over the way his trial was progressing. He had developed conflicts with his attorneys which he viewed as impossible to resolve. He perceived that he would not be able to represent himself or obtain alternate counsel and decided to kill himself instead of proceeding to trial with a defense strategy that he did not want.

Information provided through the attorneys, Sacramento County Jail personnel, and the Jail records, indicate that Mr. Kaczynski has, with the exception of his suicide attempt, been a cooperative and easy to manage prisoner. His housing has been single cell, with limited access to exercise, and essentially no contact with other prisoners. He quickly understood the rules and routines of the jail setting and demonstrated an awareness of how to access medical care or intervention for other reasons. As noted, he did report significant sleep disturbance in the jail, which he attributed to excessive noise during the night time hours. He verbalizes a need for a full eight hours of sleep and it is unclear how accurate that assessment is. He did discuss the problem with Jail staff and for a short period of time was given a prescription for Melatonin. He claims some confusion occurred about dispensing the medication, and he was given an alternate medication. He did not take that medication, and decided not to pursue medications to aid his sleep cycle. Mr. Kaczynski reports that once he was moved to FCI Dublin, his sleep improved. Upon return to the Jail he was housed in a quieter area and has not had significant problems with insomnia since that time.

Mr. Kaczynski's mental status exam remained fairly consistent throughout the week of interviews. Description will be interspersed with pertinent historical mental status information. Mr. Kaczynski appeared as a slender build, gray haired, white male, who showed adequate hygiene and was dressed in orange jail clothing and a T shirt. He carried his glasses with him and utilized them while reading and writing during the interviews. He was oriented to person, date, time, place and situation. He understood the type and purpose of the evaluation and expressed his intent to cooperate. Throughout the evaluation he answered questions to the best of his ability, was able to discuss information, and relate a narrative without prompting. No abnormality of gait was noted. No psychomotor retardation was evident. There was no evidence of tremor, tics or unusual mannerisms. Eye contact was good, although when asked a question that he perceived as difficult, or one to which it appeared he was not sure how he should respond, he tended to look down and avoid further eye contact until his answer was prepared. During those times, he would also at times clench his hands together and pat them on the table, and appeared to be actually in some distress in his efforts to formulate a response. This only happened on a few occasions throughout the

interviews. Speech was of normal rate and tone.

He did demonstrate some need for excessive explanation and often focused on details. In addition, the information he initially supplied in response to questions was frequently given verbatim from the information available in his voluminous writings. When pressed to expand on the issue, he presented some minor trouble in rewording his answer or in expanding or explaining it, but persisted with the examiner in an effort to accomplish the task. There was no evidence of the use of neologisms or clang associations. The volume of his speech was appropriate from a conversational standpoint and he would identify if he had any problems hearing a question or conversation above the noise of the jail. He seemed intent on clearly understanding questions posed to him. No evidence existed during the exam of any hearing problem. He showed the capacity to remain in the interview process for periods of several hours without demonstrating undue anxiety or restlessness. On one occasion he did identify to the examiner that he was nervous during the interview and he had not felt that experience with other individuals who were interviewing him regarding mental health issues. This topic was discussed, he was able to relax, and it did not interfere with progression of the evaluation.

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Unabomber

GOVERNMENT'S SENTENCING MEMORANDUM

May 4, 1998

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES
OF AMERICA,
Plaintiff,

v.

THEODORE JOHN
KACZYNSKI,
Defendant.

CR. NO. S-96-0259 GEB

GOVERNMENT'S
SENTENCING
MEMORANDUM

DATE: May 4, 1998
TIME: 9:00 a.m.
COURT: Hon. Garland E.
Burrell

INTRODUCTION

On January 22, 1998, Kaczynski pled guilty to 13 federal bombing offenses resulting in the death of three men and serious injuries to two others. During his plea colloquy Kaczynski acknowledged responsibility for a series of 16 bombings that occurred between May 25, 1978, and April 24, 1995, throughout the United States. Ex. 1.

The plea agreement entered into by the parties calls for a sentence of life imprisonment without possibility of release and an order of restitution for the full loss caused by defendant's wrongful conduct. The offenses of conviction, as well as the applicable Sentencing Guideline provisions, require the imposition of mandatory sentences of life imprisonment.

Because this case was resolved by a plea bargain, the public and the defendant's victims continue to have a strong interest in having a full and accurate factual record in an open proceeding, so that the public may take full measure of the seriousness of the defendant's crimes and the harm they caused to the community. Therefore, notwithstanding the mandatory sentence, the United States files this memorandum to make clear that the defendant deserves the sentence that the Court is required to impose, to emphasize the harm that the defendant caused to victims and their families, and to dispel any notion that the defendant acted for any purpose other than satisfying his personal animosity. In addition, this memorandum provides a basis for the government's request that this Court make recommendations to the Bureau of Prisons regarding the terms and conditions of Kaczynski's confinement.

The seriousness of Kaczynski's crimes, his lack of remorse for his actions, and continuing threat he poses to the public, require that he be removed from society for the rest of his life. In addition, Kaczynski should be ordered to pay restitution to the survivors of his crimes in an amount commensurate with the harm he has inflicted on them, and should be ordered to disgorge any monies paid to him, or on his behalf, for writings, interviews or other information, as set forth in the plea agreement. See 18 U.S.C. § 3681(a). Finally, this Court should recommend that the Bureau of Prisons incarcerate Kaczynski in a maximum security facility so that his activities can be monitored to prevent any future acts of violence or intimidation. See 18 U.S.C. § 3621(b) (4) (B).

A. THE HARM WROUGHT BY KACZYNSKI

Kaczynski stands convicted of intentionally taking the lives of three men and grievously wounding two others. In imposing judgment, this Court should consider that "just as the murderer should be considered an individual, so too the victim is an individual whose death represents a unique loss to society and in particular to his family." Payne v. Tennessee 501 U.S. 808, 825 (1991). Moreover, "[t]he affront to humanity of [the] brutal murder[s] such as [the defendant] committed is not limited to its impact on the victim or victims; a victim's community is also injured, and in particular the victim's family suffers shock and grief of a kind difficult to imagine for

those who have not shared a similar loss." Booth v. Maryland, 482 U.S. 496, 515 (1987) (dissenting opinion).

Those who have been left to bear witness to Kaczynski's actions may choose to address the Court, as is their right under Fed. R. Crim. P. 32(c) (3) (E) . We are simply presenting the Court with a quick glimpse of the li[ves] that [Kaczynski] chose to extinguish." Payne, 501 U.S. at 830 (concurring opinion), quoting Mills v. Maryland, 486 U.S. 367, 397 (1988) (dissenting opinion).

Gilbert Murray

Gilbert Murray was a Marine Corps veteran of the Vietnam War and a graduate of the University of California, Berkeley. A lifelong forester, he was the president of the California Forestry Association when, on April 24, 1995, he was killed at age 46 by a package bomb sent to his office by Kaczynski. The bomb so badly destroyed Gil Murray's body, that his family was allowed only to see and touch his feet and legs, below the knees, as a final farewell.

Gilbert Murray left behind a wife, two sons, a family who loved him, and many friends, colleagues, and co-workers. His wife, Connie, was introduced to Gil by her best friend, Jan Tuck, Gil's sister, when she was 16 years old. Connie and Gil began dating a few months after they met. The following year, Gil enlisted in the Marine Corps, and the two were married when Gil returned from his tour of duty in Vietnam. According to his wife, Connie, Gil "was in love with this Earth" and felt that he had been entrusted with a small patch of it to safeguard and protect. He was known as a voice of calm and reason in a highly contentious field and a man who worked hard to build bridges between differing camps. Above all, he was a dedicated father and husband, a man who "treasured" his family.

Together Connie and Gil raised two sons, Wil and Gib. Wil was 18 at the time of Gil's murder; Gib was just two weeks past his 16th birthday. Gil was always active in his sons' lives. He taught them to ski at an earlier age, watched and coached them in athletic leagues, and when they were in High School, went to their basketball, baseball and football games, even re-scheduling meetings to attend. At Gil's funeral, Wil told the congregation that his father was "the greatest man I ever met. He loved my mom, my brother and me more than life itself. He was always there for us. We always came first." For Connie Murray, her deepest regret comes from the realization that each of her sons will never know their father on an equal footing, as one adult to another.

Shortly before Gil Murray's death, his son Wil had been accepted to Cornell University where he had been recruited for the football team. There was much discussion in the family over whether they could afford to send their son to an Ivy League school which did not offer athletic scholarships. On the Sunday before Gil died, the Murray family met and decided that they would find a way to finance the education. One of the last

images that Connie had of her husband was his throwing out all the catalogues for other schools that had accepted Wil. Gil was murdered the next day. Left without the family's provider, and emotionally unable to be far away from home at such a difficult time, Wil did not attend Cornell.

Thomas Mosser

Thomas Mosser was a Navy Veteran of the Vietnam war and worked for the public relations firm of Burson-Marsteller, for 25 years. He had recently been promoted to general manager of the parent company, Young and Rubicam, Inc., and had been away on a business trip. On December 9, 1994, he returned home to his family in New Jersey. Earlier that day, the postman delivered the package that had been mailed to him by Kaczynski. Thomas Mosser's wife, Susan, brought the package inside the house and placed it on a table by the front door. The package lay unopened overnight in the Mosser home only a few feet from where Thomas' daughters played with their friends.

The following day, December 10, was meant to be a special day for the Mosser household. It was the unofficial commencement of the holiday season, a time when Thomas devoted all of his time to his family, and the day when the family had planned to go out together to buy a Christmas tree. That morning, Thomas took the mail that had accumulated during his trip, including the package sent to him by Kaczynski, into the kitchen to open. His wife and 15-month-old daughter, Kelly, joined him, while another daughter, Kim, slept in her room nearby. Seconds before Thomas opened the package, Kelly scurried out of the kitchen and Susan followed her. Thomas opened the package; the ensuing blast drove shrapnel into his body, leaving a gaping hole in his head, opening up his body, and piercing his organs with nails. He died at age 50, on the floor of his own home, his wife at his side trying in vain to aid and comfort him.

Thomas Mosser left behind a wife, a son, three daughters, a family that loved him, and many friends, colleagues, and co-workers. The Christmas season is always a painful reminder of their loss. Last year, Kelly, who had only been 15 months old when her father was murdered, returned from Sunday school with a question for her mother. "Is God coming back from heaven?" she asked. When told God would indeed return, Kelly asked "Could he bring Daddy back with him?"

Hugh Scrutton

Hugh Scrutton was a native of Sacramento and a graduate of the University of California, Davis. He had traveled the world, devoted time to art, literature, and gardening, and at age 38 was running his own computer rental business in Sacramento. Around noontime on December 1, 1985, he stepped out of his business and walked into the parking lot behind his store. There he stopped to try and pick what looked like a wooden plank with nails protruding from it laying on the ground. In reality, the object

was a bomb that Kaczynski had disguised and planted outside his store. Hugh Scrutton's simple act of courtesy, trying to remove what looked like a potential hazard to others, cost him his life. Kaczynski had rigged the concealed bomb to detonate when it was moved, and when Hugh started to lift the wood, the bomb exploded severing his right hand and driving shrapnel deep into his heart. He died at age 38, in the parking lot of the business he had only recently started, with a co-worker and a caring passerby trying desperately to save him.

Friends recall Hugh as a man who embraced life, a gentle man with a sense humor who had traveled around the world, climbed mountains, and studied languages. He cared about politics, was "fair and kind" in business, and was remembered as "straightforward, honest, and sincere." He left behind his mother, sister, family members, a girlfriend who loved him dearly, and a circle of friends and colleagues who respected and cared for him.

The survivors

Other individuals narrowly survived Kaczynski's attacks. Charles Epstein, a professor of pediatrics and a renowned researcher in prenatal disorders, was maimed and injured when, in the quiet of his family home, he opened the carefully disguised package bomb that Kaczynski had mailed to him. A husband and father, accomplished musician, as well as a physician who has dedicated his life to healing others, Dr. Epstein suffered permanent injuries to his hand, arm, face, and hearing. Dr. Epstein underwent weeks of emergency and reconstructive surgery, as well as medical treatment that continues to this day.

David Gelernter, a professor of computer science, was maimed and injured in his office at Yale University, when he too opened a package bomb sent to him by Kaczynski. Dr. Gelernter narrowly escaped death from the explosion, surviving only because he managed to stagger down five flights of steps and across a street to a nearby medical clinic where he was rushed to the trauma unit of a local hospital. A husband and father, as well as a noted teacher and writer, Dr. Gelernter suffered permanent injuries to his hand, arm, body, and sight. Dr. Gelernter underwent weeks of emergency and reconstructive surgery, as well as medical treatment that continues to this day.

Numerous other individuals were injured by Kaczynski's bombs. Gary Wright was injured by the bomb Kaczynski planted in the parking lot of a Salt Lake City computer store. He suffered lacerations and puncture wounds to his face, hands, arms, shoulder, and legs, and underwent surgery to remove shrapnel. Nicklaus Suino, an assistant to Professor James McConnell at the University of Michigan, was hospitalized when he opened the package bomb Kaczynski mailed to McConnell. John Hauser, then an Air Force Captain and graduate student at U.C. Berkeley, was seriously wounded by a bomb Kaczynski planted in a university computer room. Dr. Hauser suffered

permanent injuries, ending his career as an Air Force pilot and his dream of becoming an astronaut, and underwent weeks of surgery to repair the damage from the blast. Diogenes Angelakos, who died last year from cancer, was a distinguished professor at U.C. Berkeley when he was injured by a bomb Kaczynski planted in a break room on the U.C. Berkeley campus. He was hospitalized and underwent surgery, suffering permanent injuries to his hand. Janet Smith was injured when she opened a package bomb Kaczynski mailed to the professor she worked for. She was hospitalized and underwent surgery for her injuries. Percy Wood was the president of United Airlines when he was injured in his family home by a book bomb Kaczynski mailed to him. He was hospitalized and underwent surgery for injuries to his hand, legs, and face. Eighteen passengers and crew members were treated for smoke inhalation when the flight of their passenger airliner was aborted by a fire started by one of Kaczynski's bombs in the cargo compartment. John G. Harris was a student at Northwestern University when he was injured by a disguised bomb placed in a university work room by Kaczynski. Officer Terry Marker was injured while examining the contents of a concealed bomb Kaczynski had left in a University campus parking lot.

Many people were placed directly in harm's way by Kaczynski's bombs. Only chance prevented the death and injury of many of the victims' family members and co-workers, such as the wife and daughters of Thomas Mosser and Gilbert Murray's colleagues at the California Forestry Association. Many of Kaczynski's bombs were left in heavily trafficked areas -- the parking lot behind Hugh Scrutton's store, the student workrooms at Berkeley and Northwestern -- and easily could have killed or injured many others.

The harm Kaczynski brought about is not limited to the physical injuries he inflicted. By his actions, Kaczynski forced family members and co-workers to witness the slaying or wounding of loved ones, friends, and colleagues. In addition, while hiding behind an alias, Kaczynski intimidated individuals and the public with letters, threatening two noted scholars for pursuing academic research, taunting one of the men he had maimed, bringing the nation's air traffic to standstill on a holiday weekend by a threat to bring down a jetliner, and coercing newspapers into publishing his turgid theories on society's shortcomings. His acts of terrorism deprived countless individuals of their sense of security in their homes, workplaces, and communities.

B. KACZYNSKI'S CULPABILITY

"Deeply ingrained in our legal tradition is the idea that the more purposeful is the criminal conduct, the more serious is the offense, and, therefore, the more severely it ought to be punished." Tison v. Arizona, 481 U.S. 137, 156 (1986). The purposefulness of Kaczynski's conduct is evident from the circumstances of the crimes themselves. Each offense entailed considerable preparation and planning, from the design and construction of the homemade bombs to their clandestine implementation. And every step in the commission of these offenses allowed substantial opportunity for

reflection on the consequences. That the crimes continued unabated over the course of nearly two decades should dispel any uncertainty as to their deliberate nature.

In addition to what we may rightfully infer from the cruel details of these crimes, Kaczynski's own writings provide a stark account, in his own words, of his purposes and intentions. Thousands of pages of Kaczynski's handwritten and typed documents were found during the April 1996 search of his cabin; the documents include Kaczynski's self-styled "autobiography" chronicling his life to the age of 27, a daily journal for the days thereafter, and numerous handwritten entries and notes detailing plans for the bombings, the construction and placement of bombs, and Kaczynski's own reactions to the aftermath of his crimes. The earliest entry in these writings is 1969 and the latest is dated February 1996. Combined, these writings provide a detailed picture of Kaczynski's life and his motivation for becoming a serial killer.

Kaczynski killed out of hatred

In June of 1995, late in his bombing career, Kaczynski sent a manuscript (which came to be known as the "Unabom Manifesto") to newspapers under the alias "FC" espousing an ideological basis for his crimes. He claimed that he "had to kill people" to get a message before the public" that technology was destroying mankind. Ex. 2. While Kaczynski adopted the pretense that he was killing for the greater good of society, two points are clear from the writings seized from his home. First, his desire to kill preceded by several years any serious concerns about technology. Second, he wanted to kill not out of some altruistic sense that he would thereby benefit society, but, in his own words, out of "personal revenge" and without "any kind of philosophical or moralistic justification." Ex. 3.

Kaczynski's writings contain extensive meditations on his hatred of people, his ideology and motivations, and his intent to kill his victims. In his autobiography Kaczynski recounts that he first formed a desire to kill while still a graduate student at the University of Michigan in 1966, years before he made his way to Montana and adopted his isolated lifestyle. He immediately began to plan how he would murder: "My first thought was to kill somebody I hated and then kill myself before the cops could get me. Ex. 4. He quickly rejected this plan, however, in favor of one that would allow him to commit multiple murders and spare his own life:

But, since I now had new hope, I was not ready to relinquish life so easily. So I thought, "I will kill, but I will make at least some effort to avoid detection, so that I can kill again."

Id. According to his own writings, Kaczynski's decision to live a wilderness lifestyle was made in part to further his murderous plans:

Then I thought, "Well, as long as I am going to throw everything up anyway, instead of having to shoot it out with the cops or something,. . . I will go up to Canada, take off into the woods with a rifle, and try to live off the country. If that doesn't work out, and if I can get back to civilization before I starve, then I will come back here and kill someone I hate."

Id.

Over the ensuing years, Kaczynski came to despise many people, including those who interfered with the solitude he craved or came to represent for him certain aspects of modern technological and industrial society. Thus, his journals are filled with expressions of hatred often expressed in terms of some ill-defined need for "revenge" and plans to injure a varied group of individuals, from campers and snowmobilers who found their way into the national forest near his home, to a woman who had spurned his advances. In describing this abundant hatred, Kaczynski wrote: "I often had fantasies of killing the kind of people whom I hated (e.g. government officials, police, computer scientists, behavioral scientists, the rowdy type of college students who left their piles of beer-cans in the Arboretum, etc., etc., etc.) and I had high hopes of eventually committing such crimes." Ex. 5.

Kaczynski's culpability lies in his decision to act on his "fantasies of killing." For Kaczynski, violence was never the result of momentary rage or a response to provocation; rather it was the culmination of a plan worked out over a number of years. He described his motivation as "not hot rage, but a cold determination to get my revenge" (Ex.6) and often wrote of his resolve to act on his hatred:

Thus, when I had a fantasy of revenge, I had very little comfort from it, because I was all too clearly aware that I had had many previous fantasies of revenge, and nothing had ever come of any of them. This was very frustrating and humiliating. Therefore I became more and more determined that some day I would actually take revenge on some of the people that I hated.

Ex. 7. And while Kaczynski wrote extensively on a need for revenge, he was less articulate in explaining what he was seeking revenge for. Instead, his writings simply reveal that his hatred extended to virtually anyone who irritated him or represented some aspect of society he disagreed with. Kaczynski did, however, give considerable thought to how he would exact a plan of revenge, and was clear-eyed enough to admit (at least to himself) that he was not acting for anyone's gratification but his own. In April, 1971, before he embarked on his serial bombing campaign, Kaczynski recorded the following in his journal:

My motive for doing what I am going to do is simply personal revenge. I do not expect to accomplish anything by it. Of course, if my crime (and

my reasons for committing it) gets any public attention, it may help to stimulate public interest in the technology question and thereby improve the chances of stopping technology before it is too late; but on the other hand most people will probably be repelled by my crime, and the opponents of freedom may use it as a weapon to support their arguments for control over human behavior. I have no way of knowing whether my action will do more good than harm. I certainly don't claim to be an altruist or to be acting for the "good" (whatever that is) of the human race. I act merely from a desire for revenge.

Throughout his furtive journal entries Kaczynski conceded that his motivation to kill grew out of a "personal grievance" against society, bereft of any genuine belief that his actions would lessen what he viewed to be the negative impact of technology on others. Indeed, he noted that he would not plan his crimes and "take such risks from a pure desire to benefit my fellow man. Ex. 9. Even the causes Kaczynski later extolled in his manuscript, such as the preservation of the wilderness, he at times ridiculed in his private entries:

I believe in nothing ... I don't even believe in the cult of nature-worshippers or wilderness-worshippers. (I am perfectly ready to litter in parts of the woods that are of no use to me -- I often throw cans in logged-over areas or in places much frequented by people; I don't find wilderness particularly healthy physically; I don't hesitate to poach.)

Ex. 10.

Kaczynski seems to have prided himself in acting outside moral boundaries. He boasted that from an early age he had "never had any interest in or respect for morality, ethics, or anything of the sort." Ex. 11. Indeed, Kaczynski bragged in his autobiography:

The fact that I was able to admit to myself that there was no logical justification for morality illustrates a very important trait of mine ... I have much less tendency to self-deception than most people. ... Thus, I tended to feel that I was a particularly important person and superior to most of the rest of the human race. ... It just came to me as naturally as breathing to feel that I was someone special.

Ex. 12.

Kaczynski's journals also reflect that he worked at overcoming inhibitions against committing crimes, striving to develop what he called "the courage to behave irresponsibly." Ex. 4. Thus, in a journal entry dated December 1972 he wrote:

About a year and a half ago, I planned to murder a scientist as a means of revenge against organized society in general and the technological establishment in particular. Unfortunately, I chickened out. I couldn't work up the nerve to do it. The experience showed me that propaganda and indoctrination have a much stronger hold on me than I realized. My plan was such that there was very little chance of my getting caught. I had no qualms before I tried to do it, and I thought I would have no difficulty. I had everything well prepared. But when I tried to take the final, irrevocable step, I found myself overwhelmed by an irrational, superstitious fear -- not a fear of anything specific, merely a vague but powerful fear of committing the act. I cannot attribute this to a rational fear of being caught. I made my preparations with extreme care, and I figured my chances of being caught were less than, say, my chances of being killed in an automobile accident within the next year. I am not in the least nervous when I get into my car. I can only attribute my fear to the constant flood of anticrime propaganda to which one is subjected ...

Ex. 13, 14.

As early as 1975, Kaczynski took the first tentative steps on his destructive path. In the summer of that year he engaged in various acts of vandalism, including putting sugar in the gas tanks of various vehicles and vandalizing trailers and camps in Montana. In an act of a more deadly nature, he strung wire at neck height across roads frequented by motorcyclists. These acts continued over several summers and were a prelude to Kaczynski's coming bombing attacks.

Kaczynski's terrorism began in 1970. The history of his bombings reveal a patient and methodical killer. In May of that year he left Montana and returned to Chicago where he lived and worked for approximately a year. He noted in his journal that his biggest reason for returning to Chicago in 1978 was to "more safely attempt to murder a scientist, businessman, or the like" (Ex. 15) and explained:

In Montana, if I went to the city to mail a bomb to some big shot, [a Montana neighbor] would doubtless remember that I rode [the] bus that day. In the anonymity of the big city I figured it would be much safer to buy materials for a bomb, and mail it.

Ex. 16. Around the same time, he wrote of his continuing determination to overcome any compunction against committing crimes and realize his "ambition":

As a result of indoctrination since childhood, I had strong inhibitions against doing these things, and it was only at the cost of great effort that I overcame the inhibitions. I think that perhaps I could now kill someone (and I don't mean just set a booby trap having only a fractional chance of success) under circumstances where there was very little chance of getting

caught ... My ambition is to kill a scientist, big businessman, government official, or the like. I would also like to kill a Communist.

Ex. 3, 17.

Kaczynski's writings track his progress in realizing his "ambition." They also reflect his appreciation for the gravity and unlawfulness of his conduct. For example, Kaczynski classified many of his writings by their incriminating nature, and left catalogues designating which writings were the most damning, designating some to be burned and others to be buried. Ex. 18. These entries illustrate how well he grasped the legal significance of his actions, as when he noted that that certain journal passages detailed events "past [the] statute of limitations." Ex. 19. They also reveal his concern for his public image, with Kaczynski describing other passages as "embarrassing, not dangerous," or simply "very bad public relations." Id.

Kaczynski wrote some documents in code, others in Spanish, and concealed carbon copies of his later public "FC" missives deep within a storage container in the loft of his home. Many journal entries recount daily activities in plain English text and then revert to coded text, often in Spanish, as the subject matter moves to criminal acts. Some entries explicitly recognize the incriminating nature of the contents, as in this notebook entry where he wrote:

[M]y motive for keeping these notes separate from the others is the obvious one. Some of my other notes contain hints of crime, but no actual accounts of felonies. But these notes must be very carefully kept from everyone's eyes. Kept searate from the other notes they make a small compact packet1 easily concealed.

Ex. 20.

It is apparent that Kaczynski understood, indeed relished, the damage and suffering he was inflicting. In his journals he carefully monitored news accounts of his attacks and graphically rated their success, often by describing in detail the extent of the injuries his victims suffered. He also collected newspaper or magazine articles concerning his bombings, particularly those with photographs of bleeding victims or grieving family members, as souvenirs or trophies of his accomplishments. E.g. Ex. 21, 22.

Kaczynski has no remorse for his crimes

Kaczynski's own words demonstrate that he had neither remorse for his conduct nor empathy for his victims. When he planted his first bomb in May of 1978 at the University of Illinois, Chicago Circle Campus, he documented how he selected the name of the victim at random from the ranks of professors engaged in technical fields,

and, when the bomb would not fit in a campus mailbox, left the bomb in a parking lot near a science building in the hope that a student in a scientific field would find the package and "blow his hands off or get killed." Ex. 15. In his journal he boasted: "I have not the least feeling of guilt about this -- on the contrary, I am proud of what I did. " Id.

In May 1979, just prior to returning to Montana, Kaczynski placed his second bomb on a table located in the Technological Institute at Northwestern University. A researcher was badly injured when he attempted to pick up the device, but not badly enough to suit Kaczynski. In a journal entry, Kaczynski stated:

I figured the bomb was probably not powerful enough to kill (unless one of the lead pellets I put in it happened to penetrate a vital organ). But I had hoped that the victim would be blinded or have his hands blown off or be otherwise maimed ... maybe he would have had burns in the eyes if his glasses hadn't momentarily retarded the flow of hot gasses. Well, at least I put him in the hospital, which is better than nothing. But not enough to satisfy me I wish I knew how to get hold of some dynamite.

Ex. 23.

Kaczynski's writings chronicle his emotions during his subsequent crimes. In November of 1979 Kaczynski tried to "blow up an airliner" and "kill a lot of business people," (Ex. 24) but failed. He noted in his journal that "unfortunately plane not destroyed, bomb too weak" and sought consolation in the thought that "at least it gave them a good scare." Ex. 25. Next, in June of 1980, after he mailed the bomb that injured Percy Wood in his own home, he recorded that "after complicated preparations I succeeded in injuring the pres of United A.L." Ex. 26. Around this time he noted in his journal:

Guilty feelings? Yes, a little. Occasionally I have bad dreams in which the police are after me. Or in which I am threatened with punishment from some super natural source. Such as the devil. But these don't occur often you enuf (sic) to be a problem. I am definitely glad to have done what I have.

Kaczynski then returned his attention to universities, and in October of 1981 planted a firebomb at the University of Utah, but was disappointed with the result:

last fall I attempted a bombing and spent nearly three hundred bucks just for travel expenses, motel, clothing for disguise, etc. aside from cost of materials for bomb. And then the thing failed to explode. Damn. This was the firebomb found in U. of Utah Business School outside door of room containing some computer stuff.

Ex. 20. In May of 1982, when a bomb he sent wounded Janet Smith, a professor's secretary, he lamented:

May about 1982 I sent a bomb to a computer expert named Patrick Fischer. His secretary opened it. One newspaper said she was in hospital? In good condition? With arm and chest cuts. Other newspaper said bomb drove fragments of wood into her flesh. But no indication that she was permanently disabled. Frustrating that I can't seem to mak[e] lethal bomb.

Ex. 29. A few months later he traveled to U.C. Berkeley and planted another firebomb, this time injuring Professor Diogenes Angelakos. Again Kaczynski registered disappointment:

According to newspaper, vice chairman of computer sci. dept. picked it up. He was considered to be out of danger of losing any fingers, but would need further surgery for bone and tendon damage in hand. Apparently pipebomb went off but did not ignite gasoline. I dont understand it. Frustrated.

Kaczynski set no bombs for three years. His journals reflect that he used this sabbatical to experiment with more deadly bombs. His return was marked by renewed ferocity. In May of 1985 he set a bomb in the same building where he had injured Professor Angelakos. A graduate student, then Air Force Captain John Hauser, was seriously injured when the bomb exploded with such force that it left an exact imprint of his Air Force Academy ring embedded in the workshop wall. Kaczynski followed the news accounts closely, recording the descriptions of "blood all over the place" and Hauser's "mangled" arm. Ex. 31. While he confided to himself some unease over maiming a "father of 2 kids" he later reflected that he "just got over it" and even "laughed at the idea of having any compunction about crippling an airplane pilot." Id.

Around the time that he placed this bomb, Kaczynski mailed a bomb to the Boeing Corporation in Auburn, Washington. Unbeknownst to Kaczynski, this bomb was successfully rendered safe by police after several employees had handled it. Kaczynski could only record his disappointment: "Outcome of Boeing bomb unknown ... Seems inexplicable it was designed and built with such care that malfunction seems highly improbable." Ex. 32. He sent the next bomb to a University of Michigan Professor James McConnell. When the bomb injured the Professor's assistant, Nicklaus Suino, Kaczynski noted only scientific detachment: "Only minor injuries to McConnlls (sic) assistant. Deflagrated, did not detonate. Must be either pipe was a little weak or loading density of explosi[v]e a shade too high at failure." Ex. 33.

Later that year, Kaczynski rejoiced when he killed his first victim. "Excellent ... humane way to eliminate somebody" and "very good results" (Ex. 34,35) was how he described his murder of Hugh Scrutton, who died in the parking lot of his Sacramento

store when Kaczynski's bomb tore his hand from his body and drove shrapnel into his heart.

In February of 1987, Kaczynski placed the bomb that injured Gary Wright in Salt Lake City. Kaczynski noted that while the bomb detonated, the results "were not enough to satisfy" him. Ex. 36. Kaczynski was more concerned with the sketch of a suspect circulated after the bombing. He noted in his journals, "Description (several versions) ... The 'composite drawing' did not show any beard, although it did show a small moustache." Id.

Apparently alarmed by the possibility of an eyewitness, Kaczynski was silent for nearly six years. In his April 1995, letter to the New York Times, Kaczynski explained these periods of apparent inactivity:

Our early bombs were too ineffectual to attract much public attention or give encouragement to those who hate the system. We found by experience that gunpowder bombs, if small enough to be carried inconspicuously, were too feeble to do much damage, so we took a couple of years off to do some experimenting. We learned how to make pipe bombs that were powerful enough, and we used these in a couple of successful bombings as well as in some unsuccessful ones. Unfortunately we discovered that these bombs would not detonate consistently ...

So we went back to work, and after a long period of experimentation we developed a type of bomb that does not require a pipe, but is set off by a detonating cap that consists of a chlorate explosive packed into a piece of small diameter copper tubing ... We used bombs of this type to blow up the genetic engineer Charles Epstein and the computer specialist David Gelernter.

Ex. 27, 38.

By 1993, Kaczynski no longer accepted the risk of detection involved in placing bombs, so he concentrated on designing and sending mail bombs. In June he traveled to Sacramento and mailed bombs to Dr. Epstein in Tiburon and Dr. Gelernter in New Haven. Though he critically injured both recipients, Kaczynski was only partially satisfied:

I sent these devices during June, 1993. They detonated as they should have. The effect of both of them was adequate, but no more than adequate.

Ex. 39.

Kaczynski thereafter ensured that his next attacks were fatal. He modified his designs

to improve fragmentation and inserted additional screws, paneling nails, and even bits of razor blades into the bombs to serve as enhanced shrapnel. In December of 1994 he traveled to San Francisco and mailed a package bomb to Thomas Mosser in New Jersey. Mosser opened the package in the kitchen of his home. The bomb detonated, spraying shrapnel with such force that nails penetrated walls and metal kitchen pans. Mosser died on the floor of his kitchen with his wife and children nearby. Kaczynski noted his satisfaction in his journal, recording that the bomb "gave a totally satisfactory result." Ex. 40. Kaczynski later bragged about his technical innovation in one of his letters to the newspapers:

We did use a chlorate pipe bomb to blow up Thomas Mosser because we happened to have a piece of light-weight aluminum pipe that was just right for the job. The Gelernter and Epstein bombings were not fatal, but the Mosser bombing was fatal even though a smaller amount of explosive was used. We think this was because the type of fragmentation material that we used in the Mosser bombing is more effective ...

Ex. 41.

In April of 1995, Kaczynski sent a bomb addressed to William Dennison at the California Forestry Association (CFA) in Sacramento. On April 24, Gilbert Murray opened the package at the CFA and was killed by the blast and shrapnel. Several co-workers narrowly escaped harm as the force of the blast sent shrapnel and fragments through the walls of the building. In a later letter from "FC" to the New York Times, Kaczynski expressed no qualms about missing his mark at the CFA: "We have no regret about the fact that our bomb blew up the 'wrong' man, Gilbert Murray, instead of William N. Dennison, to whom it was addressed." Ex. 42.

Around this time Kaczynski also took to taunting victims, law enforcement, and the public in a series of letters. These letters were designed not only to instill fear, but also to thwart investigators. For example, in April of 1995 he sent a letter to one of his previous targets, David Gelernter, mocking him for having opened the package Kaczynski had sent him two years earlier:

People with advanced degrees aren't as smart as they think they are. If you'd had any brains you would have realized that there are a lot of people out there who resent bitterly the way techno-nerds like you are changing the world and you wouldn't have been dumb enough to open an unexpected package from an unknown source.

Ex. 43. Kaczynski explained the subterfuge in his journal:

In a letter say that, 'scientists consider themselves very intelligent because they have advanced diplomas (advanced degrees) but they are not as

intelligent as they think because they opened those packages.' This will make it seem as though I have no advanced degree.

Ex. 44.

Kaczynski sent letters to Nobel laureates Phillip Sharp and Richard Roberts threatening them that "It would be beneficial to your health to stop your research in genetics." Ex. 45,46. He sent a letter to a newspaper threatening to blow up an airliner out of the Los Angeles International Airport. The threat paralyzed air travel until Kaczynski wrote another letter saying:

Note. Since the public has a short memory we decided to play one last prank to remind them who we are. But no, we haven't tried to plant a bomb on an airliner (recently).

Ex. 47.

Kaczynski used fear to manipulate the public into considering his views. He threatened the public with "bombs much bigger" than any made before, offering to desist from further "terrorism" only if his manuscript was published in the newspapers. Ex. 48. At the request of law enforcement, the manuscript was published in September of 1995.

Kaczynski poses a future threat to society

Kaczynski's crimes were conceived and carried out with inventive cunning. Kaczynski crafted his bombs by hand, producing sophisticated lethal contraptions without the benefit of electricity or modern facilities. He experimented with different homemade explosive charges, often creating mixtures from household products, designed and perfected electrical initiating systems for bombs, and fashioned bomb components out of scrap materials. See e.g. Ex. 49-55. He tested prototypes and plotted the force and distance of fragments and shrapnel to measure their effective killing zones. Kaczynski contrived ways to deceive his unsuspecting targets, designing books that exploded upon opening, test equipment that detonated when lifted by the handle, and bombs disguised in packages fashioned to look like research papers.

Kaczynski also labored methodically on his bombs, combining patience with stealth and eluding detection for nearly twenty years. When assembling his bombs, he wore gloves and manually sanded all parts to remove fingerprints. Ex. 56-83. He carefully chose stamps for his mail bombs, checking to make sure they bore no indented writing, and even soaked his stamps in a home-made solution in the hopes of removing trace evidence. Ex. 84-87. He went as far as to insert false evidence into his bombs to misdirect investigators, placing human hair he collected from a public restroom in a bus station on tape used to construct the device. Ex. 88. He carefully sealed and

weighed packages to determine the appropriate postage, thereby avoiding interaction with postal clerks. He researched names to select victims and fictitious return addresses, charted bus schedules to plan his attacks, and wore disguises to purchase materials and mail bombs. Ex. 89. Kaczynski also made plans for flight in the event the authorities identified him, charting escape routes through the Montana wilderness and designating secret hiding places and burying food and ammunition on map locations disguised in a manner so that only he would recognize them.

And while Kaczynski had claimed in his 1995 letters to the press that he would forswear terrorism if his manuscript were published, it is clear he had no intention of halting the violence. Instead, at the time of his arrest in April of 1996, Kaczynski was preparing for more lethal attacks. When agents searched his cabin they found all the materials necessary for the construction of several more bombs. Kaczynski had stockpiled in excess of 40 pipes, many individually wrapped and bearing coded notations, and nearly 200 feet of the copper tubing of the type he had used in approximate 4" increments as detonators in many of his previous bombs. He also had chemicals arranged on shelves, some in raw form and others in individually marked containers mixed to the specifications of his explosive charges.

The array of materials Kaczynski had in inventory speaks volumes as to his future plans. He had 23 identical initiating devices (1) of the sort he had perfected over the years in other bombs, as well as a fully constructed pivot switch (2) of the same configuration that he had used in three of his last four bombs. He also had a number of timing devices, a rigged alarm clock, an anti-movement ball switch, spools of wire, reserves of solder, ammunition, and even specially designated nails and screws for use as shrapnel. His home also had his work bench with all the tools necessary for his craft, as well as a wide variety of books that included textbooks on chemistry and electrical circuitry, and even an FBI manual on fingerprinting.

The most disconcerting discovery during the search was that Kaczynski had already completed another bomb. It was, by any standard, a powerful weapon, fully-armed and virtually identical in design to that which killed Gilbert Murray. The weapon was intended to kill people, as the outside of the bomb cylinder was covered with a mosaic of individual lead squares, a trademark of an antipersonnel device, since the lead pellets create a lethal zone of some distance when the bomb is detonated. The device was disguised in a package with a label describing it as a "Newell Channel Reamer," a mechanical tool commonly used in the aircraft industry. The package was ready for delivery, lacking only an address.

1. An initiator is a bomb component that causes the explosive charge to ignite. See Government's Motion in Limine for Admission of Evidence Under Fed. R. Evid. 404 (B), filed on November 7, 1997, p. 12, n. 12.

2. A switch is a device that closes the electrical circuit in the bomb, passing the charge from the batteries to the explosive powder, thereby initiating the explosion. See Government's Motion in Limine for Admission of Evidence Under Fed. R. Evid. 404 (B), filed on November 7, 1997, p.

Finally, as a chilling reminder of the purpose of all this material, Kaczynski kept handwritten lists of potential victims with their home or work addresses as well as maps of various cities with these locations circled. See e.g. Ex. 90.

From what can be discerned from the search of his home, it also appears that Kaczynski's weaponry was not limited exclusively to bombs. For example, agents discovered a completely homemade, operable handgun, as well as a corresponding written description of its creation and purpose, all of which further demonstrates the resourcefulness that Kaczynski was able to summon to further his murderous intent:

a few days ago I finished making a twenty two caliber pistol. This took me a long time, for a year and a half, thereby preventing me from working on some other projects I would have liked to carry out. Gun works well and I get as much accuracy out of it as I'd expect for an inexperienced pistol shot like me. It is equipped with improvised silencer which does not work as well as I hoped. At a guess it cuts noise down to maybe one third. It is said that it is easy for machinist to make a gun, but of course I did not have machine tools, but only a few files, hacksaw blades, small vice, a rickety hand drill, etc. I took the barrel from an old pneumatic pistol. I made the other parts out of several metal pieces. Most of them come from the old abandoned cars near here. I needed to make the parts with enough precision but I made them well and I'm very satisfied. I want to use the gun as a homicide weapon.

Ex. 91.

Furthermore, while it is clear that Kaczynski plotted and carried out his crimes alone, he also contemplated recruiting others to join in his plans. Among the many documents found in his cabin were "how to" guides he had prepared -- a handwritten manual recounting step by step how to construct improvised bombs with detailed instructions on how to avoid detection by the FBI or police and a handwritten document entitled "How to Hit an Exxon Exec" detailing with chilling precision the step by step process one can undertake to send a package bomb to a corporate official. Ex.92. There were also copies of correspondence sent to other organizations, such as letters to radical environmental groups "Earth First!" and "Live Wild or Die", offering secret codes for communicating and seeking an audience for his "strategy for revolutionaries seeking to destroy the industrial system."

The history of Kaczynski's conduct demonstrates that he has both the capacity and willingness to dedicate years of his life to plan murders and elude detection. If released back into society, he would kill again.

C. SENTENCING RECOMMENDATION

1. Imposition of Mandatory Life Sentence

The nature and circumstances of the offenses justify the life sentence the Court is required to impose. Kaczynski's repeated crimes were the considered acts of a man who chose to repeatedly inflict violence and kill to gratify his own hatred. Furthermore "any sentencing authority must predict a convicted person's probable future conduct when it engages in the process of determining what punishment to impose." Jurek v. Texas, 428 U.S. 262, 275 (1976). Kaczynski's abiding hatred of everyone but himself, coupled with his lack of remorse for his conduct, gives no cause to believe he could ever rejoin society as anything other than a killer. Justice therefore requires that he spend the remainder of his days imprisoned.

2. Restitution and Forfeiture

Pursuant to 18 U.S.C. § 3663 and the Plea Agreement in this case, the Court should order restitution to the individuals, and in the amounts, identified in the Presentence Investigation Report. In addition, in accordance with the plea agreement (p. 4, ¶ D.) and 18 U.S.C. § 3681, this Court should order that Kaczynski forfeit all or any part of proceeds received or to be received by him for writings, interviews, memorabilia or other information for restitution or other distribution to the victims of his crimes.

3. Recommendation to the Bureau of Prisons That Defendant Be Placed in a Maximum Security Institution

In light of Kaczynski's continuing desire to kill and his evident resourcefulness, there remains the threat that Kaczynski could continue his lethal preoccupation behind prison walls. See, e.g., United States v. Hamrick, 43 F.3d 877, 878-79 (4th Cir. 1994) (en banc) (while in federal prison, defendant built five improvised bombs" and later built and sent from state prison a bomb capable of producing "1000 degree fireball" to U.S. Attorney). Accordingly, pursuant to 18 U.S.C. § 3621 (b) (4) (B), the United States requests that in addition to imposing a sentence of life imprisonment without release, this Court recommend to the Bureau of Prisons that Kaczynski be incarcerated in a maximum security facility where he Can be closely monitored to prevent any future acts of violence or intimidation.

Respectfully submitted,

PAUL L. SEAVE
United States Attorney

By: (signature)
STEPHEN P. FRECCERO
ROBERT J. CLEARY
J. DOUGLAS WILSON
R. STEVEN LAPHAM

Special Attorneys to the
United States Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Eastern District of California and is a person of such age and discretion to be competent to serve papers.

That on April 28, 1998, she served a copy of the **GOVERNMENT'S SENTENCING MEMORANDUM** by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es), and by depositing said envelope and contents in the United States Mail at Sacramento, California, by depositing said envelope and contents in the inter-office mailbox at the Clerk's Office, Federal Building, Sacramento, California.

Addressee(s):

INTER-OFFICE MAIL AND BY FAX

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Federal Defender

Judy Clarke
Executive Director of Federal Defenders
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20 Sacramento, CA 95814

10 North Post, Suite 700
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(signature)

SANDRA CALLAHAN

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Unabomber

**NOTICE OF MOTION AND
MOTION
TO COMPEL THE
GOVERNMENT TO
DISCLOSE THE LOCATION
AND
OTHER RELEVANT INFORMATION
SHACK(S)**

Jan. 20, 1998

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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(HONORABLE GARLAND E. BURRELL, JR.)

CR-S-96-2S9-GEB

UNITED STATES
OF AMERICA,
Plaintiff,

vs.

THEODORE JOHN
KACZYNSKI,
Defendant.

**NOTICE OF MOTION
AND MOTION
TO COMPEL THE
GOVERNMENT TO
DISCLOSE THE
LOCATION AND
OTHER RELEVANT
INFORMATION
SHACK(S)**

Date: January 21, 1998

Time: 2:00 p.m.

Hon. Gregory G. Hollows

To: ROBERT J. CLEARY, STEPHEN P. FRECCERO, BERNARD F. HUBLEY, R. STEVEN LAPHAM, Special Attorneys to the United States Attorney General:

Please take notice that on January 21, 1998, at 2:00 p.m. or at other convenient time set by the court, before the Honorable United States Magistrate Judge Gregory G. Hollows, defendant Theodore John Kaczynski, through counsel Quin Denvir and Judy Clarke, will move the Court to compel the government to disclose the location and other relevant information about defendant's secret shack(s) . The grounds for this motion are set forth in the attached memorandum in support of the motion.

This motion is based on the instant motion, the accompanying memorandum in support of the motion, and on any other evidence or argument presented before or at the hearing on the motion.

