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LOU ALEKSICH, JR. CLERK
BY _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

HELENA DIVISION

****

UNITED STATES,

Plaintiff,

-v-

THEODORE JOHN KACZYNSKI,

Defendant.

MCR 96-6-H-CCL

ORDER

****

On April 3, 1996, in the above-captioned case, this court ordered that the search warrant and return be held under seal. On April 15, 1996, the government submitted the return to the court. Upon review of the return, the court has determined that there is no reason to maintain the search warrant and return under seal.

Accordingly,

IT IS HEREBY ORDERED that the government shall forthwith serve Defendant's counsel with a copy of the search warrant and return.

IT IS FURTHER ORDERED that the search warrant and return shall be filed in the open file. The application for a search

warrant and affidavit in support thereof shall remain sealed until further order of the court.

The Clerk is directed forthwith to notify the parties of entry of this order.

Done and dated this 15 day of April, 1996.

CHARLES C. LOVELL
United States District Judge

UNITED STATES DISTRICT COURT

HELENA DIVISION, DISTRICT OF MONTANA

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SEARCH WARRANT

CASE NUMBER: —

DEPUTY CLERK

In the Matter of the Search of

the residence of Theodore John Kaczynski and surrounding 1.4 acres more particularly described in Attachment #A and exhibits A through F all of which are attached hereto and incorporated herein by reference

TO: Terry D Turchie, Special Agent, Federal Bureau of Investigation, and any Authorized Officer of the United States

Affidavit having been made before me by Terry D. Turchie, Special Agent, Federal Bureau of Investigation, who has reason to believe that ()on the person of or (x) on the premises known as:

the residence of Theodore John Kaczynski and surrounding 1.4 acres more particularly described in Attachment #A and exhibits A through F all of which are attached hereto and incorporated herein by reference

in the State and District of Montana there is now concealed property, namely:

those items particularly described in the affidavit of Terry D. Turchie which is incorporated herein by reference (those pages describing the items to be seized are set forth as Attachment #B)

I am satisfied that the affidavit and any recorded testimony establish probable cause to believe that the person or property so described is now concealed on the person or premises above-described and establish grounds for the issuance of this warrant.

YOU ARE HEREBY COMMANDED to search on or before April 12, 1996 (not to exceed 10 days) the person or place named above for the person or property specified, serving this warrant in the daytime and making the search (in the daytime -- 6:00 A.M. to 10:00 P.M.) and continuing the search until complete (at any time in the day or night as I find reasonable cause has been established) and if the person or property be found there to seize same, leaving a copy of this warrant and receipt for the person or property taken, and prepare a written inventory of the person or property seized and promptly return this warrant to the United States District Court as required by law.

O.K. C.C.

April 3, 1996 0910 at Helena, Mt.