Date: January 19, 1998

Respectfully submitted,

(signature)

QUIN DENVIR

(signature)

JUDY CLARKE

Attorneys for Defendant
Theodore John Kaczynski

In his journals, which were seized by the government in its search of his cabin, defendant Theodore John Kaczynski wrote about the construction of a shack in a remote wilderness area in order to have a refuge to which he could retreat when the encroachments of organized society on his life at his cabin became too great to endure. At another point in the journals, he wrote about the location of a second shack, which was also in a remote wilderness area. In all the discovery provided by the government to date, there has been no mention of the shack(s) (beyond defendant's journal entries themselves) and certainly no indication that the government had located either shack.

In the middle of last week, the defense learned from a media source that the government may have located one or more of the secret shacks. When confronted with this report, the government's lawyer responded that either no shack had been located or, if one had been located, the government did not intend to rely on any evidence discovered in the shack. When advised that the defense might want to use the shack or evidence from the shack in its case, the government lawyer refused to provide any further information. Since the shack(s) and any evidence therefrom are discoverable under Federal Rule of Evidence 16(a) (1) (C) and Brady v. Maryland, 373 U.S. 83 (1963), defendant brings this motion to compel disclosure, on shortened notice because of the scheduled commencement of trial on January 22, 1998. See Discovery Order of Gregory G. Hollows, filed Sept. 19, 1997, at 11 ("in a trial of great complexity (and no one would dispute that the instant case presents such a situation), meaningful management of the case requires that disclosure take place so as to not disrupt trial").

ARGUMENT

ANY INFORMATION REGARDING DEFENDANT'S SECRET SHACK(S) IN THE POSSESSION OF THE GOVERNMENT IS DISCOVERABLE UNDER FEDERAL RULE OF CRIMINAL PROCEDURE 16(a) (1) (C) AND BRADY V. MARYLAND

In his journals Mr. Kaczynski wrote about constructing an 8 x 8 log shack cut into the hillside in a remote area near Diagonal Gulch, which he camouflaged with tree branches. He built the shack because of his feeling that "there's no place to escape civilization" and his hope to have "one place at least where I still feel sure of privacy." In another journal, he wrote about a different shack located in the McClellan Gulch area. The defense's efforts to locate either shack were unsuccessful. In all the discovery from the government, there has not been the slightest indication that the government had located either shack.

On January 14, 1998, the defense learned from a media source that one or both of the secret shacks had been located by the government. Based on

that information, the defense has requested that the government provide all information in its possession concerning the location, contents, and other matters regarding the shacks. Although not denying that the government has located one or both of the shacks, the government refuses to provide any further information.

Regardless of whether the government intends to use evidence regarding a secret shack, the defense is entitled to discovery of all information in the government's possession regarding either shack. The shack(s), the locations, the methods of construction, and the contents are all potentially relevant to the issues of defendant's past and present mental status, and thus may be admissible on these issues in either the guilt or penalty phases of the trial. Accordingly, the information in the government's possession concerning the secret shacks is fully discoverable under Rule 16(a) (1) (C) as evidence "which [is] material to the preparation of the defendant's defense" or "[was] obtained from or belong[ed] to the defendant." Fed. R. Crim. P. 16 (a) (1) (C). Moreover, the information is also discoverable as potentially exculpatory evidence under Brady v. Maryland, 373 U.S. 83 (1963) (2). The government has no legitimate reason for not disclosing this information to the defense. Its failure to do so, or at least submit the matter to the Court for review, is just the latest proof that the government simply does not understand its important constitutional duties under Brady and its progeny.

CONCLUSION

For the reasons stated above, the Court must order the government to produce immediately all information in its possession relevant to defendant's shack(s), including photographs.
Dated: January 19, 1998.

Respectfully submitted,

QUIN DENVIR
JUDY CLARKE

Attorneys for Defendant
Theodore John Kaczynski

1. Fed. R. Crim. P. 16(a) (1) (C) states in full:

(C) Documents and Tangible Objects.

Upon request of the defendant the government shall permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession custody or control of the government, and which are material to the preparation of the defendant's defense or are intended for use by the government as evidence in chief at the trial, or were obtained from or belong to the defendant. (Emphasis added).

2. In the penalty phase of a capital trial, a defendant is entitled to present to the jury any relevant mitigating factor in support of a sentence less than death. See, e.g. Lockett v. Ohio, 438 U.S. 586

CERTIFICATE OF SERVICE

QUIN DENVIR, Bar No. 49374
Federal Public Defender
801 "K" Street, 10th Floor
Sacramento, California 95814
Telephone: (916) 498-5700

The undersigned hereby certifies that he is an employee in the Office of the Federal Defender for the Eastern District of California and is a person of such age and discretion as to be competent to serve papers.

On January 19, 1998, he served a copy of the attached **NOTICE OF MOTION AND MOTION TO COMPEL THE GOVERNMENT TO DISCLOSE THE LOCATION AND OTHER RELEVANT INFORMATION ABOUT DEFENDANT'S SECRET SHACK(S)** on the plaintiff by delivery as follows:

X by facsimile and by delivering said copy addressed to the person(s) herein-after listed via inter-office mail:

Robert Cleary, Stephen P. Freccero, Steve Lapham, Bernie Hubley
650 Capitol Mall
Sacramento, CA 95814

I declare under penalty of perjury that the foregoing is true and correct.

DATED: January 19, 1998.

(signature)
JOHN BALAZS

(1978); 18 U.S.C. § 3592(a) Proof of such mitigating factors is not restricted by the Rules of Evidence, rather, a defendant convicted of a capital crime may present relevant "information" to support mitigating factors. 18 U.S.C. § 3593(c) ("The defendant may present any information relevant to a mitigating factor."). Thus, even if evidence of defendant's secret shacks were not exculpatory with respect to defendant's guilt, any information in the government's possession regarding the secret shacks is discoverable sentencing information in connection with potential mental status mitigating factors.

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**GOVERNMENT'S MOTION FOR
A HEARING ON
ISSUES CONCERNING THE
DEFENDANT'S
REPRESENTATION IF HE IS
FOUND
COMPETENT**

Jan. 15, 1997

PAUL L. SEAVE
United States Attorney
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EASTERN DISTRICT OF CALIFORNIA
(HONORABLE GARLAND E. BURRELL, JR.)

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CR-S-96-2S9-GEB

UNITED STATES
OF AMERICA,
Plaintiff,

GOVERNMENT'S MOTION
FOR A HEARING ON
ISSUES CONCERNING
THE DEFENDANT'S
REPRESENTATION IF HE
IS FOUND
COMPETENT

vs.

THEODORE JOHN
KACZYNSKI,
Defendant.

Hon. Garland E. Burrell, Jr.

If the Court finds the defendant competent, the Court will again face serious questions concerning the defendant's representation. In particular, the Court will have to decide whether to direct defense counsel to follow their client's instructions concerning the mental defect defense or in the alternative to inform the defendant that defense counsel may put on a mental defect defense in some form during both the guilt and penalty phases of trial. The government requests that the Court hold a hearing on this matter after receiving Dr. Johnson's report and before the jury is scheduled to return on January 22, 1998. The purpose of this memorandum is to set forth the government's understanding of the Court's options, to sketch the possible consequences of each choice, and to recommend that the Court instruct defense counsel to follow their client's wishes.

1. The Extent of the Disagreement Between the Defendant and Defense Counsel:

In an order dated January 9, 1998, the Court stated that "[t]he gist of the conflict between Kaczynski and his counsel relates to whether a mental status defense should be asserted and communications attendant to that defense." 1/9/98 Order at 6. The Court also found that "[w]hile this conflict presented problems, it has not resulted in a total lack of communication." Notwithstanding these explanations, the government remains in the dark concerning the precise nature and extent of the disagreement between the defendant and his attorneys. The government's understanding is as follows:

- a. based on defense counsel's withdrawal of the defendant's Rule 12.2 (b) notice on December 29, 1997, the government infers that defense counsel are willing to abide by defendant's wishes to forego relying on expert testimony in support of a mental defect defense at the guilt phase of trial.
- b. Based on counsel's and the Court's statements at the January 7 and 8, 1998, hearings, it seems clear that counsel are not willing to follow the defendant's wish that they forego a mental defect defense at trial.
- c. The government has no knowledge of either the defendant's wishes concerning the use of mental defect evidence -- expert or otherwise -- at the penalty phase or defense counsel's willingness to abide by those wishes.

2. Options

a. Authorize Counsel to Rely on a Mental Defect Defense Over the Defendant's

Objection: Based on the events of January 8, 1998, it appears that the defendant will assert his constitutional right to represent himself if the Court rules that defense counsel may put on a mental defect defense of any kind during the guilt phase of trial. If the defendant, after proper warnings from the Court, knowingly and intelligently asserts his Faretta rights and is willing to proceed to trial immediately, the government believes that the Court must grant the defendant's request to represent himself. See United States v. Arlt, 41 F.3d 516, 518-24 (9th Cir.1994); see also Adams v. Carroll, 875 F.2d 1441, 1445-46 (9th Cir. 1989) (defendant's request to proceed without counsel was unequivocal even though it was invoked only as an alternative to appointment of a particular attorney whom defendant did not want). A violation of the right to self-representation always leads to reversal. McKaskle v. Wiggins, 465 U.S. 168, 177-78 n.8 (1984); Heckler v. Borg, 50 F. 3d 1472, 1476 (9th Cir. 1995) . Should the Court grant the defendant's request, it could appoint current or new counsel to a standby role. See Faretta v. California, 422 U.S. 806, 835 n.46 (1975); Savage v. Estelle, 924 F.2d 1459, 1462 (9th Cir. 1990), cert. denied, 501 U.S. 1255 (1991). As the Court recognized during the January 8 hearing, however, the validity of the defendant's decision to represent himself -- and a conviction in this case -- may turn on whether the Court correctly concluded that defense counsel has the right to decide whether to put on a mental defect defense. Compare United States v. Attar 38 F.3d 727, 734 (4th Cir. 1994) (no error in allowing defense counsel to withdraw immediately before sentencing and thereby requiring the defendant to represent himself), cert. denied, 514 U.S 1107 (1995) with United States v. Scott, 909 F.2d 488, 49.3 (11th Cir. 1990) (reversible error to force defendant to choose between the right to counsel and the right to testify).

b. Direct Counsel to Follow Their Client's Wishes Concerning the Mental Defect

Defense: Defense counsel have suggested that they have an ethical obligation to pursue a mental defect defense over the defendant's objection. See 24 Tr. (1/8/98) at 3701. The possibility exists, therefore, that counsel may seek to withdraw if the Court orders them to follow the defendant's wishes. In that case, the Court would have the discretion to deny their request to withdraw. See United States V. Garcia, 924 F.2d 925, 926 (9th Cir. 1991) . In addition, the government believes that the Court would have recourse to its civil contempt power to enforce its decision if defense counsel continued to refuse to represent the defendant under those conditions. See United States v. Accetturo, 842 F.2d 1408 (3d Cir. 1988). Should the Court hold counsel in contempt, they would have the right to appeal to challenge the Court's conclusion that they must follow the defendant's instructions. Ibid.

c. **Appoint New Counsel:** At the January 7 hearing, the defendant stated that he wishes to be represented by Tony Serra. In its January 9 order, the Court found that substitution of Mr. Serra "would be inappropriate in these circumstances" because the defendant's request for Mr. Serra was untimely and because the defendant's conflict with current counsel was not "so great that it will result in a total lack of communication, thereby preventing an adequate defense." 1/9/98 Order at 5. In

addition, the Court noted that "a lengthy continuance could be required just to allow Serra to coordinate his obligations to his many clients." Id. at 3-4 n.3.

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3. The Government's Recommendations: In Jones vs. Barnes, 463 U.S. 745, 751 (1983), the Supreme Court held that "the accused has the ultimate authority to make certain fundamental decisions regarding the case, as to whether to plead guilty, waive a jury, testify in his or her own behalf, or take an appeal." Courts have added to that list the decision whether to rely on an insanity defense. See United States v. Marble, 940 F.2d 1543, 1547 (D.C. Cir. 1991); Alvord v. Wainright, 725 F.2d 1282, 1288-89 (11th Cir.), cert. denied, 469 U.S. 956 (1984); Foster v. Strickland, 707 F.2d 1339, 1343 (11th Cir. 1983), cert. denied, 466 U.S. 993 (1984). Those decisions are surely correct. Although a defendant in the federal system does not have to plead insanity, see Fed. R. Crim. P. 11(a), 12.2(a), the decision whether to rely on an insanity defense usually requires the defendant to admit to committing the actions constituting the charged offense and to waive his Fifth Amendment privilege against self-incrimination. See Powell v. Texas, 492 U.S. 680, 685 (1989) (a "defendant waive[s] his Fifth Amendment privilege by raising a mental status defense"); Hendricks v. Vasquez, 974 F.2d 1099, 1108 (9th Cir. 1992) (defendant waives Fifth Amendment right by introducing psychiatric testimony in support of a mental defense); Dean v. Superintendent, 93 F.3d 58, 61 (2d Cir. 1996) (discussing need to admit offense in order to put on an insanity defense), cert. denied, 117 S. Ct. 987 (1997). Because those decisions are closely akin to the decisions whether to plead guilty and to testify, the decision whether to put on an insanity defense is a fundamental one that belongs to the defendant.

As the Fifth Circuit has stated, however, "categorization of decisions the personal decisions of a criminal defendant or the tactical choices of counsel is not always an easy task." Autry v. McKaskle, 727 F.2d 358, 362 (5th Cir.), cert. denied, 465 U.S. 1085 (1984). (1)

The government has found no case addressing the question whether counsel may rely on a mental defect defense over the objection of a competent defendant. The government submits that that decision should turn on whether the mental defect defense presented has the attributes of an insanity defense or of other decisions personal to the defendant. See Brookhart v. Janis, 384 U.S. 1, 8-10 (1966) (Separate opinion of Harlan, J.) (inquiring whether decision "involved so significant a surrender of the rights normally incident to a trial that it amounted to a plea of guilty or *nolo contendere*" requiring the personal approval of the defendant). Here, the Court has held, the defendant's assertion of a mental defect defense has resulted in a partial waiver of his Fifth Amendment privilege See 9/19/97 Order at 5 n.3. It also

1. The ABA Defense Function Standards implicitly recognize this difficulty. Standard 4-5.2 states that 'the defendant controls "(i) what pleas to enter; (ii) whether to accept a plea agreement; (iii) whether to waive a jury trial; (iv) whether to testify in his or her own behalf; and (v) whether to appeal." Under this standard, counsel controls "[s]trategic and tactical decisions," including "what trial motions to be made,

requires the defendant to acquiesce in a personal characterization that, as with an insanity defense, he may find stigmatizing.

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The courts have held, moreover, that defense counsel do not provide ineffective assistance of counsel if they follow their client's wishes, even if the defendant's chosen course of action results in the imposition of the death penalty. See Langford v. Day 110 F.3d 1380, 1386-88 (9th Cir. 1996), cert. denied, 118 S. Ct. 208 (1997); Jeffries v. Blodgett, 5 F.3d 1180, 1197 (9th Cir 1993) , cert. denied, 510 U.S. 1191 (1994); Mulligan v. Kemp, 771 F.2d 1436, 1442 (5th Cir. 1985) , cert. denied, 480 U.S. 911 (1987); Mitchell v. Kemp, 762 F.2d 886, 889 (11th Cir. 1985), cert. denied, 483 U.S. 1026 (1987); see also Dean v. Superintendent, 93 F.3d at 61 ("It is clearly preferable for counsel to leave the decision whether to reject a legal defense to a client."); Lowenfield v. Phelps, 817 F.2d 285, 292 (5th Cir. 1987) ("The circumstances are extremely rare when counsel is not required to follow his client's instructions on a decision of this nature."), aff'd, 484 U.S. 231 (1988).

Against this background, the government believes that the most appropriate and safest course is for the Court to direct defense counsel to follow the defendant's wishes concerning the mental defect defense and use of mental defect evidence at sentencing. Under Jeffries, defense counsel will not be providing ineffective assistance of counsel if the defendant makes a competent decision to forego a defense and counsel follow that decision.

Moreover, contrary to defense counsel's suggestion, counsel may not terminate their representation of the defendant because he insists on a particular course of action. As applicable here, the California Rules of Professional Conduct provide that counsel may decline to "continue employment" only if the objective of the employment is to "present a claim or defense in litigation that is not warranted under existing law unless it can be supported by a good faith argument for an extension, modification, or reversal of such existing law." Cal. R. Pro. Conduct 3-200, In addition, "a member [of the California bar] may not request permission to withdraw in matters pending before a tribunal" except for reasons not present here. Id. at Rule 3-700(C). Thus, the applicable ethical rules appear to require counsel to remain in the case and follow their client's wishes, not to withdraw. (2)

That conclusion finds confirmation in California Supreme Court decisions presenting facts closely analogous to those present here. In People v. Lang, 49 Cal. 3d 991, 264 Cal. Rptr. 386, 782 P.2d 627 (1989), the defendant objected to

and what evidence should be introduced." The standard does not address the difficult question of whether counsel or the defendant controls the choice of defense.

2. The Model Rules of Professional Conduct likewise appear to prohibit counsel from withdrawing in this case if the Court orders counsel to continue. Model Rule 1.16(c) expressly states that "[w]hen ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation." Thus, even if counsel are correct that they may determine whether to put on a mental

counsel's decision to put on mitigating evidence during a capital penalty hearing, and counsel acceded to his client's wishes. The California Supreme Court found that counsel had not acted ineffectively, but, more importantly, the court found that counsel's ethical obligations required him to follow his client's instructions: "To require defense counsel to present mitigating evidence over the defendant's objection would be inconsistent with the attorney's paramount duty of loyalty to the client and would undermine the trust, essential for effective representation, existing between attorney and client." Lang, 49 Cal. 3d at 1031. In addition, the court noted the problem apparently presented here, that "imposing such a duty could cause some defendants who otherwise would not have done so to exercise their Sixth Amendment right of self-representation . . . resulting in a significant loss of legal protection." Id. (citations omitted). Similarly, in People v. Kirkpatrick, 7 Cal. 4th 988, 30 Cal. Rptr. 2d 818, 874 P.2d 248 (1994), cert. denied, 514 U.S. 1015 (1995), the California Supreme Court held that "counsel need not attempt to obtain and present expert psychiatric testimony in the face of the defendant's refusal to cooperate." Id. at 1013; see also People v. Howard, 1 Cal 4th 1132, 1181, 5 Cal. Rptr. 2d 266, 824 P.2d 1315 (1992), cert. denied, 506 U.S. 942 (1992). By contrast, counsel have not cited any ethical requirement that would require counsel to withdraw from the case rather than represent the defendant as he chooses. See Whiteside v. Scurr, 744 F.2d 1323, 1327 (8th Cir. 1984) ("a lawyer who does what the sixth and fourteenth amendments command cannot be charged with violating any precepts of professional ethics"), rev'd on other grounds sub nom., Nix v. Whiteside, 475 U.S. 157 (1986).

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On the other hand, allowing defense counsel to override the defendant's wishes concerning the mental defect defense raises the prospect of two undesirable results. First, and most likely, the defendant will invoke his Faretta rights and represent himself. Although the defendant has the right to do so, the government does not believe that the Court should take action that results in a defendant representing himself in a capital case unless there is no other course open to the Court. As noted, moreover, that course injects into the case the potential that the court of appeals will find that the defendant asserted his right to representation only because he was confronted with the impermissible choice of proceeding with counsel who will not obey his instructions or representing himself.

defect defense or introduce mental defect evidence at sentencing (which the government does not concede), they would be acting unethically in withdrawing in violation of a court order. See also Model Code of Professional Responsibility EC 7-8 (an attorney "should always remember that the decision whether to forego legally available objectives or methods because of nonlegal factors is ultimately for the client"). Relying on this ethical consideration, a treatise on criminal defense ethics concludes, "decisions to forego 'legally available objectives and methods' (e.g., a particular defense) are . . . the client's to make, not the attorney's." John M. Burkoff, Criminal Defense Ethics, Sect. 6.3(a) (1) at (1) (Rev. ed. 1996) (emphasis added).

Second, even if the defendant agrees to keep current counsel on counsel's terms, he and his counsel will have a disagreement over an important matter of trial strategy.

Although the Court has found that this disagreement "has not resulted in a total lack of communication," 1/9/98 Order at 6, on appeal the defendant could assert the presence of that disagreement as evidence of an irreconcilable conflict. See United States v. D'Amore, 56 F.3d 1202, 1206 (9th Cir. 1995); United States v. Williams, 594 F.2d 1258, 1260 (9th Cir. 1979). In addition, if on appeal the court of appeals concluded that the defendant had the right to decide not to put on a mental status defense, then it could find that the defendant agreed to keep his current counsel - - and thus forego his right to represent himself -- based on an erroneous understanding of his rights.

In sum, the government submits that the Court should direct current defense counsel to continue to represent the defendant and to abide by the defendant's wishes concerning the mental defect defense. If defense counsel decline to comply, the Court should use its civil contempt authority to compel compliance. Because of the complexity of these issues, the government requests that the Court hold a hearing as soon as possible after the defendant is found competent. (3)

Respectfully submitted,

PAUL L. SEAVE
United States Attorney

By: (signature)
J. DOUGLAS WILSON
ROBERT J. CLEARY
R. STEPHEN P. FRECCERO
R. STEVEN LAPHAM
Special Attorneys to the
United States Attorney General

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3. If the Court is not inclined to compel current counsel to remain in the case, the government will withdraw its objection to the appointment of substitute counsel. The government made that objection before the defendant stated that he wished to represent himself. In light of the defendant's conditional assertion of his Faretta rights, the government believes that it would be preferable to have substitute counsel such as Mr. Serra represent him at trial if he is not permitted to have his current attorneys.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Eastern District of California and is a person of such age and discretion to be competent to serve papers.

That on January 15, 1998, she served a copy of the **GOVERNMENT'S NOTION FOR A HEARING ON ISSUES CONCERNING THE DEFENDANT'S REPRESENTATION IF HE IS FOUND COMPETENT** by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es), and by depositing said envelope and contents in the United States Mail at Sacramento, California, by depositing said envelope and contents in the inter-office mailbox at the Clerk's Office,

Federal Building, Sacramento, California.

Addressee(s):

INTER-OFFICE MAIL AND BY FAX

Quin Denvir

Federal Defender

Judy Clarke

Executive Director of Federal Defenders

of Eastern Washington & Idaho

801 K Street, Suite 1024

20 sacramento, 'CA 95814

(signature)

SANDRA CALLAHAN

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**Pier 5 Law Offices
Serra, Lichter, Daar,
Bustamante, Michael & Wilson**

Jan. 7, 1998

Kevin Clymo
660 "J" Street #200
Sacramento, CA 95814

Re: Ted Kaczynski

Dear Mr. Clymo:

Would you kindly forthwith inform Mr. Kaczynski that if he is successful in recusing his present attorneys, I am willing and stand ready to substitute in on his behalf *pro bono*, as per my previous letter to him.

What I seek to avoid is the appearance that I am interfering in the relationship between him and his present counsel. Therefore, I do not desire to participate in the present hearings.

I wish him well, whatever way it goes.

Thank you for communicating the above to Mr. Kaczynski.

Sincerely,

(signature)

J. TONY SERRA

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DECLARATION OF KAREN BRONK FROMING. Ph.D.

Nov. 17, 1997

I, KAREN BRONK FROMING, Ph.D., declare as follows:

1. I am a clinical psychologist licensed to practice in the State of California. I specialize in clinical neuropsychology and neuropsychological assessment. I have received training in this speciality in accordance with the standards of the American Psychological Association (APA), Division 40. I am a member in good standing of the APA, and its subspecialty division of clinical neuropsychology.

2. I am a member of the International Neuropsychological Society, the National Academy of Neuropsychology, American Psychological Society and Division 40 (Clinical Neuropsychology), and the California Psychological Association. I am the former chair of the Education Committee of the Northern California Neuropsychology Forum, a position I held in 1993-1994 and in 1990-1991, and a past president (1991-1992) of that organization as well.

3. In 1979, I received my B.A. degree in psychology from the University of Florida. Shortly after graduation, I received training in neuropsychological assessment at the Shands Teaching Hospital and J. Hillis Miller Center Psychological Clinic. As a trained neuropsychological technician, I administered and scored neuropsychological tests and provided neuropsychological services to over 300 patients.

4. In 1984, I received my M.S. in psychology from the University of Florida. From 1986 through 1987, following two years at Shands Teaching Hospital, I completed my pre-doctoral internship training at the San Francisco Veteran's Administration Center. In 1988, I successfully defended my dissertation and received a Ph.D. in psychology from the University of Florida. I was awarded a post-doctoral fellowship in neuropsychology in the Department of Clinical and Health Psychology at the University of Florida and received advanced training in behavioral neurology, behavioral brain syndromes, neuroanatomy, neurophysiology, memory disorders, and aphasiology or language disorders.

5. My past positions included the following duties: Director, Behavioral Medicine Unit, in the Division of General Internal Medicine at the University of California-San

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Francisco School of Medicine; Staff Psychologist III and Triage Coordinator; Consulting Neuropsychologist with the Langley Porter Psychiatric Institute's Psychological Assessment Unit; Assistant Clinical Professor of Medicine and Psychiatry at the University of California-San Francisco; and Adjunct Faculty Member at the Pacific Graduate School of Psychology.

6. In connection with my duties at the University of California-San Francisco School of Medicine, I was responsible for accepting, evaluating and assigning for treatment patients suffering from organic and/or psychiatric complaints. The department for which I was responsible handles several thousand patient visits per year. I established the first neuropsychological assessment subspecialty service within our department.

7. I am currently in private practice in San Francisco, California. I have continued faculty appointments in the Department of Psychiatry at the University of California-San Francisco. I continue to teach both at the Langley Porter Psychiatric Institute and at San Francisco General Hospital.

8. I was asked by the attorneys for Theodore J. Kaczynski to evaluate his neuropsychological development and functioning. In order to accomplish these goals, I reviewed voluminous background materials including but not limited to Mr. Kaczynski's correspondence and his journal entries related to his own thoughts, his relationships with others, and his relationships with family members. I also reviewed documents regarding his academic, work, and medical history, including his requests for psychological, psychiatric, and counseling services and information.

9. I met with Mr. Kaczynski on two occasions, once to administer a battery of tests and on a second visit to explain test results to Mr. Kaczynski. Upon an initial introduction, Mr. Kaczynski was unable to acknowledge my presence. He was quite anxious, manifested by pressured speech, focus on those present who were known to him, lack of eye contact, and a total avoidance of the half of the room where I sat. After we were introduced, he still averted his gaze, and became preoccupied and distracted by insignificant details as I explained the testing procedures.

10. Mr. Kaczynski was intent on doing well on the testing and assured me there was nothing wrong with him. He acknowledged that he had limited social contacts in his life and no satisfactory long-term relationships, but explained he had chosen that path and it was not the result of any neurological deficit. The explanations for his chronic social isolation which he offered during the testing were clearly contradicted by Mr. Kaczynski's writings that document his despair over both his inability to establish normal human relationship and his inability to comprehend why he has been unable to do so.

11. The results of the neuropsychological testing revealed deficits of a mild nature in the areas of frontal and cerebellar motor functions, microsomia or smell functions, cognitive processing efficiency, visual memory, and affective processing. In the context of Mr. Kaczynski's superior intellect, these mild deficits are noteworthy,

especially in their relation to the significant impairments in his social-emotional processing abilities. In particular, the closer the crucial task came to replicating "real-world" social interaction with its multilayered complexity, the greater difficulty Mr. Kaczynski had in performing the task.

12. My findings are based solely on the objective data provided by Mr. Kaczynski's test performance. These findings, however, are also consistent with the research data regarding neurologic dysfunction in schizophrenia, my clinical impression of Mr. Kaczynski, his thoroughly documented life history, and personality testing administered during Mr. Kaczynski's late adolescence. Mr. Kaczynski's responses on the Minnesota Multiphasic Personality Inventory while he was still a sophomore at Harvard, show clinically elevated scales of social isolation and an overall profile which has been correlated to a predisposition for schizophrenia.

13. My own testing was authorized by Mr. Kaczynski only because he believed that it would prove that he did not suffer from any neurological deficit impairing his social functioning. He was surprised and dismayed when this examiner provided him with the test results which showed that neurological impairments affected his ability to recognize and interpret the meaning of non-verbal social communication. Mr. Kaczynski stated that he had been hopeful he could use my data to support his assertions that he was neurologically intact, and instead, I had offered contrary conclusions. He informed me in writing the very next day that he would no longer need my professional services.

14. My clinical experience is consistent with Mr. Kaczynski's clinical presentation and his unawareness of his disease. Individuals suffering from pervasive paranoid ideation view the world as a threatening place, and any difference of opinion that is offered, including that the individual might be ill, is viewed as further evidence that the outside world is a dangerous and untrustworthy place. Frequently, it is my experience that patients are unable to acknowledge the most severe aspects of the illness, but may recognize discrete symptoms such as insomnia and depression. Clinical experience and research literature report that insomnia and depression are frequent features of schizophrenia. It is clinically significant that while Mr. Kaczynski has made attempts to seek help for these aspects of his illness (as reflected in his 1988, 1991 and 1993 correspondence), he did not want to meet personally with psychologists or psychiatrists, preferred to be diagnosed after he had reported his perceived symptoms (or self-diagnosed), and wanted to receive therapeutic treatment through the mail.

15. The scientific literature also recognizes the combination of mild to moderate neuropsychological deficits in the domains of frontal/cerebellar motor skills, smell functions, temporal lobe functions of memory, reasoning, and affective processing as a neurologic profile correlated to schizophrenia. More recent neuropsychological studies have isolated the neurological basis for schizophrenia patients' inability to recognize their illness. Mr. Kaczynski's superior intellect should not be confused with sound mental health. While his intelligence enables him to think in more elaborate and convoluted ways, and to appear verbally intact superficially, his inferences and logic

are clinically distorted. A wealth of congruent social and medical historical data support the diagnostic impression that Mr. Kaczynski suffers from schizophrenia, paranoid subtype, and offers a more revealing clinical picture than he is able to disclose in a clinical interview.

The foregoing is true and correct and executed under penalty of perjury under the laws of the United States of America on this 17th day of November, 1997.

KAREN BRONK FROMING, PH.D.
(signature)

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DECLARATION OF DAVID V. FOSTER, M.D.

Nov. 17, 1997

I, DAVID V. FOSTER, M.D., declare as follows:

1. I have reviewed the government's pleading filed November 14, 1997 in support of its motion to preclude mental health testimony in Theodore Kaczynski's case. Cited as evidence that Mr. Kaczynski is not refusing psychiatric evaluation due to his mental disorder are five letters of Mr. Kaczynski written in 1988, 1991 and 1993 to various mental health professionals or agencies seeking help with depression, insomnia and severe social deficits. In the redacted letters submitted to the court, several clinically significant passages are deleted. These constitute contemporaneous documentation that Mr. Kaczynski suffered severe psychiatric disability. In these deleted sections, Mr. Kaczynski describes significant psychological torment, gives indications of his paranoia, provides evidence of some of his very impaired social and economic functioning, and describes both depression as well as insomnia resulting from his inability to comprehend the nature of his disabilities.

2. Even unredacted portions of the letter of July 11, 1988 reflect that he would "prefer" to correspond in writing rather than communicating face-to-face with a potential therapist. In the letter of July 12, 1991, he relates his lack of friends or social contacts. His comfort with solitude is contrasted with his longing for even a single close, personal, loving and respectful relationship. He describes a lack of social skills and social self confidence and a painful interpersonal sensitivity, that, in spite of his longing for a nurturing intimate relationship, has kept him socially isolated. He expresses a wish for help in learning basic social skills and social self confidence. As is typical of those with severe psychiatric impairments, he seeks to explain his disabling problems in simplistic ways that demonstrate lack of insight into his psychiatric disorder. In his letters of October 6, 1993, he requested help for intractable insomnia. He reports that he had sought help from his general practitioner, but that the antidepressant he was placed on to help with sleep did not work and gave him troubling side effects. (He alludes to his embarrassment in discussing sexual side effects, but antidepressants are also known to frequently make psychotic symptoms worse.) He goes on to describe why he feels his problem is probably beyond the qualifications of a general practitioner, and to express exaggerated and convoluted fears that information discussed with his doctor would be disclosed to the general

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community.

3. In summary, the deleted portions of these letters are consistent with and support the large body of evidence available in Mr. Kaczynski's other writings that Mr. Kaczynski suffers from a severe mental impairment that has caused him intense emotional pain, has impaired his social and emotional functioning, is accompanied by intolerable interpersonal sensitivity, and has given rise to all-encompassing delusional, paranoid thought processes. Given his stated views that psychiatrists are agents of the social machine which was increasingly invading and assaulting his life and depriving all in its path of free will, the fact that he was seeking help at all is evidence of the degree of mental agony from which he suffered. The fact that he did not succeed in getting the therapy he desperately longed for is evidence of how his psychiatric condition impaired him from getting the most basic assistance with his problems.

4. Mr. Kaczynski agreed to see me very reluctantly and primarily to assist him in evaluating his health worries -- such as his over sensitivity to sound, his sleep disturbance, and his fear that his heart might burst from the anxiety of going through his trial. His paranoia about psychiatrists made it very difficult to broach his psychiatric symptoms with him in a direct way. In fact, early on in our sessions, he looked me in the face and said, "You are the enemy." As I have previously indicated, after significant efforts to build a relationship with Mr. Kaczynski, when I finally addressed his symptoms with any degree of specificity, he refused to see me further. Based on my subsequent consultation with Karen Bronk Froming, Ph.D., a qualified neuropsychologist, I am informed that Mr. Kaczynski consented to neuropsychological testing in the hope of proving that he did not suffer the neurological deficit that gives rise to the symptoms of the disorder from which he suffers. When Dr. Froming discussed some of Mr. Kaczynski's deficits with him, he refused to see her further as well.

5. This lack of insight and agitated or avoidant behavior in response to a discussion of deficits, as well as the neuropsychological test results, are all clinically consistent with Mr. Kaczynski's mental illness. No single document or selection of documents from Mr. Kaczynski's voluminous personal writings is indispensable to an accurate diagnosis. When considered in full and in the context of other evidence of his illness, the letters submitted by the government confirm, rather than refute, Mr. Kaczynski's genuine terror at the prospect of examination by the government psychiatrists.

The foregoing is true and correct and executed under penalty of perjury under the laws of the United States of America on this 17th day of November, 1997.

DAVID V. FOSTER, M.D.
(signature)

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DECLARATION OF XAVIER F. AMADOR, Ph.D

Nov. 16, 1997

I, Xavier Amador, Ph.D., declare as follows:

1. I am a clinical psychologist licensed to practice in the state of New York. I received a B.A degree in psychology from the State University of New York in 1982, a Masters degree in Clinical Psychology from New York University in New York City in 1987, and a Ph.D. degree in Clinical Psychology from New York University in 1989. I completed a clinical internship at the St. Luke's/Roosevelt Hospital Center in New York City in 1989, immediately after which I was appointed to the medical school faculty at Columbia University College of Physicians and Surgeons in New York City.

2. I am currently an associate professor of psychology in the department of psychiatry at Columbia University College of Physicians and Surgeons, an adjunct associate professor of psychology in the doctoral program in clinical psychology at Columbia University's Teachers College and a Research Scientist at the New York State Psychiatric Institute. I am also the Director of the Diagnosis and Evaluation Center for Psychotic Disorders at Columbia University College of Physicians & Surgeons and Chief Division of Diagnosis and Assessment in the Department of Clinical Psycho-Biology at the New York State Psychiatric Institute. From 1989 to 1993 I was the Associate Science Director of the Schizophrenia Research Unit at the New York State Psychiatric Institute and Columbia University.

3. I am a standing member of a National Institute of Mental Health grant review committee (the Clinical Psychopathology Initial Review Group) that evaluates grant applications submitted by investigators studying schizophrenia and other mental disorders.

4. Since 1989 I have been the principal investigator on twelve research grant awards. These grants have been given by non-profit foundations and the National Institute of Mental Health. The studies supported by these awards have focused on improving the diagnosis of schizophrenia and illuminating the nature, causes and treatment of unawareness of illness in this disorder. I have also been a co-investigator and consultant on over 15 other schizophrenia research studies. In 1990 I received a grant from the American Psychiatric Association to support my work on the revision of the

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criteria for schizophrenia and related psychotic disorders in the Diagnostic and Statistical Manual for Mental Disorders, fourth edition (DSM IV). I was an expert schizophrenia consultant and a Field Trial Coordinator for the DSM IV revision. Also, I have been a consulting editor for sixteen scientific journals in the fields of psychiatry and psychology including several which are published by the American Medical Association, American Psychiatric Association and the American Psychological Association. I review papers almost exclusively in the area of schizophrenia and the common problem of treatment refusal and unawareness of illness.

5. I supervise both clinical and research activities of medical students, psychiatric residents and post doctoral research fellows in the department of psychiatry at Columbia University College of Physicians and Surgeons in New York City. I also supervise doctoral psychology students conducting clinical and research work at the New York State Psychiatric Institute.

6. I have over fifteen years of hands on clinical experience working with patients with schizophrenia, first as an inpatient mental health therapy aid and outpatient counselor from 1982 through 1985 at the University of Arizona Health Sciences Center and at the Southern Arizona Mental Health Center, then as a student therapist in the doctoral program at New York University from 1985 through 1989 and finally, as an attending psychologist at the New York State Psychiatric Institute from 1989 to today. I am a New York State licensed psychologist in private practice.

7. Counsel for Theodore J. Kaczynski have requested that I convey to the court the information I have provided them about schizophrenia as well as the relevant research on unawareness of illness as this information relates to Mr. Kaczynski's inability to submit to an examination by government psychiatrists. They have also asked that I convey to the court my opinion on the nature, presence and severity of the mental disorder suffered by Mr. Kaczynski as it explains the reason he has refused the government's mental examination while allowing himself to be evaluated by defense mental health experts. I have formulated an opinion on these matters based on documents including numerous excerpts of Mr. Kaczynski's writings, the declaration of Dr. David Foster, the government pleading and exhibits filed 11/14/97 and the unredacted version of the exhibits filed with the government pleading, all of which were provided to me by his counsel over the last 72 hours.

8. First, with regard to Mr. Kaczynski's illness, he is typical of the hundreds of patients with schizophrenia that I have personally evaluated. The documented history of his illness is also consistent with reports in the clinical and research literature which involve tens of thousands of patients with schizophrenia. Like the overwhelming majority of males with schizophrenia, the prodromal phase of his illness began in his mid-twenties and was manifested by a significant degree of neglect in his grooming and hygiene and increased withdrawal from social relations. His writings show unambiguous evidence of delusions, another hallmark symptom of schizophrenia. From the material I have reviewed he clearly exhibits delusions of reference, bizarre delusions and paranoid delusions. The organization of his delusional beliefs and his

well organized behavior in response to these delusions are consistent with the additional diagnosis of paranoid subtype.

9. It is not necessary to have paranoid delusions to have paranoid schizophrenia. What is necessary is that the delusions are systematized: i.e., organized around a central theme. Or, that the patient is preoccupied with one or more delusions. Some patients with schizophrenia have delusions that are not thematically related to one another. For example, a patient of mine had a delusion that he was a Colonel in the Green Berets, that his rank was a government secret and that he had instant access to the president of the United States anytime he wanted. In addition to this grandiose delusion he also had a delusion of thought broadcasting. He believed that anyone could hear his thoughts as if they had been spoken aloud. He also insisted that he was once a member of a well known Rock and Roll band. One delusion had no obvious link to the others in his mind. In addition, he was extremely disorganized in his behavior. For example, at times he would shout out loud incoherently, he twice lit his apartment on fire accidentally while smoking cigarettes and used to post notices on telephone poles in his neighborhood warning the public about his sister who he believed was a witch. In this instance the patient received a disorganized subtype diagnosis.

10. Mr Kaczynski, is capable of being extremely organized as evidenced by his journals and behavior. His symptoms and behavior are typical of patients with schizophrenia, continuous course, paranoid subtype. Mr. Kaczynski's symptom picture and behavior is not unique. Another patient of mine with the same diagnosis (schizophrenia, continuous course, paranoid subtype) had several delusions centered on the belief that the Central Intelligence Agency was monitoring his every move because he was exceptionally intelligent and they wanted to study his intellect. In fact, this MIT graduate was very intelligent, but like Mr. Kaczynski, he had been incapable of maintaining social contact and had actually survived on the streets of Washington D.C. for over two years while homeless. Nearly anyone that he met would be incorporated into his delusional belief system which was elaborate but centered on the paranoid belief that he was being watched and might be abducted by government forces at any time. Research on delusions shows that certain major themes are common in patients vulnerable to this cognitive defect. When delusions turn to the paranoid type, the themes commonly involve government agencies and spiritual deities.

11. In most clinical settings the diagnosis of schizophrenia can be made with minimal direct patient interview. Usually, only about one to two hours of direct patient interview are required when other sources of information are available. In acute care clinical settings, the diagnosis is typically made with less than two hours of direct patient interview whenever sufficient written materials that speak to the patient's mental status and history of social and occupational functioning (e.g. medical records or patient journals) are available. State of the art research diagnoses typically involve no more than four hours of direct patient contact. Instead, researchers rely on collateral information from relatives, friends and others who have observed the subject for long periods of time, on written materials the subject may have produced over the course of months or years and on previous medical, work and school records.

12. Indeed, in patients like Mr. Kaczynski who present with paranoid thought content, direct patient interview longer than an hour or two may offer little if any additional information that is relevant to making the diagnosis. Because schizophrenia is a longitudinally based diagnosis, other sources of information such as a patient's writing's and work history can carry more weight than information gleaned from direct clinical interview. In other words, observations of the patient over the course of years is often necessary to make certain schizophrenia diagnoses. For example, a patient presenting with the exact same symptoms as Mr. Kaczynski could not be given the diagnosis of Schizophrenia, Continuous, Paranoid subtype if he had not evidenced these signs of illness for at least six months. Such a patient would more likely receive the diagnosis of Psychotic Disorder, Not Otherwise Specified or Schizophreniform disorder.

13. Second, as someone who conducts research in the area of schizophrenia, and in particular, on the common problem of unawareness of illness and treatment noncompliance, the most parsimonious explanation for Mr Kaczynski's refusal to submit to the Court's order for psychiatric evaluation is that he suffers from severe deficits in awareness of illness.

14. The government's suggestion in its 11/14/97 pleading - that Mr. Kaczynski has willfully defied the Court's order - demonstrate that the fact of Mr. Kaczynski's disease and his predictable resistance to being evaluated have not been understood in light of what those of us who conduct research on schizophrenia know to be true about this disorder.

15. Many people suffering from schizophrenia do not believe they have an illness and are unaware of the specific deficits caused by the disorder. Indeed, many of these individuals feel that the only thing they really suffer from is pressure from relatives, friends, doctors and courts to accept evaluation and treatment. Lack of insight frequently obstructs treatment, as disagreement that treatment is even necessary leads to patients feeling coerced to accept care for an illness they don't believe they have. Large scale studies have suggested that from fifty percent to more than eighty percent of all patients with schizophrenia do not believe they have an illness. These are not people who would be expected to agree to an insanity defense. Owing to its prevalence and disruption of the therapist-patient relationship, this type of discrepancy in perspective, or what is commonly labeled "poor insight" has become integral to our conception of schizophrenia.

16. My own research and that of others has demonstrated that a majority of patients with the diagnosis of schizophrenia are not only unaware of illness generally, but also unaware of many of the specific signs and symptoms of schizophrenia that they currently have. Research shows that this type of unawareness results in medication noncompliance in patients who have been prescribed antipsychotic medications and in refusal of psychiatric evaluation by patients not currently in treatment. In fact, the research indicates that the majority of schizophrenia patients who are involuntarily

hospitalized and receiving court ordered treatment evidence this type of awareness deficit.

17. On the face of it, schizophrenia patients who are unaware of their illness appear to be in denial or simply afraid of psychiatrists. Like Mr. Kaczynski, such patients are described as fearful of mental health professionals. Such descriptors are simply that, descriptions of behavior. They do not explain what we now know to be true about the causes of such behavior. Research shows that unawareness of illness in schizophrenia actually involves a deficit in one's capacity to become aware of changes in one's ability to function psychologically, socially and even physically.

18. Schizophrenia patients with severe deficits in unawareness are said to have an Anosognosia syndrome. Patient's with anosognosia usually believe that they do not have the illness that their doctors tell them they have.

19. Like Mr. Kaczynski, who is painfully aware of his severe social deficits and problems with insomnia, but unaware of his schizophrenia, patients with anosognosia will go to great lengths to preserve the self-concept they hold. Typically, their concept of themselves is literally stranded in time. They believe that they have many of the same capacities and abilities that they possessed prior to the onset of the illness. When observations are made by others that contradict the patients self concept (e.g. "you have schizophrenia"), the Anosognosia patient can become agitated, angry and vigorously refute the claim. It is the same type of reaction that most people would give when confronted with propositions that are experienced as insulting, threatening and/or ludicrous.

20. In stroke patients, this aspect of anosognosia is easier to understand. One stroke patient who I evaluated had suffered a stroke to the nondominant hemisphere of the brain. He was paralyzed on the left side of his body and had memory impairments. This patient was aware that he had problems with his memory but claimed that he was in the hospital because of complications from a hip replacement surgery he had undergone six months ago. At the time of the evaluation he did not know that his left arm and leg were paralyzed but did recognize that he was in the hospital and that his memory was not what it used to be. When asked to move his arm he became angry and said that he would not. He insisted that there was nothing wrong with his arm and leg and said that he didn't feel like it and that the request was absurd. This type of response is called a confabulation and is typical of patients with anosognosia. Confabulations occur whenever a patient is confronted with information about himself that is grossly at odds with his self-concept. Eventually, this patient angrily demanded that the examiner leave the room.