Date and Time Issued City and State

U.S. District Judge

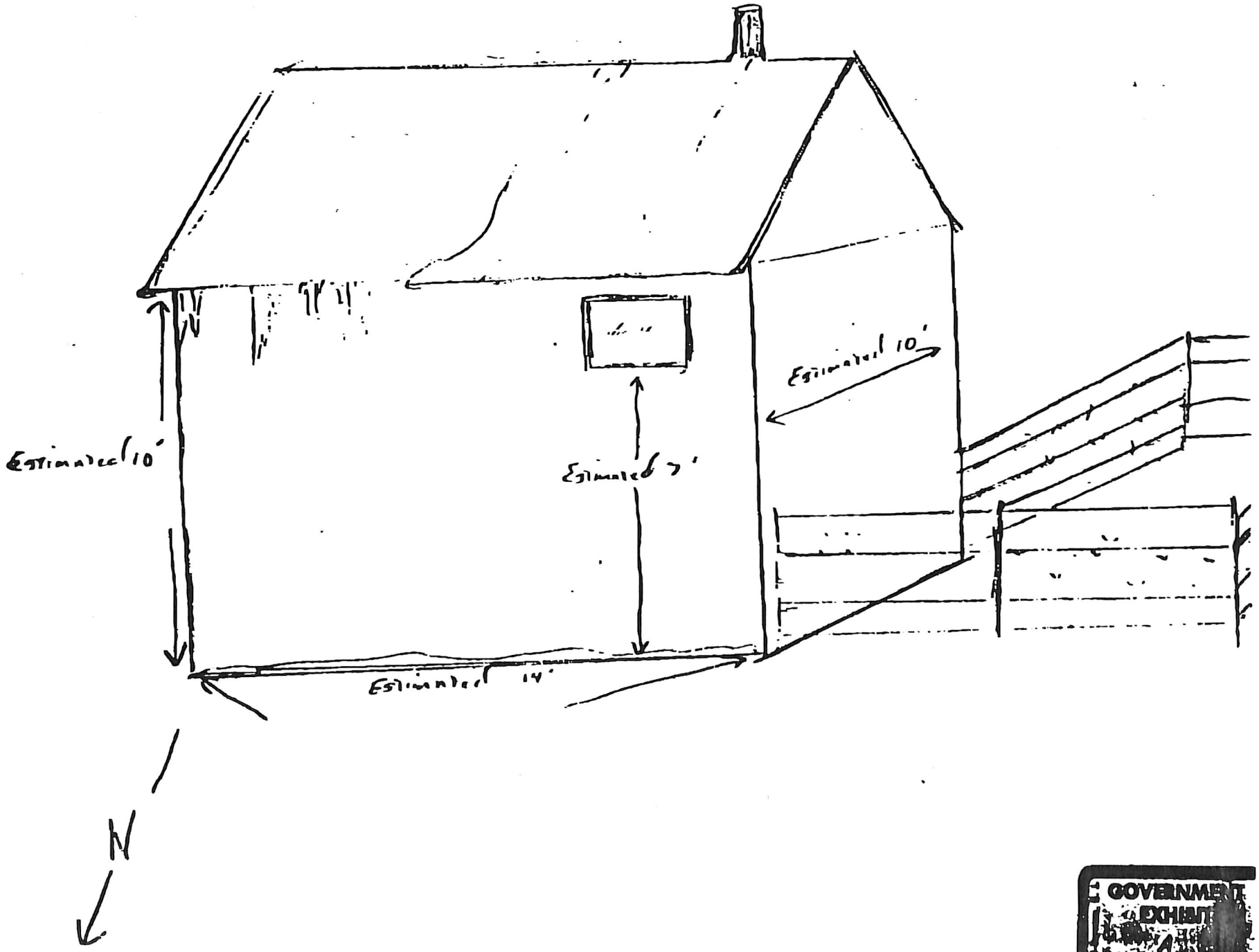
Name and Title of Judicial Officer

Signature of Judicial Officer

Attachment #1

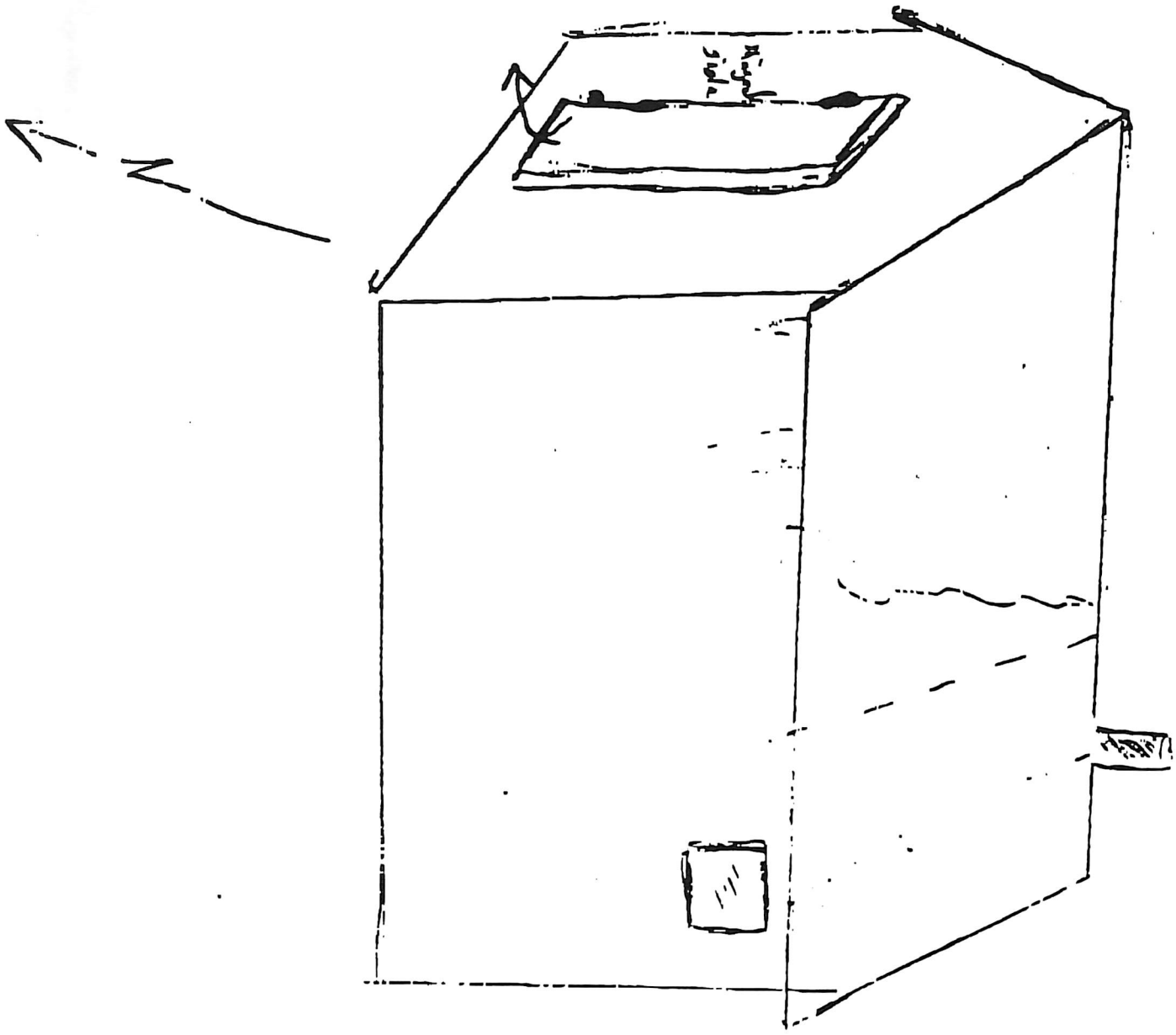
The premises to be searched is described as a faded reddish in color wood cabin structure approximately 10' x 12' in size, no eaves, with a single door on the up canyon end of the cabin, a single window on the trailside of the cabin located where the roof and the wall join, and a single chimney at the peak of the roof on the up canyon end of the cabin. This cabin is located on 1.4 acres of land approximately 1/4 miles up Canyon Creek from the Gehring Lumber Company in Lewis and Clark County, State of Montana. The cabin has an access road from the cabin of Glen Willians which comes off of a logging skid road. The cabin is the last cabin up Canyon Creek. This cabin and surrounding area is further depicted in three sketches attached to the search warrant and incorporated as Exhibits A through C. These sketches were drawn by United States Forest Service Officer Jerry Burns who has specific familiarity with the area at and around the cabin. Attached to the search warrant and incorporated as Exhibit D is a photograph of the cabin from the Lewis and Clark County Assessor's office. Exhibit E, attached to the search warrant and incorporated is an aerial photograph depicting the cabin and its orientation to the Williams Cabin. A legal description is attached as Exhibit F.

This search warrant requests authorizatiokn to search the premises described above and all surrounding areas within the approximate 1.4 acres that comprise the property of Theodore John Kaczynski. The areas to be searched include any area above and below ground that could be used to store, secrete or conceal any items of property as described in the search warrant. In order to carry out the search of the areas below ground, electronic detection equipment may be necessary to examine areas that may conceal or contain objects. Trenching and or digging equipment may be necessary for the same purpose.