21. Particular brain areas implicated in anosognosia in stroke patients provided psychiatric researchers like myself, with a practical starting point for generating hypotheses about neuropsychological contributions to anosognosia in schizophrenia. Dysfunction of the frontal lobes and the non-dominant hemisphere temporal parietal system, specifically implicated in anosognosia in stroke, have been demonstrated in

many patients with schizophrenia. Three published studies have found various aspects of unawareness of illness to be strongly correlated with poorer performance on neuropsychological tests sensitive to frontal lobe dysfunction. We have data which replicate these findings.

22. Dr. Karen Froming completed an extensive neuropsychological evaluation of Mr. Kaczynski. My initial review of the summarized results of the testing revealed mild frontal lobe impairment and nondominant hemisphere dysfunction. This pattern of neuropsychological test results is consistent with anosognosia in schizophrenia. In addition, Mr. Kaczynski evidenced significant deficits in his ability to perceive affect. Recent studies have shown a strong relationship between deficits in the ability to process affect and anosognosia in schizophrenia.

23. The government's assertions in the pleading filed 11/14/97, do not offer any clinically defensible basis for disputing either the fact of Mr. Kaczynski's schizophrenia, or that his inability to submit to an examination is a function of the illness. Mr. Kaczynski suffers from anosognosia and that is the primary reason he has refused the court ordered evaluation. His refusal to submit to the court ordered evaluation is typical of patients with schizophrenia who will nevertheless endure circumscribed evaluation by other doctors for specific aspects of the illness (e.g. insomnia, depression, social isolation) that the patient recognizes.

24. This type of seemingly contradictory behavior is a hallmark of anosognosia in schizophrenia. It reflects brain dysfunction rather than a calculated plan to manipulate authority for personal gain. Indeed, it appears from the government's motion that Mr. Kaczynski's refusal to submit to the ordered evaluation has worsened his legal situation considerably. If the patient with anosognosia does not perceive the evaluation as a challenge to his self-concept (his understanding of his innate capacities and abilities), he will usually submit without argument. Undoubtedly, that is likely the reason that Mr. Kaczynski submitted to a neuropsychological evaluation. It did not threaten his self-concept.

25. Compounding the problem is the fact that Mr. Kaczynski's delusional system is classically paranoid both in its organization and content. As I mentioned above, it is common for paranoid delusions to be constructed around fear of government agencies. It is not at all surprising, in my experience, that Mr. Kaczynski with his paranoid delusions would refuse an evaluation demanded by a government agency that seeks his death. Given the number and type of paranoid delusions held by Mr. Kaczynski it is my opinion that he would be incapable of trusting the truthfulness and moral integrity of anyone representing the government.

26. Although schizophrenia is caused by brain dysfunction, it is not the same pattern or type of dysfunction that leads to other central nervous system disorders like mental retardation or Alzheimer's disease. The brain areas affected are unique. Patients with schizophrenia can have above average intelligence. More generally, one can have brain impairment, deficits in certain functions, without evidencing general cognitive

deterioration. The main point here is that high IQ is not mutually exclusive with either the diagnosis of schizophrenia or anosognosia.

27. In summary, reluctance to submit to psychiatric evaluations and treatment are a hallmark of schizophrenia. Mr. Kaczynski's willingness to seek help with his insomnia and social deficits has no bearing on his capacity to submit to a psychiatric evaluation. It is like comparing apples to oranges.

The foregoing is true and correct and executed under penalty of perjury under the laws of the United States of America on this 16th day of November, 1997.

XAVIER F. AMADOR, Ph.D
(signature)

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EXCERPTS FROM LETTERS WRITTEN BY THEODORE KACZYNSKI

Filed Nov. 14, 1997

Following are excerpts from letters written by Theodore Kaczynski. The letters were included as an exhibit with the GOVERNMENT'S REPLY BRIEF IN SUPPORT OF ITS MOTION TO PRECLUDE DEFENDANT FROM RELYING ON EXPERT MENTAL HEALTH TESTIMONY AT THE GUILT PHASE AND TO REQUIRE THE DEFENDANT TO UNDERGO A MENTAL EXAMINATION BEFORE SENTENCING. This document was filed in U.S. District Court, Eastern District, Sacramento, Calif., on Nov. 14, 1997.

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documents provided by:



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T.J. Kaczynski
Stemple Pass Road
Lincoln, Montana 56939
July 11, 1988

Mental Health Services, Inc.
512 Logan
Helena, Montana 59601

Dear Sirs:

I have a personal problem in connection with which I'd like to do a lot of talking, partly just to relieve my feelings, partly to attain a better understanding of certain matters, and partly in order to get advice. I understand that for my income level your fee is five dollars per professional hour, but unfortunately my income is so low (redacted) that I can't afford to travel repeatedly to Helena. (A trip to Helena would cost me about \$20 exclusive of your fee.)

Thus, if it's acceptable to you, I'd like to make an arrangement of the following kind. If you'll assign me to a counselor or therapist, I will send him at intervals a typewritten statement that can be read in well under an

hour, together with a check for five dollars and a stamped, self-addressed envelope. The counselor can read the statement and then, in what is left of the hour, write down his comments and advice informally and mail them to me.

I suppose this would be an unusual arrangement, but, as I've already mentioned, I can't afford repeated trips to Helena, so I don't see how else to handle the matter. Actually I'd even prefer to handle it this way because, in writing, I can express what I have to say much more precisely, clearly, and completely than I can in speaking.

Several weeks ago I phoned Mental Health Services and was told that you had a 10-week waiting list. Since I didn't want to wait that long for at least a preliminary discussion, I went to a private therapist (redacted) whom I saw June 1. I like her very much, but I can't ask her for any further services because I can't afford the fee. As far as I am concerned, the counselor or therapist to whom you assign me would be welcome to exchange information about me or impressions of me with (redacted).

Sincerely yours,

T.J. Kaczynski

Theodore J. Kaczynski
HCR 30 Box 27
Lincoln, Montana 56939
July 12, 1991

Dr. (redacted)
Missoula Medical Plaza, Suite 304
900 North Orange Street
Missoula, Montana

Dear Dr. (redacted)

I am interested in consulting you about a personal problem. However, I assume that an interview with you will be quite expensive -- probably a hundred dollars or more -- and naturally I am not anxious to spend that amount of money only to be told that you can't be of help to me or that I would do better to see some other doctor. Therefore I would like to outline (illegible) letter the problem about which I want to consult you. I would appreciate it if you would let me know whether you think you can help me and what approach you would be likely to take in dealing with the problem. If your answer seems promising, then I'll make an

appointment to see you.

To begin with, I must tell you frankly that I am highly skeptical about the theories by which talk therapists (illegible) to explain their patients' problems, and I'm not going to pay large sums of money to listen to speculative explanations based on psychoanalytic theories or to be told that I have 3,288 different personalities. In fact, the main cause of my problems seems reasonably clear (though questions about contributing factors can be raised), and I am interested in a concrete and practical approach to getting over the problem.

(pages 2 and 3 redacted)

I expect to be in Missoula on Thursday and Friday, July 18 and 19, If I haven't heard from you by then, I will stop in at your office on one of those days to get an oral or written reply from you if you choose to answer me in that way; or you can use my stamped, self-addressed envelope -- as you may prefer.

Sincerely yours,

Theodore J. Kaczynski

Theodore J. Kaczynski
P.O. Box 524
Lincoln MT 59639
October 6, 1993

Director
Golden Triangle Community
Mental Health Center
P.O. Box 5048
Great Falls, Montana (illegible)

Dear Sir:

I am suffering from insomnia, which is causing me serious hardship and which I suspect is due to some form of (redacted). I am seeking referral to a psychiatrist or other doctor who could diagnose and treat this problem.

(redacted)

I telephoned Mental Health Services Inc. in Helena (442-0640) and spoke to a woman whom I asked to refer me to a suitable psychiatrist. She said

that she was unable to give me such a referral and suggested that I call the support unit at St. Peters Hospital. I did so and was told that I should go to a general practitioner for referral to a psychiatrist.

(redacted)

I don't want to pick a psychiatrist at random out of the yellow pages, because I might pay a hundred dollars or more for a visit to him only to find that he is, for example, a freudian who tries to tell me that I have insomnia because I am unconsciously punishing myself for oedipal feelings or some such nonsense. So it would be extremely helpful to me if you could give me the name of a psychiatrist in Helena, Great Falls, or Missoula who might diagnose and treat my insomnia.

I would strongly prefer to see a psychiatrist who is oriented more toward physiology and neurology than toward talk therapy, for the following reasons. First, a psychiatrist oriented primarily toward talk therapy might tend to overlook possible physical causes of the insomnia. (I only suspect that my insomnia is caused by (redacted) I am by no means certain of it.) Second, I am skeptical about the theories of the talk therapists. Third, for financial reasons I could not possibly undergo talk therapy, which involves repeated visits to a therapist. Even if I got such therapy at a mental health center where fees are proportioned to income, the expense of repeated trips to the city, with the overnight stays that would be necessary, would be prohibitive. My hope is that in one or at most two visits to a psychiatrist I could have my insomnia diagnosed and get a prescription for some medication that would enable me to sleep, perhaps by relieving (redacted), if that is the cause of the insomnia. If my response to the medication has to be monitored, Dr. (redacted) could probably take care of that.

If a suitable psychiatrist is available at the Mental Health Center in Helena, and if I can get a reduced fee on grounds of low income, that of course would be very helpful.

Thank you for your help.

Sincerely yours,

Theodore J. Kaczynski

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DEFENDANT'S OPPOSITION TO MOTION TO PRECLUDE EXPERT MENTAL HEALTH TESTIMONY AT THE GUILT PHASE AND TO REQUIRE DEFENDANT TO UNDERGO A MENTAL EXAMINATION BEFORE SENTENCING

Nov. 12, 1997

Court transcripts and documents provided by:



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Attorneys for Defendant Theodore John Kaczynski

UNITED STATES OF AMERICA
Plaintiff,

v.

THEODORE JOHN KACZYNSKI,
Defendant.

CR-S-96-259 GEB

Date: November 12, 1997

Time: 1:00 p.m.
Hon. Garland E. Burrell, Jr.

EXHIBIT A

[Declaration of David Vernon Foster, M.D.](#)

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

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INTRODUCTION

The government sought and obtained an order that Mr. Kaczynski submit to a mental examination by government psychiatrists. The order was intended to ensure that the government had "access to the same type and quality of information upon which the defense intends to rely" in support of his mental state defense. Order, filed Sept. 19, 1997, at 7. The defendant failed to go forward with the examination, and now the government seeks sanctions for such failure. It is critical to understand what the government does and does not seek as sanctions.

The government does not seek an order precluding testimony on the issue of defendant's mental capacity "by any expert by whom he has been interviewed" -- the sanction adopted by the government in its September 29, 1997, Motion To Compel Compliance, at page 10. The government does not seek an order precluding testimony by a defense psychiatrist -- an arguably appropriate sanction for a defendant's refusal to be examined by government psychiatrists. The government does not seek an order of preclusion at the guilt phase only -- an appropriate limitation in light of the fact that it was defendant's notice that he intended to present expert

testimony "bearing upon the issue of guilt" under Federal Rule of Criminal Procedure 12.2(b), that triggered the court-ordered examination. Instead, the government asks the Court to preclude any testimony by a mental health expert -- whether a psychiatrist or some other specialist, whether the expert has examined the defendant or not -- at both the guilt and penalty phases of the trial. The draconian sanction sought by the government is unnecessary to provide the government access to the same information relied on by the defense experts, is without support in the law, and, if granted, would result in a manifest injustice in this capital case.

I. ANY REMEDY FOR DEFENDANT'S FAILURE TO COMPLY WITH THE COURT'S EXAMINATION ORDER SHOULD NOT EXCLUDE TESTIMONY FROM EXPERTS. EXCEPT FOR EXPERTS WHOSE TESTIMONY RELIES ON INFORMATION OBTAINED DURING A PSYCHIATRIC EXAMINATION OF THE DEFENDANT.

In its motion setting forth the conditions it sought for the examination of the defendant, the government advised the Court of the sanction it would seek if the defendant failed to comply with a mental examination:

If the defendant does not comply with the Court's order by submitting to the examination at the time set forth above, the government respectfully requests that he "be precluded at trial from presenting testimony upon the issue of his alleged mental capacity by any expert by whom he has been interviewed." *United States V. Handy*, 454 F.2d [885] at 888-89 [(9th Cir. 1971)] (and cases cited therein)

Government's Motion To Compel Compliance, filed Sept. 29, 1997, at 10. The indicated sanction advanced the government's claimed entitlement to parity, or a "level playing field," by precluding expert testimony that was supported by information to which the government experts were denied access.

Inexplicably, the government now ignores the Ninth Circuit authority it previously adopted and takes the unsupportable position that the Court should preclude all mental health expert testimony from the guilt and the penalty phases of the trial -- even if the expert's testimony would not rely on any information gleaned from an examination and even if the expert never spoke to Mr. Kaczynski. Such an extreme sanction is virtually unprecedented in scope and far out-of-proportion to the degree the government conceivably may be "prejudiced" as a result of the defendant's failure to be examined by government experts. The government does not seek to level the playing field, but essentially asks for a guilty verdict and a death sentence before the trial begins.

Under Federal Rule of Criminal Procedure 12.2(d), the Court has

discretion to impose a range of sanctions for failure to comply with the notice and examination requirements in Rules 12.2(b) & (c), including instructing the jury of defendant's failure to comply, granting a continuance, and limiting some or all of defendant's expert testimony. (1) See. e.g. *United States V. Handy*, 454 F.2d 885 (9th Cir. 1971) (approving of district court's order limiting some expert testimony), cert. denied, 409 U.S. 846 (1972); *Karstetter V. Cardwell*, 526 F.2d 1144, 1145 (9th Cir. 1975) (trial court did not err in permitting the prosecution's psychiatric expert to testify that the defendant had refused to submit to a mental examination); see also *People V. Mcpeters*, 2 Cal.4th 1148, 9 Cal. Rptr.2d 834, 856, 832 P.2d 146 (1992) (upon defendant's refusal to submit to a court-ordered examination, court permitted the prosecution's psychiatrist to testify regarding the refusal) . Because the Court has engrafted the Rule 12.2 procedures on to this case through the exercise of its inherent authority, the appropriate sanction should take into account the reasons for defendant's non-compliance and should be carefully tailored in order to correct any disparity in the parties' positions that may have been caused by non-compliance.

In cases where the defense fails to provide timely notice that it intends to rely on an "insanity" or "diminished capacity" defense, the drastic sanction of exclusion of expert testimony may be appropriate to ensure that the defendant does not gain a tactical advantage through unfair surprise. See *United States V. Veatch*, 647 F.2d 995, 1002-03 (9th Cir. 1981) (notice filed on first day of trial) ; *United States V. Caplan*, 633 F.2d 534, 539 (9th Cir. 1980). (2) On the other hand, where, as here, the defendant provides notice of an intent to present mental health expert testimony bearing on the issue of guilt, the government is made aware of the defense and can prepare before trial to rebut the defendant's case. The prosecution can have its mental health experts review all the evidence in its possession, can interview witnesses, can prepare for cross-examination of defense experts, and can undertake further investigation, if necessary. If the government is unable to present expert testimony encompassing a

Footnotes

1 The Court ordered a mental examination under its inherent powers, not under Rule 12.2. Order, filed Sept. 19, 1997. Nonetheless, the Court indicated that Rule 12.2(d) would guide the Court in deciding the appropriate remedy to apply if defendant failed to comply with the examination. *Id.* at 7; see also Fed. R. Crim. P. 57(b) ("A judge may regulate practice in any manner consistent with federal law, these rules, and local rules of the district.")

2. For these reasons, cases where courts have precluded the defendant

personal examination of the defendant, the court may likewise bar the defendant from presenting similar expert testimony that relies on an examination of the defendant as a basis for an opinion on his mental condition. Any greater sanction would go beyond merely "balancing the scales" or "leveling the playing field," and thus is not appropriate under Rule 12.2(d). The remedy should fit the violation. (3)

Indeed, the government acknowledged as much in its earlier brief when it quoted the Ninth Circuit's decision in *United States V. Handy*, 454 F.2d 885 (9th Cir. 1971). In *Handy*, the Court expressly approved the remedy whereby the district court precluded "testimony upon the issue of his alleged mental capacity by any expert by whom [the defendant] has been interviewed." *Id.* at 888 (emphasis added) ; see also *United States V. Baird*, 414 F.2d 700, 708 (2d Cir. 1969) ("It would still be open to the accused to present evidence of his own past behavior, of a family history of mental impairment and other relevant circumstances of his life, and alienists would still be afforded an opportunity on his behalf to give their opinions on his mental state or condition from hypothetical questions based on assumptions from evidence in the case"), cert denied, 396 U.S. 1005 (1970). No Ninth Circuit case has condoned the extreme remedy that the prosecution seeks in this case for defendant's failure to submit to a mental examination by government experts: the total preclusion of defendant's expert testimony. Rather, the Ninth Circuit has approved far less drastic sanctions for a defendant's failure to comply with a court-ordered psychiatric examination. See *Karstetter V. Cardwell*, 526 F.2d 1144, 1145 (9th Cir. 1975). (4)

In this case, the defense filed its notice of

from presenting any mental health expert testimony as a sanction for defendant's failure to provide the notice required by Rule 12.2(b) are not illuminating in deciding the appropriate remedy for a defendant's failure to comply with an examination order. See Government's Motion To Preclude Testimony, at 5-6. Without the notice required by Rule 12.2(b), the government may be unable to effectively rebut defendant's expert mental condition testimony because it will not know to prepare its own experts or be prepared to cross-examine the defense experts. These cases, however, provide little support to exclude all mental condition expert testimony where a defendant provides timely Rule 12.2 notice, but merely fails or is unable to comply with an examination order.

3. Moreover, a total exclusion of defendant's mental health experts would also violate the Sixth Amendment's Compulsory Process Clause and the Fifth Amendment's Due Process Clause and the right against self-incrimination. In *Taylor V. Illinois*, 484 U.S. 400 (1988), the

intent to present expert testimony under Rule 12.2(b) on June 24, 1997, more than four months before trial. 5/ The government sought to conduct a lengthy psychiatric examination in order to render an opinion whether the defendant suffered from a recognized mental disorder bearing on the issue of guilt. Long before the defense provided notice, however, the government had sufficient information to select and retain at least one forensic expert who began evaluating the voluminous written materials, including Mr. Kaczynski's journals and medical records, in preparing to rebut a potential mental state defense. By at least August of this year, the government had retained a second, equally qualified expert to review the life history documents, as well as to identify and interview life history witnesses. Indeed, as suggested by published news accounts, the unavailability of Mr. Kaczynski for examination has not hampered the government's ability to "conduct meaningful interviews with witnesses who have interacted with defendant and who may provide evidence relevant to his contention that he has a mental disease, defect, or condition." Government's Motion For More Specific Notice Under Fed R Crim P 12 2(b) And For A Mental Examination Of The Defendant By The Government's Expert, filed July 30, 1997, at 5. Rather, the two government experts apparently have identified sufficient clinical necessity for conducting field interviews of Mr. Kaczynski's acquaintances, including former neighbors in Montana.

Moreover, the nature and scope of the interview, as requested by the government, sought information that was in excess of that available to the defense and unnecessary to diagnose the nature and severity of Mr. Kaczynski's mental

Supreme Court recognized that the Sixth Amendment right to offer testimony may be violated where a court's sanction entirely excludes the testimony of a material defense witness, despite the availability of lesser, appropriate remedies. *Id.* at 408-413. The court also explained that the "reasons for restricting the use of the exclusion sanction to only the most extreme situations are even more compelling in the case of criminal defendants, where due process requires that a defendant be permitted to offer testimony of witnesses in his defense." *Id.* at 417 n.23 (citing *Washington V. Texas*, 388 U.S. 14 (1967)); see *United States V. Wade*, 426 F.2d 64, 74 (9th Cir. 1970) (en banc) (an order that bars an insanity defense with respect to a defendant who is mentally unable to comply with an examination order would present "a grave constitutional question"). In light of the adequacy of lesser, more appropriate sanctions as set forth herein and the conditions surrounding defendant's non-compliance, see Dr. Foster Declaration, the government's request for total exclusion of defense expert testimony would

condition. As reflected in the Declaration of David V. Foster, M.D., a reliable evaluation of Mr. Kaczynski's (5) condition and its functional impact can be made on the basis of his documented medical and social history, exclusive of any personal examination. Dr. Foster Declaration, at pp. 3-5. As further evidenced by Dr. Foster's declaration, the symptomatology manifested in Mr. Kaczynski's own writings includes a pathological dread of examination by psychiatrists. Dr. Foster did not discuss the alleged criminal conduct with Mr. Kaczynski, nor was such discussion necessary to formulate a professional opinion to a medical certainty that Mr. Kaczynski's conduct was the product of a sincere belief that he was defending himself against personal annihilation by an omnipotent organization of scientists and technocrats, against which he felt powerless. *Id.* at p. 5.

Thus, the inability to subject Mr. Kaczynski to an examination does not deprive the government's experts of a fair opportunity to refute the bases of the defense experts' opinions. However, should the Court nevertheless conclude the lack of access to Mr. Kaczynski disadvantages the government's experts, the appropriate remedy would be to (1) instruct the jury as to the defendant's lack of compliance with the ordered examination, or (2) , at most to, preclude the defendant from presenting testimony from any expert who would rely on information from a psychiatric examination of the defendant in rendering an opinion regarding the defendant's mental condition. There are no grounds, however, for precluding testimony by mental health experts who are not psychiatrists, psychiatrists who do not rely on any contact with the defendant in forming their opinions, or psychiatrists who would testify on the general nature of a particular type of

violate Mr. Kaczynski's rights under the Fifth and Sixth Amendments.

4. Karstetter is a habeas corpus case where the Ninth Circuit approved of the state court's decision to sanction the defendant's failure to submit to a mental examination by permitting the prosecution's expert to inform the jury of defendant's refusal to comply. 526 F.2d at 1144. The government quotes broad dicta from Karstetter that cited Handy for the proposition that a defendant's refusal to submit to an insanity examination may be sanctioned by excluding defendant's experts' testimony on the insanity issue. *Id.* at 1145. Given that Handy approved only the lesser remedy of excluding testimony on the issue of defendant's alleged mental capacity from experts who interviewed the defendant, Karstetter's broad dicta is clearly not meant to apply to experts who will not testify on whether defendant has a reduced mental capacity or who have not conducted a psychiatric examination of the defendant.

5. Pursuant to the Court's order, defendant gave the

mental illness.

In particular, the Court should not exclude testimony of the following expert witnesses (6):

1. A licensed psychologist with expertise in clinical neuropsychology to testify solely as to the results of neuropsychological testing of the defendant.

The defense intends to introduce the testimony of a licensed psychologist with expertise in clinical neuropsychology regarding the results of a battery of neuropsychological tests administered to the defendant. These tests involve intellectual capacity, perceptual, attentional, memory, language, problemsolving, behavioral regulation, and olfactory functions. The witness's scoring and results of these tests, together with the raw data, have been turned over to the government as part of defendant's reciprocal discovery obligations. The defense intends to present the opinion of this psychologist based solely on the objectively verifiable results of these tests. The psychologist did not ask Mr. Kaczynski any questions about any charged or uncharged crimes.

This testimony should not be barred, because the psychologist's testimony will be limited to an evaluation of Mr. Kaczynski's neurological development and functioning. The witness's testimony will be based solely on information that is in the government's possession. The government and the defense will be on a level playing field, because the defense expert will be relying on exactly the same data that is available to the government's experts.

government a more specific notice on October 9, 1997.

6. In a letter dated October 20, 1997, defense counsel provided the government the names of the two expert witnesses described in the text, as part of its expert witness summaries under Fed. R. Crim. P. 16(b) (1) (C). The names of the two expert witnesses have not been disclosed in this pleading to protect their privacy. The letter to the government also provided the names and summaries of the testimony of two other expert witnesses. Defendant will not seek to introduce the testimony of these latter two witnesses in the guilt phase of trial, as a sanction for defendant's failure to comply with the examination order, as long as the Court permits the two experts identified in the text to testify.

7. The defense will provide the government with a summary of the testimony to be introduced through such witnesses, should it appear likely such witnesses will be called to testify.

8. 18 U.S.C. section 3593(c) states, in relevant part, that "[t]he

Absent a valid, scientifically based challenge to the reliability of the testing data and results, the government cannot claim any disadvantage in preparing to meet the defense evidence. Indeed, the standard of care in the field of neuropsychology militates against repeated testing. See, e.g. *United States V. Beckford*, 962 F. Supp. 748, 765-66 (E.D. Va. 1997) ("the Government proffers that it has 'consulted with several mental health professionals [who] uniformly indicated to the government that certain intelligence tests can be administered to a person only once in any one-year period due to the 'practice' effect of the test.' Thus, the Government apprehends that ... no valid retest will be possible within a useful time frame.") Thus, this psychologist should be permitted to testify solely concerning the results of neuropsychological testing on the defendant

government and the defendant shall be permitted to rebut any information received at the hearing."

9. Indeed, the Court stated that sections (c) and (d) of Rule 12.2 would apply to its order compelling Mr. Kaczynski to submit to a guilt phase examination.

2. A psychiatrist who met Mr. Kaczynski only in connection with his sleep deprivation problems.

Defendant also proposes to present a psychiatrist to testify that the defendant suffers from a chronic psychiatric disorder, as previously disclosed to government counsel. This psychiatrist met the defendant briefly while he was interviewed by a sleep-disorder specialist regarding ambient noise levels at his place of confinement and his sleep patterns. The witness was in the same room with Mr. Kaczynski for just over an hour and did not conduct a clinical interview. The witness's testimony will be based on a variety of information, including an analysis of defendant's writings, physical evidence from the cabin, and medical, educational, and psychological records -- all sources available to government experts. The witness's testimony will not rely on any information discussed in the witness's presence regarding the defendant's sleep problems.

In addition to these expert witnesses, the defense should not be barred from presenting the testimony of any other experts who have not conducted a psychiatric examination of Mr. Kaczynski or who would testify only as to the general nature of a particular mental illness.(7)

II. THE COURT LACKS AUTHORITY TO ORDER THE DEFENDANT TO SUBMIT TO A PENALTY PHASE EXAMINATION.

The prosecution also moves for a mental examination of the defendant before the penalty phase of the trial to rebut the defendant's possible use of mental health expert testimony in the penalty phase. The prosecution requests that, if defendant fails to submit to a penalty phase examination, the defendant be barred from introducing any mental health testimony during the penalty phase. Government's Motion, at 8. Mr. Kaczynski opposes this request on the ground that there is no authority for ordering him to submit to an examination for the penalty phase of a capital trial. Moreover, if the Court were to order such an examination, the Court should set the conditions for the examination before it considers the government's extreme request for total preclusion of mental health expert testimony from the penalty phase, as a sanction for non-compliance.

The government erroneously argues that the Court's authority to grant a penalty phase examination flows from two sources: its right to rebut the information received at a capital sentencing hearing under 18 U.S.C. section 3593(c) and from the Court's inherent judicial authority. However, section 3593(c) does not provide for an examination. It speaks only in general terms of the government's right to rebut mitigating information presented by the defendant. (8) In this regard, it should be noted that the government expressly disavowed any claim that Federal Rule of Criminal Procedure 12.2(c) provided a right to compel an examination after the defendant provides notice of a possible mental condition defense under Rule 12.2(b), even though the terms of that rule could more easily be construed as according such a right than Section 3593(c) does. See Government's Motion For More Specific Notice And To Compel A Mental Examination Of The Defendant, filed July 30, 1997, at 7-8 n.5 (noting split of authority on question whether Rule 12.2(c) provides basis for mental examination where defendant provides Rule 12.2(b) notice).

Moreover, the Court lacks the inherent authority to order defendant to submit to a mental examination in connection with the penalty phase of a capital trial. In 18 U.S.C. section 3593, Congress set forth comprehensive procedures to be followed in a capital sentencing hearing. Section 3593 (a) requires the government to provide notice of its intention to seek the death penalty and to identify the aggravating factors it will seek to prove in support of the death penalty. Although Section 3593(c) provides that the prosecution may rebut evidence presented by the defense in mitigation, the statute does not require the defendant to provide notice of an intent to introduce expert testimony or to submit to an examination. Since Congress has established a detailed capital sentencing scheme, the Court should presume that any omissions were intentional, see. e.g. Pittston Coal Group V Sebben, 488 U.S. 105, 119 (1988); Lorillard V. Pons, 434 U S 575, 582 (1978). It is one thing for a Court to rely on its inherent powers to fill in the perceived gaps in Rule 12.2, which requires

mental examinations in analogous contexts, it is quite another for the Court to create such a power where no similar rule was included in a comprehensive statutory scheme.

If the Court determines that it may compel the defendant to submit to a mental examination in connection with the penalty phase, the Court should set conditions for the exam before it decides whether any sanctions would be appropriate if defendant failed to comply. The conditions for a penalty phase examination would likely be significantly different from an examination for the guilt phase, in light of the entirely different purposes of the guilt and penalty phases of trial. See *United States V. Beckford*, 962 F. Supp. 748, 764 (E.D. Va. 1997) (ordering that report of government experts' examination be sealed with the court until after conclusion of guilt phase of trial) . Moreover, it would be premature to determine the issue of sanctions before the Court decides whether it even has authority to compel a penalty phase examination or the conditions of such exam. Mr. Kaczynski notes that the Rules of Evidence do not apply in the penalty phase and preclusion of mental health expert testimony in the penalty phase of a capital trial would violate his Eighth Amendment right to reliable sentencing and to consider and give full effect to evidence of mental illness, see *Lockett V. Ohio*, 438 U.S. 586, 604 (1978) ("the Eighth and Fourteenth Amendments require that the sentencer [in a capital case] not be precluded from considering, as a mitigating factor, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death") (emphasis in original) (footnote omitted) ; *Eddings V. Oklahoma* 455 U.S. 104, 110-12 (1982) , *Penry V. Lynaugh*, 492 U.S. 302 (1989), in addition to his rights under the Fifth and Sixth Amendments. Section I at 6 n.3, *supra*.

CONCLUSION

The Court should not preclude the testimony of any defense mental health expert from the guilt phase of the trial, except for testimony that relies on a psychiatric examination of the defendant as part of the basis for the expert's opinion on defendant's mental condition. The Court should also deny the government's request for a penalty phase examination because of the absence of authority to order such an examination.

Dated: November 12, 1997.

Respectfully submitted,

(Proxy signatures for Quin Denvir and Judy Clarke)

Attorneys for Defendant Theodore John Kaczynski

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Unabomber

DECLARATION OF DAVID VERNON FOSTER, M.D

November 12, 1997

I, David Vernon Foster. M.D.. declare as follows:

1. I am a physician licensed to practice in the states of California and Hawaii. I received a B.A. degree in 1968 from Pacific Union College in Angwin. California. I studied under developmental psychologist Jean Piaget in Geneva, Switzerland, and in 1973 I received my M.D. degree from Loma Linda University, Loma Linda, California. I completed a medical internship at white Memorial Medical Center in Los Angeles (1973-1974) and a residency at the Los Angeles County/USC Medical Center (1974-1977). Subsequently, I completed a fellowship in child psychiatry at the UCLA Neuropsychiatric Institute (1977-1979). I am Diplomate of the American Board of Psychiatry and Neurology and am Board Certified in Child and Adolescent Psychiatry. (A copy of my curriculum vitae is attached to this declaration as Appendix A.)

2. I currently maintain a private practice in Auburn, California, specializing in child, adolescent. and adult neuropsychiatry. I am also Medical Director for Community Psychiatric Center's Auburn Oaks Partial Hospitalization Program, a program for assisting those with severe psychiatric disorders to avoid or shorten in-patient hospitalization. I am also psychiatric consultant for the Placer County Children's Collaborative, a multi-agency, multi-disciplinary project designed to produce significant improvement in the outcomes for children and youth at risk for serious behavioral, legal, emotional, educational, and family problems.

3. From 1989 to 1993, I was Medical Director of Adolescent Services at Charter Hospital of Sacramento. From 1987 to 1989, I was chief of Children's Mental Health for Hawali State Department of Health. During this time I also was an Attending Psychiatrist at Kahi Mohala Hospital in Ewa Beach, Hawaii. Prior to that. from 1979 to 1987, I held several positions at New England Memorial Hospital in Stoneham. Massachusetts. including Director of Adult and Adolescent Inpatient Services. Acting Director of the Department of Human Services (1985); Acting Chief of Psychiatry (1984-1985), Acting Director of the Child Inpatient Psychiatric Unit (1982-1984), Psychiatric Supervisor of Outpatient Services (1979-1983), and Senior Clinical Supervisor of Child Inpatient Services (1979-1983). I was founder and former Co-Director (1981 - 1984) of the Center for Family Treatment in Stoneham,

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Massachusetts.

4. I was a Clinical Instructor in Psychiatry at Harvard Medical School from 1979 to 1987. During that period, I also supervised residents and fellows in psychiatry and child psychiatry, and pre- and postdoctoral fellows in psychology at Cambridge Hospital's Department of Psychiatry. I was responsible, with other colleagues, for teaching courses in child psychopharmacology and psychopathology to fellows in child psychiatry. From 1980 to 1984, I was a lecturer in child psychiatry, family therapy and biopsychosocial medicine in the family practice residency program of Boston University's School of Medicine. I have served as a consultant to physicians.

rehabilitation programs and health care providers, both public and private. I have lectured extensively on behavioral neurology and brain and behavior relationships.

5. I have testified or submitted declarations in state and federal court for both the prosecution and the defense in criminal proceedings. I have conducted many evaluations of prisoners in county jails and state prisons.

6. Counsel for Theodore J. Kaczynski requested that I evaluate Mr. Kaczynski regarding the nature, presence, and severity of any mental disorders suffered by Mr. Kaczynski and assist counsel in exploring with Mr. Kaczynski mental state evidence that should be presented at trial.

7. In order to perform the requested task, it was necessary for me to review extensive background material relating to Mr. Kaczynski and to the offenses with which he is charged: The materials I reviewed included volumes of Mr. Kaczynski's personal journals, decades of correspondence between Mr. Kaczynski and his family, detailed notebook entries, news clips he collected, treatises on technological society, correspondence with legislators and others, social history documents, medical records, family history records and other documents provided by counsel. I have also interviewed members of Mr. Kaczynski's family and reviewed reports of interviews of persons who observed him at different periods in his life. These data provide an indepth picture of Mr. Kaczynski's social history and global functioning.

8. Mr. Kaczynski's writings and life history data provide a clear and consistent picture of schizophrenia, paranoid type; a chronic neurobiological brain disorder with possible genetic etiology that is characterized by substantial impairments in inferential thinking, behavioral monitoring, and other aspects of psychosocial functioning. A central organizing feature of Mr. Kaczynski's delusional system is a belief that every aspect of his existence is controlled by an omnipotent organization against which he is powerless.

9. During the course of my consultation with Mr. Kaczynski's attorneys, I met with him five times for periods of up to three hours. My interviews of Mr. Kaczynski confirmed my diagnostic impression that he suffers from schizophrenia, paranoid type, but did not disclose diagnostic symptoms in addition to those identifiable in his writings. In my professional opinion, which I hold to a degree of medical certainty, it is possible to render a reliable opinion of the mental disease suffered by Mr. Kaczynski

based on the volume, frequency, and content of his writings and the specific symptoms of brain disorder demonstrated throughout his childhood and until the time of his arrest.

10. Mr. Kaczynski's writings cover a span of nearly four decades from adolescence to his arrest and chronicle his delusional thinking. Social isolation and preoccupation with delusional themes such as mind control, civilized society's efforts to destroy him, and annihilation by technological society are consistently found in his writings. The delusions that plague Mr. Kaczynski have invaded all spheres of his life and dictate his actions. He believes, and rejects any argument to the contrary, that technological society intends to destroy him and others like him. According to his writings, Mr. Kaczynski chronically views accidental or intentional personal contact with other people, newspaper articles, scientific advances, commercial and residential development, air traffic, and radio and television broadcasts as threats to his survival.

11. His writings, in combination with physical evidence removed from his cabin following his arrest, document his disorganized behavior in a variety of ways. He experienced unpredictable episodes of agitation in response to a chance encounter with another person in the wilderness or thoughts of technological advancement. His psychosocial functioning deteriorated markedly over the course of his illness.

12. Mr. Kaczynski's writings and other background material chart a course of increasing deterioration in his social functioning, another symptom of schizophrenia. His deteriorating functioning in these domains is distinct from the evidence of his organized survival-motivated behavior, including those behaviors that were the product of his delusional system.

13. An essential component of Mr. Kaczynski's brain disorder is his deeply ingrained fear of being considered mentally ill. The series of meetings I held with Mr. Kaczynski were for the purpose of serving as liaison between him and his counsel to encourage Mr. Kaczynski to explore the mental health issues involved in his case. I approached the meetings mindful from his writings and background that Mr. Kaczynski had expressed a perception of psychiatrists as agents of a science of the brain given to mind control and personality alteration. In Mr. Kaczynski's perception, psychiatrists seek to eliminate free will and personal autonomy by creating a population that is wholly compliant with the needs of an omnipotent system.

14. A significant feature of Mr. Kaczynski's illness is his pathological fear and compulsive aversion to evaluation by psychiatrists. I attempted to proceed cautiously in each of our meetings and to be respectful of his life-long fears and concerns. I acknowledged his fears and concerns and explained the necessity of addressing the symptoms of his illness. Upon broaching with any degree of specificity the symptoms and course of his illness, Mr. Kaczynski became visibly upset and shortly thereafter discontinued the meetings. At no time did I discuss with Mr. Kaczynski the conduct with which he is charged. The state of Mr. Kaczynski's cabin and personal effects, and the unusually thorough, voluminous and descriptive material available for review

provide ample evidence of his mental illness. This is clinically evident despite Mr. Kaczynski's symptom-based failure to cooperate fully with psychiatric evaluation. The information available to me, exclusive of personal observations of Mr. Kaczynski, provides compelling evidence that Mr. Kaczynski's psychiatric condition drove him to seek isolation and that isolation amplified his psychosis. The available data further demonstrate that Mr. Kaczynski's conduct was the product of his sincere belief that he needed to defend himself against annihilation by an omnipotent organization against which he felt helpless.

The foregoing is true and correct and executed under penalty of perjury under the laws of the state of California and the United States of America on this 11th day of November, 1997.

(Signature)

DAVID VERNON FOSTER, M.D.

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Unabomber

GOVERNMENT'S TRIAL BRIEF

Nov. 12, 1997

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES
OF AMERICA,
Plaintiff,

V.

THEODORE JOHN
KACZYNSKI,
Defendant.

CR NO. S-96-0259 GEB

GOVERNMENT'S TRIAL
BRIEF
(REDACTED VERSION)

DATE: November 12, 1997

TIME: 9:00 a.m.

COURT: Hon. Garland E.
Burrell

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I. INTRODUCTION

The defendant, Theodore Kaczynski, is charged in this district with offenses arising out of four bombings between 1985 and 1995. These bombings formed part of an 18-year scheme in which the defendant mailed or placed 16 bombs in an effort, as Kaczynski himself phrased it, to "kill someone I hate" and to gain "revenge on society". Throughout this scheme, Kaczynski sought to build increasingly lethal bombs by improving his bomb design and his bombmaking techniques. Kaczynski achieved

success in his eleventh bomb, which resulted in the death of Hugh Scrutton and which forms the basis for Count One of the indictment. The bombs charged in the remaining counts were the thirteenth, fourteenth, and sixteenth bombs mailed or placed by Kaczynski and resulted in the death of Gilbert Murray and serious injuries to Drs. David Gelernter and Charles Epstein. A seventeenth, fully functional bomb was discovered during the search of Kaczynski's cabin in April, 1996.

In Section II, the government summarizes the 18 year reign of the "Unabomber" and provides details regarding each of the bombings and the type of proof which the government intends to present for each one.

In Section III, the government has attempted to set forth the elements of the charged crimes and to provide the Court with relevant authority pertaining to those elements and the necessary proof at trial.

In Section IV, the government has attempted to identify and provide the Court with authority for evidentiary issues which may arise with respect to the government's proof.

In Section V, the government has attempted to identify issues that may arise in the defense portion of the case or in the defendant's cross-examination of government witnesses.

II. FACTS

A. An Individual Dubbed the "Unabomber"

Between May 25, 1978 and April 24, 1995 an individual dubbed the "Unabomber" was responsible for 16 bombings throughout the United States. The bombings, which are set forth below, resulted in 3 deaths and 29 injuries:

No.	Date	Location of Explosion	Injuries
1	5/26/78	Chicago, IL	Minor injury to police officer
2	5/9/79	Chicago, IL	Moderate injury to student
3	11/15/79	Chicago, IL	18 cases of smoke inhalation after emergency landing of jetliner
4	6/10/80	Chicago, IL	Major injury to UAL President
5	10/8/81	Salt Lake City	Device failed to explode
6	5/5/82	Nashville, TN	Major injuries to secretary
7	7/2/82	Berkeley, CA	Major injuries to professor

8	5/15/85	Berkeley, CA	Major injuries to student
9	6/13/85	Auburn, WA	Device disarmed
10	11/15/85	Ann Arbor, MI	Moderate injuries to graduate student
11	12/11/85	Sacramento, CA	Death of Hugh Scrutton
12	2/20/87	Salt Lake City	Moderate injury to businessman
13	6/22/93	Tiburon, CA	Major injuries to professor
14	6/24/93	New Haven, CT	Major injuries to professor
15	12/10/94	No. Caldwell, NJ	Death of Thomas J. Mosser
16	4/24/95	Sacramento, CA	Death of Gilbert B. Murray

Although the defendant is only charged with four of the devices in this district, the government will seek to prove that the defendant is responsible for all sixteen devices. The government will also seek to introduce evidence that, during the search of Kaczynski's cabin, agents found a fully functional bomb. As explained in the government's 404(b) motion, due to the interlocking nature of the evidence, proof that the defendant was responsible for any one of the bombs tends to strengthen and reinforce the evidence with respect to other bombs.

In each of the 16 bombings an improvised explosive and/or incendiary device was used. Eight of the devices contained the initials "FC" stamped on a piece of metal or on the end plug of the pipe bomb. Prior to Kaczynski's arrest, experts in the field of bomb construction and forensics, identified significant similarities among the bombs and concluded that all of the bombings had been carried out by the same individual or group of individuals acting in concert. Experts also concluded that the same typewriter had been used to type all the mailing labels and correspondence from the Unabomber since 1982.

In June, 1993, the New York Times received a letter from an individual claiming to represent an anarchist group known as "FC". The letter, which was mailed at the same time and from the same location as Devices 13 and 14, stated that it preceded a "newsworthy event". The writer of the letter provided "an identifying number that will ensure the authenticity of any future communication from us.

On April 20, 1995, the Unabomber mailed Device 16 which killed Gilbert B. Murray, the president of the California Forestry Association. At the same time and from the same location "FC" mailed four letters. A letter from "FC" to the New York Times commenced: "We blew up Thomas Mosser last December . . ." and claimed responsibility for Devices 5, 13, 14 and 15 and generally described a 17 year history of bombing. The letter explained that the author could now make more deadly bombs but proposed to desist from further terrorist activities if the Times agreed to publish a 29,000 to 37,000 word article written by him. A letter from "FC" to David Gelernter,

the victim of Device 14, taunts Gelernter for opening "an unexpected package from an unknown source." Finally, letters to nobel prize winning geneticists Phillip Sharp and Richard Roberts contained the following "warning from FC": "It would be beneficial to your health to stop your research in genetics."

On June 27, 1995, the San Francisco Chronicle received a letter from "the terrorist group FC, called unabomber by the FBI" which stated that the group was planning to "blow up an airliner out of Los Angeles International Airport some time during the next six days". The letter had the effect of paralyzing nationwide air travel over the long Fourth of July weekend.

On June 28, 1995, the New York Times, received a "message from FC", which supplied the secret identifying number referred to in previous correspondence. In the letter, the author claimed responsibility for Devices 3, 6 and 16. In a postscript, the author states that the threat to bring down an airliner was a "prank". Enclosed with the letter was the original of the promised manifesto, a 67 page diatribe entitled "Industrial Society and It's Future by FC", which argues that the "industrial revolution and its consequences have been a disaster for the human race." At the same time, "FC" sent carbon copies of the manuscript with different cover letters to the Washington Post, Penthouse Magazine and UC Berkeley Professor Tom Tyler. The Unabomber also sent a letter to Scientific American further expounding on his anti-technology views.

Commencing on April 3, 1996, the FBI conducted a search of Kaczynski's one-room cabin. Among other things the agents located:

1. The typewriter used to type all identifiable Unabomber correspondence since 1982. This typewriter ties Kaczynski to mailing labels and correspondence which accompanied Devices 6, 7, 9, 10, 13, 14 and 15. The typewriter also connects Kaczynski to the letters to the New York Times in which "FC" claims responsibility for Devices 3, 5, 6, 13, 14, 15 and 16 and a seventeen year history of bombing. It also connects Kaczynski to the manifesto and the threat to bring down an airliner.
2. A carbon copy of the manifesto (the original was sent to the New York Times).
3. A handwritten draft of the manifesto.
4. Handwritten or carbon copies of several of the letters that were sent by the "Unabomber", including those that accompanied bombs, letters to the New York Times, and cover letters which accompanied the manifesto to the New York Times, Washington Post, Penthouse Magazine and Professor Tyler and the letter to Scientific American.
5. A handwritten autobiography written around 1979 which contains the statement that Kaczynski intends to start killing people and that the purpose of the autobiography is to explain that he is not sick.
6. Notebooks written largely in Spanish or in code (together with the key to the code) and a journals written in English which together contain admissions or inculpatory statements to each of the 16 bombing incidents. *(1. Defense counsel have entered into a written stipulation that virtually all of the handwritten*

documents found in the cabin, including the autobiography, the journals and the Spanish and coded notebooks, were written by the defendant. The government intends to present this stipulation in open court so that the court may assure that the stipulation was knowingly and voluntarily made by the defendant. See United States V. Miller, 588 F.2d 1256, 1263 (9th Cir. 1978) ("It is the responsibility of the trial judge when accepting a stipulation or waiver to assure that it is voluntarily made."); United States v. Ferreboeuf, 632 F.2d 832, 836 (9th Cir. 1980) ("[W]hen a stipulation to a crucial fact is entered into the record in open court in the presence of the defendant, and is agreed to by defendant's acknowledged counsel, the trial court may reasonably assume that the defendant is aware of the content of the stipulation and agrees to it through his or her attorney.")

7. Three-ring binders which memorialize Kaczynski's experiments over the years with various types of bombs and explosive chemical compounds. These experiments show a clear progression in Kaczynski's bomb-making capabilities, describe the construction of several of the Unabom devices and how each was deployed. Kaczynski's coded notes also occasionally refer to a particular device as being the product of a particular experiment.
8. A piece of paper on which was written the secret ten-digit identifying number used by the Unabomer.
9. Green paneling nails which have been forensically matched to green paneling nails used as shrapnel in the Murray (#16) and Mosser (#15) bombs.

A fully functional improvised explosive device which is similar in design and construction to the Murray bomb (#16) and components of which can be forensically associated with components of Epstein (#13) and Gelernter (#14) bombs.

10. Various bomb components including triggers, initiators, pipes and chemicals.

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Unabomber

NOTICE OF MOTION AND MOTION TO DISMISS GOVERNMENT'S NOTICE OF INTENT TO SEEK DEATH PENALTY AND FOR OTHER APPROPRIATE RELIEF

October 25, 1997

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT of CALIFORNIA

<p>UNITED STATES OF AMERICA Plaintiff,</p> <p>V.</p> <p>THEODORE JOHN KACZYNSKI, Defendant.</p>	<p>CR-S-96-259 GEB</p> <p>Date: October 24, 1997</p> <p>Time: 1:30 p.m. Hon. Garland E. Burrell, Jr.</p>
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- 18 U.S.C. § 3593(a) 6, 35
- 18 U.S.C. § 3593(a)(2) 6
- 18 U.S.C. § 3593(e) 33
- 18 U.S.C. § 3594 33
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- Federal Rule of Criminal Procedure 7(c)(1) 6
- Fed. R. Crim. P.7(f) 9
- Fed. R. Evid. 404(b) 10

STATE STATUTES

- Iowa Code Ann. § 708.6 (1997) 21

MISCELLANEOUS

- M. Radelet, H. Bedau, C. Putnam, In Spite Of Innocence, at 17 (Northwestern University Press 1992) (recording more than 400 cases of innocent persons convicted of capital or potentially capital crimes in this country since 1900) 28
- Webster's Third New International Dictionary 2280 (1981) 19
- 1 Wright, Federal Practice and Procedures ¶ 129, at 436 (1982) (footnote omitted) 10
- Jonathan H. Levy, Note, Limiting Victim Impact Evidence And Argument
- After Payne v. Tennessee, 45 Stanford Law Rev. 1027, 1041 (1993) 37
- N.H. Code Ann. ¶ 630:5(VII)(f)(Supp. 1992) 20

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THEODORE JOHN KACZYNSKI

To: ROBERT J. CLEARY, STEPHEN P. FRECCERO, BERNARD F. HUBLEY, R.
STEVEN LAPHAM,
Special Attorneys to the United States

Attorney General:

Please take notice that on October 24, 1997, at 1:30 p.m., before the Honorable United States District Judge Garland E. Burrell, Jr., defendant Theodore John Kaczynski, through counsel Quin Denvir and Judy Clarke, will move the Court to dismiss the government's notice of intent to seek the death penalty, which was filed on May 15,

1997, and for other appropriate relief as set forth herein. The grounds for this motion are set forth in the attached memorandum in support of the motion. A motion to preclude imposition of the death penalty is being filed separately.

This motion is based on the instant motion, the accompanying memorandum in support of the motion, and on any other evidence or argument presented before or at the hearing on the motion.

Dated: September 15, 1997

Respectfully submitted,
QUIN DENVER (signature)
JUDY CLARKE (signature)

Attorneys for Defendant
Theodore John Kaczynski

INTRODUCTION

Defendant Theodore Kaczynski is charged in a 10-count indictment with various federal offenses arising out of four separate explosives incidents. Pursuant to 18 U.S.C. § 3593 (a) , in any case in which the government intends to seek the death penalty, the government must file a notice that sets forth the aggravating factor or factors that it proposes to prove to justify a death sentence ("death penalty notice") On May 15, 1997, the government filed such a notice in which it stated that it intends to seek the death penalty in the event that Mr. Kaczynski is convicted of the explosive incident that is alleged in counts eight and nine of the indictment. Count eight charges defendant with transportation of an explosive in interstate commerce in violation of 18 U.S.C. § 844(d) while count nine charges him with mailing the same explosive in violation of 18 U.S.C. § 1716.

The death penalty notice first alleges that the defendant acted with the mental state or states required to establish eligibility for a death sentence. 18 U.S.C. § 3591(a)1 (1); see also Tison v. Arizona, 481 U.S. 137 (1987)

(Eighth Amendment does not prohibit death penalty as disproportionate where defendant had major participation in felony that results in murder and whose mental state is reckless indifference to human life) . The notice calls these "preliminary factors." The notice also alleges three aggravating factors enumerated in 18 U.S.C. § 3592(c) ("statutory") and five aggravating factors that are not set forth in the statute ("non-statutory") as follows:

Statutory Aggravating Factors:

- 1. The death, or injury resulting in death, occurred during the commission or

attempted commission of an offense under 18 U.S.C. § 844(d) which prohibits transportation of an explosive device in interstate commerce with intent to kill. 18 U.S.C. § 3592(c) (1)

- 2. The defendant, in the commission of the offense knowingly created a grave risk of death to one or more persons in addition to the victim of the offense. 18 U.S.C. § 3592(c) (5).
- 3. The defendant committed the offense after substantial planning and premeditation to cause the death of one or more persons and to commit an act of terrorism. 18 U.S.C. § 3592(c) (9).

Non-Statutory Aggravating Factors:

- 1. The defendant has committed two other murders and numerous other significant acts of violence and attempted acts of violence and has made threats of violence against others.
- 2. The defendant has a low potential for rehabilitation.
- 3. The defendant lacks remorse for any of the murders and other acts of violence which he has committed.
- 4. The defendant represents a continuing danger to the lives and safety of other persons.
- 5. The defendant caused severe and irreparable harm to the families of three murder victims and caused life. altering injuries to the survivors of his acts of violence.

RELEVANT LAW

A constitutional death penalty statute must "genuinely narrow the class of persons eligible for the death penalty and must reasonably justify the imposition of a more severe sentence on the defendant compared to others found guilty of murder." (Zant v. Stephens, 462 U.S. 862,

With respect to these preliminary factors, the notice states as follows:

Pursuant to 18 U.S.C. § 3591(a) (2), the United States will rely on the following preliminary factors to establish the defendant's eligibility for the death penalty: 1. The defendant intentionally killed the victim. 18 U.S.C. § 3591(a) (2) (A).
2. The defendant intentionally inflicted serious bodily injury that resulted in the death of the victim. 18 U.S.C. § 3591(a) (2) (B).
3. The defendant intentionally participated in an act contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victim died as a direct result of the offense. 18 U.S.C. § 3591(a) (2) (C)
4. The defendant intentionally and specifically engage in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for

877 (1983).) (2) The statute must "channel the sentencer's discretion by 'clear and objective standards' that provide 'specific and detailed' guidance,' and that 'make rationally reviewable the process for imposing a sentence of death.'" (Lewis v. Jeffers, 497 U.S. 764, 774 (1990) (quoting Godfrey, 446 U.S. at 428).)

human life and the victim died as a direct result of the act. 18 U.S.C. § 3591(a) (2) (D).

A statute's aggravating factors play a critical role in channeling the sentencer's discretion through clear and objective standards. An aggravating factor must set out a clear, principled way to distinguish those few cases in which the death penalty may be imposed from the many cases which it is not imposed. (Godfrey, 446 U.S. at 428-29, 433.) As the Court has instructed,

"Although our precedents do not require the use of aggravating factors, they have not permitted a State in which aggravating factors are decisive to use factors of vague or imprecise content. A vague aggravating factor employed for the purpose of determining whether a defendant is eligible for the death penalty fails to channel the sentencer's discretion. A vague aggravating factor used in the weighing process is in a sense worse, for it creates the risk that the jury will treat the defendant as more deserving of the death penalty than he might otherwise be by relying upon the existence of an illusory circumstance.

2. In general, the requisite narrowing can be accomplished in two ways: "The legislature may itself narrow the definition of capital offenses . . . so that the jury finding of guilt responds to this concern," or "the legislature may more broadly define capital offenses and provide for narrowing by jury findings of aggravating circumstances at the penalty phase." (Lowenfield v. Phelps, 484 U.S. 231, 246 (1988).)

(Stringer v. Black, 503 U.S. 222, 235-36 (1992).) Following these principles, the Court has struck down aggravating factors that are too vague to supply clear guidance or that could be interpreted as applying to almost any murder. (See, e.g., Maynard v. Cartwright, 486 U.S. 356 (1988) (holding Oklahoma's "especially heinous, atrocious, or cruel" aggravating factors unconstitutionally vague) ; Godfrey, 446 U.S. 420 (holding Georgia's "outrageously or wantonly vile, horrible or inhuman" aggravating factor unconstitutionally vague) .)

In a jurisdiction with a weighing statute, like the federal statute here, "there is Eighth Amendment error when the sentencer weighs an 'invalid' aggravating circumstance in reaching the ultimate decision to impose the death sentence." (Sochor v. Florida, 504 U.S. 527, 532 (1992).) "Employing an invalid aggravating factor in the weighing process 'creates the possibility . . . of randomness,' by placing a 'thumb [on] the death's side of the scale,' thus 'creat[ing] the risk [of] treat[ing] the defendant as more deserving of the death penalty.'" (Id. at 532 (quoting Stringer, 503 U.S. at 232, 235, 236 (citation

omitted)).

ARGUMENT

I. The Government's Death Penalty Notice In This Case Must Be Dismissed Because It Fails To Provide The Notice Required By The Constitution And By 18 U.S.C. § 2593(a).

In any case in which the government intends to seek the death penalty, 18 U.S.C. § 3593 (a) (2) requires the government to file a notice "setting forth the aggravating factor or factors that the government, if the defendant is convicted, proposes to prove as justifying a death sentence." When criminal charges are filed, Federal Rule of Criminal Procedure 7(c) (1) requires that the filing provide notice of the nature of the charges, consisting of a "plain, concise and definite written statement of the essential facts." Notice is also a bedrock principle under the Due Process Clause and the Sixth Amendment. See Simmons v. South Carolina, 512 U.S. 154, 175 (1994) ("Capital sentencing proceedings must of course satisfy the dictates of the Due Process Clause,' and one of the hallmarks of due process in our adversary system is the defendant's ability to meet the State's case against him.") (O'Connor, J., concurring) (quoting Clemons v. Mississippi, 494 U.S. 738, 746 (1990)); United States v. Kurka, 818 F.2d 1427, 1431 (9th Cir. 1987) ("The Sixth Amendment requires that a defendant be informed of 'the nature and cause of the accusation.'")

Here the government's death penalty "notice" is wholly insufficient to apprise Mr. Kaczynski of the nature of the aggravating factors that the government intends to rely on to sentence him to death. See Givens v. Housewright, 786 F.2d 1378, 1380 (9th Cir. 1986) ("The sixth amendment requires, in part, that an information state the elements of an offense with sufficient clarity to apprise a defendant of what he must be prepared to defend against") (emphasis added). For example, the second alleged statutory aggravating factor states that defendant knowingly created a grave risk of death to other persons--but does not specify which other persons, or provide other essential details concerning the scope of this factor. Does the government allege that every person who came near Mr. Kaczynski while he allegedly transported an explosive from Montana to Oakland was subject to a grave risk of death? Likewise, the third alleged statutory aggravating factor states that the defendant committed the offense after substantial planning and premeditation, but does not identify any conduct that supposedly supports this factor.

The notice concerning the alleged non-statutory aggravating factors is equally lacking. The first alleged nonstatutory aggravating factor states that defendant committed "two other murders and numerous other significant acts of violence and attempted acts of violence and has made threats of violence against others," while the fifth alleged non-statutory aggravating factor similarly states that defendant caused severe and irreparable harm to the families of three murder victims and caused life altering injuries to the survivors of his acts of violence. The notice, however, provides no names, dates,

places, etc. concerning the broad allegations set forth in these aggravators. The notice is utterly lacking in the information necessary for the defense to adequately prepare to defend against these factors. Moreover, other alleged non-statutory aggravating factors use such vague terms as "low potential for rehabilitation," "lacks remorse," and "continuing danger," so as to make the government's "notice" essentially meaningless.(3)

Fair notice has been a fundamental principle in our constitutional law for more than a century. In United States v. Cruikshank, 92 U.S. (2 Otto) 542, 23 L.Ed. 588 (1876), the Supreme Court held that portions of an indictment were invalid for lack of fair notice, even though the indictment set forth the elements of the offense in the language of the applicable statute, i.e., intentionally hindering particular citizens in their "free exercise and enjoyment of . . . the several rights and privileges granted and secured to them by the constitution and laws of the United States." Id. at 557. The indictment was defective because it did not specify which of the many constitutional rights had been taken from the alleged victims. The Court explained that when an offense "includes generic terms," the indictment must do more than repeat those terms; "it must state the species,--it must descend to particulars." Id. at 558.

In this case, the government's notice suffers from the same infirmities found fatal in Cruikshank. The notice repeats the general language set forth in the statutory aggravating factors and defines the non-statutory aggravating factors in vaguer, generic language. Especially in a capital case where the need for reliability is paramount, the government's notice falls far short of the notice required by our Constitution and federal laws.

Alternatively, in the event the notice is not dismissed, the Court should order a bill of particulars pursuant to Federal Rule Criminal Procedure 7(f), requiring the government to provide sufficient details concerning the nature of the aggravating factors alleged in the notice.(4) A request for a bill of particulars requires no showing of cause. (5) The test is "whether it is necessary that defendant have the particulars sought in order to prepare his defense and in order that prejudicial surprise will be avoided." 1 Wright, Federal Practice and Procedure ¶167; 129, at 436 (1982) (footnote omitted) . "A defendant should be given enough information about the offense charged so that he may, by the use of diligence, prepare adequately for the trial." Id. at 436-37.

Even in a non-capital trial, when the government intends to present evidence of "other

3. In other federal capital cases, the prosecution has been far less stingy in providing information concerning the aggravating factors alleged in its death penalty notice. See United States v. Spivey, 958 F. Supp. 1523, 1535 (D. N.M. 1997) ("The Notice lists five acts of violence with specific dates, names of victims or intended victims, and descriptions of the acts themselves.") ; United States v. Davis, 912 F. Supp. 938, 950-53 (E.D. La. 1996) (death penalty notices set forth in appendix).

crimes, wrongs, or acts" of the defendant, the government is required to provide pretrial notice of the "general nature of any such evidence it intends to introduce at trial." Fed. R. Evid. 404(b). It is inconceivable that the federal death penalty statute should be interpreted as allowing the government to provide less notice of a defendant's alleged "other acts" for the penalty phase of a capital trial, where a jury determines whether the defendant shall live or die. For the defense to prepare adequately in this case, the Court should grant a bill of particulars ordering the government to provide notice as follows: (1) with respect to each person or act or event referred to in the death penalty notice, identifying the name of each person and the date, place and general nature of each act or event; (2) specifying the general nature of the evidence it intends to rely on to support a finding that defendant committed the offense "after substantial planning and premeditation," "lacks remorse," has a "low potential for rehabilitation," and is a "continuing danger" to others; and (3) identifying and describing the general nature of the evidence purporting to show "severe and irreparable harm" to victims' families and "life altering injuries to the survivors of his acts of violence."

II. The Statutory Aggravating Factors Alleged In The Government's Death Penalty Notice Must Be Dismissed As Duplicative, Vague, and Overbroad.

1. The first statutory aggravating factor -- The death, or injury resulting in death occurred during the commission or attempted commission of an offense under 18 U.S.C. S 844(d) which prohibits transportation of an explosive device in interstate commerce with intent to kill. 18 U.S.C. § 3592(c) (1).

An aggravating factor that merely duplicates the capital crime violates the Eighth Amendment because it fails to genuinely narrow the class of persons who should be selected for the death penalty. A jury finding of an aggravating factor that merely replicates the underlying crime does not in any way distinguish one sentenced to death from one sentenced to a term of imprisonment. Under a weighing statute, such as the federal statute here, employing duplicative aggravating factors also unfairly pre-weighs the scales in favor of death, because the jury must necessarily find the existence of the aggravator when finding the defendant guilty of the capital crime.

Here, the government seeks the death penalty in the event that Mr. Kaczynski is convicted of count eight, transportation of an explosive in interstate commerce with intent to kill or injure in violation of 18 U.S.C. § 844(d), resulting in death. The

4. To the extent that the notice required by section 3593 (a) must be returned by a grand jury, see separately filed Motion to Preclude Imposition of Death Penalty, Argument Section I, a bill of particulars cannot substitute for a valid indictment. United States v. Cecil, 608 F.2d 1294, 1296 (9th Cir. 1979).

5. Fed. R. Crim. P. 7(f) was amended in 1966 to eliminate the requirement that a bill could be ordered only "for cause." The amendment was intended "to encourage a more liberal attitude by the courts towards bills of particulars." Advisory Committee Note to the 1966 Amendment of Rule 7 (f).

first aggravating factor duplicates this offense. As a result, if the jury finds Mr. Kaczynski guilty of count eight, it would automatically find the existence of one statutory aggravating factor.

For this reason, in United States v. McVeigh, 944 F. Supp. 1478 (D. Col. 1996), Judge Matsch agreed with the defendants and prohibited the government from using any of the crimes charged in the indictment as aggravating factors:

"Because the Court has held that the weighing process is highly sensitive to the influence of aggravating factors that might unfairly tip the scales in favor of death, the government may not introduce those offenses as aggravating factors that duplicate the crimes charged in the indictment. To allow the jury to weigh as an aggravating factor a crime already proved in a guilty verdict would unfairly skew the weighing process in favor of death."

Id. at 1489-90; cf. Lowenfield v. Phelps, 484 U.S. 231 (1988) (in non-weighing statute, no Eighth Amendment violation where aggravating factor duplicates charged crime) . State courts have also found that "double-counting" the elements of a crime as an aggravating factor is unconstitutional. See Middlebrooks v. Tennessee, 840 S.W.2d 317 (Tenn. 1992), cert dismissed, 113 S. Ct. 651 (1992); State v. Cherry, 257 S.E.2d 551 (N.C. 1979), cert denied, 446 U.S. 941 (1980). Thus, the Court should dismiss the first alleged aggravating factor.

Moreover, the first alleged statutory factor does not apply to this case. To fall within the scope of the aggravating factor set forth in 18 U.S.C. § 3592(c) (1), a death must occur "during the commission of or attempted commission of" one of several enumerated offenses, in this case, transportation of an explosive in interstate commerce in violation of section 844(d). This language was not meant to apply to cases where the defendant's intent was to kill and transporting an explosive was merely the means to commit the crime, rather than an independent felony. In such cases, the death did not occur during the commission of the explosive offense, but was the object of the offense.

In People v. Green, 27 Cal.3d 1, 164 Cal. Rprt. 1, 609 P.2d 468 (1980), the California Supreme Court reached the same conclusion in interpreting its state death penalty statute:

"...it was not enough for the jury to find the defendant guilty of a murder and one of the listed crimes, the statute also required that the jury find the defendant committed the murder 'during the commission of or attempted commission of' that crime. . . . In other words, a valid conviction of a listed crime was a necessary condition to finding a special circumstance, but it was not a sufficient condition: the murder must also have been committed 'during the commission' of the underlying crime.

* * *

"...we infer that the purpose of the Legislature was to comply insofar as possible with what it understood to be the mandate of Furman and Gregg et al. At the very least, therefore, the Legislature must have intended that each special circumstance provide a rational basis for distinguishing between those murderers who deserve to be considered for the death penalty and those who do not. The Legislature declared that such a distinction could be drawn, inter alia, when the defendant committed a 'willful, deliberate and premeditated' murder 'during the commission' of a robbery or other listed felony. . . The provision thus expressed a legislative belief that it was not unconstitutionally arbitrary to expose to the death penalty those defendants who killed in cold blood in order to advance an independent felonious purpose, e.g., who carried out an execution-style slaying of the victim of or witness to a holdup, a kidnapping, or a rape.

"The Legislature's goal is not achieved. however when the defendant's intent is not to steal but to kill and the robbery is merely incidental to the murder--'a second thing to it.' as the jury foreman said here--because its sole object is to facilitate or conceal the crime. . . . To permit a jury to choose who will live and who will die on the basis of whether in the course of committing a first degree murder the defendant happens to engage in ancillary conduct that technically constitutes robbery or one of the other listed felonies would be to revive 'the risk of wholly arbitrary and capricious action' condemned by the high court plurality in Gregg. . . . We conclude that regardless of chronology such a crime is not a murder committed "during the commission" of a robbery within the meaning of a statute."

27 Cal.3d at 59-62, 164 Cal. Rptr. at 37-39 (emphasis added); see also People v. Thompson, 27 Cal.3d 303, 321-25, 165 Cal. Rptr. 289, 298-300, 611 P.2d 883 (1980) (same)

Finally, the aggravating factor must be dismissed because, even assuming the allegations to be true, a death did not occur during the commission of a section 844(d) offense--but after the offense had ended. Count eight of the indictment charges that Mr. Kaczynski transported a bomb and bomb components from Montana, to Oakland, California, from on or about March 13, 1995, to on or about April 20, 1995. It also alleges that defendant mailed the bomb from Oakland on or about April 20, 1995, and that the bomb was delivered to Sacramento on or about April 24, 1995, where it was opened, exploded, and caused a death.

To qualify as an aggravating factor under section 3592 (c) (1) , a death must occur during the commission of or attempted commission of the offense of transportation of an

explosive in interstate commerce with intent to kill in violation of 18 U.S.C. § 844(d). But here the transportation of the explosive in interstate commerce ended when the defendant purportedly brought the explosive to Oakland on or about April 20, 1995. See United States v. Wallach, 979 F.2d 912, 918 (2d Cir. 1992) (interstate transportation of stolen property (18 U.S.C. § 2314) "is complete when the defendant transports in interstate commerce property worth more than \$5,000"), cert. denied, 508 U.S. 939 (1993). The death occurred four days later, after the bomb was allegedly mailed from Oakland to Sacramento four days earlier. Thus, the charged death occurred after the violation of section 844(d) was complete, not during the commission of or attempted commission of the offense.

2. The second statutory aggravating factor --The defendant, in the commission of the offense knowingly created a grave risk of death to one or more persons in addition to the victim of the offense. 18 U.S.C. § 3592(c) (2).

This aggravating factor violates the death penalty statute and the Fifth and Eighth Amendments because it is duplicative and vague.

A finding of the second aggravating factor, that the defendant knowingly created a grave risk of death to additional persons beyond the victim, duplicates both the first alleged statutory aggravating factor and the mental state preliminary factor set forth in 18 U.S.C. § 3591(a) (2) (D) . The gist of the first alleged aggravating factor is that the interstate transportation of explosives is so inherently dangerous that it justifies a sentence of death rather than life imprisonment. Given the potential lethal nature of explosives, any case where a defendant is convicted of knowingly transporting an explosive will almost always involve a "grave risk of death to one or more persons in addition to the crime." Thus, the first and second alleged aggravating factors simply place two different labels on the identical conduct.

In weighing statutes, aggravating factors that are duplicative or substantially overlap one another are constitutionally invalid. "Such double counting of aggravating factors, especially under a weighing scheme, has a tendency to skew the weighing process and creates the risk that the death sentence will be imposed arbitrarily and thus, unconstitutionally." United States v. McCullah, 76 F.3d 1087, 1111, aff'd on denial of reh'g, 87 F.3d 1136 (10th Cir. 1996), cert. denied, 117 S. Ct. 1699 (1997); see also Parsons v. Barnes, 871 P.2d 516, 529 (Utah), cert. denied, 513 U.S. 966 (1994); Cook v. Alabama, 369 So.2d 1251, 1256 (Ala. 1978). "While the federal statute at issue is a weighing statute which allows the jury to accord as much or as little weight to any particular aggravating factor, the mere finding of an aggravating factor cannot but imply a qualitative value to that factor." McCullah, 76

6. The alleged mailing from Oakland to Sacramento on April 20, 1995, was purely intra-state. Thus, it could not be part of the offense of transporting an explosive in interstate commerce.

F.3d at 1112. Where a sentencer is asked to weigh a factor twice in its decision, "a reviewing court cannot 'assume it would have made no difference if the thumb had been removed from death's side of the scale.'" Id. (quoting Stringer, 503 U.S. at 232). Because the first two aggravating factors duplicate one another, they produce an unconstitutional skewing of the weighing process towards death.

In addition, the second alleged statutory aggravating factor also impermissibly duplicates one of the "preliminary" mental state factors set forth in the death penalty notice, which states as follows:

"The defendant intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victim died as a direct result of the act."

18 U.S.C. § 3591(a) (2) (D) (emphasis added) . This factor completely subsumes the second alleged statutory aggravating factor that charges that "[t]he defendant, in commission of the offense, knowingly created a grave risk of death to one or more persons in addition to the victim of the offense." See 18 U.S.C. § 3592(c) (5) (emphasis added). This double counting of aggravating evidence in the federal statute tends "to skew the weighing process and creates the risk that the death sentence will be imposed arbitrarily and thus, unconstitutionally." McCullah 76 F.3d at 1111. This is true even though the mental state factors in section 3591(a) (2) are not formal aggravating factors. A jury will likely still treat its finding on the mental state factors as aggravation when weighing all the aggravating and mitigating circumstances to determine the appropriate sentence. A jury instructed to make two duplicative findings regarding whether a defendant "knowingly created a grave risk of death to one or more persons in addition to the victim of the offense" will likely give this factor more weight than it warrants.

Furthermore, an aggravating factor's duplication of a mental state "preliminary" factor impermissibly skews the weighing process towards death. Before the jury considers whether any of the alleged statutory (or non-statutory) aggravating factors are present, the jury considers whether the defendant acted with one of the mental states required under section 3591(a) (2). Only if and after the jury finds beyond a reasonable doubt one of the requisite mental states, does the jury consider whether the government has established beyond a reasonable doubt the existence of aggravating factors. Where an aggravating factor duplicates one of the jury's earlier mental state findings, the jury necessarily will have found that the aggravating factor has been established before it starts weighing the relevant factors in reaching its decision on life or death. By giving the government an improper head-start in this manner, the second alleged statutory aggravating factor unconstitutionally skews the jury's weighing process towards death.

Moreover, this factor is unconstitutionally vague because there is no clear meaning to

the term "grave risk" of death. When reviewing the adequacy of an aggravating factor, a court must first "determine whether the statutory language defining the circumstance is itself too vague to provide any guidance to the sentencer." Walton v. Arizona, 497 U.S. 639, 654 (1990). If so, the court determines whether the courts have defined the vague term, and if they have done so, whether their construction is constitutionally sufficient. Id.

Here the term "grave risk" of death provides no guidance to a sentencer. How does a grave risk differ from a standard risk of death? Because Congress and the courts have not attempted to reduce the ambiguity in this factor by giving the term "grave risk" a limiting construction, this statutory aggravating factor must be dismissed as unconstitutionally vague.

3. The third statutory aggravating factor--The defendant committed the offense after substantial planning and premeditation to cause the death of one or more persons and to commit an act of terrorism. 18 U.S.C. § 3592(c) (9).

This factor is unconstitutionally vague and overbroad. Most intentional killings involve some planning and premeditation. The term "substantial" is facially invalid because it fails to adequately advise the jury what it must find in order to determine that this aggravating factor is present. "Substantial" may mean "considerable in amount" or "not seeming or imaginary, not illusive." Webster's Third New International Dictionary 2280 (1981). Moreover, the statute does not make clear whether substantial modifies only "planning" or both "planning and premeditation." Thus, the terms of the statute do not provide a clear, objective standard to guide the jury in its deliberations.

In Arnold v. Georgia, 236 Ga. 534, 224 S.E.2d 386 (1976), the Georgia Supreme Court held the aggravating factor that the defendant had a "substantial history of serious assaultive criminal convictions" to be unconstitutionally vague because applying the term "substantial" is highly subjective and could not be applied uniformly by sentencing juries. 236 Ga. at 540-41, 224 S.E.2d at 391-92. In the federal statute, the word substantial is equally subjective and, without a meaningful limiting construction, juries are left with essentially unfettered discretion in determining whether to find substantial planning and premeditation.(7)

Likewise, the inherent ambiguity in the term "terrorism" amplifies the vagueness in this aggravating factor. Terrorism has neither a fixed meaning nor historic and common sense roots necessary to fix its meaning. If the definition of "act of terrorism" set forth in 18 U.S.C. § 3077 applies,(8) this phrase does not apply to the facts of the charged offense. On the other hand, under an Iowa statute, "terrorism" is committed when a "person, with the intent to injure or provoke fear or anger in another, shoots, throws, launches, or discharges a dangerous weapon at, into, or in a building . . ." Iowa Code Ann. § 708.6 (1997). Under the Iowa definition of terrorism or one similar to it, the alleged mailing of an explosive would not qualify as an act of terrorism because the

explosive was not shot, thrown, launched, or discharged-- but was mailed. Without any fixed meaning, the phrase "act of terrorism" is unconstitutionally vague.

III.

The Non-Statutory Aggravating Factors Alleged In The Government's Death Penalty Notice Must Be Dismissed.

1. The defendant has committed two other murders and numerous other significant acts of violence and attempted acts of violence and has made threats of violence against others.

As explained in section I, this non-statutory aggravating factor is deficient because it does not identify what other murders, significant acts of violence, attempted acts of violence, and threats of violence the defendant is alleged to have committed. The lack of adequate notice deprives Mr. Kaczynski of his rights under the federal statutes, as well as the Fifth, Sixth, and Eighth Amendments to the Constitution.(9) Further, this factor must be dismissed because it relies on allegations of unadjudicated criminal conduct, see Defendant's Motion To Preclude Imposition of Death Penalty, Argument section IV.

2. The defendant has a low potential for rehabilitation.

In addition to a lack of adequate notice of the bases for this allegation, this non-statutory aggravator should be dismissed because it is (1) duplicative; (2) proper only in rebuttal of mitigation, not as aggravation; and (3) unconstitutionally vague.

At least two district courts have held that a "low potential for rehabilitation" aggravating factor impermissibly double-counts the future dangerousness factor, which is the fourth non-statutory aggravating factor alleged in the death penalty notice in this case. See United States v. Nguyen, 928 F. Supp. 1525 (D. Ks. 1996); United States v. Davis, 904 F. Supp. 564 (E.D. La. 1995).(10) The courts in Nguyen and Davis succinctly described the double-counting flaw in the aggravating factors as follows:

"The term 'low rehabilitative potential' is too vague. Rehabilitative potential for what? The only relevant

7. Mr. Kaczynski recognizes that other federal courts have found that this phrase is not so vague as to violate the Eighth Amendment. See, e.g., United States v. McVeigh, 944 F. Supp. 1478, 1490 (D. Cob. 1996); United States v. Walker, 910 F. Supp. 837, 849 (N.D. N.Y. 1995). New Hampshire appears to be the only state to use the identical phrase "substantial planning and premeditation" as an aggravating factor. N.H. Code Ann. § 630:5(VII)(f) (Supp. 1992). Since this language was added in 1991, the New Hampshire courts have not considered the constitutionality of this provision.

8. An "act of terrorism" is defined in 18 U.S.C. § 3077 as follows:

(1)"act of terrorism" means an activity that-- (A) involves a violent act or act dangerous to human life that is a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United

issue would be DAVIS' rehabilitative potential for becoming a nonthreat to the health and safety of others. With that limitation, it becomes the converse of future dangerousness. It may therefore be combined with the second nonstatutory factor [future dangerousness], but it is not appropriate as a separate freestanding factor. Since this is a statute in which the jury is to 'weigh' aggravating factors versus mitigating factors, there is always the danger that one or more jurors will weigh by counting. Breaking out what is essentially one factor into separately itemized factors is unduly prejudicial and confusing."

Davis, 912 F. Supp. at 946.

"While 'future dangerousness' and 'low potential for rehabilitation' are not identical, the two factors 'substantially overlap with one another.' The court is hard-pressed to imagine how a person convicted of murder who has a low potential for rehabilitation does not represent a continuing danger to the lives of others in the future. Conversely, it is tautological that a person who will represent a continuing danger to others also has a low potential for rehabilitation."

Nguyen, 928 F. Supp. at 1543-44.

Moreover, even if it were non-duplicative, the low potential for rehabilitation factor may not be used as an aggravating factor because it is not a valid reason to sentence a person to death, rather than life imprisonment. A defendant's potential for rehabilitation and adjustment has been held to be a proper mitigating factor. See Hitchcock v. Dugger 481 U.S. 393 (1987) (Florida statute errs in failing to permit consideration of defendant's non-statutory mitigating evidence, including potential for rehabilitation) . Evidence of a defendant's lack of rehabilitative potential would be admissible in the appropriate case to rebut a defendant's proposed mitigating factor. But the absence of mitigating evidence of defendant's potential to be rehabilitated cannot also be

States or of any State; and appears to be intended--
(1) to intimidate or coerce a civilian population;
(2) to influence the policy of a government by intimidation or coercion;
or
(3) to affect the conduct of a government by assassination or kidnapping; . . .

9. The government's failure to identify what conduct or events it intends to rely on to prove the existence of this factor prevents the defendant from adequately challenging this factor (and others) on other grounds. For example, if the government intends to present evidence of crimes that allegedly occurred long ago, the statute of limitations may bar the government from proving such ancient offenses. Or where the government seeks to rely entirely on admissions allegedly made by the defendant in order to prove a particular charge, the evidence may be inadmissible under the federal corpus delicti rule. Until the government specifies the conduct it intends to prove under this and other aggravating factors, the defense is unable to evaluate all potential challenges, and preserves the right to bring

used as a basis for finding an aggravating factor. See, e.g. People v. Bonin, 46 Cal.3d 659, 700, 250 Cal. Rptr. 687, 709, 758 P.2d 1217 (1988) (absence of mitigating evidence does not constitute an aggravating factor); People v. Siripongs, 45 Cal.3d 548, 583, 247 Cal. Rptr. 729, 750, 754 P.2d 1306 (1988) (same) , cert denied, 488 U.S. 1019 (1989).(11)

Indeed, under federal law, Congress has declared that imprisonment is not intended to promote rehabilitation. 18 U.S.C. § 3582(a) ("recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation") . Given that rehabilitation is not a proper purpose of imprisonment, it necessarily follows that a defendant's "low potential for rehabilitation" cannot be a valid justification for not choosing a sentence of life imprisonment. The prosecution's attempt to classify a matter that is irrelevant to the life or death decision as an aggravating factor violates the Eighth Amendment and Due Process Clause. See Zant, 462 U.S. at 885 (death penalty statute may not "attach[] the aggravating label to factors that are constitutionally impermissible or totally irrelevant to the sentencing process")

Finally, even if this factor was not invalid for other reasons, it is unconstitutionally vague. What does "low potential" for rehabilitation mean? How does it differ from "medium" potential? "Low potential" fails to provide sufficiently clear, objective standards to guide the jury in its penalty determination and pass constitutional scrutiny. Similarly, what does "rehabilitation" encompass? To be a model citizen, to not violate the laws,

11. In an analogous context, the government may be able to present evidence that a defendant did not suffer from any mental illness to rebut a defendant's purported mental health mitigating factor, but certainly could not use evidence of the defendant's clean bill of mental health as an aggravating factor. See Zant, 462 U.S. 862 (noting that it would be constitutionally impermissible to "attach[] the 'aggravating' label...to conduct that actually should militate in favor of a lesser penalty, such as perhaps the defendant's mental illness").

other challenges at a later date.

10. In addition to finding the "low potential for rehabilitation" factor impermissibly duplicative in Nguyen, U.S. District Judge Belot also found it improper for the same reasons in United States v. Chanthadara, 928 F. Supp. 1055, 1058 (D. Ks. 1996). Moreover, in United States v. Beckford, 962 F. Supp. 748 (E.D. Va. 1997), the government apparently recognized the constitutional error in alleging "low potential for rehabilitation," "lack of remorse," and "future dangerousness" as separate aggravating factors. The government correctly alleged only the "future dangerousness" aggravator. 962 F. Supp. at 765 n.18. The government apparently proffered that its evidence of the defendant's purported lack of remorse and low potential for rehabilitation would support its alleged future dangerousness aggravator--not as the basis for separate aggravating factors. Id; see also United States v. Spivey, 958 F. Supp. 1523, 1534-35 (D. N.M. 1997) (noting that evidence of "past violent acts" and "low

or to not kill again?

3. The defendant lacks remorse for any of the murders and other acts of violence which he has committed.

The lack of remorse factor violates Mr. Kaczynski's Fifth Amendment right to remain silent and his Fifth and Eighth Amendment rights to reliable sentencing. The Fifth Amendment provides that "No person . . . shall be compelled in any criminal case to be a witness against himself. . ."

rehabilitative potential" are listed in the government's notice as categories of evidence supporting the future dangerousness factor, not as independent aggravating factors).

"The Fifth Amendment protects the individual's right to remain silent. The central purpose of the privilege against compulsory self-incrimination is to avoid unfair criminal trials. It is an expression of our conviction that the defendant in a criminal case must be presumed innocent, and that the State has the burden of proving guilt without resorting to an inquisition of the accused."

Lefkowitz v. Cunningham, 431 U.S. 801, 810 (1977) (Stevens, J., dissenting) (footnote omitted) . A defendant may not punished for exercising his right to remain silent. Malloy v. Hogan, 378 U.S. 1, 8 (1981). The privilege also "forbids either comment by the prosecution on the accused's silence or instructions by the court that such silence is evidence of guilt." Griffin v. California, 380 U.S. 609, 615 (1965).

In a capital case, evidence that a defendant lacks remorse violates his Fifth Amendment right to remain silent. The lack of remorse aggravator unfairly penalizes the defendant who chooses to exercise his right to remain silent and places him in an unconscionable "Catch-22." To effectively rebut evidence presented by the prosecution in support of this aggravating factor, a defendant may believe he is obligated to testify that he feels remorse for the crimes for which he has been convicted. Otherwise, a jury may "penalize" the defendant by inferring that his silence demonstrates lack of remorse. On the other hand, to make a sincere showing of remorse, a defendant will almost certainly need to admit guilt of the capital offense for which he is convicted. In many cases, a genuinely remorseful defendant may desire to testify as to his remorse, but at the same time be unwilling to jeopardize his right to appeal or to waive his privilege with respect to other charges he may face for the same conduct.(12) The admission of evidence of a defendant's lack of remorse improperly compels a defendant to testify in violation of his Fifth Amendment right or risk a death sentence for failing to do so. See Johnson v. Mississippi, 486 U.S. 578, 585 (1988) (death sentence "cannot be predicated . . . on 'factors that are constitutionally impermissible or totally irrelevant to the sentencing process'" (quoting Zant v. Stephens, 462 U.S. 862, 885 (1983)); Zant, 462 U.S. at 885 (aggravating factor is invalid where it "authorizes a jury to draw adverse inferences from conduct that is constitutionally protected") In a capital case which requires a "heightened need for reliability, "the likelihood of error that results from forcing a defendant to make this Hobson's choice also creates an unacceptable risk that the defendant's sentence will not be reliably obtained or will be based on an impermissible reason in violation of the Eighth Amendment and principles of due process of law.(13) In Pope v. Florida, 441 So.2d 1073 (1984), the Florida Supreme Court barred evidence of a defendant's lack of

remorse in aggravation in a penalty phase of a capital case to avoid just such "mistaken" sentences:

"Unfortunately, remorse is an active emotion and its absence, therefore, can be measured or inferred only from negative evidence. This invites the sort of mistake which occurred in the case now before us--inferring lack of remorse from the exercise of constitutional rights. . . . Any convincing evidence of remorse may properly be considered in mitigation of the sentence, but absence of remorse should not be weighed either as an aggravating factor nor as an enhancement of an aggravating factor."

441 So.2d at 1078. (14)

In United States v. Davis, 912 F. Supp. 938, 946 (E.D. La. 1996), the government's notice proposed to establish the defendant's lack of remorse with evidence demonstrating that the defendant "displayed absolutely no remorse" regarding the capital murder and in two telephone conversations "exulted in the murder." Id. at 951. The court prohibited the government from presenting lack of remorse as an independent aggravating factor and limited evidence of absence of remorse to proving the future dangerousness aggravating factor. Id. at 946. The court justified its ruling as necessary to protect defendant's exercise of his constitutional rights not to testify and to require the government to prove its

3. Our criminal justice system should not ignore the fact that juries sometimes convict innocent persons and that on many occasions defendants have been exonerated long after they had been convicted. See Richard C. Dieter, Innocence And The Death Penalty: The Increasing Danger of Executing the Innocent, July 1997 (sequel to a 1993 Staff Report of the Subcommittee on Civil and Constitutional Rights, Judiciary Committee, U.S. House Of Representatives) (summarizing 69 cases where persons have been released from death row since 1973 after evidence of their innocence had emerged) ; see also M. Radelet, H. Bedau, C. Putnam, In Spite Of Innocence, at 17

12. For example, in this case, the State of California might seek to charge Mr. Kaczynski with capital offenses arising out of the same conduct alleged in this proceeding. Moreover, Mr. Kaczynski already faces federal charges for Unabom offenses in New Jersey, Utah, Tennessee, and Michigan, and could face state charges for these offenses. Even if the Fifth and Eighth Amendments did not completely preclude all evidence of the defendant's alleged lack of remorse, any such evidence should be limited to the charged capital crime--not unadjudicated conduct or non-capital offenses.

case beyond a reasonable doubt:

"Lack of remorse is a subjective state of mind, difficult to gauge objectively since behavior and words don't necessarily correlate with internal feelings. In a criminal context, it is particularly ambiguous since guilty persons have a constitutional right to be silent, to rest on a presumption of innocence and to require the government to prove guilt beyond a reasonable doubt. To allow the government to highlight an offender's lack of remorse undermines these safeguards. Without passing on whether lack of remorse is per se an inappropriate independent factor to consider, the court finds it inappropriate in this case. The only information proposed to sustain the factor is DAVIS' alleged jubilation in learning that Kim

(Northwestern University Press 1992) (recording more than 400 cases of innocent persons convicted of capital or potentially capital crimes in this country since 1900).

14. Even in non-capital cases, some state courts preclude evidence of lack of remorse to enhance a defendant's sentence where the defendant has entered a denial of guilt. See Arizona v. Tinajero, 188 Ariz. 350, 935 P.2d 928, 935 (AZ. Ct. App. 1997) ("When a convicted person maintains his innocence through sentencing, as Tinajero did here, his failure to acknowledge guilt 'is irrelevant to a sentencing determination' and 'offends the Fifth Amendment privilege against self-incrimination.'") People v. Holguin, 213 Cal. App.3d 1308, 1319, 262 Cal. Rptr. 331, 337 (1989) (defendant's lack of remorse may not be used as a sentencing factor where the defendant has denied guilt and the evidence of guilt is conflicting).

Groves had been killed. The government does not propose to introduce evidence of continuing glee, or boastfulness, or other affirmative words or conduct that would indicate a pervading and continuing lack of remorse. Furthermore, as already noted, the allegation of lack of remorse encroaches

dangerously on an offender's constitutional right to put the government to its proof."

912 F. Supp. at 946; *cf.* United States v. Nguyen, 928 F. Supp. 1525 (D. Ks. 1996) (denying motion to strike aggravator, but cautioning government that its evidence must be "more than mere silence," relevant, reliable, and "its probative value must outweigh any danger of unfair prejudice").

Moreover, while evidence that a defendant's lack of remorse may be admissible to rebut a proposed mitigating factor that the defendant is remorseful for his conduct, the absence of remorse is not a valid aggravating factor. *See* pp. 26-27 (low potential for rehabilitation factor), *supra*. The aggravating factor is also unconstitutionally duplicative (as is the low potential for rehabilitation factor) because it improperly overlaps with the future dangerousness non-statutory aggravating factor (#4) - The government's attempt to use the same evidence to justify multiple aggravating factors renders them unconstitutionally duplicative. *Contra United States v. Nguyen*, 928 F. Supp. 1525, 1542 (D. Ks. 1996) (ruling that lack of remorse does not appear to duplicate continuing danger factor). Finally, given the factor's duplicative nature, improper use in aggravating, and vagueness, and the risk that it may deprive defendant of his Fifth Amendment right to remain silent and right to reliable sentencing under the Eighth Amendment and Due Process Clause, the Court should also dismiss this factor because its probative value is outweighed by the danger of unfair prejudice under section 3593 (c) . *See United States v. Walker*, 910 F. Supp. 837 (N.D. N.Y. 1995) (dismissing lack of remorse aggravator on this ground).(15)

4. The defendant represents a continuing danger to the lives and safety of other persons.

Many death penalty sentencing schemes provide that evidence that a defendant may be a danger in the future may be admitted in aggravation. *See. e.g., Jurek v. Texas*, 428 U.S. 262, 274-76 (1976) (**upholding use of future dangerousness provision in Texas statute**). Because Congress chose not to include such a "future dangerousness" provision within the enumerated aggravating factors, Congress intended that this general factor not be considered as a separate aggravating factor. *Cf. West Coast Truck Lines v. Arcata Comm. Recycling*, 846 F.2d 1239, 1244 (9th Cir.) ("When some statutory provisions expressly mention a requirement, the omission of that requirement from other statutory provisions implies that Congress intended both the inclusion of the requirement and the exclusion of the requirement."), *cert. Denied*, 485 U.S. 856 (1988).