GOVERNMENT EXHIBIT A

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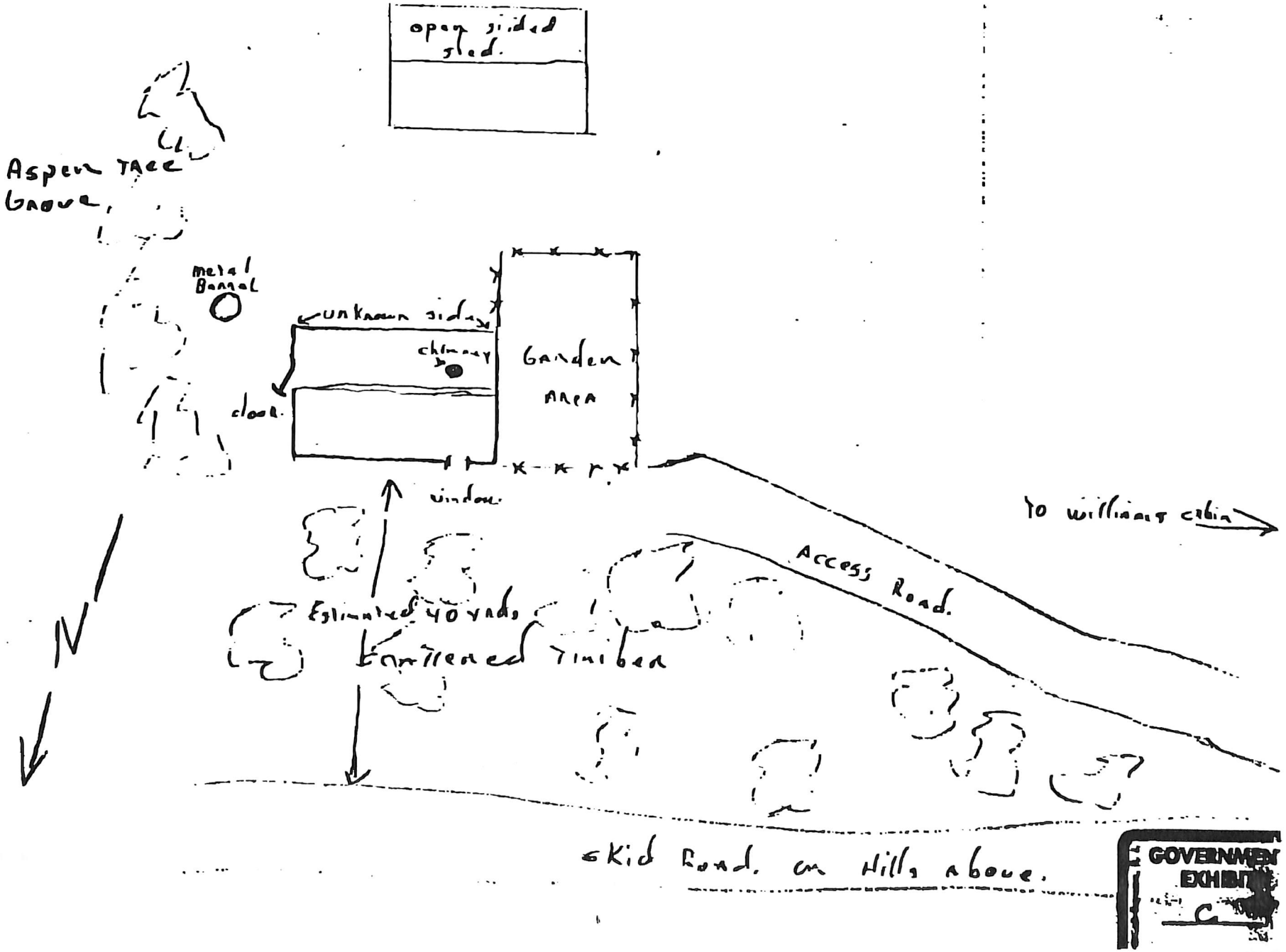