Instead of adopting a general "future dangerousness" provision, Congress chose to set forth several specific statutory aggravating factors regarding the defendant's past conduct, including a prior felony conviction involving use or attempted or threatened use of a firearm under § 3592(c) (2) , a prior conviction for an offense carrying a maximum penalty of life imprisonment or death under § 3592(c) (3), two or more prior felony convictions for offenses involving serious bodily injury or death under § 3592(c) (4), two or more prior felony convictions for distributing a controlled substance under § 3592 (c) (10), and a prior conviction for sexual assault or child

molestation under § 3592(c) (15). Mr. Kaczynski does not fall within any of these statutory aggravating factors. The government cannot simply create a new aggravating factor by transcending the limits of these factors in order to encompass Mr. Kaczynski's background; under the general category of "future dangerousness" with a subcategory of "pattern of past violent acts." Congress implicitly rejected the use of such a broad aggravating factor.

Furthermore, even if this aggravator were permitted by the death penalty statute, the factor can satisfy the Fifth and Eighth Amendments only if the government limits its evidence and argument (and the jury is so instructed) to showing that the defendant poses a continuing danger to the lives and safety of others while serving a sentence of life imprisonment without parole. Otherwise, this aggravating factor violates the rule of Simmons v. South Carolina, 512 U.S. 154 (1994).

In Simmons, the prosecution argued that the jury should sentence the defendant to death because, in part, of his future dangerousness. Id. at 157. The trial court rejected the defendant's request to rebut the allegation of future dangerousness by informing the jury that he was ineligible for parole and would serve the rest of his life in prison if the jury returned a life sentence. Id. at 158-60. The Supreme Court held that, where the prosecution puts a defendant's future dangerousness in issue, the Due Process Clause requires that the jury be informed that the defendant would remain in prison for the remainder of his life if the defendant is indeed ineligible for parole when sentenced to life imprisonment. Id. at 171 (plurality opinion); id. at 177 (O'Connor, J., joined by Rhenquist, J., and Kennedy, J.).

15. In light of the serious constitutional concerns underlying use of this aggravating factor, it is not surprising that a number of states prohibit use of this factor. See, e.g., North Carolina v. Brown, 320 N.C. 179, 198-99, 358 S.E.2d 1, 15, cert. Denied, 484 U.S. 970 (1987); McCampbell v Florida, 421 So.2d 1072, 1075 (1982); People v. Thompson, 45 Cal 3d 86, 12324, 753 P.2d 37, 59-60, 246 Cal. Rptr. 245, 267-68 (1988).

The Due Process principle underlying Simmons and the Eighth Amendment's heightened need for reliability (16) necessarily restrict the government's continuing danger non-statutory aggravating factor to proof that defendant is a continuing danger while in prison. Under the 1994 federal death penalty statute, the jury has the option of sentencing the defendant "to death, to life imprisonment without possibility of release or some other lesser sentence." 18 U.S.C. § 3593(e). If the jury recommends life imprisonment without release, the court must impose that sentence. 18 U.S.C. § 3594. The government's argument that the defendant should be put to death based on aggravating evidence that the defendant would continue to be a danger to the community is misleading because the jury can ensure through its verdict that a defendant serves the rest of his life in prison.

In United States v. Flores, 63 F.3d 1342 (5th Cir.), cert denied, 117 5. Ct. 87 (1995), the

defendant argued that the prosecution improperly relied on defendant's future dangerousness because it knew that anything less than a life sentence was unlikely. Id. at 1368. Under the provisions of the applicable death penalty law in Flores's case, the defendant could have received a sentence of less than life imprisonment even if the jury recommended a sentence of life imprisonment without possibility of release. 63 F.3d at 1367-68; 21 U.S.C. § 848(k) & (1). Nonetheless, the Fifth Circuit, in dicta, explained that the government's future dangerousness evidence should be restricted to defendant's danger while in prison in any case where there is little likelihood that a defendant would ever be released:

"Garza further urges that, even if the government did not violate the express holding of Simmons, its emphasis on future dangerousness was inappropriate because it knew anything less than a life sentence was unlikely. However, the record clearly shows that the government primarily focused on the danger Garza would pose while still in prison, making Garza's case materially different than Simmons This does not mean that district courts should allow the government to freely hammer away on the theme that the defendant could some day get out of prison if that eventuality is legally possible but actually improbable. . . . If the court knows a twenty-year sentence is highly unlikely, it should, in its discretion, preclude the government from arguing that the defendant may be free to murder again two decades hence. But that is not what happened in Garza's case, and we see no error in the way the district court handled the issue."

Flores, 63 F.3d at 1368-69 (emphasis added) Here, where a jury's verdict of life imprisonment ensures that the defendant will never be released from prison, the prosecution's aggravating factor should be limited to evidence of defendant's continuing danger while serving a mandatory life sentence.

5. The defendant caused severe and irreparable harm to the families of three murder victims and caused life altering injuries to the survivors of his acts of violence.

This alleged non-statutory aggravating factor violates the federal death penalty statute and the Fifth and Eighth Amendments by relying on "victim impact" evidence unrelated to the harm caused by the capital offense charged in this proceeding.

The 1994 death penalty statute bars aggravating factors that are based on victim impact evidence that is unrelated to the charged capital crime. Although section 3593(a) permits the government to allege aggravating factors concerning the effect of "the offense" on the victim and victim's family, it limits these factors to those concerning "the offense"

16. The Court in Simmons relied on the Due Process Clause for its holding, reserving judgment on whether its decision was also compelled under the Eighth Amendment. 512 U.S. at 162 n.4; but see Id. at 172 (Souter, J., concurring, joined by Stevens, J.) (Eighth Amendment also entitles defendant to inform his jury about his parole eligibility).

for which the defendant is subject to a potential death sentence. 18 U.S.C. § 167; 3593(a) states, in relevant part:

"The factors for which notice is provided under this subsection may include factors concerning the effect of **the offense** on the victim and the victim's family, and may include oral testimony, a victim impact statement that identifies the victim **of the offense** and the extent and scope of the injury and loss suffered by the victim and the victim's family, and any other relevant information."

(Emphasis added). This reading of the statute is bolstered by the choice of aggravating factors Congress included in section 3592 (c). Besides listing certain enumerated criminal convictions as aggravating factors, section 3592(c) sets forth nine aggravating factors that all concern circumstances of the charged offense. Section 3592(c)'s final "catch-all" category permits a jury to "consider whether any other aggravating factor for which notice has been given exists." But this category of factors should be read in the context of the factors enumerated in that same section of the statute. By setting forth specific aggravating factors that relate to the circumstances of the capital crime for which defendant is on trial, Congress necessarily intended to bar other factors that do not relate to the charged offense. See National Labor Relations Board v. A-Plus Roofing, Inc., 39 F.3d 1410 (9th Cir. 1994) (catch-all section of magistrate judges' powers is limited by the listing of the judges' enumerated powers in that same section); see also Defendant's Motion to Preclude Imposition of The Death Penalty, Argument Section IV(A).

Furthermore, if the statute is interpreted to permit the government to present victim impact evidence unrelated to the offense for which defendant faces a potential death sentence, the statute cannot pass scrutiny under the Eighth Amendment.(17) The emotionally charged nature of so-called "victim impact" evidence has long been recognized as likely to inflame a jury and thereby increasing the risk that a death sentence will be imposed for arbitrary or impermissible reasons. See, e.g., Louisiana v. Bernard, 608 So.2d 966 (La. 1992) ("Victim impact evidence, by its very nature, is emotionally charged material which involves the risk of injecting arbitrary factors into a capital sentencing hearing."); Cargle v. Oklahoma, 909 P.2d 806, 830 (Okla. Crim. App.) ("The more a jury is exposed to the emotional aspects of a victim's death, the less likely their verdict will be a 'reasoned moral response' to the question whether a defendant deserves to die; and the greater the risk the defendant will be deprived of Due Process."), cert. denied, 117 S. Ct. 100 (1996); Jonathan H. Levy, Note, Limiting Victim Impact Evidence And Argument After Payne. V. Tennessee, 45 Stanford Law Rev. 1027, 1041 (1993) ("Victim impact statements are often prejudicial, and prejudicial evidence, by its very nature, cannot be defended against because it inflames the emotions of the jurors to the point where they will no longer credit defense testimony.").

In Booth. v. Maryland, 482 U.S. 496 (1987), the Supreme Court held two categories of so-called "victim impact" evidence inadmissible in capital sentencing under the Eighth Amendment. The Court first ruled that evidence of the personal trauma suffered by the victim's family and of the personal characteristics of the Victim "is irrelevant to a capital sentencing decision, and that its admission creates a constitutionally unacceptable risk that the jury may impose the death penalty in an arbitrary and capricious manner." Id. at 502-03; accord, South Carolina v. Gathers, 490 U.S. 805 (1989). The Court also held that the Eighth Amendment barred evidence of the family members' opinions and characterizations of the crime because such evidence served "no other purpose than to inflame the jury and divert it from deciding the case on the relevant evidence concerning the crime and the defendant." Id. at 508.

In erecting an absolute Eighth Amendment bar to victim impact evidence, the Court relied primarily on two rationales. First, since capital sentencing is concerned with "the personal responsibility and moral guilt" of a particular defendant, Enmund v. Florida, 458 U.S. 782, 801 (1982), the character and reputation of the victim and the effect of the crime on his or her family is irrelevant.

Booth., 482 U.S. at 504-05. Second, permitting the life or death sentencing determination to turn on factors, such as the degree to which a family is willing and able to express grief, or the status of the victim in the community, "creates an impermissible risk that the capital sentencing decision will be made in an arbitrary manner." Id. at 496-97.

"But in some cases the victim will not leave behind a family, or the family members may be less articulate in describing their feelings even though their sense of loss is equally severe. The fact that the imposition of the death sentence may turn on such distinctions illustrates the danger of allowing juries to consider this information."

Id. at 496. The Court concluded that victim impact evidence "does not provide a 'principled way to distinguish [cases] in which the death penalty was imposed, from the many cases in which it was not.'" Id. at 506 (quoting Godfrey v. Georgia, 446 U.S. 420, 433 (1980) (opinion of Stewart, J.)).

Four years later, in Payne. v. Tennessee, 501 U.S. 808 (1991) , the Court abruptly reversed course(18) and held that the Eighth Amendment does not per se prohibit a capital sentencing jury from considering victim impact evidence, overruling Booth. v.

17. By expressly limiting "victim impact" aggravating factors to those that relate to "the offense" for which the defendant faces a potential death sentence, Congress intended to avoid the Eighth Amendment violation that would result if the government could present virtually limitless evidence concerning the effect of other crimes on victims and their families. See United States ex rel. Attorney General v. Delaware & Hudson Co., 213 U.S. 366 (1909) (courts should choose construction of statute that avoids constitutional questions).

Maryland, 482 U.S. 496 (1987), and South Carolina v. Gathers, 490 U.S. 805 (1989). In doing so, the Court rejected the view that evidence of the impact of an offense on the victim's survivors is barred in the penalty phase of a capital trial because it does not reflect on the "blameworthiness" of a particular defendant. Payne., 501 U.S. at 819.

The Court reasoned that a capital jury should be able to consider the harm caused by the charged crime, as sentencers have traditionally been permitted in determining punishment:

"The assessment of harm caused by the defendant as a result of the crime charged has understandably been an important concern of the criminal law, both in determining the elements of the offense and in determining the appropriate punishment."

Id. (emphasis added). However, the Court's opinion focused solely on whether the Eighth Amendment barred evidence of the harm caused by the crime for which the defendant had been sentenced to death. See e.g. id. at 820 ("Wherever judges in recent years have had discretion to impose sentence, the consideration of the harm caused by the crime has been an important factor in the exercise of that discretion") (emphasis added) ; id. at 821 ("Congress and most states have, in recent years, enacted similar legislation to enable the sentencing authority to consider information about the harm caused by the crime committed by the defendant.")(emphasis added); Id. at 825 ("Victim impact evidence is simply another form or method of informing the sentencing authority about the specific harm caused by the crime in question, (emphasis added). The Court concluded that, because a defendant was permitted to introduce any relevant mitigating evidence, a per se bar of all victim impact evidence would result in a skewed presentation of evidence at a sentencing hearing:

"This misreading of precedent in Booth. has, we think, unfairly weighted the scales in a capital trial; while virtually no limits are placed on the relevant mitigating evidence a capital defendant may introduce concerning his own circumstances, the State is barred from either offering a "quick glimpse of the life" which a defendant "chose to extinguish," . . . or demonstrating the loss to the victim's family and to society which has resulted from the defendant's homicide."

18. The reversal resulted from a change of membership in the Court. Justices Brennan and Powell, who were in the Booth. majority left the Court; their two replacements, Justices Kennedy and Souter, joined the Payne. majority in voting to overrule Booth.

id. at 822 (emphasis added). Thus, to balance the scales, the Court held that the Eighth Amendment does not prohibit limited victim impact evidence, consisting of a "quick glimpse" of the victim's life and evidence showing the harm resulting to the victim's

family as a result of the charged offense.

The government's fifth non-statutory aggravating factor would stretch the introduction of victim impact evidence in a capital trial far beyond that approved in Payne. or permitted under our Constitution. It is one thing to say, as the Payne. court did, that the Eighth Amendment does not erect a per se bar to all evidence concerning the capital victim or the effect of the death on the victim's family, so as not to tip the presentation of the evidence too far towards the defendant. It is entirely another to permit the introduction of victim impact evidence at a capital sentencing hearing with respect to offenses and acts of violence in addition to the capital crime itself.

Payne. explained that a state could allow the prosecution to present some victim impact evidence with respect to the charged crime in order to provide the jury with a full picture of the circumstances of the offense. The Court, however, did not address the admissibility of victim impact evidence concerning offenses or acts unrelated to the charged crime. The rationale underlying Payne. demonstrates that the Eighth Amendment would bar a broad, range of victim impact evidence relating to a defendant's prior offenses. Payne. justifies the introduction of some evidence of the loss to the victim's family and a "quick glimpse" of the victim as helpful to the jury's assessment of the harm caused by the offense for which the defendant is to be sentenced. Evidence concerning the effect of other offenses that a defendant may have committed in the past is irrelevant to establishing the harm caused by the charged offense. Permitting the government to present such evidence would serve only to interject an impermissible risk of inflaming the jury and producing an arbitrary and unreliable death verdict.

The Court in Payne. specifically noted that its decision left intact other aspects of the Booth. opinion, which held that other categories of victim impact evidence were prohibited by the Eighth Amendment. 501 U.S. at 830 n.2; id. at 833 (O'Connor, J., concurring, joined by White, J., and Kennedy, J.); id. at 835 n.1 (Souter, J., concurring, joined by Kennedy, J.) . In particular, Booth. remains the law of the land with respect to its view that "the admission of a victim's family members' characterizations and opinions about the crime, the defendant, and the appropriate sentence violates the Eighth Amendment." Id. at 830 n.2; see also Louisiana v. Taylor, 669 So.2d 364, 369-70, cert. denied, 117 S. Ct. 162 (1996); New Jersey v. Muhammad, 145 N.J. 23, 47, 678 A.2d 164, 176 (1996); Ohio v. Fautenberry 72 Ohio St.3d 435, 438-40, 650 N.E.2d 878, 882, cert. denied, 116 5. Ct. 534 (1995). Under Booth, this category of evidence was banned under the Eighth Amendment because it "serve[s] no other purpose than to inflame the jury and divert it from deciding the case on the relevant evidence concerning the crime and the defendant." 482 U.S. at 508.

Likewise, the category of victim impact evidence involved here, evidence from crimes unrelated to the charged offense, violates the Eighth Amendment. Its admission would lead to numerous "mini-trials" regarding the effect of prior offenses on victims and their survivors, multiplying the risk found unacceptable in Booth.: that the capital sentencing decision will be made in an arbitrary manner or for an impermissible reason. Booth., 482 U.S. 502, 505.

Moreover, as alleged, the victim impact aggravating factor is also unconstitutionally duplicative, vague, and overbroad. It duplicates the first non-statutory aggravating factor because both factors rely on the same allegations that defendant has committed other crimes and acts of violence. There is no meaningful distinction between a factor based on other criminal acts and one that relies on the harm caused by such acts. "Such double counting of aggravating factors, especially under a weighing scheme, has a tendency to skew the weighing process and creates the risk that the death sentence will be imposed arbitrarily and thus, unconstitutionally." United States v. McCullah, 76 F.3d 1087, 1111, aff'd on denial of reh'g, 87 F.3d 1136 (10th Cir. 1996), cert. denied, 117 5. Ct. 1699 (1997). Because the sentencer is asked to weigh the same factor twice in its decision, "a reviewing court cannot 'assume it would have made no difference if the thumb had been removed from death's side the scale.'" Id. at 1112 (quoting Stringer, 503 U.S. at 232).

The factor is also unconstitutional by referring to other acts and victims without identifying the alleged conduct or harms and by using vague terms, such as "severe and irreparable harm" and "life altering injuries." The factor fails to "channel the sentencer's discretion by 'clear and objective' standards that provide 'specific and detailed guidance,' and that 'make rationally reviewable the process of imposing a sentence for death.'" Lewis v. Jeffers, 497 U.S. 764, 774 (1990) (quoting Godfrey, 446 U.S. at 428).

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MOTION FOR PROCEDURES TO PROTECT PRIVACY INTERESTS OF JURORS AND INTEGRITY OF JURY SELECTION PROCESS

Sept. 26, 1997

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UNITED STATES OF
AMERICA
Plaintiff,

V.
THEODORE JOHN
KACZYNSKI,
Defendant.

CR-S-96-259 GEB

Date: September 26,
1997

Time: 1:30 p.m
Hon. Garland E.
Burrell, Jr.

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Attorneys for Theodore J. Kaczynski

INTRODUCTION

Pursuant to this Court's amended order, dated September 5, 1997, the prospective jurors in this case are to appear in person to fill out juror questionnaires prior to the commencement of jury selection on November 12, 1997. See Jury Selection Process appended to Amended Order. Initial hardship determinations will be made at the time that prospective jurors appear to complete the juror questionnaires. (Id.) Prospective jurors have been summoned to appear in person to complete the questionnaires in order to ensure the integrity of the voir dire process. This on-site, in-person process is designed to assure that the prospective jurors will be able to answer the questions themselves without any outside influences. To further ensure the privacy of the prospective jurors and the integrity of the jury selection process, the following procedures should be followed:

1. The blank juror questionnaire (including all drafts that the court finds should be filed) should be filed under seal and maintained under seal until the case is concluded;
2. Members of the press and the public should not be present at the time that the prospective jurors complete the juror questionnaires;
3. Members of the press should be precluded from photographing or interviewing prospective jurors who appear to complete written juror questionnaires;
4. The identity of the jurors who serve, as well as of the other prospective jurors, and their completed questionnaires should be sealed until the case is concluded.
5. The initial hardship determinations should be conducted in camera in the presence of counsel and on the record. The transcripts of these hardship proceedings may be made available after the Court's determination whether to discharge the prospective jurors. The prospective jurors' identities and any sensitive information should be redacted from the transcripts.

I.

THE BLANK JUROR QUESTIONNAIRES MUST BE SEALED UNTIL THE CONCLUSION OF THIS CASE

The blank juror questionnaire should be filed under seal and maintained under seal until the case is concluded. The prospective jurors have been summoned to complete juror questionnaires in person so as to maintain the integrity of the jury selection process. Completing the questionnaires in person will preclude the possibility that prospective jurors will be influenced by others when answering the questions. Releasing the blank questionnaire to the press prior to the completion of the jury selection process will taint the process. If prospective jurors are able to learn from media coverage what questions are asked prior to their appearing in person to complete the questionnaire, the efforts to maintain the integrity of the jury selection process will

be defeated.

Similarly, the blank questionnaire cannot be released prior to oral questioning as part of voir dire in this case because speculation by the press as to the meaning or purpose of the questions contained in the questionnaire will taint prospective jurors' answers to questions on voir dire. For these reasons, the blank questionnaire was filed under seal and maintained under seal in United States V. McVeigh, CR 95-110-A (W.D. Okla. Sept. 27, 1995) (Alley, J.) , 1995 WL 583383, (ordering the filing and maintaining of the draft questionnaires under seal) ; United States V. Mcveigh, CR 95-110-A (D. Colo. March 6, 1996) , 1996 WL 117627, (Matsch, C.J.) (ordering that the juror questionnaires remain under seal).

II.

MEMBERS OF THE PRESS AND PUBLIC SHOULD NOT BE PRESENT WHEN THE PROSPECTIVE JURORS FILL OUT THE OUESTIONNAIRES

Assembling prospective jurors who have reported to jury duty in the jury room and instructing them as to the procedures that they will follow with regard to their prospective jury service is not a proceeding that is open to the public and the press. Likewise, assembling prospective jurors to complete a written questionnaire as a preliminary step to participating in voir dire is not an event to which the public and press should have access. A finding that the assembling of prospective jurors to complete written questionnaires is not a proceeding that should be open to the press and public comports with the Supreme Court's analysis regarding the public nature of criminal trials.

In Press-Enterprise Company v. Superior Court, 464 U.S. 501 (1984), the Supreme Court, after reviewing the history of the criminal trial under the common law, held that the traditional guarantees of openness of a criminal trial extend to voir dire examination in court. (464 U.S. at 505-10.) Nothing in the Court's opinion supports a view that the press and public traditionally have had access to the jury assembly room or that the press or public, therefore, would have the right to view prospective jurors silently completing questionnaires.

This view is supported by the purpose underlying open voir dire proceedings, which is to guarantee that "offenders are being brought to account for their criminal conduct by jurors fairly and openly selected." (Id. at 509.) That purpose is not furthered by public or press access to the prospective jurors while they are completing the questionnaires because no jury selection process is occurring at that time.

The purpose of having prospective jurors assemble to complete the questionnaires is to guarantee the integrity of the questionnaire process and to protect the privacy interests of the prospective jurors. In the context of juror questionnaires, it is the authority of the

Court that assures the integrity of the process, not the presence of the public or the press. A presumption that the integrity of the jury process can only be maintained by the presence of the public and press would lead to the ineluctable conclusions that: (1) the press and public should be given access to the jury room to ensure that jurors do not discuss the case among themselves prior to jury deliberations, and (2) the press and public should be given access to the jury room during jury deliberations to ensure that all of the evidence is considered and the trial court's instructions are followed. Clearly, the public and press have no right of access to the jury room or to jury deliberations and for like reason should have no access to prospective jurors while they complete written questionnaires.

Moreover, denial of public and press access to the proceedings ensures that the prospective jurors' privacy rights are respected. If the prospective jurors received the juror questionnaire with their summons and completed it in the privacy of their homes, the press and public would have no right of access to the jurors while they completed the questionnaires. (See United States V. Mcveigh, 955 F. Supp. 1281, 1282 (D. Colo. 1997) (questionnaires were mailed with the jury summons).) Denial of access to the jurors while assembled to complete the questionnaire provides the same privacy safeguards.

III.

THIS COURT SHOULD ENTER AN ORDER PROHIBITING THE PRESS FROM INTERVIEWING OR PHOTOGRAPHING PROSPECTIVE JURORS

As discussed above, the assembling of the prospective jurors in this case is the functional equivalent of assembling the prospective jurors in the jury room. The press would not have access to photograph or interview jurors assembled in the jury room and should not have access to them in this case. Moreover, the Court clearly has the authority to limit the ability of the press to photograph or of sketch artists to draw jurors during the course of a trial. (Cf. Capital Cities Media, Inc. v. Toole, 463 U.S. 1303, 1304, 139f (1983) (discussing the trial court's order, directing that "[n]o person shall draw sketches, photograph, televise or videotape any juror or jurors during their service in these proceedings") .) Even though forty-seven state courts permit cameras in the courtroom, every state recognizes the importance of the jurors privacy interests by limiting or prohibiting the photographing of the jury during the proceedings. (See Ruth Ann Strickland & Richter H. Moore, Jr., Cameras In State Courts: A Historical Perspective, 78 *Judicature* 128, 135 (1994) ("televised coverage of voir dire and of jurors is usually restricted or prohibited").) Accordingly, the Court should exercise its authority in this instance. In the alternative, the Court should direct the United States Marshal's Service to provide a means of access to the proceedings so that the jurors have the choice of avoiding the press.

Through either of the means outlined above, the Court can show the jury that it is

aware of the difficulties that are inherent in possible jury selection in this case and is making every effort to protect the prospective jurors' right to privacy.

IV.

THE IDENTITY OF THE JURORS SELECTED TO SERVE ON THIS JURY AND THEIR JUROR QUESTIONNAIRES SHOULD REMAIN SEALED

In light of the extensive publicity that this case has received and is anticipated to receive in the future, this Court has indicated that it is inclined to impanel a partially anonymous jury, withholding the "names, places of employment, residences, and employment addresses of jurors and their spouses from the public". Amended Order, at 2. In addition, the Court, in accordance with the dictates of Press-Enterprise, intends to follow a procedure pursuant to which "venirepersons who are reluctant to answer sensitive questions publicly ... [can] ... respond [to] the same in camera." (Amended Order, at 5-6 (citation omitted).) This Court opined that such precautions are necessary because, "even though juror names may remain confidential during trial, the interest justifying anonymity during trial 'becomes attenuated after the jury brings in its verdict and is discharged.'" (Amended Order, at 5 (quoting Capital Cities Media, 463 U.S. 1303, 1306 (1983).) Accordingly, courts have held that "[n]o explicit or implicit promise of confidentiality should be attached to the information contained in the questionnaires." Amended Order, at 5 (quoting Copley Press Inc V. Superior Court, 228 Cal.App.3d 77, 87, 278 Cal. Rptr. 443, 450, cert. denied, 502 U.S. 909 (1991).

Capital Cities Media involved a local homicide case that attracted "a great deal of public interest" in Pennsylvania. After jury selection but before sequestration, the trial court, sua sponte without any hearing or record, entered an order prohibiting the publication of the names or addresses of the jurors. (463 U.S. at 1303-05.) The jurors, however, had been selected in open court with the press and public present and their names had been disclosed. (Id. at 1305.) The record, therefore, failed to provide sufficient justification for a "categorical, permanent prohibition against publishing information already in the public record". (Id. at 1306.)

A case such as the one at bar presents the kind of situation in which permanent sealing is appropriate. The media attention already received, and which will undoubtedly continue in this case, is extraordinary. Our system of jury service contemplates not only that jurors will be able to serve as jurors without interference by the public and press but also contemplates that the "jurors will inconspicuously fade back into the community once their tenure is completed." (Application of Daily News, 787 F. Supp. 319, 323 (E.D.N.Y. 1992) (quoting United States V. Gotti, 777 F. Supp. 224, 226 (E.D.N.Y. 1991). See United States V. Gurney, 558 F.2d 1202, 1210 (5th Cir. 1977), cert. denied, 435 U.S. 968 (1978) (denying press request for release of jurors names, addresses and other personal information in highly publicized case) ; cf. United States v. Beckham, 789 F.2d 401, 406-415 (6th Cir. 1986) (denying the media the right to

copy audio and videotapes, tape transcripts, and exhibits in a highly publicized political case) .)

V.

THE JUROR QUESTIONNAIRES OF THOSE PROSPECTIVE JURORS WHO DO NOT SERVE ON THE JURY IN THIS CASE SHOULD BE SEALED

The prospective jurors who do not ultimately serve on the jury should remain sealed as the press and public would never have any right of access to the information contained in the questionnaires unless, and until, the prospective jurors actually participate in the voir dire examination. See Copley Press, 228 Cal.App.3d at 87, 278 Cal. Rptr. at 450 (relying on Leshar Communications, Inc. V. Superior Court, 224 Cal.App.3d 774, 779, 274 Cal. Rptr. 154, 156 (1990) ("Press-Enterprise does not require that disclosure be made of questionnaires submitted by venirepersons never called to the jury box for voir dire").

In holding that the questionnaires of venirepersons not chosen to serve on the jury should not be disclosed, the Copley court adopted the reasoning of the Leshar court:

"[W]e assume that these questionnaires play no role whatsoever until a prospective juror is actually called to the jury box. The Press Enterprise court rested its decision that voir dire must be open to the public on the interest of the public in open criminal trials. A review of the history and tradition of open criminal proceedings in English and American courts led to the conclusion that an open trial included an open voir dire. However, venirepersons who are never called to the jury box do not play any part in the voir dire or the trial. They fill out the questionnaire only as a prelude to their participation in voir dire. The questionnaire serves no function in the selection of the jury unless the person filling it out is actually called to be orally questioned. We see no legitimate public interest in disclosure of these questionnaires.

(228 Cal. App.3d at 87 n.8, 278 Cal. Rptr. at 450 n.8.) In adopting the holding of the Leshar court, the Copley court reasoned that the prospective jurors' privacy interests outweighed any countervailing rationale for disclosure. (Id.)

Furthermore, nondisclosure comports with the procedure normally followed in the jury selection process. Prospective jurors fill out a juror questionnaire that accompanies the jury summons. This information, however, does not become a matter of public record until the prospective jurors are asked the same or similar questions in open court and give their answers on the record. Where records, such as these, are not entered into

evidence or filed in court, they are not matters of public record to which the public and press have a constitutional or common law right of access. (See In the Matter of Newsday, Inc., 71 N.Y.2d 146, 518 N.E. 2d 930 (N.Y. App. 1987), cert denied, 486 U.S. 1056 (1988); cf. Beckham, 789 F.2d at 406-415 (upholding on constitutional and common law grounds the district court's denial of the media's requests to copy audio and videotapes, transcripts of tapes and trial exhibits); United States V. Board of Education, 747 F.2d 111, 114 (2d Cir. 1984) (upholding the district court's denial of media's request to tape record the proceedings in a civil trial) .)

VI.

HARDSHIP DETERMINATIONS SHOULD BE CONDUCTED IN CAMERA

According to the procedures for jury selection, hardship determinations will be made prior to the completion of juror questionnaires. Thus, those prospective jurors who believe that they are unable to serve as jurors in this case will present their reasons for hardship to the Court. Only if such claims of hardship are rejected will the prospective juror then complete a juror questionnaire. Conducting the hardship determinations in camera will encourage candor in the hardship process and in answering the questionnaires, if required.

If the press and public are present during the initial hardship determinations, the prospective juror may self-censor so as to avoid embarrassment in the public eye. This lack of candor could lead to the denial of a hardship request and a subsequent lack of candor in the juror questionnaire so as to avoid further exposure to the media and public. To ensure the integrity of the jury questionnaires and the hardship determinations, and the privacy rights of the prospective jurors, the hardship determinations should be conducted in camera with counsel present and on the record. The transcripts should be sealed temporarily and may be released, with identifying and other sensitive information redacted from them, following the completion of the juror questionnaires.

CONCLUSION

It is requested that this Court take the above requested steps to ensure the integrity of the questionnaire process and that the privacy of the prospective jurors, including those who are ultimately selected to serve, is protected.

DATED: September 15, 1997

Respectfully submitted,

QUIN DENVIR
(signature)

JUDY CLARKE
(signature)

Attorneys for Defendant
Theodore J. Kaczynski

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NOTICE OF INTENT TO SEEK THE DEATH PENALTY

May 15, 1997

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF
AMERICA,
Plaintiff,

V.

THEODORE JOHN
KACZYNSKI,
Defendant.

NOTICE OF
INTENT TO
SEEK THE DEATH
PENALTY

CR NO. S-96-0259
GEB

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Pursuant to the requirements of 18 U.S.C § 3593(a), the United States hereby gives notice that it believes that the circumstances of this case are such that, in the event that the defendant is convicted of either of the

capital offenses relating to the death of Gilbert B. Murray, a sentence of death is justified and that the United States will seek the death penalty. Specifically, the United States will seek a sentence of death for each of the following counts charged in the indictment: Count Eight (transportation of an explosive device with intent to kill or injure in violation of 18 U.S.C. § 844(d)) and Count Nine (mailing of an explosive device with intent to kill or injure in violation of 18 U.S.C. § 1716).

Pursuant to 18 U.S.C. § 3591(a)(2), the United States will rely on the following preliminary factors to establish the defendant's eligibility for the death penalty:

1. The defendant intentionally killed the victim. 18 U.S.C. § 3591(a)(2)(A).
2. The defendant intentionally inflicted serious bodily injury that resulted in the death of the victim. 18 U.S.C. § 3591(a)(2)(B).
3. The defendant intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victim died as a direct result of the act. 18 U.S.C. § 3591(a) (2) (C)
4. The defendant intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victim died as a direct result of the act. 18 U.S.C. § 3591(a)(2)(D).

Pursuant to 18 U.S.C. § 3592(c), the United States will rely on the following statutory aggravating factors as justifying a sentence of death:

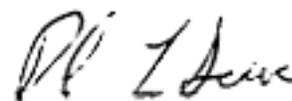
1. The death, or injury resulting in death, occurred during the commission or attempted commission of an offense under 18 U.S.C. § 844(d) which prohibits transportation of an explosive device in interstate commerce with intent to kill. 18 U.S.C. § 3592(c) (1).
2. The defendant, in the commission of the offense, knowingly created a grave risk of death to one or more persons in addition to the victim of the offense. 18 U.S.C. § 3592(c)(5).
3. The defendant committed the offense after substantial planning and premeditation to cause the death of one or more persons and to commit an act of terrorism. 18 U.S.C. § 3592(c) (9).

In addition to the statutory aggravating factors set forth above, the United States will rely on the following nonstatutory aggravating factors to justify a sentence of death:

1. The defendant has committed two other murders and numerous other significant acts of violence and attempted acts-of violence and has made threats of violence against others.
2. The defendant has a low potential for rehabilitation.
3. The defendant lacks remorse for any of the murders and other acts of violence which he has committed.
4. The defendant represents a continuing danger to the lives and safety of other persons.
5. The defendant caused severe and irreparable harm to the families of three murder victims and caused life altering injuries to the survivors of his acts of violence.

DATED: 5/15/97

Respectfully submitted,



Paul L. Seave
United States Attorney

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Eastern District of California and is a person of such age and discretion to be competent to serve papers.

That on May 15, 1997, she served a copy of the NOTICE OF INTENT TO SEEK THE DEATH PENALTY by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named. at the place(s) and address(es) stated below, which is/are the last known address(es), and by depositing said envelope and contents in the United States Mail at

Sacramento, California or by depositing said envelope and contents in the inter-office mailbox at the Clerk's Office, Federal Building, Sacramento, California.

Addressee(s):

Quin Denvir
Federal Defender
801 K Street, Suite 1024
Sacramento, CA 95814

Judy Clarke
Executive Director of Federal Defenders of Eastern Washington & Idaho
10 North Post, Suite 700
Spokane, WA 99201

A handwritten signature in black ink. The signature is written in a cursive style. The name 'Callahan' is clearly legible, while the first part of the signature is more stylized and less legible, appearing to start with a large 'S' or 'C'.

Sandra Callahan

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DECLARATION OF DONALD W. FOSTER, Ph.D

April 11, 1997

I, Donald W. Foster, declare as follows:

1. I obtained my Ph.D. in English from the University of California (Dec. 1985). I am currently employed by Vassar College full-time as a Professor of English on the Jean Webster Chair, having been hired by Vassar as an Assistant Professor in 1986. In 1990 I was promoted to Associate Professor with indeterminate tenure, and to Full Professor in 1995. My responsibilities include classroom instruction and scholarly research in the fields of English language and literature. In addition to my responsibilities within the academic community, I serve often as a private consultant in matters of textual analysis and authorial attribution. I have been retained in civil cases as a consultant and expert to examine issues of authorial attribution of written documents. These cases have included litigation involving wills and various other documents of disputed or doubtful authorship. I am perhaps best known for having correctly identified Joe Klein as the author of Primary Colors, "by Anonymous," in February 1996, three weeks after the novel's initial release; six months later, Klein finally acknowledged his authorship of the novel.⁽¹⁾

2. My publications include articles in various fields of literary study (classical and biblical literature, early women writers, Shakespeare and Renaissance drama, literary theory), but my area of special expertise is that of linguistic and textual analysis as pertains to problems of attribution, textual indebtedness, and textual transmission. My print publications in this area of specialization include one book and many articles. In addition, I have developed and edited "Shaxicon" (a lexical database for literary studies and linguistics) and the "Vassar Electronic Text Archive," both of which resources have helped to solve problems of authorship and intertextual indebtedness.

3. I have examined in detail the following documents:

a. The Turchie Affidavit (hereafter, the "Affidavit") in support of the 3 April 1996 Search Warrant in the case of United States v. Kaczvnski, as well as the attachments to the said Affidavit.

b. The "T-documents," which consist of various letters and other writings

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ascribed to the Defendant (written in the years 1968-1995, some undated), and an untitled 1971 essay likewise ascribed to the Defendant.

c. English translations of T-documents that were written in Spanish and translated into English, as prepared by a Government translator.

d. The "U-documents," which consist of the Unabom Manuscript, entitled "Industrial Society and Its Future," and other letters purportedly by the same individual.

e. The "Notice of Motion and Motion to Suppress Evidence" (hereafter, the "Motion to Suppress"; dated 3 March 1997), as well as the appendices to the Motion to Suppress.

4. In studying these documents I have made comparative reference to various linguistic and textual databases, a cross-sample extending to many millions of words and thousands of writers. I have also compared various T- and U-documents with the identified or identifiable sources that contribute textual material to those documents.

5. In December 1996 I received a telephone call from Lauren Weil, who identified herself as an assistant counsel for Ted Kaczynski's Defense. Ms. Weil explained that the Defense intended to file a Motion to Suppress, arguing that the FBI's text analysis was flawed and that it supplied insufficient grounds for the April 1996 Search Warrant. Ms. Weil asked if I would assist the Defense in critiquing the FBI's text-analysis. I needed a few days to consider the available documents before making a decision whether or not to assist the Defense in this respect. In the interim, I downloaded from the World Wide Web various texts pertaining to the Unabom case. These included the Affidavit, T-2 (the 1971 essay by Kaczynski), and U-14 (i.e., the Unabom manuscript, "Industrial Society and Its Future"). In my initial study of these documents, I found considerable internal evidence that T-2 and U- 14 were likely to have been written in whole or in part by the same person; and in my study of the Affidavit, I found that the FBI had done a remarkably careful job in setting forth evidence of common authorship for T-2 and U- 14. When Ms. Weil called me again a few days later, I declined her invitation to assist the Defense. She asked me for the names of other scholars who might be willing and able to help with the Motion to Suppress. Having surveyed the evidence for common authorship of U-14 and T-2 (and of various other T- and U-documents as represented in the Affidavit), I told Ms. Weil it was unlikely she would find an attributional scholar willing to assail Fitzgerald's text-analysis, except perhaps in a few minor particulars.

6. In March 1997, an attorney for the United States invited me to examine the representations made in the Affidavit concerning the comparative text-analysis of Special Agent Fitzgerald; and to examine the representations made in the Motion to Suppress alleging flaws in that analysis. I agreed to do so. I have now examined the pertinent documents in considerable detail. My opinions may be summarized as

follows:

7. It seems reasonable, fair, and accurate for the Affidavit to represent the U-14 and the T-documents as "very similar," in thought, language, and manner (Affidavit, paragraph 110); and indeed it seems reasonable to conclude that these texts are likely to have been written by the same individual. The evidence of common authorship is set forth in the Affidavit judiciously and with admirable objectivity and restraint; errors of fact or interpretation are relatively few and insignificant. The evidence of authorial identity rests not in any one instance of similar thought or language, but in a collocation of shared linguistic habits that extends to spelling, rare diction, grammatical accident, syntactical habits, shared source material, and shared ideology, together with internal biographical evidence that likewise points to authorial identity of the T- and U-documents.

8. More specifically, I find it reasonable, fair, and accurate, to conclude that T-2 (the 1971 essay) and U-14 are significantly "similar" as indicated in paragraph 112 of the Affidavit and as illustrated in the passages cited on pp. 65-66 (again with the understanding that it is the collocation of similarities, and no particular example, that points toward the likelihood of common authorship for T-2 and U-14).

9. I find it likewise reasonable to conclude that the passages cited in paragraph 199 of the Affidavit are significantly "similar." Moreover, "you can't have your cake and eat it too" is indeed the common American usage as indicated in paragraph 200.

10. It is alleged in the Motion to Suppress that "Through a series of false statements, material omissions, and irrelevant information, the Government improperly attempted to suggest that there was evidence that Theodore Kaczynski was the author of the Unabom manuscript" (Argument, p. iii, 52). I find this representation to be unreasonable, unfair, and inaccurate. In my opinion, the analysis by Special Agent Fitzgerald is unassailable in all important respects; conversely, I find the comparative analysis in the Motion to Suppress to be highly unreliable, containing many false and misleading statements and material omissions (Argument, pp.52-76, 95-99, 109: "Critique of the FBI Analysis of the T-Documents and the U-Documents," pp.1-77).

11. I find that the testimony of Harry M. Ermoian substantially understates the significance of books and other documents from which the T- and U-documents draw topical, ideological, or linguistic material. Many of the writings directly mentioned or alluded to in both the T- and U-documents are widely known, as noted by Ermoian, but the collocation of shared reading material and manner of citation point likewise to authorial identity of the T- and U-documents.

12. I disagree strongly with the conclusion of Professor Robin Lakoff that the FBI's claims of "authorial identity" are "untenable and unreliable at best" (Lakoff, p. 10). Prof. Lakoff acknowledges that her examples of "errors" are "intended to be illustrative, rather than exhaustive" (Lakoff, p.3), but I find that she substantially misconstrues or misrepresents the evidence of common authorship as set forth in the

Affidavit. Lakoff extracts and decontextualizes particular linguistic similarities in the T- and U-documents, observing particular examples in the Affidavit to be commonplace, dismissing others as the result of content-linked lexical choices; but nowhere is it alleged in the Affidavit that isolated verbal parallels constitute evidence of common authorship. I find the methods and conclusions of Agent Fitzgerald to be considerably more reliable and tenable than those of Prof. Lakoff with respect to the probable authorship of the U-documents.

13. In my opinion, the Affidavit substantially understates the likelihood that the U-documents and the T-documents were written in whole or part by the same individual. The evidence of common authorship is far more extensive, detailed, and compelling than the FBI has suggested. The similarities of thought, expression, grammar, syntax, diction, and internal biographical evidence cannot be attributed to mere chance, or to common subject matter, or even to a shared ideology and set of beliefs. In my opinion, unless it can be shown that the original English writings ascribed to the Defendant were not, in fact, written by him, one must conclude that U-14. "Industrial Society and Its Future," was written by the Defendant as well.

14. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief. Executed this 11th day of April, 1997, at Poughkeepsie, New York.

DONALD W. FOSTER
(signature)

1. D. Foster, "Primary Culprit." New York (26 Feb.1996: released 14 Feb.): 50-7.

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Unabomber

DECLARATION OF WANDA KACZYNSKI

Feb. 27, 1997

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
(HONORABLE GARLAND E. BURRELL, JR.)

UNITED STATES
OF AMERICA,
Plaintiff,

CR-S-96-2S9-GEB

vs.

DECLARATION OF
WANDA KACZYNSKI

THEODORE JOHN
KACZYNSKI,
Defendant.

Court transcripts and
documents provided by:



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Services

I, Wanda Kaczynski, hereby declare the following:

- (1) I am a resident of the state of New York and live in Scotia, New York;
- (2) I am the mother of Theodore John Kaczynski (Ted), the defendant in the above captioned case;
- (3) In March 1996, I was interviewed by FBI agents regarding Ted;
- (4) I have reviewed various paragraphs in the affidavit in support of the search warrant for Ted's cabin as well as a seven page Federal Bureau of Investigation report of the interview of me on March 23, 1996;
- (5) After I gave the agents letters from Ted and my canceled checks (pursuant to a subpoena served on me), I told the agents that there was a footlocker in my home that Ted had used for college and had left at my home;

(6) I told the agents that this was Ted's footlocker and the contents of it were his;

(7) I opened the footlocker because I believed that the subpoena required me to provide whatever was requested by the agents and they requested to look in the footlocker;

(8) Paragraph 109 of the affidavit states that I provided a copy of an essay written by Ted;

(9) I am not aware that I provided a copy of the essay referred to in paragraph 109, but only that pursuant to the subpoena to provide anything written by Ted, I opened a footlocker that belonged to Ted and I removed some of its contents and provided them to the agents;

(10) Paragraph 195 is misleading where it states that I noted Ted fit the description of the "Unabomber" and that I believed he must be stopped;

(11) I did not say that the description of the "Unabomber" fit Ted, but only that he lived alone and was against technology;

(12) I told the agents that I did not think that Ted was the "Unabomber" because he hated to travel, he did not like being around people or noise, he did not have a lot of money~and he had never been violent;

(13) I did not focus on Ted saying that he should be stopped, but agreed that if he or anyone else was the "Unabomber" of course they should be stopped;

(14) I told the agents that I sent Ted \$7,032 in July 1991 to pay for medical expenses and that he sent me an itemized listing of the medical expenses.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 27 day of February, 1997.

Wanda Kaczynski

Wanda Kaczynski

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Unabomber

DECLARATION OF DAVID KACZYNSKI

Feb. 8, 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF
AMERICA,
Plaintiff,

CR S-96-0259 GEB

V.

THEODORE JOHN
KACZYNSKI,
Defendant.

DECLARATION OF
DAVID KACZYNSKI

Court transcripts and
documents provided by:



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I, David Kaczynski, hereby declare the following:

- (1) I am a resident of the state of New York and live in Schenectady, New York. If called as a witness, I could and would competently testify as set forth herein.
- (2) I am the brother of Theodore John Kaczynski, the defendant in the above captioned case.
- (3) I have reviewed the paragraphs in the search warrant affidavit that attribute information and beliefs to me and have the following statements about the accuracy of the information attributed to me:
 - (A) Paragraph 95 states:

"Beginning on February 14, 1996, David Kaczynski informed members of the UNABOM Task Force (UTF) that he believes his brother Theodore John Kaczynski, also

known as "Ted", to be the person responsible for the UNABOM event. David Kaczynski initiated contact with the FBI through an attorney. He stated that he did not want any of the reward money offered in connection with this investigation."

This paragraph is not true insofar as it states that I told the FBI in mid-February that I believed my brother was responsible for the Unabom events. I told the FBI in mid-February that I had suspicions that he could be involved and hoped that he could be ruled out as the Unabomber.

(B) Paragraph 101 states:

"Theodore Kaczynski's brother, David Kaczynski, has informed UTF investigators that he developed a suspicion of Theodore Kaczynski's (hereafter referred to as Theodore Kaczynski, or as David Kaczynski's brother if appropriate) involvement in the series of bombings committed by the UNABOM subject after reading news media reports, in approximately December, 1994, that summarized the dates and places of the UNABOM events and bombings."

This is not true insofar as it states that I told the FBI that I developed a suspicion in approximately December 1994. I told the agents that at that time I had a passing thought that Ted could be involved. This paragraph does not fit the tone or spirit of what I told the FBI.

(C) Paragraph 105 states:

"David Kaczynski has advised investigators that following his reading of published excerpts from the UNABOM manuscript in approximately August, 1995, he became increasingly suspicious of strong similarities between Theodore Kaczynski's views and those of the UNABOM subject. He further stated that upon reading the published UNABOM manuscript in its entirety, in approximately September, 1995, he became convinced that his brother was the author of the UNABOM manuscript. In particular, David Kaczynski stated that there was a unique phrase in the UNABOM manuscript, which referred to a "cool-headed logician" which he, David Kaczynski, recognized as his brother's terminology. David Kaczynski stated that this and

other statements in the UNABOM manuscript "leapt out" at him because they expressed his brother, Theodore Kaczynski's, long-held position on the role of art versus science in our society. According to David Kaczynski, these statements marked the UNABOM manuscript as his brother's product, because he and his brother had a running argument for years on these topics."

This paragraph is an inaccurate account of what I told the agents. First, I told the FBI that, after reading newspaper account of the Unabom Manuscript in about August 1995, I dismissed the possibility that Ted could be the Unabomber. Second, I did not tell the FBI that, after reading the entire Manuscript in about September or October 1995, I was "convinced" my brother was the Unabomber. I told them that I was not able to form an opinion about whether Ted was or was not the Unabomber and could develop no sense of probability on the question. Third, I did not tell the agents that "cool-headed logician" was my brother's terminology, but only that he had used the phrase once in a letter to me. Finally, I did not tell the FBI that anything in the Manuscript "marked" the Unabom manuscript as Ted's product. I told the agents that a discussion of art and science indicated a possible connection of Ted to the Unabom Manuscript.

(D) Paragraph 106 states:

"David Kaczynski advised investigators that he recognized, in particular, a paragraph in the first portion of the manuscript that spoke of art and the human experience. Paragraph 17 of the UNABOM manuscript (attachment 2) discusses art and rationality."

I did not tell the investigators that I recognized a particular paragraph about art and the human experience, but only that one of the paragraphs resembled what Ted and I had talked about and I could connect the ideas to discussions with Ted.

(E) Paragraph 107 states:

"David emphasized that his brother has long been committed to "rationality" as a guiding principle. He further stated that since his brother's ideas were based on a "rational ideal", any action in support of them was justifiable. David Kaczynski expressed his sadness to investigators in commenting that this type of justification would enable his brother to feel fully

justified and even visionary in killing people to accomplish his "rational objectives."

This statement misses the point that I made to the agents. I told them that Ted would have to believe that there was a reason that made something the right thing to do before he would do it and that Ted did not believe that the "end justifies the means." (F) Paragraph 108 states:

"In addition to providing 86 (85) personal letters received from Theodore Kaczynski during the preceding 30 years, David Kaczynski provided investigators with a photocopy of a carbon copy of an essay written by his brother in approximately 1971 (a copy of this essay and incorporated by reference to this affidavit in attachment number 3). In that essay his brother, Theodore Kaczynski, discusses the necessity of forming and supporting an organization to bring about the end of Federal and corporate funding for scientific research. David Kaczynski has advised the UTF that his brother personally discussed with him in approximately 1971 the possibility of David heading up such an organization. David stated that he recognized substantial similarity between the ideas, concepts and expressions contained in his brother's 23 page essay and the UNABOM manuscript."

I did provide a copy of my brother's essay to the investigators. However, this paragraph attributes to me a conclusion that was exactly opposite of what I told the investigators. I told the investigators that after reading the copy of the essay, in my opinion there were substantial similarities and dissimilarities between the essay and the Unabom Manuscript. I told the investigators that based upon my reading of the essay, as opposed to my memory of it, I felt less suspicious of Ted being the Unabomber. (G) Paragraph 124 states:

"David Kaczynski reviewed all of the writings attributed to the UNABOM subject. He came to the conclusion that based upon content, style, and specific phraseology of the writings that they were written by his brother, Theodore Kaczynski."

When I read the letters which were attributed to the Unabomber, I said that "I have difficulty believing it isn't him." This was in mid-March 1996. I made that statement because when I noticed that the Unabomber had

spelled "installment" as "instalment" and stated that I believed that to be a misspelling, the agents told me that Ted had misspelled the word the same way. Because I knew that Ted was very careful about spelling words, I found this fact to be quite significant. Several days later I learned that "installment" could be spelled correctly with either one or two "l"s, and I became less convinced that Ted was the Unabomber. Had I known this at the time, I would not have made the statement or drawn the conclusion about Ted. In addition, this statement by me was made in the context of the agents debating whether they believed Ted was the Unabomber and not reaching agreement. It was an informal discussion and not one I thought was focused on my beliefs about Ted.

(H) Paragraph 134 states:

"In an interview with the UTF on February 18, 1996, David Kaczynski recalled that shortly after departing UCB, his brother had played a practical joke involving a forged letter. Theodore Kaczynski sent a letter to one professor at UCB, purportedly from another professor. David Kaczynski was quite impressed with the content and manner in which the letter was drafted. Dave could not explain this peculiar behavior, other than to say that Ted did not have any friends of his own to write to during that period."

This paragraph mixes two things that I talked about with the investigators. I told the investigators about a "tongue-in-cheek" letter Ted had sent to a professor at UCB which purported to be from another professor. This letter was clearly intended as a joke and would have been seen as such by the professor to whom it was sent. The letter which the paragraph says I could not explain was a letter which Ted wrote to a friend of mine, not to the professor.

(I) Paragraph 143 states:

"UNABOM Device #1 was found at the University of Illinois, Chicago Circle Campus on May 25, 1978. Theodore Kaczynski began a job with Foam Cutting Engineers in Chicago on June 26, 1978. David believed that his brother returned to Chicago from Montana a few days, to no more than 30 days, before starting this job. According to David, when Theodore Kaczynski returned, he took a Greyhound bus from Montana to the main bus terminal in Chicago."

I told the agents that I had always believed that Ted returned to the family home in Chicago no more than one week before beginning the job at Foam Cutting Engineers and that I did not think he would have been in the area before this without telling the family he was in town. I did not tell the agents that I believed Ted returned to Chicago up to 30 days before starting the job at Foam Cutting Engineers.

(J) Paragraph 145 states:

"UNABOM Device #3 was mailed from the Chicago area on November 14, 1979. David recalled that Theodore Kaczynski had gone to work at Prince Castle Restaurant Equipment Division in August or September, 1978, and then quit in the summer of 1979. Theodore Kaczynski stayed at his parent's home for awhile and then borrowed David's car, thereafter travelling to Canada for 6-8 weeks, to look for land in Saskatchewan. Theodore Kaczynski returned to Chicago and later to Montana that summer or fall. Wanda Kaczynski believed that her son remained in Lombard until the fall of 1979 before returning to Montana. She remembered walking with him to the local commuter train in Lombard."

I did not tell the FBI that Ted returned to Montana "that summer or fall." I told them that he returned to Montana that summer or possibly early fall.

(K) Paragraph 158 states:

"In September, 1990, David sent his brother a letter advising him that their father was very ill. Theodore Kaczynski responded and stated that this had been an appropriate use of the red line. Their father died on October 2, 1990, and David wrote Theodore Kaczynski to advise him of the memorial service. Theodore Kaczynski did not attend the service."

I did not tell the agents that the line needed to be red. There is another reference to a red line in paragraph 156 that is likewise inaccurate. In addition to the information in the above paragraph, I told the agents that while Ted did not attend our father's memorial service, he did call our mother expressing sympathy for our father's death.

(L) Paragraph 159 states:

"In January or February, 1991, Theodore Kaczynski wrote to David asking for his share of the father's estate, which was approximately \$60,000. Theodore Kaczynski did not receive this money, but did get \$7,000 from his mother under separate circumstances."

This is not an accurate statement of what I told the agents. I told them that at one point Ted wrote to me proposing to relinquish his share of our inheritance from our parents in return for a payment of \$60,000, which was substantially less than his share would have been. The "separate circumstances" involved my mother sending Ted a CD which she had been holding for him.

(4) During my interviews with the FBI, I provided the agents the following information which is not reflected in the search warrant affidavit.

(A) The FBI asked me about Ted's travelling. I told them that Ted had a great aversion to travelling and that was one factor which weighed in my mind against the possibility that he was the Unabomber. I told them that he wrote to me stating that he had cancelled his trip to Texas in 1985 to see me because of the strain he experienced in travelling.

(B) The FBI asked me if Ted's hair was curly. I told them that it had a slight natural wave but was not curly. I also told the FBI that I doubted that Ted ever dyed his hair.

(C) The FBI asked me if Ted had a mustache. I told them that he had a full beard and had talked about shaving it off for the summer, but I had never seen him with just a mustache.

(D) The FBI asked me if Ted had long, thin fingers. I told them that I had short hands and that I remembered Ted's hands as longer than mine, but nothing out of the ordinary.

(E) The FBI asked if Ted has hair on his hands. I replied that I believed that he had hair on his hands like I did, but he did not have especially hairy hands.

(F) The FBI asked if Ted had sunken cheeks. I asked what they meant, and they replied prominent cheek bones with more sunken cheeks. I told them that Ted did not have prominent cheek bones or sunken cheeks. They showed me a picture of Ted at Berkeley (a copy of the picture was attached as Attachment S to the search warrant affidavit). The agents

asked if Ted's cheeks were more sunken when I saw him in 1986 than as shown in the photograph. I replied, "No."

(G) When asked about Ted's complexion, I told the agents that Ted was lightly complected, with a fair complexion.

(H) I told the FBI that Ted has had one of his upper front teeth missing from childhood and had a bridge for the missing tooth, but I did not think that he had ever used the bridge since leaving his teaching position at University of California at Berkeley.

(I) The FBI asked me if there was anything unusual about my brother's gait. I replied that his left foot is noticeably pigeon-toed and affects the way he walks.

(J) I provided the FBI a self-portrait which Ted had done of himself.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 8 day of February, 1997.

David R. Kaczynski

David Kaczynski

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Unabomber

60 MINUTES INTERVIEW

Sept. 15, 1996

60 MINUTES INTERVIEW
OF SUSPECTED UNABOMER,
THEODORE JOHN KACZYNSKI'S FAMILY

WANDA AND DAVID KACZYNSKI,
LINDA PATRICK KACZYNSKI
AND ATTORNEY - TONY BISCEGLIE

SUNDAY SEPTEMBER 15, 1996

INTERVIEWERS - MIKE WALLACE, LESLEY STAHL

INTERVIEWEES - WANDA KACZYNSKI, DAVE KACZYNSKI, LINDA
PATRICK KACZYNSKI, TONY BISCEGLIE

MIKE - IF HE IS THE UNABOMER AS THE FBI THINKS HE IS NO ONE WAS MORE SHOCKED BY THAT FIRST SIGHT OF HIM ON TELEVISION THAN HIS MOTHER.

WANDA - IT WAS A HORRIBLE MOMENT I, I, I, I, COULDN'T BELIEVE IT WHEN I SAW HIM, OH GOSH, I, I FIGURED OH MY GOD HE'S REALLY GONE OVER THE EDGE, TED'S GONE.

MIKE - BUT THE FACT REMAINS THAT IT WAS HIS OWN BROTHER WHO MADE THE DECISION TO TURN HIM IN.

DAVID - ONE OF THE THINGS THAT MADE MY DECISION VERY, VERY DIFFICULT WAS TRYING TO IMAGINE HOW IT MUST FEEL TO HIM TO BE TURNED IN BY HIS OWN BROTHER.

WANDA - BUT WHAT CAN YOU DO, YOU CAN'T RISK MORE LIVES.

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MIKE - NOW MOST AMERICANS THINK THE FBI PROBABLY GOT THE RIGHT MAN. WHEN THEY ARRESTED TED KACZYNSKI AS THE UNABOMER, A MAN THE FBI SAYS KILLED THREE (3) PEOPLE AND WOUNDED TWENTY-THREE (23) MORE IN A SERIES OF MAIL BOMB ATTACKS OVER A PERIOD OF 18 YEARS, HIS FAMILY MAY NOT BE JUST AS SURE ABOUT IT AS THE FBI BUT IT WAS HIS BROTHER, DAVID, WHO TURNED HIM IN AND HIS MOTHER WANDA, WHO SAID THAT DAVID HAD NO CHOICE BUT TO DO IT. TONIGHT THEY'LL TELL YOU WHY. HIS MOTHER WANDA WAS WIDOWED SIX (6) YEARS AGO, SHE IS 79, SELF EDUCATED AND DIDN'T GET HER COLLEGE DEGREE UNTIL SHE WAS 51, HER YOUNGER SON DAVID A GRADUATE OF COLUMBIA UNIVERSITY, RUNS A SHELTER FOR HOMELESS CHILDREN, DAVID'S WIFE LINDA PATRICK, A PHILOSOPHY PROFESSOR AT UNION COLLEGE IN SCHENECTADY, NEW YORK. THEY ALL ACKNOWLEDGE THAT TED'S MENTAL STATE HAD DETERIORATED OVER THE YEARS, THAT HE'D BECOME SERIOUSLY DISTURBED, BUT THEY WERE HARDLY PREPARED FOR THE SIGHT THEY AND THE WORLD SAW ON TELEVISION, THE DAY THIS HARVARD GRADUATE AND MICHIGAN PHD WAS ARRESTED, THE MAN THEY'VE KNOWN AND LOVED AND THEN FELT THEY HAD TO TURN INTO THE FBI.

DAVID - OH, SEEING HIM COME OUT OF THE CABIN, HA, UM, HAIR COMPLETELY UNKEMPT, CLOTHES IN COMPLETE TATTERS, I THINK I EVEN NOTICED THE THE LOOK ON HIS FACE WHICH DID NOT SEEM TO BE A LOOK OF FULL HUMAN RECOGNITION, MY FEELING WAS JUST A WRENCHING IN MY HEART TO THINK WHAT HE HAD COME TO, WHAT WAS HAPPENING TO HIM, WHAT HE MUST BE GOING THROUGH AT THAT MOMENT.

MIKE - AND WANDA, YOU THE SAME I'M SURE?

WANDA - OH YES, OH IT WAS HORRIBLE, IT WAS A HORRIBLE MOMENT I, I, I, I, COULDN'T BELIEVE IT WHEN I SAW HIM, OH GOSH, I, I FIGURED OH MY GOD HE'S REALLY GONE OVER THE EDGE, TED'S GONE.

MIKE - HOW DID ALL THIS BEGIN? WANDA KACZYNSKI TOLD LESLEY STAHL AND ME THAT TED'S PROBLEMS COULD HAVE BEGUN WAY BACK IN 1942 SOON AFTER HE WAS BORN.

WANDA - I USE TO PICK HIM UP OUT OF THE CRIB AND HE WOULD BE BOUNCING AROUND AND HE WOULD NUZZLE HIS HEAD IN MY NECK AND CHORTLE AND GURGLE AND PULL MY HAIR AND HE WAS A BUNDLE OF JOY.

LESLEY- BUT WHEN TED WAS 9 MONTHS OLD HE SUFFERED A PAINFUL AND DANGEROUS CASE OF HIVES HE WAS HOSPITALIZED FOR A WEEK.

WANDA - IN THOSE DAYS THEY DID NOT ALLOW YOU TO STAY WITH A CHILD, I WOULD REMEMBER HOW HE'D GRAB THE BARS OF THE CRIB IN THIS HOSPITAL AND HE'D SCREAM AND HOLD OUT HIS ARMS AND I'D HAVE TO GO OUT THE DOOR, WHEN I FINALLY CAME BACK TO TAKE HIM HOME, WHAT THEY HANDED TO ME WAS NOT THIS BOUNCING, JOYOUS BABY, BUT A LITTLE RAG DOLL, THAT DIDN'T LOOK AT ME, THAT WAS SLUMPED OVER, WAS COMPLETELY LIMP.

MIKE - WANDA, BACK IN THOSE DAYS THAT HAPPENED TO A LOT OF YOUNGSTERS I MEAN WHO WHO'S PARENTS COULDN'T SEE THEM IN IN A HOSPITAL JUST AS WITH TED AND THEY DID NOT BECOME SOCIOPATHS IF YOU WILL.

WANDA - RIGHT, BUT CAN YOU JUDGE ONE CHILD BY ANOTHER.

LESLEY- WANDA FEELS THAT MARKED THE BEGINNING OF A LIFELONG PATTERN OF WITHDRAWAL FOR TED, A PATTERN THAT CONTINUED AFTER DAVID WAS BORN WHEN TED WAS 7 SHE REMEMBERS TED AS APART, ALOOF, ALONE. WASN'T HE ALWAYS GOING UPSTAIRS AND.
WANDA - YES.

LESLEY- CLOSING THE DOOR.

WANDA - YES AND UH IF HE HEARD CARS DRIVING UP HE'D SAY OOH THERE'S SO AND SO HE SAYS DON'T CALL ME DOWN I, I DON'T WANT TO SEE. THEM, I DON'T WANT TO SEE THEM AND HE'D GO UPSTAIRS.

LESLEY- SOME OF YOUR NEIGHBORS HAVE SAID THAT THEY CAN'T REMEMBER THAT HE EVER SMILED OR THAT HE EVER LAUGHED.

WANDA - YES, THIS IS TRUE, HE BECAME A VERY SOBER SORT OF CHILD.

LESLEY- WHY DID YOU NEVER SEEK HELP FOR HIM WHEN HE WAS A YOUNG BOY AND DISPLAYING ALL THESE UNUSUAL.

WANDA - WELL, FIRST OF ALL.

LESLEY- QUALITIES?

WANDA - THERE WAS NOTHING GROSS, YOU KNOW HE WASN'T VIOLENT HE WAS A GOOD KID, NO PROBLEMS WITH DELINQUENCY, HOW DO YOU TELL PEOPLE HE'S EASILY HURT AND HE GOES OFF BY HIMSELF, YOU KNOW, THE TEACHERS LIKED HIM BECAUSE HE WAS SUCH A GOOD STUDENT.

LESLEY- A GOOD STUDENT WITH A GENIUS IQ OF A HUNDRED-SEVENTY (170). TED SKIPPED TWO GRADES AND ENTERED HARVARD AT SIXTEEN (16). HE MADE FEW IF ANY FRIENDS, BUT HE DID EARN A REPUTATION AS A BRILLIANT MATHEMATICIAN AND A TEACHING JOB AT BERKELEY. KACZYNSKI ABRUPTLY QUIT IN 1969 AND WOUND UP BUYING LAND NEAR LINCOLN, MONTANA, THERE HE BUILT A PRIMITIVE SHACK WITHOUT ELECTRICITY OR RUNNING WATER. FOR A WHILE DAVID LIVED NEARBY, AND ONCE HE AND HIS PARENTS DROVE TO VISIT TED.

DAVID - AND AS WE WERE DRIVING UP HIS, UH, HIS ROAD HE WAS DRIVING OUT THE OTHER WAY, WE ALL WAVED AT HIM AND SAID "TED HI" AND AGAIN HE HAD THAT, THAT VEILED LOOK ON HIS FACE AND HE KIND OF HELD UP HIS HEAD AND LOOKED AWAY AND JUST DROVE OFF. WE ENDED UP RETURNING TO MY APARTMENT IN GREAT FALLS AND FOUND TED SITTING THERE ON THE COUCH, UM, THIS WOULD HAVE PROBABLY BEEN EARLY AFTERNOON AND HE REMAINED SITTING THERE, UM, UNTIL NIGHTFALL. UH, HE WOULD NOT (UI).

LESLEY- IN THE SHUTDOWN STATE?

DAVID - IN THE SHUT DOWN STATE, AND THE NEXT MORNING HE WAS AN ENTIRELY DIFFERENT PERSON, HE WAS CHEERFUL, UM, HE WAS CONVIVIAL, UM, IT WAS VERY, VERY PUZZLING.

LESLEY- AS IF IT HADN'T HAPPENED?

DAVID - AS IF IT HADN'T HAPPENED.

LESLEY- TED'S LAST VISIT HOME CAME IN THE LATE 70'S. HE TOOK A JOB AT THIS FACTORY IN A CHICAGO SUBURB WHERE HIS FATHER WAS A MANAGER AND HIS BROTHER DAVID WAS A FOREMAN.

LESLEY- YOU HAD TO FIRE HIM, WHY WHY DID YOU HAVE TO FIRE HIM?

DAVID - UH, HE HAD BEGUN DATING, UM, SOMEBODY WAS, WHO WAS A, A, SUPERVISOR IN THE FACTORY, AS IT TURNED OUT THE RELATIONSHIP DIDN'T GO ANYWHERE. HE WROTE A LIMERICK THAT WAS OFFENSIVE AND HE PASTED IT IN, IN VARIOUS PLACES AROUND THE FACTORY WHERE WE WORKED.

LESLEY- ABOUT HER?

DAVID - ABOUT, ABOUT THIS WOMAN WHO HAD REJECTED HIM. I APPROACHED HIM AND I, I TOLD HIM, UM, IN AN ANGRY WAY THAT HE HAD TO STOP DOING THAT, AND IF HE DIDN'T I WOULD FIRE HIM, UM, THE NEXT DAY HE CAME UP TO THE MACHINE WHERE I WAS WORKING

AND PASTED ONE OF THESE LIMERICKS RIGHT IN FRONT OF ME AND SAID TO ME "SO WHAT ARE YOU GONNA TO DO ABOUT THIS?" AND I SAID "TED GO HOME ".

LESLEY- THAT WAS THE FIRST TIME DAVID THOUGHT SOMETHING WAS DEEPLY WRONG WITH HIS BROTHER. DAVID DIDN'T KNOW THAT THE UNABOMER'S FIRST ATTACK HAD TAKEN PLACE JUST A FEW MILES FROM THE FACTORY AND JUST A FEW MONTHS BEFORE TED WAS FIRED. WHEN TED MOVED BACK TO MONTANA, HE COMMUNICATED WITH HIS FAMILY THROUGH LETTERS THAT GREW INCREASINGLY HOSTILE.

MIKE - LET ME JUST READ YOU A LITTLE BIT FROM ONE LETTER THAT HE SENT TO YOU.

WANDA - YEAH.

MIKE - UH, YOUR NOT GONNA BE HAPPY TO HEAR IT I'M SURE, BUT.

WANDA - I, I, YEAH, I KNOW.

MIKE - HE SAYS "SO GENERALLY IF I EXPERIENCED ANY FAILURE OR SHOWED ANY WEAKNESS I FOUND THAT I COULDN' T COME TO YOU FOR SYMPATHY, YOUR SIMPLY USING ME AS A DEFENSELESS BUT ON. WHICH TO TAKE OUT YOUR FRUSTRATIONS, I WAS SUPPOSE TO BE YOUR PERFECT LITTLE GENIUS.

DAVID - MIKE, THIS IS NOT THE FAM, SAME FAMILY THAT I GREW UP IN, THAT HE GREW UP IN, THIS IS NOT THE SAME MOTHER THAT HE'S DESCRIBING HERE, THIS IS, THIS IS A FICTION OR A FANTASY.

MIKE - BUT THIS SEEMS ALMOST CALCULATED TO HURT WANDA.

WANDA - YEAH, I THINK SO.

DAVID - YEAH.

LESLEY- TED'S FANTASIES HIS FAMILY SAYS, INCLUDED ACCUSATIONS THAT HIS PARENTS HAD VERBALLY ABUSED AND REJECTED HIM. ACCUSATIONS THAT BECAME MORE AND MORE BIZARRE.

MIKE - HE CLAIMS THAT BECAUSE OF THE REJECTION HE'S SHORTER THAN DAVID.

WANDA - OOH, GOD.

MIKE - "THE REJECTION I EXPERIENCED AT HOME AND AT SCHOOL EVEN

AFFECTED ME PHYSICALLY, IN CASE YOU WONDER WHY DAVE IS THREE (3) INCHES TALLER THAN I. I HAVE BROUGHT UP TWO (2) DIFFERENT STUDIES THAT REPORT TO SHOW THAT REJECTION DURING ADOLESCENCE TENDS TO STUNT GROWTH.

WANDA - I DON'T KNOW, WHAT DO YOU DO?

MIKE - YOU (LAUGHING) WHAT, WHAT DO YOU DO?

LESLEY- (LAUGHING) PARENTS.

MIKE - MOTHERS AND FATHERS.

LESLEY- RIGHT.

MIKE - RIGHT.

LESLEY- BLAME THE MOTHER.

LESLEY- AND TED BLAMED DAVID FOR DESERTING HIM BY FALLING FOR LINDA.

MIKE - HE WAS DEVASTATED WHEN HE LEARNED THAT YOU WERE HAPPY WITH LINDA AND THAT YOU OF ALL THINGS MARRIED LINDA.

DAVID - IT WAS ENTIRELY UNEXPECTED, HE HAD NEVER MET LINDA, UM, AND I GOT A LETTER THAT WAS PAGES AND PAGES AND PAGES LONG, FULL OF, UH, CRITICISMS OF LINDA, CRITICISMS OF ME, UM, IT WAS AS IF I HAD SOMEHOW BETRAYED HIM.

MIKE - HE WANTED NOTHING TO DO WITH THE FAMILY, FOR INSTANCE IN ONE OF THE LETTERS HE SAYS "THERE IS NOTHING THAT COULD EVER BE IMPORTANT ENOUGH SO THAT YOU WOULD HAVE TO GET IN TOUCH WITH ME EVEN IF MA DIES I DON'T WANT TO HEAR ABOUT IT.

LESLEY- WANDA ARE YOU OKAY?

WANDA - I'M OKAY, I'M ALRIGHT, OKAY.

LESLEY- WHEN HIS FATHER DIED IN 1990, TED DIDN'T EVEN RETURN FOR THE FUNERAL. DAVID AND LINDA BECAME SO CONCERNED ABOUT WHAT THEY CALLED TED'S DETERIORATION THAT THEY TOOK TWO (2) OF HIS LETTERS TO A PSYCHIATRIST IN 1991.

LINDA - UM, A PSYCHIATRIST ADVISED US THAT TED WAS MENTALLY DISTURBED, SERIOUSLY DISTURBED AND THAT NOT ONLY WAS HE

DISTURBED, BUT THAT THERE WAS A POSSIBILITY OF VIOLENCE, THAT STUCK IN MY MIND AND IT STUCK IN MY MIND ALL THESE YEARS, SO THAT.

LESLEY- IS IT TRUE THAT YOU HAD ACTUALLY TALKED ABOUT HAVING HIM COMMITTED?

LINDA - WE WERE ADVISED THAT IT WAS EXTREMELY DIFFICULT TO GET SOMEONE COMMITTED.

DAVID - WE WERE TOLD THAT HE HAD TO BE A DANGER A, PH, A DEMONSTRABLE DANGER TO HIMSELF OR TO OTHERS IN ORDER TO.

LESLEY- WELL WE SHOULD POINT OUT THAT BY THIS POINT HE WAS ALL THOSE THINGS.

WANDA - BUT WE DIDN'T KNOW THAT.

LESLEY- BUT YOU DIDN'T KNOW THAT.

LINDA - WE DIDN'T KNOW.

DAVID - WE DID NOT KNOW.

LINDA - SO WE DID THE NEXT BEST THING THAT WE COULD THINK OF AND THAT WAS THAT UM WE GOT IN CONTACT WITH ONE OF HIS DOCTORS UP IN MONTANA AND DAVID CALLED THE DOCTOR AND ASKED THE DOCTOR TO PLEASE REFER HIM TO THERAPY.

LESLEY- AND DID ANYTHING COME OF THIS?

DAVID - UNFORTUNATELY NO, UM (CUT OFF).

LESLEY- THAT WAS FIVE YEARS AND FOUR LETTER BOMBS AGO, LETTERS HAD ALWAYS BEEN TED'S WEAPONS.

DAVID - THE ONLY WAY HE REALLY RELATED TO PEOPLE OR SPOKE HIS MIND OR FEELINGS TO PEOPLE WAS THROUGH LETTERS.

LESLEY- ISN'T IT IRONIC THAT THE ANGER WAS WRITTEN IN THE LETTERS AND THEN HE USED LETTER BOMBS.

DAVID - UH HMM, SURE.

LESLEY- HAVE YOU, HAVE YOU EVER THOUGHT THAT THROUGH AS TO WH, WHY HE WOULD CHOOSE THIS DISTANT FORM?

DAVID - A PART OF ME VERY STRONGLY BELIEVES THAT I IF TED HARMED AND MAIMED AND EVEN KILLED PEOPLE HE COULD NOT HAVE DONE IT FACE TO FACE HE HAD TO IN SOME WAY DISTANCE HIMSELF FROM THE CONSEQUENCES OF WHAT HE WAS DOING.

LESLEY- AGAIN WE REMIND YOU THAT TED KACZYNSKI HAS NOT GONE ON TRIAL YET SO LEGALLY HE MUST STILL BE PRESUMED INNOCENT. BUT WHAT MADE DAVID THINK THAT HIS BROTHER COULD POSSIBLY BE THE UNABOMER.

LESLEY- BOMBER WAS ONE OF THE LONGEST MAN HUNTS IN FBI HISTORY HUNDREDS OF FEDERAL AGENTS SPENT MILLIONS OF DOLLARS CHASING DOWN MORE THAN 50,000 LEADS AND IT ENDED NOT BECAUSE OF ALL THAT DETECTIVE WORK BUT BECAUSE KACZYNSKI'S OWN FAMILY TURNED HIM IN. TED HAD NEVER MET HIS SISTER-INLAW LINDA, BUT SHE WAS THE ONE WHO STARTED TO SUSPECT HIM. HALF JOKINGLY SHE TOLD HER HUSBAND "YOU'VE GOT A SCREWY BROTHER MAYBE HE'S THE UNABOMER" DAVID LAUGHED IT OFF. BUT THEN LINDA REALIZED THAT THE UNABOMER HAD STRUCK IN SOME OF THE SAME PLACES TED HAD LIVED. AFTER THE UNABOMER FORCED THE WASHINGTON POST TO PUBLISH HIS MANIFESTO BY THREATENING MORE ATTACKS, LINDA DRAGGED DAVID TO THE LOCAL LIBRARY TO READ THE MANIFESTO.

LINDA - WELL, I WATCHED DAVID'S JAW LITERALLY DROPPED.

MIKE - WHAT'D YOUR JAW DROP ABOUT DAVID?

DAVID - I WAS FEELING SOMETHING I REALLY DIDN'T EXPECT TO FEEL AT ALL WHICH WAS A DEEP SENSE OF UNEASE, UM, FEAR, UM, PROFOUND DISMAY.

MIKE - BECAUSE OF WHAT YOU READ?

DAVID - BECAUSE OF WHAT I READ.

MIKE - BECAUSE IT SOUNDED LIKE TED.

DAVID - BECAUSE THAT IT SOUNDED ENOUGH LIKE HIM THAT I COULD NOT SAY TO MYSELF OR TO LINDA THAT THIS IS NOT TED'S WRITING.

MIKE - DAVID STILL HOPED TO RULE TED OUT BY COMPARING TED'S LETTERS WITH THE MANIFESTO BUT AGAIN THEIR TONE SEEMED SIMILAR.

DAVID - I WOULD SWING BACK AND FORTH LIKE A PENDULUM, ONE MORNING I WOULD WAKE UP AND FIND SOME REASON TO BELIEVE THAT IT HAD TO BE HIM, THAT THE TRUTH WAS LOOKING IN MY EYES, AND I HAD BEEN IN DENIAL ABOUT IT, I WOULD WAKE UP ANOTHER MORNING AND FIND A REASON TO BELIEVE THAT I HAD DREAMED THIS UP.

MIKE - TO FINALLY FIGURE IT OUT, DAVID THOUGHT HE SHOULD VISIT TED IN MONTANA, BUT LINDA THOUGHT THAT WOULD BE TOO DANGEROUS THE LAST TIME DAVID SAW TED NINE (9) YEARS AGO, DAVID SPOTTED A BULLET HOLE INSIDE TED'S FRONT DOOR. STILL DAVID WROTE TED OFFERING TO COME.

DAVID - I HOPED PERHAPS THAT HE WOULD INVITE ME OUT AND I WOULD GO AND I WOULD BE ABLE TO CONVINCING LINDA THAT IT WAS SAFE TO GO AND THAT I WOULD MEET TED AND FEEL RE REASSURED AND CONVINCED THAT HE COULD NOT BE THIS PERSON.

MIKE - TO LINDA'S RELIEF TED WROTE BACK TELLING DAVID NOT TO COME.

LESLEY- IT WAS TO SAY THE LEAST NOT A FRIENDLY RESPONSE. THIS IS FROM YOUR BROTHER "I GET JUST C ~KED WITH FRUSTRATION AT MY INABILITY TO GET OUR STINKING FAMILY OFF MY BACK ONCE AND FOR ALL AND STINKING FAMILY EMPHATICALLY INCLUDES YOU". THIS WAS A MAN WHO WAS YOUR BEST FRIEND FOR A WHILE, AND HE GOES ON "I DON'T EVER" THIS IS IN BLOCK LETTERS "I DON'T EVER WANT TO SEE YOU OR HEAR FROM YOU, OR ANY OTHER MEMBER OF OUR FAMILY, AGAIN.

DAVID - IT'S HIS FEELINGS ABOUT OUR FAMILY, THERE NO RELATIONSHIP TO THE REALITY OF THE FAMILY LIFE THAT WE EXPERIENCED THESE WERE LOVING SUPPORTIVE PARENTS.

MIKE - THEN DAVID AND LINDA SPOTTED A POTENTIALLY DEVASTATING POSSIBILITY, TWICE AFTER THEY HAD SENT MONEY TO TED, SUPPOSEDLY FOR MEDICAL BILLS, THE UNABOMER HAD STRUCK KILLING TWO (2) PEOPLE.

DAVID - WE REALIZED THAT OUR FIRST LOAN TO TED HAD PRECEDED A BOMBING BY 6 WEEKS TO 2 MONTHS AND THAT OUR SECOND LOAN TO HIM HAD PRECEDED A BOMBING BY ABOUT THE SAME AMOUNT OF TIME.

LESLEY- YOU BEGAN TO FEAR THAT YOUR MONEY?

DAVID - LINDA FELT EXTREMELY ANGRY, EVEN A SENSE OF RESPONSIBILITY THAT WE HAD, WE WERE SOMEHOW RESPONSIBLE FOR THESE ACTS.

LESLEY- THAT YOU MAY HAVE FINANCED IN SOME WAY. LINDA - BUT WE DIDN'T KNOW, I MEAN WE REALLY DIDN'T KNOW.

MIKE - BUT NOW THEY DID KNOW IT WAS TIME TO GET OUTSIDE HELP. LINDA TURNED TO A CHILDHOOD FRIEND, SUSAN SWANSON, A PRIVATE INVESTIGATOR IN CHICAGO TO FIND AN EXPERT TO COMPARE TED'S LETTERS WITH THE UNABOMER'S MANIFESTO. A FEW WEEKS LATER SWANSON CALLED DAVID WITH THE RESULTS. DAVID - SHE SAID IT WAS NOTHING TO KNOCK MY SOCKS OFF, UM, AS IT TURNED OUT IT WAS SOMETHING TO KNOCK MY SOCKS OFF. THE ANALYSIS SUGGESTED THAT THERE MAY BE A CHANCE OF 60 PERCENT THAT TED WAS ALSO THE AUTHOR OF THE MANIFESTO.

MIKE - THAT DID IT, DAVID AND LINDA AGREED THAT THEY SIMPLY COULD NOT RISK HAVING ANY MORE PEOPLE HURT. THEY WANTED TO CONTACT THE FBI AND THEY WANTED THE FBI TO TAKE THEM SERIOUSLY, BUT THEY DIDN'T WANT AGENTS IMMEDIATELY STORMING TED'S SHACK. SWANSON BROUGHT IN WASHINGTON ATTORNEY TONY BISCEGLIE, A FORMER ASSISTANT US ATTORNEY WHO HAD WORKED WITH THE FBI.

MIKE - THEN TONY HAS HIS FIRST MEETING WITH THE FBI AND COMES BACK TO YOU AND SAYS?

DAVID - SAYS THEIR TAKING IT SERIOUSLY, UM, IN THE MEANTIME I HAPPEN TO FIND IN A TRUNK, A COPY OF AN ESSAY THAT TED HAD WRITTEN MAYBE 25 YEARS AGO THAT I HAD REMEMBERED IN WHICH BORE ON SOME OF THE SAME TOPICS AS THE MANIFESTO.

TONY - QUITE FRANKLY THE ESSAY MADE ALL THE DIFFERENCE IN THE WORLD TO ME, IT WAS AN ANTI-TECHNOLOGICAL PIECE, IT EXPRESSED CONCERN ABOUT, UH, THE COURSE OF GENETIC ENGINEERING, UH, MIND CONTROL SURVEILLANCE.

MIKE - REALLY?

TONY - THE IMPLANTATION OF ELECTRODES IN HUMAN BRAINS.

MIKE - A QUARTER OF A CENTURY BEFORE?

TONY - YES, SO WHEN I SAW, UM, THE ESSAY AND SAW THOSE REFERENCES AND SAW THE SAME REFERENCES IN THE MANIFESTO AND

IT WAS AT THAT POINT THAT I TOOK A DEEP BREATH, WENT OUTSIDE, TOOK A WALK AND I SAID THIS THIS IS VERY SERIOUS THIS IS.

MIKE - THIS MAY BE IT. TONY - THIS MAY BE IT.

MIKE - BISCEGLIE GOT THE FBI TO AGREE THAT AGENTS WOULD NOT EVEN QUESTION TED UNTIL THEY COULD VERIFY SOME OF THE FAMILIES SUSPICIONS AND THEY PROMISED TO KEEP DAVID, LINDA AND WANDA'S NAMES CONFIDENTIAL. AFTER INVESTIGATING FOR TWO (2) MONTHS, AGENTS SAID THEY WANTED NOW TO TALK TO WANDA. SO DAVID FINALLY HAD TO TELL HIS MOTHER WHAT HE SUSPECTED ABOUT HIS BROTHER.

DAVID - I HAD WANTED FOR SO LONG TO PROTECT MY MOTHER BECAUSE I KNEW HOW PAINFUL THIS WOULD BE FOR HER, I WAS CONCERNED ABOUT HER HEALTH AS WELL, I MEAN IF, IF YOU COULD IMAGINE THE AGONY OF THINKING THAT I MIGHT NOT ONLY END UP WITH MY BROTHER IN PRISON BUT, BUT MY MOTHER PERHAPS DEAD A, AS A RESULT OF THIS DECISION. I SPENT PRETTY MUCH OF A SLEEPLESS NIGHT THE NIGHT BEFORE.

WANDA - HE HAD A HARD TIME GETTING IT OUT, AND HE SAID ITS ABOUT TED, AND I SAID "OH MY GOD IS HE DEAD", NO I SAID "OH MY GOD IS IT TED" AND HE SAID "HE'S NOT DEAD, HE'S NOT DEAD", AND THEN HE PROCEEDED TO TELL ME AND HE WAS WALKING BACK AND FORTH AND THE TEARS STARTED RAINING DOWN HIS FACE AND I SORT OF SAT THERE IN SHOCK. I REALIZED I KNEW THAT DAVID LOVED HIS BROTHER AND HE ALWAYS HAD SO I KNEW THAT WHAT HE HAD DONE HE HADN'T DONE LIGHTLY.

DAVID - SHE GOT UP FROM HER CHAIR AND SHE PUT HER ARMS AROUND ME AND SHE HUGGED ME AND SHE SAID "I THINK YOUR WRONG, I DON'T THINK TED IS THIS PERSON, BUT I FEEL SO SO BADLY ABOUT WHAT YOU HAVE BEEN GOING THROUGH" AND I FELT SUCH A SENSE OF RELIEF, AND, AND RELEASE, MOM, THAT, THAT THE PART OF ME THAT WAS JUST AGONIZED IN MY CONSCIENCE ABOUT ALL THIS, UM.

WANDA - I THOUGHT IT, IT, IT COULDN'T BE TED IT, IT, IT JUST COULDN'T IT MUST BE A MISTAKE AND I SAID I'M, I'M SURE THE INVESTIGATION WILL RULE HIM OUT.

LESLEY- HOW SOON AFTER THIS EMOTIONAL SCENE AND YOUR FIRST AWARENESS THAT THAT YOUR SON MIGHT BE A SUSPECT DO YOU HAVE TO TALK TO THE FBI?

WANDA - HALF AN HOUR LATER.

LESLEY- HALF AN HOUR.

WANDA - YES.

MIKE - THE FBI GATHERED MORE THAN 90 ITEMS THAT N ESSAYS AND A WOODEN BOX.

TONY - WE WERE AWARE FROM THE PUBLIC PROFILE THAT ONE OF THE CHARACTERISTICS OF THE, THE UNABOMER, WAS WOOD CARVING, WE ALSO KNEW THAT TED HAD THE ABILITY TO CARVE INTRICATE BOXES AND WE KNEW THAT HE HAD CARVED SUCH A BOX FOR HIS MOTHER. THIS IN FACT IS THE BOX AND IT IS A CYLINDRICAL BOX.

MIKE - AND THE BOMBS THEMSELVES HAD BEEN SENT NO IN CARVED WOODEN CYLINDERS.

LESLEY- SIMILAR CYLINDERS?

TONY - SIMILAR TO A

LESLEY- CYLINDRICAL BOX.

TONY - PIPE BOMB DESIGN YES.

MIKE - ELEVEN DAYS LATER THE FBI TOLD TONY BISCEGLIE THEY WERE ABOUT TO SEARCH TED'S SHACK, AND WITHIN HOURS THE FAMILY ALSO LEARNED THAT THEIR NAMES HAD BEEN LEAKED TO THE PRESS. THEN THE, THE PRESS BEGAN TO, UM, MASS ON YOUR LAWN.

DAVID - AT WAN, AT WANDA'S HOUSE, UM, WE WERE THERE, UM, THERE WAS LOTS OF COMMOTION OUTSIDE LOTS OF PEOPLE RINGING HER BELL, NOTES.

MIKE - RINGING WANDA'S BELL?

DAVID - YES.

LINDA - YES, UNTIL 2 OR 3 IN THE MORNING, IT WAS RIDICULOUS.

MIKE - AT FOUR IN THE MORNING WE WOKE UP TO, UH, WE HAD. CATS THAT NEEDED TO BE FED, UM, SO WE HAD TO GO BACK TO OUR PLACE AND AT THE MOMENT A CAMERA CREW WAS THERE HOLDING LIGHTS AND A CAMERA ASKING MY MOTHER WHETHER SHE THOUGHT HER SON WAS THE UNABOMER, AND THAT WAS AN EXTREMELY PAINFUL

MOMENT FOR ME.

MIKE - WHAT WAS THAT MOMENT LIKE WANDA?

WANDA - OH, COMPLETE NIGHTMARE, COMPLETE NIGHTMARE.

MIKE - NOW TED KACZYNSKI IS AWAITING TRIAL ON MURDER CHARGES IN A SACRAMENTO, CALIFORNIA JAIL.

TONY - HE IS ISOLATED, UM, HE IS READING, HE IS WRITING, WHICH HE DOES, UM ALL THE TIME AND UH, AND I BELIEVE HE IS HELPING ORGANIZE MATERIAL FOR HIS CASE. BUT ALL EFFORTS ON THE PART OF THE FAMILY TO REACH OUT TO, TO TED UM HAVE, HAVE BEEN REJECTED.

MIKE - THE WHOLE REASON THAT DAVID YOU AND WANDA AND LINDA ARE TALKING TO US NOW IS BECAUSE YOU WOULD LIKE IF HE IS FOUND GUILTY, TO BE ABLE TO SAVE YOUR BROTHERS LIFE, BUT PEOPLE WHO ARE LOOKING IN AT THIS MOMENT ARE SAYING HE KILLED AT LEAST THREE PEOPLE AND HE WOUNDED TWENTY TWENTY THREE MORE.

WANDA - IT'S A HORRIBLE THOUGHT.

DAVID - AND IT'S IT'S UH.

WANDA - IT'S A HORRIBLE THOUGHT.