NOT TO SCALE 3/12/98 S.Burns

GOVERNMENT EXHIBIT

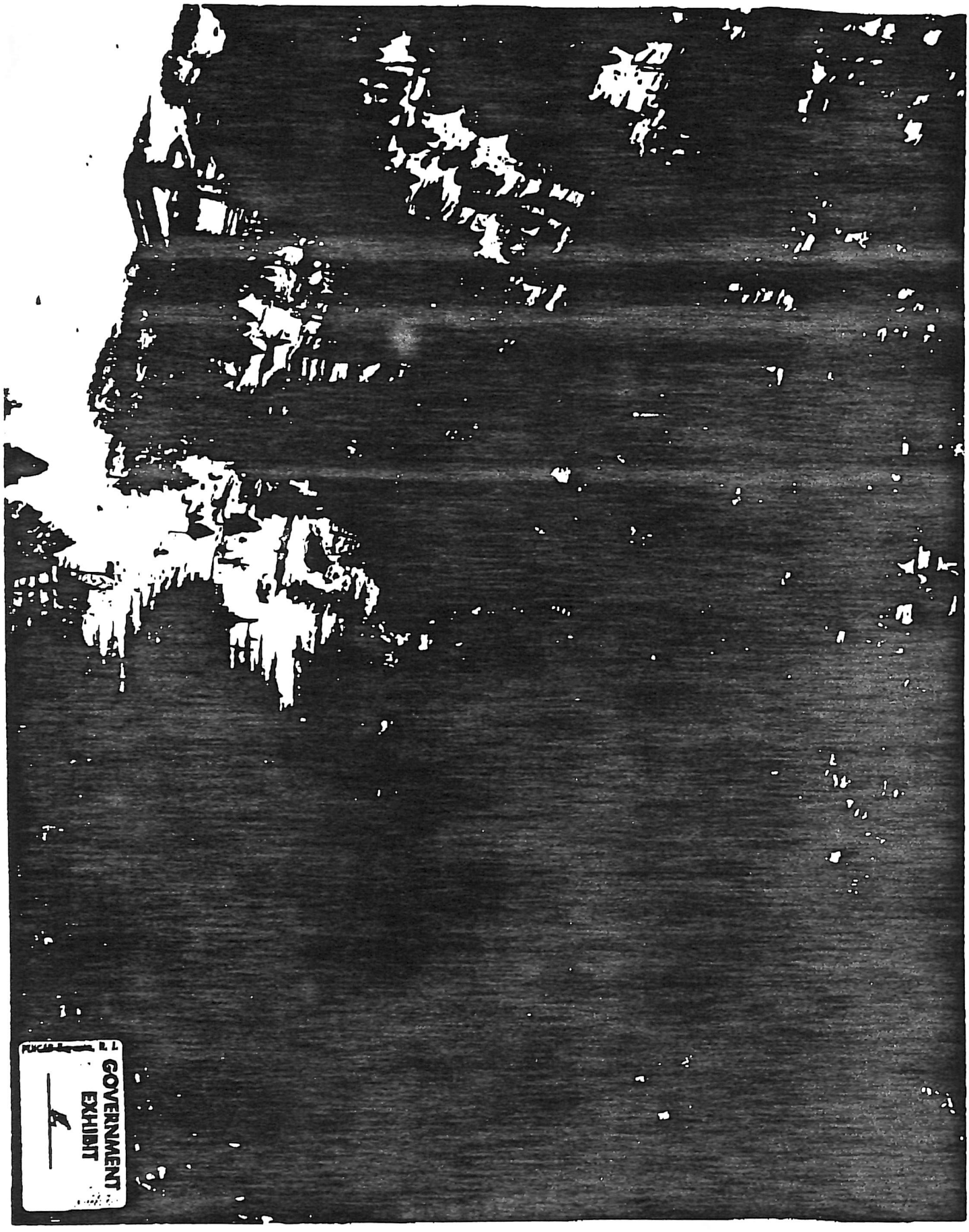
US ATTY HELENA MT

S. Burns



GOVERNMENT EXHIBIT C


GOVERNMENT
EXHIBIT
D


GOVERNMENT
EXHIBIT

310

This Indenture, Made the nineteenth day of June

A. D. one thousand nine hundred and seventy-one BETWEEN

Clifford D. Sharino, Sr., a single man,

of Lincoln, Montana PARTY of the FIRST PART and Theodore John Kaczynski and David R. Kaczynski, brothers

of Lombard, Illinois and Great Falls, Montana the PARTIES of the SECOND PART:

WITNESSETH, that the said PARTY of the FIRST PART, for and in consideration of the sum of One Dollar ($ 1.00) lawful money of the United States of America to him in hand paid by said PARTIES of the SECOND PART, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell, convey, warrant and confirm unto the said PARTIES of the SECOND PART AS JOINT TENANTS AND TO THE SURVIVOR OF SAID NAMED JOINT TENANTS, (and not as tenants in common) and to the heirs and assigns of such survivor forever, the hereinafter described real estate situated in the city or town of

County of Lewis and Clark and State of Montana, to-wit:

Beginning at the N ¼ Cor. Sec. 8, T. 13 N., R. 8 W., M.P.M.; thence N 82°03' E a distance of 333.2 feet; thence S 57°53' E a distance of 201.3 feet; thence S 44°55' E a distance of 782.0 feet; thence S 67°59' E a distance of 273.4 feet; thence S 62°26' E a distance of 220.0 feet; thence S 86°47' E a distance of 198.0 feet; thence N 77°38' E a distance of 265.0 feet to the true point of beginning; thence S 12°37' E a distance of 300.0 feet; thence N 82°52' E a distance of 217.2 feet; thence N 12°37' E a distance of 300.0 feet; thence N 82°52' W a distance of 217.2 feet to the true point of beginning, containing 1.4 acres, more or less, all in Section 5, T. 13 N., R. 8 W., M.P.M., Lewis and Clark County, Montana; together with the right of ingress and egress to the above-described property from Steamle Pass Road over existing road.

TOGETHER, with all and singular the hereinbefore described premises, all tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, right of dower and right of homestead, possession, claim and demand whatsoever, as well in law as in equity, of the said PARTY of the FIRST PART, of, in or to the said premises, and every part and parcel thereof, with the appurtenances thereto belonging. TO HAVE AND TO HOLD all and singular the above mentioned and described premises unto the said PARTIES of the SECOND PART, as joint tenants with right of survivorship (and not as tenants in common) and to the heirs and assigns of the survivor of said named joint tenants forever.

And the said PARTY of the FIRST PART, and his heirs, do hereby covenant that he will forever WARRANT and DEFEND all right, title and interest in and to the said premises and the quiet and peaceable possession thereof, unto the said PARTIES of the SECOND PART, as joint tenants with right of survivorship (and not as tenants in common) and to the heirs and assigns of the survivor of said named joint tenants, against all acts and deeds of the said PARTY of the FIRST PART, and all and every person and persons whomsoever lawfully claiming or to claim the same.

IN WITNESS WHEREOF, the said PARTY of the FIRST PART has hereunto set his hand and seal the day and year first hereinbefore written.

Signed, Sealed and Delivered in the presence of

Clifford D. Sharino, Sr. (SEAL)

(SEAL)

(SEAL)

(SEAL)

GOVERNMENT EXHIBIT

31 3K D

ATTACHMENT "B"

IX

ITEMS TO BE SEIZED

213. Based on all of the information contained in this affidavit, which establishes a continual and consistent pattern of conduct between 1978 and the present date, and based on the expert opinion of Supervisory Special Agent of the FBI's Explosive Unit, who has stated that probable cause exists that all of the below-listed items would be utilized in the manufacture, construction, assembly, packaging, and mailing of the explosive devices, your Affiant believes that probable cause exists that the following items, which are evidence of said violations, and are the fruits and instrumentalities of the foregoing crimes, are currently being stored at the premises of Theodore ~~John~~ Kaczynski, located in Lewis and Clark County, in

the State of Montana, more particularly described in the Application and Affidavit for Search Warrant and Attachment A, previously incorporated by reference.