DAVID - IT'S LIKE A DOUBLE TRAGEDY FOR US BECAUSE THERE'S NOT ONLY THE WORRY AND CONCERN AND, AND HORROR OF WHAT HAS BECOME OF TED BUT THE THOUGHT THAT A FAMILY MEMBER, OUR FLESH AND BLOOD MAY HAVE BEEN RESPONSIBLE FOR HARMING OTHER PEOPLE, DESTROYING FAMILIES IS UH, IT, IT BRINGS SUCH DEEP REGRET AND SORROW.

MIKE - HAVE YOU MADE ANY EFFORT TO SAY ANYTHING TO THE FAMILIES OF THE VICTIMS?

DAVID - I HAVE UH, WRITTEN LETTERS TO THEM.

LESLEY- YOU ARE THE ONE THAT BASICALLY BROUGHT HIM TO LIGHT, UM, DO YOU FEEL THAT BECAUSE YOU DID THIS THAT SOCIETY IN A WAY OWES YOU THE SPARING OF HIS LIFE.

DAVID - I DON'T THINK THAT'S A CLAIM I COULD MAKE BUT WHAT AN AWFUL IRONY IF I WERE TO TAKE ACTION TO PREVENT THE LOSS OF THE, FURTHER LOSS OF LIFE AND IT ENDED UP IN THE LOSS OF MY OWN

BROTHERS LIFE.

TONY - I DON'T THINK THERE'S ANY QUESTION, THIS COUNTRY WOULD BE BETTER OFF EMBRACING THE VALUES THAT DAVID KACZYNSKI BROUGHT TO THIS MATTER BY SPARING THE LIFE OF HIS BROTHER, AND ALLOWING DAVID TO LIVE HIS LIFE WITHOUT HAVING THE BLOOD OF HIS BROTHERS ON HIS HANDS.

WANDA - THERE ARE PEOPLE IN THIS WORLD THAT ARE MENTALLY ILL AND ARE WE GOING TO START KILLING THEM, WHAT KIND OF A BARBARIC SOCIETY ARE WE HEADING FOR. I AGREE THAT A, AS FAR AS POSSIBLE WE SHOULD RESTRAIN PEOPLE FROM DOING HARM TO OTHER PEOPLE, BUT SHOULD THE ANSWER BE LETS KILL'EM.

MIKE - INSIDE TED'S SHACK OFFICIALS SAY THEY FOUND DETAILED ANALYSIS, EVALUATIONS OF EACH BOMBING. WHY WOULD A FORMER COLLEGE PROFESSOR SEND BOMBS TO COLLEGE PROFESSORS? HIS FAMILY BELIEVES THAT IF HE IS THE UNABOMER, HE WAS ON A MISSION TO CHANGE THE WORLD.

DAVID - ITS AN ATTEMPT TO CHANGE THE COURSE OF HUMAN HISTORY BY SENDING BOMBS IN PACKAGES TO PEOPLE, BY PUBLISHING A MANIFESTO, THAT HE MAY HAVE ASSUMED HE WOULD HAVE AN EXTRAORDINARY EFFECT ON PUBLIC OPINION. I THINK HE BELIEVED THAT HE WAS MAKING A DIFFICULT CHOICE TO DO SOMETHING GOOD FOR THE WORLD, AND, AND, AND NO SANE PERSON WOULD, WOULD THINK THAT AS PLAUSIBLE.

MIKE - THE KACZYNSKI FAMILY IS NOT ARGUING THAT TED'S MENTAL CONDITION, WHATEVER PSYCHIATRISTS CALL IT, MEANS THAT HE SHOULD BE FOUND NOT GUILTY BY REASON OF INSANITY, BUT IF HE IS FOUND GUILTY THEY WANT HIM LOCKED AWAY AND TREATED NOT EXECUTED, AND THAT IS ALL THEY WANT.

MIKE - THE FBI HAS OFFERED A MILLION DOLLARS FOR INFORMATION LEADING TO THE ARREST AND CONVICTION OF THE UNABOMER, A MILLION DOLLARS CONCEIVABLY TO YOU TO LINDA.

WANDA - WE ARE NOT GOING TO PROFIT ONE CENT FROM THAT, WE HAVE DETERMINED THAT WE WOULD NOT IN ANY WAY PROFIT FROM MY SONS CONVICTION.

LINDA - IT'S BLOOD MONEY.

DAVID - YES, WE COULD NOT.

LINDA - WE CAN'T TAKE THAT

MIKE - SO NOW THIS VERY PRIVATE FAMILY HAS HAD TO BECOME VERY PUBLIC AND THEY ARE CERTAIN THAT TED WILL NOT UNDERSTAND WHY THEY TURNED HIM IN OR EVEN WHY THEIR ON TELEVISION TALKING ABOUT IT.

DAVID - CERTAINLY ONE OF THE THINGS THAT MADE MY DECISION VERY, VERY DIFFICULT WAS REALIZING, TRYING TO IMAGINE HOW IT MUST FEEL TO HIM TO BE TURNED BY HIS OWN BROTHER, THE ONLY PERSON WHO HAD BEEN CLOSE TO HIM FOR A LONG LONG TIME.

WANDA - BUT I, BUT I DREAD TO THINK HOW HOW DEEPLY HURT HE'LL FEEL BUT IT, WHAT CAN YOU DO, YOU CAN'T RISK MORE LIVES, DAVE COULDN'T, NONE OF US COULD.

MIKE - AND APPARENTLY SOME LIVES WERE SAVED FOR WHEN THE FBI ARRESTED TED KACZYNSKI THEY SAY THEY FOUND A LIVE BOMB WRAPPED UNDER HIS BED READY FOR MAILING, THE ONLY THING MISSING WAS A NAME AND ADDRESS.

Problems? Suggestions? [Let us hear from you.](#)

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Unabomber

Bomb #1

Victim: Terry Marker

Northwestern University (5/26/78)

FBI Description

(Explosive Device #1)

15. This device was contained in a parcel wrapped in brown paper and was discovered unattended in the University of Illinois, Chicago Campus, Engineering Building parking lot. The parcel was addressed to Professor E.J. Smith at Rensselaer Polytechnic Institute (RPI), Troy, New York, with a return address of Professor Buckley Crist at Northwestern University (NWU), Evanston, Illinois. The woman who discovered the parcel contacted Northwestern University and made arrangements to have the parcel returned to Crist. Upon receiving the parcel, Crist became suspicious, since he had not mailed any such parcel. He then contacted the NWU, Department of Public Safety. When the parcel was opened by a NWU Public Safety officer, it exploded causing only minor injuries. The officer's injuries were minor because the majority of the blast was directed to the side away from the officer. However, an analysis of the components of the explosive device by the Bureau of Alcohol Tobacco and Firearms (ATF) Laboratory concluded that this device was capable of causing serious injury or death to persons in close proximity to the explosion. Professor E.J. Smith, the intended recipient of the parcel, was located and interviewed by ATF agents. He stated, as did Professor Crist, that he had no knowledge of the parcel and no information concerning who might have constructed the bomb.

Court transcripts and documents provided by:



Attorney's
Diversified
Services

16. An analysis of the components of the explosive device by the ATF Laboratory revealed that it was constructed of a one inch diameter galvanized pipe approximately nine inches in length sealed on one end with a wooden plug. The explosive charge consisted of two types of smokeless powders and match heads. The pipe containing the main charge, together with an improvised mechanical firing mechanism consisting of a nail held under tension by multiple rubber bands, was encased in a homemade wooden box. The cover of the box was designed to release tension on the firing pin causing the nail to strike the match heads, thus igniting the smokeless powder.

17. The following components were recovered from the blast scene:

- Remnants of 1" pipe
- Wooden box
- Screws
- Nails
- Rubber bands
- Epoxy
- Two types of smokeless powder
- Match heads
- wood plug
- 3/4" black plastic tape
- 1/2" filament tape
- Brown wrapping paper
- "Eugene O'Neill" \$1 U.S. postage stamps -
- Mailing label

(Source: [Affidavit](#), FBI agent Terry D. Turchie, 4/3/96)

Problems? Suggestions? [Let us hear from you.](#)

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Warrant for Arrest

April 4, 1996

The following is the April 4, 1996, arrest warrant of Theodore John Kaczynski, who is suspected by federal officials of being the Unabomber. This document contains an affidavit from one of the agents who searched Kaczynski's one-room cabin and a list of potential evidence that was seized.

UNITED STATES DISTRICT COURT
HELENA DIVISION, DISTRICT OF MONTANA
UNITED STATES OF AMERICA

V.

THEODORE JOHN KACZYNSKI

To: The United States Marshal and any Authorized United States Officer

WARRANT FOR ARREST

CASE NUMBER:

YOU ARE HEREBY COMMANDED to arrest Theodore John Kaczynski and bring him or her forthwith to the nearest magistrate to answer a

- Indictment Information Complaint Order of Court
- Violation Notice Probation Violation Petition

charging him with knowingly possessing a firearm -- specifically, components from which a destructive device such as a bomb can be readily assembled -- which is not registered to him in the National Firearms Registration and Transfer Record

In violation of Title 26
United States Code, Section 5861(d)

_____	_____
_____	_____
_____	_____

by

Name of Judicial Officer

This warrant was received and executed
with the arrest of the above-named defendant at

DATE RECEIVED

NAME AND TITLE OF
ARRESTING OFFICER

SIGNATURE OF ARRESTING OFFICER
UNITED STATES DISTRICT COURT
HELENA DIVISION, DISTRICT OF MONTANA
UNITED STATES OF AMERICA

DATE OF ARREST

v.

THEODORE JOHN KACZYNSKI

CRIMINAL COMPLAINT

CASE NUMBER:

I, Donald J. Sachtleben, Special Agent, Federal Bureau of Investigation, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief.

On or about April 3, 1996, and before, in Lewis and Clark county, in the State and District of Montana defendant did, knowingly possess a firearm - specifically, components from which a destructive device such as a bomb can be readily assembled - which is not registered to him in the National Firearms Registration and Transfer Record in violation of Title 26 United States Code, Section 5861(d). I further state that this complaint is based on the following facts:

See attached affidavit incorporated herein by reference

(X) Continued on the attached sheet and made a part hereof

Signature of Complainant

City and State

at

Date

Name and Title of Officer

Signature of Judicial Officer

AFFIDAVIT

STATE OF MONTANA
County of Lewis and Clark

Your affiant, Special Agent (SA) Donald J. Sachtleben, Federal Bureau of Investigation, states as follows:

1. I, SA Donald J. Sachtleben, have been a Special Agent for 12 years. I graduated from the FBI Hazardous Devices School and the FBI Post Blast School. I have investigated bombing cases for 10 years and taught classes on the investigation of improvised explosive devices (IED). I have participated in the on scene investigation of bombing cases.
2. On April 3, 1996 your affiant and other agents of the FBI, ATF and United States Postal Service began the execution of a search warrant on the residence of Theodore John Kaczynski, located in Lewis and Clark County. The premises is a one-room cabin, approximately 10 feet by 12 feet with a loft and without electricity or running water. I am informed by other agents that records of Lewis and Clark County indicate that this property was purchased by Theodore John Kaczynski and another person in 1971. I am also informed by other agents that interview of neighbors revealed that Kaczynski has lived at this residence by himself since that date.
3. When agents knocked on the door, Theodore John Kaczynski answered and was removed so that the search could begin. The initial entry was to ascertain the presence or any explosive devices. The search of the premises continues at the time of this application for an arrest warrant. The items described herein are based only on a preliminary search and there remains a considerable amount of items to be located and reviewed.
4. I personally participated in the search. As set forth in more detail below, during the search I observed chemicals and other materials that, in my opinion, are designed and intended for use in manufacturing a destructive device, namely a pipe bomb, and from which a destructive device could be readily assembled, including what appears to be a partially completed pipe bomb. I also observed notebooks that contain what I recognize to be diagrams and notes that are consistent with the manufacture of destructive devices such as pipe bombs.
5. In order to construct a pipe bomb, one needs either a commercially manufactured explosive or an improvised

explosive, a casing, a device to detonate the explosive, and a power source for the detonating device. During the search I observed materials from which all of these could be made. In particular, during the search I observed the following:

1. Ten three-ring binders, which have been partially reviewed. These binders contain page after page of meticulous writings and sketches which I recognize to be diagrams of explosive devices. These diagrams depict cross-sections of pipes and electrical circuitry commonly used in the construction of such devices. In addition, they contain sketches of boxes which could be used to contain, conceal and transport explosive devices. The notebooks also contain hand-written notes in Spanish and English which describe, in part, chemical compounds which can be used in various combinations to create explosive charges for use in explosive devices. After consultation with an FBI chemist, it appears that the notes reflect the proper proportions for such mixtures. From investigation from other FBI agents I am aware that Theodore John Kaczynski is able to write Spanish.
2. Pipes that appear to be galvanized metal, copper and plastic. Four of the copper pipes had plates affixed to one end, which is one of the first steps in the construction of a pipe bomb. I did not observe any indoor plumbing or any other apparent structural need for such piping on the premises.
3. Containers containing powders labeled as "KC103" (potassium chlorate), "NaC103" (sodium chlorate), "Sugar", "Zinc", "Aluminum", "Lead" and "Silver Oxide". Necessary ingredients in the preparation of explosives include an oxidizer and a fuel. Sugar, zinc, aluminum, lead and silver oxide all can serve as fuels, and potassium chlorate or sodium chlorate can be oxidizers. For example, potassium chlorate can be combined with either aluminum or sugar to create an explosive material. Similarly, sodium chlorate can be combined with aluminum to create an explosive.
4. Solid cast ingots, one of which is labelled aluminum. I observed on the floor shiny metal filings consistent with aluminum. Aluminum can be used as an additional fuel and a catalyst in an explosive mixture.
5. C cell batteries and electrical wire. From my experience I am aware that these materials can be used to provide the power for a device used to detonate explosive material such as the mixtures described above.
6. Three rolled-up pieces of paper attached to one another, containing what appear to be logs of experiments to determine the optimum pipe dimension and combination of explosive materials in various weather conditions.
7. During a preliminary search of the loft, a package was located. Visual examination determined that it was a cylindrical package wrapped in paper and secured with tape. An X-ray of the package revealed what appears to me to be a partially completed pipe bomb, including threaded pipe, wire and other electrical components.
8. Several books including ones on the construction of electrical circuitry and chemistry.
9. Numerous tools, including mechanical drills, drill bits, hack saw blades, wire cutters, and a roll of solder, all of which would be necessary to convert the materials I have described above into a pipe bomb.
6. Based upon my experience in the investigation of the use of destructive devices, my examination of the above-described materials, and my review of the writings and sketches in the binders, it is my opinion that these components were designed to be, could be, and were intended to be readily assembled into a destructive device such as a pipe bomb. In my opinion, the premises contained all of the necessary ingredients and materials to manufacture such a destructive device.
7. A search was conducted by ATF on April 4, 1996 of the National Firearms Registration and Transfer Record. That search failed to locate any record of Theodore John Kaczynski having authorization for the possession or manufacture of a destructive device.

S/A Donald J. Sachtleben



Unabomber

FEDERAL BUREAU OF INVESTIGATION SHERRI WOOD INTERVIEW

April 2, 1996

Date of Transcription: April 2, 1996

SHERRI WOOD, date of birth (DOB) - (address omitted), was interviewed in the office of Head Librarian DEBORAH SCHLESINGER, Lewis and Clark County Library, (address omitted), Helena, Montana. WOOD was interviewed in the presence of Head Librarian SCHLESINGER. After being apprised of the identity of the interviewing Agent and Postal Inspector (PI) and of the nature of the interview, WOOD provided the following information:

WOOD stated she became the Librarian at the Lincoln, Montana, branch of Lewis and Clark Library in November of 1984.

WOOD advised that TED KACZYNSKI came into the Lincoln library about four to five years after WOOD began her employment there. WOOD described KACZYNSKI as being a "little hermit-type guy." WOOD advised that she has seen KACZYNSKI at least once per month over the period of time that she has been acquainted with him. WOOD advised that KACZYNSKI is an extremely polite individual who is always courteous and who requests books, many of which WOOD could not pronounce the titles.

WOOD stated that in January of 1992, the Lincoln library opened their new addition. WOOD explained that the library had been being remodeled for some period of time and expanded. WOOD advised that sometime near the end of 1991, KACZYNSKI began volunteering at the library assisting the library in moving books to accommodate the remodeling and expansion project. KACZYNSKI would help by unpacking boxes of books and re-shelving them and generally moving items of equipment from one spot to another.

WOOD advised that KACZYNSKI has never "scared" any of the library employees. As a matter of fact, WOOD advised that her assistant, MARY SPERLING, likes KACZYNSKI. WOOD advised that if MARY SPERLING can like KACZYNSKI, anyone should be able to like KACZYNSKI. WOOD stated that KACZYNSKI is as "inoffensive" a person as anyone could be.

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WOOD advised that when KACZYNSKI first began coming to the Lincoln library, he was very closed-mouthed and did not talk about himself or his background; however, through the years, she and other members of the library staff have been able to develop a relationship with KACZYNSKI to the point that KACZYNSKI has talked to them about his family and background. WOOD advised that one prior employee of the Lincoln library, LUCILLE SULLIVAN, developed a close relationship with KACZYNSKI and that KACZYNSKI really opened up to her. SULLIVAN volunteered at the library for two to three years. SULLIVAN, according to WOOD, has resided in Hamilton, Montana, a suburb of Missoula, for the last nine to ten years.

WOOD advised that over the years, she has been able to determine that KACZYNSKI appears to be very proud of his family and Polish background. WOOD advised that she believes that KACZYNSKI comes from a big family in Chicago or Detroit and that he has several brothers and sisters. WOOD described KACZYNSKI's family as being a very traditional family, possibly Catholic, and it is always with fondness when he talks of memories and reminisces about his family. WOOD stated that there appears to be a "dark side" with regard to KACZYNSKI's growing up in the city. She stated that he appears to have "street smarts" from his experience in growing up in a big city.

WOOD advised that there appears to be a whole section about KACZYNSKI's life that he will not talk about. WOOD stated that KACZYNSKI talks about his life up until the time he was about 18 or 19 years old. After that, there appears to be a period in his life that he does not discuss. wood stated that KACZYNSKI talks about his life more recently in Montana but that there appears to be a huge period in his life that he does not talk about. WOOD stated that even though KACZYNSKI appears to be a well-educated man, KACZYNSKI has never spoken with her or any of her staff members about his education. WOOD stated she assumes that KACZYNSKI has a college degree; however, he has never spoken to her about what he did after college prior to his coming to Lincoln, Montana.

WOOD stated that KACZYNSKI talks about his life more recently in Montana but that there appears to be a huge period in his life that he does not talk about. WOOD observed that she and other members of her staff have speculated over the years that KACZYNSKI is probably a Vietnam veteran who has come to the mountains seeking refuge. WOOD observed that in her experience, many Vietnam veterans do not like to talk about their war experience. WOOD recalled KACZYNSKI telling her at some time in the past that he had worked at a car dealership and at a grocery store. WOOD also believed that as a boy, KACZYNSKI had a paper route.

WOOD advised that even though she normally sees KACZYNSKI approximately once per month over the last several years at the library, recently she has been "kind of concerned" about him because she has not seen KACZYNSKI all winter. WOOD went on to say that during the last couple of times that KACZYNSKI has been at the Lincoln library, he has not appeared to be as friendly as in the past. WOOD stated that KACZYNSKI's strange behavior started last summer. WOOD advised that she did not believe that KACZYNSKI was "mad at us," but that he seemed to "have something

else on his mind."

WOOD stated that KACZYNSKI was interested in "heavy subjects," such as socialism, branches of socialism, Russian history and Czars, Spanish and Mexican revolutionaries. KACZYNSKI, according to WOOD, has an "astounding vocabulary" and at times WOOD has difficulty in understanding what KACZYNSKI is talking about.

KACZYNSKI also demonstrated an interest in Mexico and South America and, according to WOOD, KACZYNSKI liked to read books written by obscure writers of which she had never heard. WOOD stated that many of the books requested by KACZYNSKI were written in Spanish or Latin. WOOD said that as a general example, KACZYNSKI liked books about other people's theories. WOOD also observed that KACZYNSKI had an interest in psychology.

WOOD described the methods by which KACZYNSKI or anyone else in Lincoln could request books from the public library. WOOD stated that sometimes KACZYNSKI would give WOOD a list of books to request from the Helena library. For each title, KACZYNSKI would cite the title, author, publication date, and whether it was written in English or Spanish. These lists were always neatly printed or written long-hand by KACZYNSKI. As WOOD received the request from KACZYNSKI, she would check the computer at the Lincoln library to see where the book might be available within the Five-State Library Federation. WOOD advised she has never known KACZYNSKI to have a job while in Lincoln, Montana, and she assumes that he gets some type of check through the mail which supports his lifestyle. WOOD stated she has always thought he was a Vietnam veteran simply because of his lifestyle.

The five states included in the Library Federation included Montana, Washington, Oregon, Arizona, Idaho and parts of Canada and Utah. It was possible to search outside the five-state area. WOOD noted that a lot of KACZYNSKI's searches were very intensive. Some searches required WOOD to send letters to other libraries outside this five-state area. Included in these searches were periodicals as well as books. WOOD speculated that she has kept some of these letters of request for approximately the last two to three years and volunteered to look for them at the Lincoln library.

WOOD advised that at other times, she would just bring KACZYNSKI's list to the Lewis and Clark Library and research the books for availability there. She would then return these books to Lincoln for KACZYNSKI.

Approximately once per month, WOOD comes to Helena to rotate books between the Lincoln and Helena libraries. WOOD explained that as she has learned about her patrons, she learned what type of books they like to read. Some library patrons prefer mysteries while others prefer books on war. WOOD advised that she attempts to rotate books back to the Lincoln library that she knows her patrons will be interested in reading.

WOOD stated that some of the research she completed for KACZYNSKI included getting addresses for letters KACZYNSKI was writing to magazines and newspapers. WOOD stated that KACZYNSKI had many "causes" for which he wrote letters highlighting social injustices. WOOD stated that one such cause involved a Mexican friend of KACZYNSKI's who had some problems in California. WOOD believed this friend had been injured and was not receiving any form of compensation or assistance. KACZYNSKI organized a letter-writing campaign on behalf of this Mexican individual.

WOOD stated that some of the addresses she researched for KACZYNSKI included a newspaper from back east, a newspaper in Colorado and one or two newspapers in California. WOOD did not recall KACZYNSKI requesting any newspaper articles, only newspaper addresses.

SSA NOEL displayed a list of 24 books and periodicals prepared by SA CANDICE L. DELONG which were items sent to the Lincoln library through the Inter-Library Loan Program. WOOD reviewed the list and stated that she believed that KACZYNSKI had been the individual for whom the following books had been requested:

Human Helplessness;

Theory and Applications Society Survival of the Adversary Culture;

Social Criticism and Political...

WOOD stated that she believed the following books and/or periodicals were also requested on behalf of KACZYNSKI although she stated she could not be absolutely certain. WOOD based her belief on the fact that KACZYNSKI often read and requested books pertaining to sociology and psychology. WOOD also advised she could not recall requesting these books for anyone else. Those books and periodicals are:

Skeptical Inquirer;

New Scientist;

Psychological Bulletin;

Psychological Reports;

Sanity, Insanity and Common Sense;

Psychological Review.

WOOD stated that the book entitled, "Surface Self Diffusion of Metals," was in fact requested by a young boy who was trying to learn how to make knives. She stated that upon receipt of this book, the young boy came to her and told her that he could not understand the book.

WOOD was asked about specific magazines and books. She advised as follows with regard to the specific book and/or magazine:

Scientific American -

The Lincoln library has lots of people reading Scientific American. The magazine is maintained at the Lincoln library and WOOD stated she believed KACZYNSKI read this magazine.

Omni -

Omni Magazine is not very requested at the Lincoln library and WOOD has no recollection of this magazine being requested by KACZYNSKI.

Violence in America -

WOOD stated that she remembered this book having been requested by someone in the past. WOOD could not say for sure but said that it was possible KACZYNSKI had been the requester of this particular book.

True Believer, by ERIC HOFER

WOOD stated that she remembers someone having requested this book at the Lincoln library and that it sounds like something that KACZYNSKI would request; however, WOOD could not remember specifically for whom she requested the book.

The Ancient Engineer, by L. SPRAGUE DECAMP

WOOD recalled having requested this book for KACZYNSKI. Additionally, WOOD recalled ordering "tons of stuff" on L. SPRAGUE DECAMP for KACZYNSKI. WOOD stated that she believed she requested the assistance of CAROL KOPEC of the Inter-Library Loan Program in Helena with regard to KACZYNSKI's request involving L. SPRAGUE DECAMP. WOOD believed that the Ancient Engineer book which she obtained for KACZYNSKI was the hardback version although WOOD stated that it could have been the paperback version.

Advertising Age

WOOD advised that she had never ordered Advertising Age for anyone, to include KACZYNSKI, at the Lincoln library.

WOOD stated that she did do some inter-library loan requests for KACZYNSKI involving journals and books but not newspapers. WOOD stated that she did not do any requests on behalf of KACZYNSKI for the periodical, Canadian Dimensions.

WOOD stated that KACZYNSKI would travel to Missoula, Montana, about every two to three months via bus. While in Missoula, KACZYNSKI would rent an automobile. WOOD assumed that while KACZYNSKI was in Missoula, he would do research there for possible sources of books. WOOD explained that it was not uncommon for Lincoln library patrons to find books at other libraries and then ask WOOD to order the books for them. In this way, WOOD explained, the patrons would not incur any retrieval costs levied by other libraries.

WOOD commented that KACZYNSKI would usually check in at the Lincoln library prior to taking these trips to Missoula. WOOD likened this to KACZYNSKI asking permission from her to go. WOOD stated that she did not believe that KACZYNSKI was ever gone for more than a week on any of these trips. WOOD stated that she was very surprised to learn that KACZYNSKI could drive a car. She believed up until KACZYNSKI told her about renting cars in Missoula that KACZYNSKI was "anti-car" because of the pollution problem. WOOD noted that KACZYNSKI seemed to be real "anti-stuff" but could not be more specific about what she meant by "anti-stuff."

WOOD stated that she learned about KACZYNSKI's renting cars in Missoula from conversations she had with KACZYNSKI. WOOD stated she was also surprised to hear that KACZYNSKI was driving an automobile because she had never seen him drive in Lincoln.

WOOD went on to say that KACZYNSKI told her he takes the bus to Missoula where he rents a car and goes grocery shopping. KACZYNSKI told her he buys groceries in Missoula and then drives them in the rental car back to Lincoln, where he unloads them at his cabin. WOOD stated KACZYNSKI then drives back to Missoula where he returns the rental car and takes the bus back to Lincoln. Prior to this time, WOOD advised that she and LUCILLE SULLIVAN believed that KACZYNSKI had been bringing his groceries back to Lincoln, Montana, on the bus. According to WOOD, SULLIVAN had asked KACZYNSKI to explain how he got his groceries back and that KACZYNSKI had related the above to them. WOOD suggested that because of KACZYNSKI's lifestyle and apparent lack of income, it is possible that he rents a vehicle at a "rent-a-wreck" type place in Missoula.

WOOD stated that KACZYNSKI "hops on a bus and goes and visits a lot more than anyone thought." WOOD recalled KACZYNSKI telling her about these bus trips. WOOD observed that about two or three years ago, KACZYNSKI was very excited about taking a trip "back home." WOOD went on to say she believed that in the last

two to three years, KACZYNSKI has gone back to the Chicago or Detroit area on a couple of occasions. Additionally, WOOD stated KACZYNSKI went "down" to see his Mexican friend at least once in the past two to three years. WOOD believed this Mexican friend's situation really bothered KACZYNSKI. WOOD believes KACZYNSKI visited this friend in either California or Colorado.

WOOD stated that approximately two years ago, in either the spring of 1994 or the spring of 1995, KACZYNSKI was coming into the Lincoln library every day on Tuesdays, Wednesdays and Thursday afternoons. WOOD stated that KACZYNSKI's presence at the library seemed to intimidate other library patrons. WOOD recalled KACZYNSKI's daily trips interfered with Lincoln students wanting to do their spring reports. WOOD stated that KACZYNSKI continued this daily use of the library through the fall of that year. WOOD stated that KACZYNSKI's every day visits to the library "irritated" her. WOOD advised that KACZYNSKI would go to the reference table at the back of the library and cover the table with newspaper "stuff" and books that KACZYNSKI took from his backpack. WOOD stated that KACZYNSKI's reference materials would cover the entire table, making it difficult for anyone else to use this area. WOOD stated that KACZYNSKI would read material he brought, as well as material from the library shelves. She notes he also did a lot of writing.

WOOD explained that over the last 12 years, the Inter-Library Loan Program has grown from a small to a large part of her job. WOOD stated there were books that were not available for loaning, even if they were available at other libraries. Types of books not available to be loaned were books out of print, newly released books or reference books.

WOOD recalled doing some research in Whose Who for someone approximately two to three years ago. WOOD recalled that CAROL KOPEC at the Helena Lewis and Clark Library assisted her with this request. WOOD recalled faxing the request to KOPEC who in turn mailed the information back to WOOD at the Lincoln library. WOOD could not remember if this request had been on behalf of KACZYNSKI.

Another reference book available at the Lincoln library, according to WOOD, was the Blue Book of Colleges. This book consisted of four or five volumes and contained material with regard to colleges, entrance requirements, faculty, professors and classes needed for particular degrees. WOOD guessed that the most recent edition at the Lincoln library was 1994. WOOD advised that older editions were destroyed when they were replaced by the newer versions. WOOD advised that this book is available in the Lincoln library, Reference Section, which is the area in which KACZYNSKI always sits when he is at the library.

WOOD stated that another reference book that KACZYNSKI uses a lot when he comes to the Lincoln library is the three volumes of Standard and Poor's Register (S & P). WOOD stated that she had done a lot of work for KACZYNSKI in the past in this reference book and that she had instructed KACZYNSKI on how to use all three volumes. WOOD stated that the Lincoln library is about one year behind with regard to

S & P issues. WOOD stated that now that KACZYNSKI knows how to use the S & P, she takes him to the back of the library where the reference materials are located and leaves him alone while he does his research.

WOOD advised that KACZYNSKI has looked for telephone numbers of companies and corporations "back east." WOOD advised that she helped him locate a couple of such telephone numbers in one of the S & P volumes. WOOD stated she referred KACZYNSKI to larger libraries such as Missoula in order to find additional numbers in which he was interested.

WOOD advised that on occasion, the Lincoln library discards old books, magazines and newspapers. WOOD stated that KACZYNSKI does occasionally take some of this throwaway material home. WOOD recalled KACZYNSKI recently took a book that she was prepared to throw away concerning ballistics and how fast bullets travel. Later, WOOD wished she had this book back because a Lincoln student had come in doing research on ballistics and could have used this book.

WOOD advised that in the past, the Lincoln library had the following newspapers:

The Helena Independent Record

The Missoula Missoulian

The Great Falls newspaper

WOOD advised that she had let KACZYNSKI take old issues of all of these newspapers. WOOD also recalled giving KACZYNSKI old issues of the National Geographic.

WOOD went on to say that one time in the past, she had obtained the address of the San Francisco Chronicle for someone. However, she could not specifically say that she had done this on behalf of KACZYNSKI. WOOD did say it was possible that KACZYNSKI had made the request. WOOD recalled that the address she had gotten for the individual requesting it had been just the general address of the newspaper. WOOD advised that she had never requested articles from any San Francisco newspaper on behalf of KACZYNSKI.

WOOD stated that discarded items from the Lincoln library are taken to the Lincoln dump which is located two miles east of Lincoln just off of Highway 200. WOOD observed she had taken the library's old Olivia electric typewriter to the dump and discarded it there. The library now has a new IBM typewriter. WOOD advised KACZYNSKI had never used the old typewriter nor had he ever requested to use the new typewriter. WOOD observed that all of the lists that she had ever received from KACZYNSKI were either neatly printed or written "real nicely" in long-hand.

KACZYNSKI had never requested WOOD to do any errands for him while she was on any of her trips to Helena, Montana. Specifically, WOOD stated she had never done any banking for KACZYNSKI in Helena or anywhere else. She stated jKACZYNSKI had never asked her to mail any letters for him or to pick up any mail for him from the post office.

WOOD described KACZYNSKI as someone who liked to be alone. She stated KACZYNSKI was not rude to people and he could be real caring, but you had to know him. WOOD commented that KACZYNSKI had a very good relationship with her oldest son, DANNY, who is 13 years old. WOOD stated that DANNY was very comfortable around KACZYNSKI. KACZYNSKI was always concerned about DANNY's well-being, problems and about how DANNY felt about things. WOOD stated that KACZYNSKI would also discuss computers and other contemporary topics with her son. WOOD's general impression of KACZYNSKI's feelings about computers was "they were not were they were cracked up to be."

WOOD advised she noted that KACZYNSKI could carry on great conversations and that KACZYNSKI did not seem to have anything against people who had televisions, telephones and radios but KACZYNSKI just felt these articles were not important to him.

WOOD stated about three years ago, she helped KACZYNSKI find addresses for Montana United States Senator BAUCUS, U. S. Congressman PAT WILLIAMS and former U. S. Congressman CONRAD BURNS. WOOD stated she believed KACZYNSKI wrote each of these governmental officials some type of letter.

WOOD stated that KACZYNSKI does not appear to have anyone else in Lincoln to talk to other than the staff at the Lincoln library. WOOD observed that the Lincoln library appeared to be the only place in town that offered KACZYNSKI friendship.

WOOD advised that KACZYNSKI never mentioned to her about taking any trips to Helena. WOOD stated she does not believe that KACZYNSKI has ever been at the Helena Lewis and Clark branch of the library. WOOD advised that to the best of her knowledge, the only other library that she knows KACZYNSKI to have gone to is the public library in Missoula.

WOOD described KACZYNSKI as looking like a hermit and always wearing dirty jeans that "looked like they could stand up in a corner." WOOD advised that when KACZYNSKI comes to the Lincoln Public Library, he dresses in jeans and a flannel shirt and wears an old down-filled jacket. WOOD advised that KACZYNSKI's beard and hair did not appear to be clean and that he had some teeth missing. She stated that KACZYNSKI "smelled" and bothered other patrons with his odor and appearance. WOOD said that it was not uncommon for the staff to spray a deodorizer after KACZYNSKI leaves the library. WOOD also stated that after KACZYNSKI returns books to the library, it is necessary for the staff to clean the books of smudge prints that KACZYNSKI leaves on the books. WOOD observed that she did not want her

library patrons to have to check out books that were dirty.

WOOD advised KACZYNSKI always has a "great big humongous backpack" full of stuff when he comes to the library. WOOD described this backpack as being canvas in color on a big metal frame with lots of pockets. WOOD also stated that KACZYNSKI generally wears "logging boots" on his visits to the Lincoln library.

WOOD went on to say that KACZYNSKI always rides to the library on an old bicycle. WOOD observed that in the winter, KACZYNSKI puts chains on the bicycle and comes to the library in all kinds of inclement weather. WOOD observed that KACZYNSKI has come to the library on occasion when it was 40 below outside.

The following list of names was read to WOOD in an effort to determine if any of them were familiar to WOOD:

THOMAS TYLER - WOOD stated that this name was not familiar to her.

BOON LONG HOE - WOOD said that BOON may sound familiar but the LONG HOE portion of the name is not familiar to her.

JOHN T. MINOR - May be familiar to WOOD. WOOD believed possibly MINOR was the author of a journal article.

MANFRED MORARI - WOOD advised this name was not familiar.

GILBERT T. MURRAY - WOOD advised this name was not familiar.

WILLIAM DENNISON - WOOD advised that this name is familiar to her but she did not recall why.

CHARLES EPSTEIN - WOOD advised that this name is familiar to her but she does not recall why.

DAVID GELERTNER - WOOD advised this name is not familiar to her.

THOMAS MOSSER - WOOD advised this name is familiar but cannot recall why.

BOB GUCCIONE - WOOD advised that this name is familiar but cannot recall why.

MIRROR WORLDS - WOOD advised she believes this book was available at the library once but cannot remember for whom she requested the book.

WOOD was shown a copy of a Federal Grand Jury Subpoena issued to the Lewis and Clark Public Library, Helena, Montana, for records of THEODORE J. KACZYNSKI, as well as a court order forbidding disclosure of the service of Grand Jury Subpoena and notification of individuals named in the subpoena. WOOD stated that she would honor the confidentiality of the interview.

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Unabomber

FEDERAL BUREAU OF INVESTIGATION THOMAS L. STELL INTERVIEW

April 1, 1996

Date of Transcription: April 1, 1996

THOMAS L. STELL, white male, date of birth (omitted), (information omitted) Montana, telephone number (omitted), was advised of the official identities of the interviewing agents and the nature of the interview. STELL provided the following information:

STELL has been a bus driver for RimRock Trailways (RRS) since September of 1994. Prior to driving for RimRock, he drove the Billings, Montana to Seattle, Washington and return bus route for Greyhound Lines for approximately six years. STELL currently is driving the RRS Great Falls, Montana to Idaho Falls, Idaho bus route. STELL advised that the drivers switch in Butte for the RRS Great Falls, Montana to Idaho Falls, Idaho bus route. Stell advised at approximately 3:30 am the schedule 16 bus leaves Butte for Great Falls and the schedule 15 bus returns to Butte at approximately 10:20 am. The schedule 15 bus leaves Butte for Idaho Falls at approximately 10:45 am and the schedule 14 bus returns to Butte at approximately 7:00 pm. The schedule 13 bus leaves Butte for Idaho Falls at approximately 7:30 pm and the schedule 16 returns to Butte at approximately 3:00 am. The schedule 13, 14, 15 and 16 are all RRS route 7915 busses.

STELL stated that he drove the Missoula, Montana to Helena, Montana and return from June, 1995 to the first part of September, 1995. The schedule 6 bus would leave Missoula at approximately 4:00 pm and returns to Missoula at approximately 6:45 pm. The schedule 3 bus leaves Missoula at approximately 7:15 pm and returns to Missoula at approximately 9:30 pm. The drivers would switch in Helena.

STELL stated that the bus station managers in Great Falls, Montana are VERN and LODIE (LNU). He advised that the RRS Great Falls drivers, for the period of time discussed, are BOB LAIRD, Sr., BOB LAIRD, Jr., TOM CAMPBELL and TOM CARPENTER.

STELL was shown photographs without any identifying information of THEODORE J. KACZYNSKI, both with and without a beard. STELL stated he recognized the photo of KACZYNSKI without the beard. STELL could not provide any additional

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descriptive information, except he believes KACZYNSKI had been wearing a dark baseball cap the last time he saw him. STELL thinks the last time was on the bus, which Stell was driving, was several months ago. STELL was not advised of KACZYNSKI's name or current whereabouts.

STELL believes he is sure that he drove KACZYNSKI on the Great Falls to Idaho Falls bus, and vice versus, a number of times, remembering KACZYNSKI at least 3 or 4 times at the driver switch point in Butte.

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FEDERAL BUREAU OF INVESTIGATION WANDA KACZYNSKI INTERVIEW

March 26, 1996

Date of Transcription: March 26, 1996

WANDA T. KACZYNSKI (Protect Identity) was interviewed regarding her son, THEODORE J. KACZYNSKI, whose name had been referred to the FBI by DAVID R. KACZYNSKI as a possible suspect in the "Unabom" investigation. DAVID KACZYNSKI (Protect Identity) was also present during the interview.

WANDA KACZYNSKI was served with Federal Grand Jury subpoena issued at San Francisco, California calling for production of certain records pertinent to this inquiry. She advised that she had just spoken to DAVID KACZYNSKI (hereinafter referred to as DAVE) regarding the investigative interest in THEODORE J. KACZYNSKI (hereinafter referred to as TED) and that she would cooperate. Her cooperation was predicated on the thought that TED is not responsible for the bombings attributed to the "Unabomer" and that her cooperation would ultimately assist in eliminating TED as a suspect.

She was informed of the confidentiality requirement as set forth in the non-disclosure order attached to the above subpoena. She stated that she was sensitive to the fact that her other son, DAVE, brought TED's name up to the FBI in confidence. She was confident that TED would be eliminated as a suspect and said she had no intention of communicating with TED on this matter.

She advised that TED came home to Lombard, Illinois after he left the University of California at Berkeley (UCB). She believed that he left UCB in 1969, and she recalled that TED and DAVE took a trip to Canada before returning to Illinois. TED did not work for about a year after he returned to Lombard, Illinois. She and her husband thought that TED needed a break after UCB and regarded it a sabbatical. In 1970, TED went to work for Oakbrook Mall in Oakbrook, Illinois as a landscaper. It was a seasonal job, but she could not remember when that job ended. In that regard, there was some confusion as to whether TED left Lombard, Illinois for Montana in 1970 or later in 1971.

WANDA and her husband made regular summer trips to Montana starting the summer after TED moved to Montana. She remembered they habitually visited TED in early

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September, although there may have been a few occasions when they visited earlier in the summer, possibly in June. Those regular visits ended in the mid 1980's when TED cut off contact with the family. She could not recall whether it was 1984 or 1985.

In 1978, TED wrote a letter inquiring as to whether there might be a job available at Foam Cutting Engineers, where TED's father worked. TED's father determined that there would be an opening so TED traveled from Montana to Illinois in order to work and make some money. As far as Wanda knew, TED's only purpose in coming to Illinois in 1978 was to earn some money, and he always intended to return to Montana.

She recalled that TED took the Greyhound bus from Montana to the main bus terminal in Chicago and that he caught the "Northwestern," a local commuter train, to Lombard.

At this point DAVE advised that on this occasion TED's father went to pick TED up at the bus terminal in Chicago, but TED and his father missed each other due to some miscommunication. DAVE recalled that TED telephoned to find out why his father did not meet him, and that TED ended up taking a taxi to Lombard.

To the best of WANDA KACZYNSKI's recollection, TED started working at Foam Cutting Engineers within a few days of his arrival at Lombard.

TED remained in Lombard until the Fall of 1979, when he returned to Montana. WANDA KACZYNSKI recalled that TED just took his suitcase, plus whatever he could carry. She walked with him to the local commuter train station in Lombard so that he could catch a bus in Chicago for Montana. She was unable to fix a more precise date for his return to Montana.

WANDA KACZYNSKI noted that TED did not maintain any long term friendships with anyone in the Chicago area, and that he would not have stayed with anyone else.

She recalled that TED had been a member of the local Audubon Club for a brief period when he stayed at Lombard in 1978 and 1979. She believed that the club was located in Glen Ellen, Illinois, but she did not know much about his involvement with the club.

She noted that TED had been a member of the Sierra Club when he was in California.

She did not recall anything about TED traveling to Saskatchewan, Canada in 1979. She did remember the trip that TED and DAVE took to British Columbia after TED left UCB in 1969. To the best of her knowledge and recollection, TED never visited Chicago after he returned to Montana in 1979.

She and her husband continued to visit TED each September until the mid 1980's. She recalled that TED did a lot of work around the cabin planting apple trees and building a root cellar. The root cellar is visible from the front door of the cabin off to the right and is located across the creek about 100 to 150 feet from the cabin. She described it as an enclosure in the side of a hill that is covered with sod. She was not sure about the door, but thought that a trap door would be likely since TED would probably want to keep rodents and small animals out of the cellar.

TED used the cellar to preserve potatoes, onions and carrots that he grew in the garden.

TED worried about forest fires and that fact that a fire might destroy his papers inside the cabin. She stated that TED had a little attic or loft inside the cabin where he kept important papers.

Their last trip to Montana in the mid 1980's was a most wonderful visit. TED took them to see the flowers in the meadow and they generally had a great time. Shortly after returning to Illinois, TED sent an angry letter in which TED said that he did not want to hear from the family anymore. That was the last visit that they made to Montana and she believed that it must have been about 1985.

She had no recollection of TED ever living or working in Salt Lake City.

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FEDERAL BUREAU OF INVESTIGATION LARRY D. PETERSON INTERVIEW

March 16, 1996

Date of Transcription: March 16, 1996

LARRY D. PETERSON, (information omitted) Avenue (information omitted), telephone number (omitted), was contacted by Special Agent (SA) JOHN R. GRAY of the Federal Bureau of Investigation (FBI), and he voluntarily provided the following information:

PETERSON advised that he has been a bus driver since January 1993. He began with Intermountain Bus Lines and then with Rimrock Trailways upon their purchase of Intermountain in July 1995. He stated that he has driven the Great Falls to Lincoln to Missoula to Kalispell then Whitefish Route (7916) since October 1994.

PETERSON was shown the June 5, 1990, Montana driver's license photograph of THEODORE JOHN KACZYNSKI depicting a fully bearded white male. Upon observing the photograph, PETERSON stated he is sure that the individual depicted has been his passenger four or five times within the last year. PETERSON advised that the passenger always pays in cash with no receipt given.

PETERSON further described the passenger from the photograph as "greasy-dirty" looking wearing a green army fatigue-type jacket and carrying a duffel bag (gym bag) described as small and green in color. PETERSON stated that the individual always sits towards the rear of the bus and has never been a problem. PETERSON recalls the passenger as having only a four to five day growth of facial hair rather than the individual shown in the photograph. However, PETERSON stated that the passenger he recalls is without a doubt the person depicted in the photograph.

PETERSON stated that he recalls the passenger only traveling from Lincoln, Montana, to Missoula, Montana, never continuing on to Kalispell or Whitefish. PETERSON stated that passengers in Missoula would usually continue on to Spokane, Washington, or Butte, Montana. Further, PETERSON never recalls carrying the passenger from Missoula to Lincoln, Montana.

PETERSON noted that the passenger simply appears in the parking lot of the Rainbow

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Cafe, Lincoln, Montana, and always says "Can I get on?". The passenger never mixes with the other passengers and does not go inside the cafe for warmth as do all the others during the 15 minute delay.

PETERSON specifically recalls that the passenger was on his bus as recently as late January 1996 or early February 1996, from Lincoln to Missoula, Montana.

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FEDERAL BUREAU OF INVESTIGATION MARK LLOYD CAMPBELL INTERVIEW

March 15, 1996

Date of Transcription: March 23, 1996

MARK LLOYD CAMPBELL, telephone number (omitted), was contacted by Special Agent (SA) JOHN R. GRAY of the Federal Bureau of Investigation (FBI), and he voluntarily provided the following information:

CAMPBELL advised that he has been employed as a bus driver since 1978 when he went to work for the Intermountain Bus Line. He has driven the Missoula to Lincoln to Great Falls Route (7916) since February 1987, except for a short assignment to another route from January to July, 1994. CAMPBELL stated that his prior service was with Intermountain Lines and it continued when his current employer, Rimrock Trailways, purchased the route in July 1994.

CAMPBELL was shown the June 5, 1990, Montana driver's license photograph of THEODORE JOHN KACZYNSKI depicting a fully bearded white male. CAMPBELL immediately identified the individual depicted as a passenger from Lincoln, Montana. CAMPBELL stated that he has had him as a passenger several times (three or four) within the last year. CAMPBELL stated that he always travels from Lincoln to Missoula or Missoula to Lincoln, Montana, and does not ever recall him traveling from Lincoln to Great Falls, Montana. CAMPBELL advised that his most recent recollection of KACZYNSKI was during the holiday period (Thanksgiving to Christmas) 1995. At that time, CAMPBELL recalls him getting on in Missoula, Montana, and getting off when the bus stopped in Lincoln, Montana.

CAMPBELL clearly described KACZYNSKI as looking just like his photograph. Further, CAMPBELL described KACZYNSKI as an unkempt individual who is "scruffy" looking. CAMPBELL recalled that KACZYNSKI always wears dark clothing and may have worn an army fatigue type jacket once which he further described as being bulky.

CAMPBELL stated that KACZYNSKI always travels alone and sits towards the rear of the bus. Additionally, KACZYNSKI does not engage people in conversation, and CAMPBELL does not recall KACZYNSKI ever traveling with anything but carry-on

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luggage. CAMPBELL could describe the carry-on as a "small bag."

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FEDERAL BUREAU OF INVESTIGATION DAVID KACZYNSKI INTERVIEW

March 12, 1996

Date of Transcription: March 12, 1996

DAVID R. KACZYNSKI was interviewed at the parking lot of the Yorktown Shopping Mall, Lombard, Illinois, in regard to THEODORE JOHN KACZYNSKI, also known as TED. KACZYNSKI furnished the following information:

DAVID KACZYNSKI (hereinafter referred to as DAVE) advised that in (January) 1973 he drove through Salt Lake City, Utah, on his way back to Great Falls, Montana. DAVE stopped off to visit THEODORE JOHN KACZYNSKI (hereinafter referred to as TED) in Salt Lake City while enroute and spent one night there. DAVE noted that his visit with TED was not planned in advance and he did not recall the address. DAVE did not receive directions from TED prior to his arrival and DAVE was not sure how he found TED's apartment, although he presumed that he just looked up the address on the map. DAVE believed that TED wrote some letters to his mother, WANDA KACZYNSKI, while TED was in Salt Lake City so so he probably got the address from the letters.

TED was living in a one bedroom apartment in Salt Lake City in an unrecalled part of town. DAVE vaguely recalled that it was a multi story apartment building constructed with brown stone material and that TED's apartment was on one of the upper floors. DAVE believed that TED lived on the second floor, but he could be sure. DAVE had no recollection of the general location of the apartment, although he believed that it was in Salt Lake City and not in one of the nearby suburbs. DAVE was shown a street map of Salt Lake City and vicinity, but he was unable to add any further information that might focus on the general location of TED's apartment.

When TED first went to Montana he owned a Chevelle, which was later sold or traded for a pickup truck, date not recalled and make, year and model not recalled. TED sold the pickup truck, date not recalled, and DAVE understood that the truck wasn't running so TED did not get very much money for it.

In regard to TED's trip to Lombard, Illinois in 1978, DAVE recalled that TED

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travelled by bus and that it was in the Spring or Summer of 1978. DAVE was informed that TED's application for employment at Foam Cutting Engineers was dated June 23, 1978, and that he started working there on June 26, 1978. DAVE was asked to clarify how long TED had been in Lombard, Illinois prior to starting to work at Foam Cutting Engineers.

DAVE advised that TED's purpose for traveling to Lombard, Illinois was to work at Foam Cutting Engineers with DAVE and their father. DAVE believed that TED started working fairly soon after he arrived. DAVE was unable to fix a specific time period or associate TED's arrival with a specific date, such as TED's birthday. DAVE doubted that TED was there for more than thirty days prior to the time that he started working at Foam Cutting Engineers.

DAVE advised that after TED quit his job at Prince Castle in Addison, he borrowed DAVE's 1975 Datsun for a trip to Saskatchewan, Canada. That was during the Summer of 1979. TED returned to Lombard, Illinois and then returned to Montana in the late Summer or early Fall of 1979. DAVE could not recall with certainty whether TED borrowed DAVE's car for a round trip from Chicago to Montana in 1979.

DAVE's memory of that time was extremely vague, but he seemed to remember that TED once drove DAVE's car to Montana and that he brought the car back to Chicago. DAVE could not recall the date, or recall an approximate time period. DAVE also had a vague, dream-like recollection of TED returning from Montana to Chicago for a visit. He thought that it could have been in 1979, or 1980, or conceivably at some later date. DAVE could not provide more specific details as to those vague memories.

DAVE advised that he did not have any recollection of TED having a lab in his room. DAVE noted that he was in fourth grade when TED went off to college and that TED did not often seek out DAVE's brotherly companionship. TED was also a very private person and DAVE only went into TED's room on a few occasions. DAVE could not recall ever being in TED's room without TED being present.

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FEDERAL BUREAU OF INVESTIGATION WASHINGTON, D.C. 20535 LAB REPORT

Mar. 11, 1996

To: SAC, San Francisco
FBI File No. 149A-SF-106204
Lab No. 60218031 S/D ZW UI UJ
ZZ

Your No. 149A-SF-106204
Reference: Communication dated February 17, 1996
Re: UNABOM;
MAJOR CASE #75
OO: SAN FRANCISCO

Specimens received: February 18, 1996

Specimens:

- K389 Envelope with accompanying nine sheets of paper (#45)
- K390 Envelope with accompanying thirty-three sheets of paper (#44)
- K391 Envelope with accompanying twenty-six sheets of paper (#43)
- K392 Envelope with accompanying sheet of paper and pamphlet (#14)
- K393 Envelope with accompanying eight sheets of paper (#23)
- K394 Envelope with accompanying two sheets of paper (#24)
- K395 Envelope with accompanying sheet of paper and want ad notice (#16)
- K396 Envelope with accompanying four sheets of paper (#19)
- K397 Envelope with accompanying two sheets of paper (#25)
- K398 Envelope with accompanying three sheets of paper and piece of graph paper (#21)
- K399 Envelope with accompanying sheet of paper (#15)
- K400 Envelope with accompanying three sheets of paper (#20)
- K401 Envelope with accompanying nine sheets of paper (#22)

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K402 Envelope with accompanying sheet of paper (#33)
K403 Envelope with accompanying three sheets of paper (#34)
K404 Envelope with accompanying two sheets of paper (#17)
K405 Envelope with accompanying two sheets of paper (#27)
K406 Envelope with accompanying three sheets of paper (#30)
K407 Envelope with accompanying six sheets of paper (#18)
K408 Envelope with accompanying six sheets of paper (#28)
K409 Envelope with accompanying sheet of paper (#31)
K410 Envelope with accompanying two sheets of paper (#32)
K411 Envelope with accompanying five sheets of paper (#29)
K412 Envelope with accompanying seven sheets of paper (#36)
K413 Envelope with accompanying sheet of paper (#26)
K414 Envelope with accompanying two sheets of paper (#38)
K415 Envelope with accompanying sheet of paper (#37)
K416 Envelope (#35)
K417 Envelope with accompanying sheet of paper (#39)
K418 Four sheets of paper (#42)
K419 Envelope (#41)
K420 Envelope with accompanying two sheets of paper (#40)
K421 Envelope (#8)
K422 Envelope with accompanying three sheets of paper (#12)
K423 Envelope with accompanying sheet of paper (#11)
K424 Envelope with accompanying three sheets of paper (#10)
K425 Envelope with accompanying five sheets of paper (#9)
K426 Envelope with accompanying four sheets of paper (#7)
K427 Envelope with accompanying sheet of paper (#3)
K428 Envelope with accompanying sheet of paper (#4)
K429 Envelope with accompanying three sheets of paper (#2)

- K430 Envelope with accompanying six sheets of paper (#1)
- K431 Envelope with accompanying two sheets of paper (#6)
- K432 Envelope with accompanying four sheets of paper (#5)
- K433 Envelope with accompanying eight sheets of paper (#13)

Results of Examination:

GENERAL INFORMATION:

This report supplements the report previously furnished under this caption dated February 19, 1996 (60218031 S/D ZW UI).

PHOTOGRAPHS:

You have previously been provided with copies of photographs which depict a portion of the submitted specimens.

FINGERPRINTS:

You will be separately advised concerning the results of the latent fingerprint examination.

DOCUMENTS:

The K389 through K391 typewriting did not originate from the same sources as typewriting attributable to the UNABOMBER.

Due to the nature of the writing, possibly deliberately distorted, previously submitted on specimens attributable to the UNABOMBER and the lack of comparability, it could not be determined whether the K389 through K433 writer(s) prepared any of the questioned writing in this matter.

Specimens K389 through K433 contain no indented writing of value. In addition, specimens Q736 through Q748, previously received from the same source as K389 through K433, contain no indented writing of value.

The U.S. "G" postal stamp submitted with device #16, The Gelernter letter, the Roberts letter, the Sharp letter, the Times letter, the San Francisco cronicle letter, the New York Times manifest, the Washington Post manifest, the Penthouse manifest and the Berkeley manifest U.S. "G" postal stamps originated from booklets of stamps. The "G" Old Glory stamps are issued with the "G" printed in three different colors, black, red and blue. The stamps attached to specimens attributable to the UNABOMBER have the "G" in black. The K419 and K420 U.S. "G" postal stamps have the "G" in red.

Specimens K389 through K433 have been photographed.

DNA ANALYSIS:

DNA analyses of the DQ alpha (DQA1) and the Polymarker (PM) loci were conducted on the specimens listed below. The results of these analyses are as follows:

Specimens	LDLR	GYPA	HGGG	D7S8	Gc	DOAI
K408(stamp)	BB	AA	AA	BB	CC	1.1,2
K414(envelope flap)	BB	AA	AA	BB	CC	1.1,2
K419(envelope flap)	BB	AA	AA	BB	CC	1.1,2
K425(stamp)	BB	AA	AA	BB	CC	1.1,2

The DNA DQ alpha and PM typing results for specimens K408 (envelope flap) and K419 (stamp) indicate the presence of DNA from more than one individual. Because of these mixtures, no conclusive DNA results were obtained for these specimens, however; the major type present is consistent with the type shown above.

Insufficient DNA was obtained from specimens K414 (stamp), K425 (envelope flap), K427 (stamp), K427

(envelope flap), K432 (stamp) and K432 (envelope flap).

HAIR AND FIBERS:

No human hairs of value for meaningful comparison purposes were found on specimens K389 through K433. Cat hairs were removed and mounted on glass microscope slides for possible future comparisons.

Textile fibers of different types and colors were found on the above-mentioned specimens. The fibers recovered from Device #16 (FBI Laboratory 50427001) and from previously submitted manuscripts were compared to these fibers and no common fibers were found.

DISPOSITION OF SPECIMENS:

The submitted specimens are being retained in the Laboratory.

Please call the Explosives Unit - Bomb Data Center, (202) 324-2696, if you have any questions concerning the results of examinations in this case.

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FEDERAL BUREAU OF INVESTIGATION CAROLYN GOREN, M.D., INTERVIEW

March 6, 1996

Date of Transcription: March 6, 1996

On 3/6/96, Dr. CAROLYN GOREN, (MD), Internal Medicine/cardiology, (information omitted), Missoula, Montana, (information omitted), was contacted by Special Agents CANDICE L. DeLONG and PHILLIP M. GADD of the FEDERAL BUREAU OF INVESTIGATION (FBI), and was served Federal Grand Jury subpoena GJ 95-2, 9301718, CR 93-0288, (SF Division # 1139). Dr. GOREN was made aware of the non-disclosure order regarding the subpoena, and thereafter provided the following information:

GOREN stated that KACZYNSKI was a self-referred patient who came to her in 1991 with the Chief Complaint (CC), of what he believed to be a possible cardiac problem. According to GOREN, KACZYNSKI was shy and reserved in nature and she noticed nothing particularly unusual about him. GOREN stated that his personal hygiene was, "Unremarkable," adding that she did not notice anything unusual. GOREN stated that KACZYNSKI did not talk about his background or where he lived, and she does not know how he traveled to her office in Missoula. GOREN recalled that she did not find anything wrong with KACZYNSKI'S heart or any other system, and she only prescribed a low dose (and number) of sleeping pills for stress-induced insomnia. GOREN added that she only saw KACZYNSKI twice in her office, although he sent a record of his blood pressure readings to her every six months.

When asked by the interviewing Agent if she recalled anything unusual regarding KACZYNSKI, GOREN stated, "He asked me out to dinner". GOREN stated that this invitation came in the form of a letter, and she chose to ignore it and did not go out with him. GOREN stated that she recalls receiving a letter from TED'S brother, DAVID, regarding his concern that TED might need to see a psychiatrist, but GOREN stated that she did not refer TED to a psychiatrist, and does not recall the reason for this.

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FEDERAL BUREAU OF INVESTIGATION DAVID KACZYNSKI INTERVIEW

February 24-25, 1996

Date of Transcription: February 28, 1996

During the period 2/24 - 25/96, DAVID KACZYNSKI was interviewed and provided the following information concerning his brother, THEODORE KACZYNSKI, also known as TED:

DAVID (DAVE) has shared many of TED's beliefs regarding nature and the evils of technology. DAVE continues to admire many things about TED, and characterizes TED as "brilliant," while referring to himself as "smart." Nonetheless, DAVE has long been troubled by TED's behavior, particularly by TED's extreme antagonism to their parents. TED has behaved in an "attacking" manner to his parents, writing them hostile letters in which he accused them of "ruining his life." He quoted one of the letters which TED sent to his parents as including the sentence, "I can't wait until you die so I can spit on your corpse."

DAVE characterized TED's hostility toward his parents as essentially lifelong. He described an incident at the dinner table when TED was 12 or 13, after the family had moved to Evergreen Park in Chicago. Their mother, WANDA, was carrying a dish of hot food from the oven to the table, when TED stood and drew her chair out for her in an apparently gentlemanly manner. When WANDA smiled and began sitting down, TED jerked the chair out from under her and she fell to the floor, while the dish fell onto the table. WANDA "began screaming" at TED, while TED stood and laughed at her. Their father sternly ordered TED to go up to his room (in the attic), which TED did, still laughing. DAVE noted that incidents like this were never followed by discussion or apology, but were simply not mentioned again after everyone "simmered down."

TED's inability to make friends or establish any ongoing relationships is also a lifelong characteristic of his. Since he had not thought TED was much interested in relationships with women, DAVE was surprised when TED told him he had advertised in the paper for female companionship during TED's time at the University of California at Berkeley (UCB) in 1968 - 69. DAVE believes TED continued to be unsuccessful in his quest

(pages 2-3 omitted) austerity in his personal habits and rigid control of his appetites. DAVE knows of no occasion when TED drank alcohol, or even coffee or tea, since

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TED deplors the consumption of substances which have mind-altering qualities. TED has never smoked as far as DAVE is aware; DAVE noted that he, himself has smoked cigarettes, a pipe, and chewed tobacco, as well as drunk alcohol in moderation.

Because of TED's abstemious habits, DAVE was not surprised when he saw how TED was living in his cabin in Montana in 1986. The cabin was constructed of wood, and consisted of one room, approximately 10 feet by 12 feet. The foundation was poured "sackrete" pillars; the roof was tarpapered, with a pipe from the wood stove venting from the top. The wood stove, from which issued a great deal of wood smoke and ash, stood in the center of the room. (DAVE recalled that letters he received from TED often had a distinct, smoky odor.) The floor was wood, although TED indicated he planned to tile it so he could sweep the ashes from the fire out more efficiently. There was a small platform bed, a small table and chair, and a storage loft; all of these items were made out of wood by TED himself. There was no electricity or running water in the cabin; TED used candles with metal reflectors for light, and obtained water either from the nearby creek or, in winter, from melted snow. There were no sanitary facilities, and TED relieved himself outside unless it was too cold to leave the cabin. On those occasions TED used newspapers to contain his feces, which he then burned in the fire of the stove. The exterior of the cabin was painted with a redwood stain. DAVE noted that an unusual feature of the cabin was its lack of eaves. This fault in design he attributed to TED'S inexperience at the time he built the cabin, since eaves are important in a northern location with a great deal of snow, such as Montana.

TED's everyday clothing was dirty and threadbare; TED told DAVE he never washed his everyday clothes, but kept a few things in better condition so that he could wear them "to town." TED washed his hands and face using a water bucket. Despite the conditions TED did not have noticeable body odor, and his hands appeared cared for, without ragged or dirty fingernails. His fingers are somewhat long; DAVE said that TED resembles their mother, WANDA1 while DAVE takes after their father, TED Sr., (now deceased). TED kept his hair short and, when he wore a beard, kept it trimmed. DAVE noted that the last time he actually observed TED was during DAVE's 1986 visit.

TED showed DAVE a root cellar he had built near the cabin, across the creek. Although it was a tight squeeze, both he and TED were able to step down into the cellar, using a small ladder. It was not deep enough to stand up in. DAVE thought the cellar was "beautifully finished," lined with wood, and noted that it contained parsnips and potatoes which TED had grown himself. DAVE said that he had the fleeting but frightening feeling that TED was going to close the hatch to the root cellar while DAVE was still inside, but he controlled his unease and they left the root cellar without incident.

TED's cabin was stocked with a small amount of staples, such as flour, sugar and oil. He hunted for squirrels, and supplemented his diet with wild plants and the parsnips and potatoes he grew in the summer. TED had a kind of spiritual feeling for the land which DAVE also shares; when he killed a squirrel TED would say, "Thank you, Grandfather Squirrel." TED also told DAVE that he never hunted squirrels within a

mile radius of his cabin, since he regarded the nearby squirrels as neighbors.

DAVE noted that despite WANDA's concerns that certain actions she and her husband took during TED's childhood must have been at least partly responsible for TED's lifelong problems and isolation, WANDA is defensive of her own actions in general, and sees herself as having unfairly carried the main burdens of both her family of origin and her own family. DAVE characterized his mother as "often difficult herself," and said she would be difficult to approach in connection with this investigation. He requested that in the event such contact with WANDA is necessary, he be contacted first, and facilitate the approach.

DAVE made the following comments regarding elements of the UNABOM Manifesto which he strongly associated with TED:

He was struck upon his initial reading of the document with the "feel" and tone of it, as well as the many familiar, anti-technology themes which have characterized his brother's statements and writings for many years. One example of this was the phrase "cool-headed logician," (mentioned in FD-302 of the writer dated 2/21/96, reporting results of interview with DAVE on 2/18/96). A further example of what struck DAVE as TED's wording was in the few sentences of a paragraph near the beginning of the (later identified by the writer as Paragraph 17) These sentences "leapt out" at him because they expressed TED's long-held position on the role of art in human life. This definitively marked the UNABOM Manifesto as TED's in DAVE's mind, because DAVE and TED had a running argument for years on the subject, with DAVE holding the position that art was a transcendent phenomenon which could glorify and enhance human experience. TED, on the other hand, always argued that art was dominated by feeling, which eliminated rational control and purposeful activity in favor of "the sensations of the moment." DAVE noted that as he read the paragraph concerning art, LINDA, who was with him, commented that his (DAVE's) face had suddenly "gone white," and they both attributed this as due to the shock of recognition which DAVE experienced upon reading that paragraph.

DAVE then discussed at length an ongoing "discussion and debate -- a dialectic, in fact," which he and TED began in approximately 1978 concerning the nature of reality in the universe. They debated around a "core argument" for years, the essence of which concerned TED's belief that scientists had a truer picture of the universe than artists did, because of their reliance on the "Verifiability Criterion." TED defined this criterion as holding that a "fact" was valid only insofar as it could be proven "true or false." DAVE, on the other hand, believes that reality is not necessarily "black and white," but includes many "mystical unknowables" which are a part of human experience not easily quantifiable, or even identifiable. DAVE includes "Art" as part of this type of experience. DAVE emphasized that TED has long been committed to rationality as a guiding principle, and noted that a particular characteristic of TED'S debating style was that he placed special emphasis on making his arguments compelling. In doing this, TED characteristically stressed that since his ideas were based on a "rational ideal," any action in support of them was justifiable. DAVE expressed sadness in commenting that this type of justification would enable TED to

feel fully justified and even visionary in killing people to accomplish his "rational objectives."

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FEDERAL BUREAU OF INVESTIGATION DAVID KACZYNSKI INTERVIEW

February 18, 1996

Date of Transcription: February 21, 1996

On 2/18/96, DAVID KACZYNSKI (PROTECT IDENTITY) was interviewed in the presence of his wife, LINDA KACZYNSKI and his attorney, ANTHONY P. BISCEGLIE. He provided the following information:

He is the brother of THEODORE ("TED") KACZYNSKI, who to the best of his knowledge currently resides in Montana and who he believes to be the UNABOM subject. TED was born in 1942 in Chicago; DAVID ("DAVE") was born in 1949, also in Chicago. DAVE is currently employed as a social worker in Schenectady, New York. He and LINDA were married in 1990; they have no children.

The reasons for DAVE's belief that TED is the UNABOM subject are several, but he noted that his belief was confirmed when he read the UNABOM "Manifesto" after it was published in the media in September, 1995. LINDA, who is a Professor of Philosophy, spent the month of August, 1995 in Paris, France on vacation, where she was joined by DAVE for the last two weeks of that month. She had read numerous reports about the UNABOM manifesto and details of the case in the Herald Tribune, which is distributed in Paris. She and DAVE had previously discussed the similarities of TED's life to the trail which has been left by the UNABOM subject: specifically, that the UNABOM subject has origins in Chicago, has been in Salt Lake City and in Northern California, is believed to be a "loner," unmarried and in midlife. When extracts of the text of the UNABOM Manifesto were published in August, and were reprinted in the Paris Herald Tribune, the anti-technology views expressed seemed to LINDA to be identical to the descriptions of TED's ideology which DAVE had discussed with her. Upon DAVE's arrival in Paris they discussed the similarities further, and LINDA extracted a promise from DAVE that he would read the UNABOM Manifesto in its entirety when and if it was published in its entirety. They returned to the U.S. at the end of August, 1995.

During the last part of September, 1995, DAVE's mother, WANDA KACZYNSKI, had been briefly hospitalized due to illness, and DAVE and LINDA had traveled to Chicago to care for her upon her release and see to her comfort upon her return home. On October 3, 1995, they were exiting a restaurant in Chicago with WANDA when

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DAVE felt compelled to make what he called a "casual remark" to his mother which was, "Mom, did you ever think that TED might be the UNABOMER?" WANDA paused and then said quietly, "It's crossed my mind." LINDA was highly alarmed at the apparently casual nature of this conversation, and when she was alone with TED again pressed him to read the UNABOM Manifesto when it was published, which occurred almost contemporaneously with the above exchange between DAVE and WANDA. DAVE noted that his mother later said she had read about the "violent militia groups" in Montana, and hoped that TED had not joined one of them. She thought it might be likely, however, given that TED is "so angry." She then said that she would never communicate her suspicion of such a thing on TED's part, however, and she hoped that DAVE would refrain from telling anyone of any worries he might have regarding TED's associations with such groups because it "would be so unfair to him."

DAVE found it difficult to obtain a copy of the UNABOM Manifesto initially, since there were limited numbers of the Washington Post, where the Manifesto was first published, available in Schenectady, New York. When DAVE finally obtained one and read it, he was powerfully reminded of not only his brother's general philosophy, but was struck by a singular phrase in the Manifesto which seemed to be a direct quote from a letter TED had written him sometime in the past. The phrase was "coolheaded logician," and its appearance in the Manifesto, along with the arguments and the way they were presented in general, convinced DAVE that the UNABOM Manifesto was written by TED.

DAVE noted that his mother, WANDA, had begun the process of selling her home in Chicago about this time, in accordance with a plan to relocate to an upstate New York town near DAVE and LINDA in mid-March, 1996. DAVE has been helping his mother go through her possessions in preparation for this move, and has traveled by train from Schenectady to Chicago to accomplish this. On one of these visits, and after reading the UNABOM Manifesto, DAVE found a 23-page essay, which he recognized as having been written in 1971 or 1972 by TED, in an unlocked foot locker in what had formerly been TED's bedroom in WANDA's house. He recognized the document as one which TED had shown him in approximately 1972, and noted the handwritten corrections on the typed carbon copy were in TED's handwriting. *(pages 2-3 omitted)*

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DAVID KACZYNSKI INTERVIEW

February 17-18, 1996

Date of Transcription: February 21, 1996

DAVID R. KACZYNSKI was interviewed at the office of his attorney, ANTHONY P. BISCEGLIE, 1130 17th Street, N.W., Suite 400, Washington, D.C., phone 202-778-1160, concerning suspicions he previously raised suggesting that his brother, THEODORE JOHN KACZYNSKI, also known as TED, might be the "Unabomber." DAVID KACZYNSKI, hereinafter referred to as DAVE, was accompanied by his wife, LINDA. DAVE furnished the following information:

DAVE was born in October 1949 in Chicago, Illinois. His father was THEODORE R. KACZYNSKI and his mother is WANDA KACZYNSKI, nee DOMBEK. He has an older brother named THEODORE JOHN KACZYNSKI, hereinafter referred to as TED, born in Chicago, Illinois on May 22, 1942. There are no other siblings. DAVE is seven and a half years younger than his brother so he received information about family events prior to 1949 and during his early childhood from stories related by his parents.

When DAVE was born, the family lived on Carpenter Street in a working class neighborhood on the south side of Chicago. He did not recall exactly where they lived prior to Carpenter Street. When DAVE was about two and a half years old, possibly about 1952, the family moved to 9209 Lawndale Ave., Evergreen Park, Illinois, a south side suburb of Chicago. The family moved in order to get away from the crime problems common to the inner city and the fact that the old neighborhood was deteriorating.

DAVE did not recall where TED went to school prior to moving to Evergreen Park, but surmised that it was a local public school. While living in Evergreen Park, TED attended Central School which was a combination elementary and junior high school. TED was about nine years old at that time. DAVE recalled that TED was quite smart and that he skipped a grade, but he could not remember whether it was the 3rd or 4th grade. As a result, TED was young for his grade.

DAVE provided a description of TED based on his 1986 recollection:

Name:	THEODORE JOHN KACZYNSKI
Sex:	Male
Race:	White
Height:	5'9" - 5'10"
Hair:	Dark brown (No grey showing)
Eyes:	Blue
Build:	Lean and muscular. Considered wiry.
Complexion:	Light complected, fair
Glasses:	None
Facial Hair:	Beard that he kept trimmed
Tattoos:	None
Scars:	Small chickenpox scar at corner of either his left or right eye.
Misc:	TED is missing one of his upper front teeth dating from childhood. TED has a bridge, but DAVE did not think that he used it after leaving Berkeley. TED's left foot is noticeably pigeon toed which affects the way he walks. TED is right handed.

DAVE noted that TED talked about growing a beard in the winter and shaving in the summer. DAVE doubted that TED would dye his hair. DAVE did not see any sunglasses at TED's cabin when he visited in 1986, but TED mentioned using acrylic sunglasses and warned DAVE to do the same to protect against ultraviolet rays. TED looks younger than his biological age and DAVE estimated that TED looked like he was in his early to mid 30's when last

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seen in 1986.

DAVID R. KACZYNSKI is a white male adult, residing at (address deleted) Schenectady, New York 12309, phone (number deleted). He works for Equinox, Inc., a private non-profit corporation supported by Federal and State funds. He works as a counselor for kids at risk. The phone number there is (number deleted) but DAVE prefers to be contacted at work through his attorney.

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LETTER TO MOLLY FLYNN, FBI

February 12, 1996

LAW OFFICES
Bisceglie & Walsh
1130 Seventeenth Street, N.W.
Washington, D.C., 20036

February 12, 1996

Molly Flynn
Special Agent
Federal Bureau of Investigation (Bureau)
10th and Constitution Ave., N.W.
Washington, D.C. 20535

Dear Ms. Flynn:

As you know, this firm has been retained by a person in connection with this person's furnishing information on a confidential and anonymous basis to the Bureau which may be pertinent to its pending "Unabomber" investigation. In response to the information provided thus far, the Bureau has requested an opportunity to interview our client, to obtain the identity of an individual who might become a subject or target (hereinafter the Subject) of the investigation~ and to obtain additional information related thereto. Our client is fully prepared to cooperate with the Bureau and to comply with its above-described requests conditioned upon receipt of certain written assurances by the Bureau as set forth below.

First, the Bureau agrees that our client's identity, his cooperation and his role as a source of information shall remain confidential and shall not be revealed to persons other than the authorized Department of Justice employees with a need to know. Our client will be given the status and entitled to Bureau procedures applicable to confidential informants. This confidential treatment by the Bureau shall continue indefinitely, unless and until our client indicates otherwise in writing.

Second, the Bureaus agrees that its investigation of the Subject will be conducted in

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accord with all applicable laws, regulations and guidelines.

Third, the Bureau agrees that its investigation of the Subject, if any, will be conducted in phases beginning with the most discrete and least intrusive measures to minimize any publication of the fact that the Bureau is investigating the Subject. The first phase could include inquiries with people from the Subject's past, but only if a pretext is used. The investigation in this phase should exhaust all investigative steps that do not require authorities to inform anyone that the Subject is a Unabomber suspect.

Once the quiet-phase steps have been exhausted, we would be informed of whether the Subject has been excluded as a suspect. If he is not included at that point, we would be notified before the next investigative phase begins.

If the investigation progresses to the point where the Bureau desires to speak with the Subject's mother or the people living in the town where the Subject now resides, we would be notified prior to the start of that phase. Prior to that point, such contacts would be considered "off limits".

The Bureau agrees that during the investigation, they would not contact or confront the Subject, due to his fragile psychological state. Our client has reason to believe that the Subject has a heart condition, suffers from stress, is paranoid, and his reaction to any contact from a stranger could endanger his life. It could also endanger our client's life.

Fourth, at every step of the investigation, and during each phase, all efforts to exclude the subject as the Unabomber would be made. The Bureau will keep us informed about the progress and results of its investigation of the Subject on an ongoing basis.

Fifth, in the event that the Subject would have to be arrested, the Bureau agrees that the arrest would be carried out properly in a humane way which minimizes any risk to the safety of the Subject.

These are our client's concerns. Please review them with the appropriate personnel and get back to me at your earliest convenience.

Sincerely,

Tony Bisceglje
(signature)

/bt

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ANTHONY P. BISCEGLIE INTERVIEW

January 31, 1996

ANTHONY P. BISCEGLIE, Attorney at Law, Bisceglie & Walsh, 1130 17th Street, NW., Suite 400, Washington, D.C., telephone number (202) 778-1160, was contacted at his place of business. After being advised of the identities of the interviewing Agents and the nature of the interview, BISCEGLIE furnished the following information:

BISCEGLIE was contacted on Friday, January 26, 1996, at his office by an acquaintance whom he declined to identify. The acquaintance related a hypothetical situation to BISCEGLIE about another individual who may have some information that would identify a serial killer. BISCEGLIE spoke briefly to his acquaintance and recommended that the acquaintance contact him again on Monday. On Monday, January 29, 1996, BISCEGLIE was contacted by an individual, hereinafter referred to as the source, who indicated he had been referred to BISCEGLIE by the acquaintance with whom BISCEGLIE had spoken to on Friday. The source told BISCEGLIE he believed that he might know the identity of the UNABOM subject. The source did not identify himself to BISCEGLIE but eventually indicated that the person whom he suspects to be the UNABOM subject is the source's brother.

The source raised a number of concerns to BISCEGLIE about why he was reluctant to contact the FBI directly at this time about his suspicions. The source does not want his brother, if he is innocent, to be harassed, provoked or killed. The source expressed concern to BISCEGLIE that a "Ruby Ridge" incident might happen if his brother were confronted. The source described his brother as an angry man who lives alone in a cabin in a remote area and who uses weapons to hunt his food. The source also told BISCEGLIE that if his brother is the UNABOM subject, he would like a guarantee that his brother would not receive the death penalty before the source would reveal his own identity and his brother's identity. The source told BISCEGLIE his motivation in contacting him was to save lives, including his brother's life and the lives of any potential victims.

The source told BISCEGLIE that he suspected his brother may be the UNABOM subject in the Spring or Summer of 1995, after the last UNABOM explosion occurred in California and a profile of the UNABOM subject was publicized. The source

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became more concerned after the publication of the UNABOM manuscript, because he thought some of the themes in the manuscript were similar to themes discussed and written about by his brother. The source told BISCEGLIE that a retired FBI linguistics expert compared writings of his brother's to the manuscript and concluded the similarities were strong enough to warrant notification to the FBI.

The source related a number of factors which made him suspect his brother could be the UNABOM subject. The source's brother was born in Chicago, Illinois, was a brilliant scholar, attended the University of Michigan, and taught at UC Berkeley. The source's brother lived in Utah at some point, but not during any of the UNABOM events associated with Utah. The source believes his brother lived in Chicago during the late 70's, and during that time period, attempted to get his views published in a number of publications. The source may be able to obtain a copy of the material his brother sought to have published. The source's brother has voiced anti-technology views and asked for his brother's help in the late 70's to put together a group that was opposed to technology.

The source's brother lives alone in the Northwest in a cabin he built. The source's brother does not have electricity, plumbing, a telephone or a car. He rides a bike for transportation and hunts for his food. The source has seen his brother's cabin and has known him to have a typewriter. The source's brother has been unemployed for years, after dropping out of society. The source communicates with his brother via letters. The source has not seen his brother in six years. The source proposed visiting his brother recently, but his brother strongly rejected the idea.

The source described his brother as having a difficult time with people. The source's brother has not ever been married, but has had several relationships with women which did not work out. The source told BISCEGLIE that his brother was hospitalized as a child for a serious illness, and that this hospitalization period may have contributed to his brother's depression as a child. The source's brother cut off contact with his parents years ago, and has at times cut off contact with the source. The source told BISCEGLIE that his parents were from a "leftist" background and that his brother always had problems with them about their views. According to the source, his brother has no criminal record and has received no formal psychiatric treatment.

The source indicated to BISCEGLIE that his brother taught himself to build metal tube rockets when he was younger. The source's brother operated machines in two factories and has made at least three wooden boxes, one of which the source described as a sewing box. The source told BISCEGLIE he might be able to obtain one of the wooden boxes made by his brother. The source's brother fits within the general age and physical descriptive parameters of the UNABOM subject, with the exception of hair color. The source's brother borrowed \$1000 from the source just prior to the December, 1994 UNABOM explosion, and he borrowed \$2000 from the source within two months prior to the April, 1995 UNABOM explosion.

Although BISCEGLIE does not know the full identity of the source, he considers

himself to have an oral retainer with him, and has agreed to waive his fee. The source claimed to have no knowledge of a reward in the UNABOM investigation, but indicated to BISCEGLIE if he were to be eligible for it, he would arrange for the money to go to the victims and/or their families. BISCEGLIE recommended that the source submit handwritten and typed samples from his brother which BISCEGLIE could turn over to the FBI for its evaluation. The source agreed to do so and sent via Federal Express four samples which BISCEGLIE received this morning.

BISCEGLIE furnished to SA FLYNN four sealed and dated envelopes which SA FLYNN opened and reviewed with BISCEGLIE. According to BISCEGLIE, the envelopes were dated by the source to reflect the date he received them from his brother. The first envelope was dated February 19, 1985 and containing a handwritten letter on six pieces of paper, with writing on both sides. The second envelope was dated December 1985 and contained three pages of typewritten material. The third envelope was dated April, 1986, and contained a handwritten letter on one piece of paper, with writing on both sides. The fourth envelope was dated November 2, 1994, and contained a handwritten letter on one piece of paper, with writing on both sides. The letters were retained by SA FLYNN in the envelopes. An FD-597 was prepared reflecting the receipt of the letters by SA FLYNN and was signed by BISCEGLIE. BISCEGLIE requested he be furnished copies of the letters when they were available.

Investigation on 1/31/96 at Washington, D.C.

File: 149A-SF-106204-5-2416-9

By SA FRANK R. BARBERO and SA MARY A. FLYNN/maf, Date dictated: 1/31/96

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.
FD-302a (Rev. 11-15-83)

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FEDERAL BUREAU OF INVESTIGATION VICTOR FERKISS INTERVIEW

Aug. 7, 1995

Date of Transcription: Aug. 7, 1995

On August 7, 1995, Dr. VICTOR FERKISS, (information omitted), Telephone (number omitted), was interviewed at his residence. He furnished the following information:

On July 27, 19995, Dr. FERKISS was given a copy of the UNABOM manuscript to review. This interview was a follow-up in order to get Dr. FERKISS' impressions of the manuscript and to ask several pre-designed questions.

1) Can you identify any writings (books, articles, etc.) that appear to form the basis for this article?

Dr. FERKISS said it seemed the article had a strong influence by a JAQUE ELLUL (deceased) who had written several books, to include the "Technological Scientist." Dr. FERKISS' impression of the writer of the manuscript was that the person had formed his opinion in the 1970's and had not updated it. Dr. FERKISS said he thought the person's age could be in his 40's, assuming he started college at a regular age.

2) Can you identify any group or organization that has similar views?

Dr. FERKISS was not able to identify the manuscript to any group or organization, but did say that about ten years ago, there was a group called "Scientists Against Science," or something similar. Dr. FERKISS was not sure whether this fits or not.

3) Does the writing style bring any individual to mind?

Dr. FERKISS could not associate or identify the writing style with anyone in particular. He said some parts were well written and some parts needed editing. Dr. FERKISS did say, however, that he felt this author was into some sort of psychology and enjoyed the power that it gave him.

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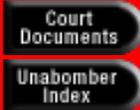
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FEDERAL BUREAU OF INVESTIGATION WASHINGTON, D.C. 20535 LAB REPORT

Aug. 1, 1995

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To: SAC, San Francisco
 FBI File No. 149A-SF-106204
 Lab No. 50628001 S/D ZW UD ZZ
 50628022 S/D ZW AP GG
 UD GB ZZ
 50629010 S/D ZW AP GG
 UD GB ZZ
 50630001 S/D ZW AP GG
 UD GB ZZ
 50630018 S/D ZW UD
 50701035 S/D ZW AP GG
 UD ZZ
 30628001 S/D ZW AR UJ
 RU ZH UD
 GB ZZ
 30628002 S/D ZW AR UJ
 RU ZH UD
 GB

Your No. 149A-SF-106204
 Reference: Evidence Receipt dated June 28, 1995
 Re: UNABOM;
 MAJOR CASE #75
 OO: SAN FRANCISCO

Specimens received: June 28, 1995

Result of examination:

GENERAL INFORMATION:

This report supplements the reports previously furnished under this caption dated July 21, 1993, August 19, 1993 (FBI Laboratory Numbers 30628001 and 30628002), and July 6, 1995 (FBI Laboratory Numbers 50628001, 50628022, 50629010, 50630001, 50630018 and 50701035). You should refer to all reports for the complete results of analyses conducted and a complete specimen listing.

- This report provides the results of the Firearms Toolmarks and the DNA examinations.

FIREARMS - TOOLMARKS:

UNABOM DEVICE #14

FBI Laboratory Number 30628001 S/D ZW AR UJ RU ZH UD GB

One (1) of the two (2) staples represented in Specimen Q163 and one (1) of the two (2) staples represented in Specimen Q166 were associated on the basis of toolmarks with the staple represented in specimen Q381 (Laboratory Number 50628022 S/D ZW AP GG UD GB ZZ). The other two (2) staples represented in Specimens Q163 and Q166 bear extremely limited microscopic characteristics of value and could not be associated with the Q381 staple.

The two (2) staples represented in Specimen Q153 and the two (2) staples represented in specimen Q158 are heavily corroded and bear no microscopic characteristics of value.

The staple represented in Specimen Q159 bears extremely limited microscopic characteristics of value which could not be associated with the Q381 staple.

UNABOM DEVICE #13

FBI Laboratory Number 30628002 S/D ZW AR UJ RU ZH UD GB

Two (2) of the six (6) staples represented in Specimen Q13 and the staple represented in Specimen Q37 were associated on the basis of toolmarks with Specimens Q379 and Q381 (Laboratory Number 50628022 S/D ZW AP GG UD GB ZZ). The other four (4) staples represented in Specimen Q13 are heavily corroded and bear no microscopic characteristics of value.

The staple represented in Specimen Q17 bears microscopic characteristics of value which are unlike those present in the Q13 and Q37 specimens.

THE NEW YORK TIMES

FBI Laboratory Number 50628022 S/D ZW AP GG UD GB ZZ

The three (3) staples represented in Specimens Q378, Q379 and Q381 were associated on the basis of toolmarks with each other and with the two (2) staples represented in Specimens Q454 and Q458 (Laboratory number 50629010 S/D ZW AP GG UD GB ZZ), the staple represented in Specimen Q537 (Laboratory Number 50630001 S/D ZW AP GG UD GB ZZ), one (1) of the two (2) staples represented in Specimen Q163 and one (1) of the two (2) staples represented in Specimen Q166 (Laboratory Number 30628001 S/D ZW AR UJ RU ZH UD GB) and two (2) of the six (6) staples represented in Specimen Q13 and the staple represented in Specimen Q37 (Laboratory Number 30628002 S/D ZW AR UJ RU ZH UD GB).

THE WASHINGTON POST

FBI Laboratory Number 50629010 S/D ZW AP GG UD GD ZZ

The two (2) staples represented in Specimens Q454 and Q458 were associated on the basis of toolmarks with the staple represented in Specimen Q381 (Laboratory Number 50628022 S/D ZW AP GG UD GB ZZ).

PENTHOUSE

FBI Laboratory Number 50630001 S/D ZW AP GG UD GB ZZ

The staple represented in Specimen Q537 was associated on the basis of toolmarks with the staple represented in Specimen Q381 (Laboratory Number 50628022 S/D ZW AP GG UD GB ZZ).

DNA ANALYSIS:

DNA DQ alpha (DQA1) analysis was conducted on DNA obtained from specimen Q370 (FBI Laboratory Number 50628001 S/D ZW UD ZZ). The results indicated the presence of DNA from more than one individual.

DNA analysis of the DQ alpha (DQA1) locus was conducted on the specimen listed below. The result of this analysis is as follows:

SPECIMEN
Q608

Laboratory #
50701035

DQAI
1.1,2

This result will be maintained by the FBI Laboratory for possible future comparisons.

There was insufficient DNA for analysis on specimens Q372 (FBI Laboratory Number 50628022), Q451 (FBI Laboratory Number 50629010) and Q528 (FBI Laboratory Number 50630001).

DISPOSITION OF SPECIMENS

The submitted specimens are being retained in the FBI Laboratory.

Please call the Explosives Unit - Bomb Data Center, (202) 324-2696, if you have any questions concerning the results of examinations in this case.

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FEDERAL BUREAU OF INVESTIGATION WASHINGTON, D.C. 20535 LAB REPORT

Feb. 2, 1995

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To: SAC, San Francisco
FBI File No. 149-12761
Lab No. 50109014 S/P ZW AH
41212001 S/D ZW AR UJ
ZZ UD RU
YR
41213004 S/D ZW UJ RU
UD
41220025 S ZW ZZ RU
UJ
41229029 S ZW ZZ
40214062 S ZW XT UJ

Your No. 149A-SF-106204 (UTF)
Reference: (SEE REFERENCE BELOW)
Re: UNABOM; MAJOR CASE #75 DAMV-EID

OO: SAN FRANCISCO Specimens received: January 9, 1995,
December 12, 1994, December 13, 1994, December 20, 1994,
December 29, 1994 and February 14, 1994

Reference: Evidence Receipt dated December 12, 1994 and
Communications dated January 3, 1995,
December 13, 1994, December 15, 1994,
December 28, 1994 and February 10, 1994 Previous DNA DQ alpha
typing from FBI Laboratory Number 30628001 S ZW report dated
August 19, 1993 were detected for the following specimen:

SPECIMEN
Q162

DQAI
1.1,2

DNA analyses of the DQ alpha (DQAI) and the Polymarker (PM) loci were conducted on the specimens listed below (Submitted under FBI Laboratory Number 41229029 S ZW). The results of these analyses are as follows:

Specimens	LDLR	GYPA	HBGG	D7S8	Gc	DOAI
K16 (GELERNTER)	BB	AB	AB	AB	BC	1.1,2

Based on these results, the source of K16 cannot be excluded as a potential contributor to the DNA

previously detected on specimen Q162 (Submitted under FBI Laboratory Number 30628001 S ZW).

No other DNA examinations were conducted.

VIDEO ENHANCEMENT:

The original 8mm videotape specimen was reviewed and the pertinent segment was located.

Prepared from the video segment were four (4) VMS copies. Two (2) copies are in color and two (2) copies are in black and white. Also prepared was a 1" copy in color and in black in white.

The original 8mm videotape and the four (4) VMS copies were returned to the Explosives Unit on January 12, 1995.

The two (2) 1" copies will b. retained in the Video Enhancement Unit for any additional work.

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