214. Tools and other instruments or items which have been used, can be used, or are intended to be used in the manufacture and/or construction of improvised explosive devices or the components thereof. These items include, but are not limited to, saws, files, metal punches, drill bits, sanding devices, hammers, chisels, drills, vice or similar jawed tools, abrading equipment, soldering and brazing equipment, wire strippers, screwdrivers, staplers, safety wire and other pliers, various hand tools for cutting steel bar stock, grinders, sandpaper, leather working tools, pots or other containers used to melt lead and aluminum, tools and associated materials used in the casting of lead and aluminum, machines and tools which cut metal pipe, tools used for cross-referencing circumference to diameter, rulers and other various measuring devices, abrasive cloths, steel wool or iron wire.

215. The following explosives, chemicals or other substances which have been used, can be used or are intended to be used in the manufacture or construction of improvised explosive devices, or the components thereof: These items include but are not limited to, firearms ammunition, smokeless powder, black powder, aluminum and aluminum powder, gasoline containers, barium nitrate, magnesium, potassium chlorate,

potassium perchlorate, sulfur, potassium sulfate, ammonium nitrate, sodium chlorate, matches, or other pyrotechnic mixtures and constituents.

216. The following items, which have been used, can be used or are intended to be used to house or contain improvised explosive devices and the components thereof: These items include, but are not limited to, cigar boxes, wood, wooden boxes, wooden blocks, scrap wood and wood sources such as boxes, pallets, cabinets and crates, hollowed-out books, the book entitled the "Ice Brothers" by author Sloan Wilson, or portions thereof, notebooks, loose leaf binders, or other plastic containers.

217. The following items and materials which have been used, can be used or are intended to be used as component parts of improvised explosive devices: These items include, but are not limited to, metal tubes/pipes, cans, switches, barometers, springs, batteries, dowels, plugs, screws, pins, nuts and bolts, nails, staples, fishing line, straps, washers and brackets, rubber bands, cord, wire, flashlight bulbs, alligator clips, and lead split shot, tire weights or similar item, any form of aluminum metal or scraps, sheet metal scraps and shims.

218. The following items which have been used, can be used or are intended to be used in the construction or assembly

of improvised destructive devices: These items include, but are not limited to, solder, epoxy, glues and other adhesives or caulking materials, varnish, lacquer, paint, wax and wax paper, lead, solid silver bar, metal debris, explosive residue and debris, gloves, plumbing sink traps, tape, gasket material and twine.

219. The following items which have been used, can be used or are intended to be used as exterior packaging materials: These items include, but are not limited to, boxes, envelopes, mailing labels, rubber stamps, rubber stamp kits, postage stamps, wrapping paper, padded envelopes, stenciling sets, ink pens, ink pads, and scales.

220. Typewriters.

221. Any and all documents, photographs, papers, written materials, books, diagrams, schematic drawings, video tapes, computer generated or stored information or other materials which relate to the manufacture, construction and/or assembly of improvised explosive devices or any of the components thereof.

222. Any and all receipts, invoices, purchase orders, sales slips or other documents and materials relating to the

purchase or procurement of any and all materials and tools which have been used, can be used, or intended to be used in the design, manufacture and construction of improvised explosive devices; said documents would include, but are not be limited to, those which denote the purchase or obtainment of any or all items previously listed in paragraphs A through H.

223. Any and all documents, photographs, papers, written or printed materials, books, video tapes, computer generated or stored information or other materials and indicia which relate to the names of, "Wu", the initials "R.V." and "FC", "The Ice Brothers" a book written by Sloan Wilson, "The History of Violence in America," a book written by Hugh Graham and Ted Gurr, "Chinese Political Thought in The 20th Century", a book by Chester C. Tan, "The Ancient Engineers", a book by L. Sprague de Camp, "The True Believer" by Eric Hoffer, Ralph C. Kloppenburg, Enoch W. Fischer, or any of the previously identified persons, names, mailing addresses, or bombing incidents which appear in this affidavit. These items will also include any lists of previous or future targeted individuals or victims.

224. Any and all documents or computer generated and stored information, including but not limited to, appointment books, diaries, journals, calendars, telephone toll records, receipts, bank statements, credit card statements, motel receipts, canceled checks, travel itineraries, canceled airline

tickets, car rental contracts or other receipts which denote Theodore Kaczynski's travel and whereabouts between 1978 and the present date.

225. Any and all documents, materials, and correspondence relating to Theodore Kaczynski's affiliation or association with educational institutions and universities, airlines, airline fabrication plants, scientific and professional groups or organizations, and computer companies.

226. Any and all literature, documents, materials, books, correspondence, membership lists, written materials, or computer generated and stored lists which relate to the identity of any co-conspirators who may be involved in any of the aforementioned bombing incidents.

227. Any and all literature, documents, materials, books, correspondence, or computer generated and stored information relating to or showing an interest in or affiliation with any movement or group advocating violence, revolution or anarchy.

228. Any and all documents and other indicia of any kind showing ownership or control of the premises described in Attachment A or under the control of Theodore Kaczynski,

including but not limited to, rental agreements, contracts of sale, deeds, leases, utility and telephone bills, keys.

229. Any and all documents and other indicia of any kind showing ownership or control of storage facilities, safe deposit boxes, other commercial or rental properties, rented or owned by Theodore Kaczynski, which could be used for the storage of the above-mentioned items, including but limited to rental agreements, leases, contracts, deeds, keys and access devices.

230. Based upon the facts presented herewith, your affiant has reason to believe that there is probable cause to search the premises belonging to, owned by, and/or under the control of, Theodore John Kaczynski, and therefore request that a warrant be issued authorizing a search for the aforementioned items of evidence related to the violations mentioned herein.

/s/
Terry D. Turchie
Assistant Special Agent in Charge
Federal Bureau of Investigation

SWORN AND SUBSCRIBED TO BEFORE ME
THIS 3RD DAY OF APRIL, 1996

United States District Judge

RETURN

DATE WARRANT RECEIVED	DATE AND TIME WARRANT EXECUTED	COPY OF WARRANT AND RECEIPT FOR ITEMS LEFT WITH
4/3/96	4/3/96 12:30 PM	TO MR. KACZYNSKI, THROUGH COUNSEL UPON UNSEALING OF INVENTORY

INVENTORY MADE IN THE PRESENCE OF

SPECIAL AGENT TONY MAXWELL, FBI

INVENTORY OF PERSON OR PROPERTY TAKEN PURSUANT TO THE WARRANT

SEE ATTACHED INVENTORY OF ITEMS SEIZED INCORPORATED HEREIN BY REFERENCE.

CERTIFICATION

I swear that this inventory is a true and detailed account of the person or property taken by me on the warrant.

Terry A. Tuschka

Subscribed, sworn to, and returned before me this date.

U.S. Judge or Magistrate

April 15, 1996
Date

Date Printed: 04/11/96

INVENTORY OF ITEMS SEIZED AT THE RESIDENCE OF
THEODORE KAZCYNSKI, HCR# 30, BOX 27, LINCOLN, MONTANA

ITEM		DESCRIPTION
DEV	1	(CONTROL SAMPLE) ONE WINCHESTER SUPER X SHOTGUN ROUND
L	1	BROWN TYPEWRITER CASE CONTAINING A TYPEWRITER
L	2	BOX CONTAINING FISHING GEAR
L	3	LABELED CAN OF PLASTER OF PARIS
L	4	TYPEWRITER, STAMPS, MISC. WRAPPED PAPERS, AND DOCUMENTS
L	5	OATS CAN CONTAINING FOIL WRAPPED TRIGGER SWITCH
L	6	MISC. METAL SHAVINGS, WIRES, BEARINGS, ETC. IN OAT CONTAINERS
L	7	BACKPACK FRAME CONTAINING MISC. PIPES AND CORDAGE
L	8	NORTHWEST TERRITORY HIKING SHOES (BROWN GREEN)
L	9	BLACK PEPPER CAN CONTAINING SEVERAL METAL PIECES AND A PLASTIC BOTTLE LABELED "STRYCHNINE OATS"
L	10	ONE "ALDRICH" BOX CONTAINING MISC. PAPERS, NEWSPAPER CLIPPINGS, BUS SCHEDULE, ADDRESSES OF CORPORATE OFFICIALS, AND MAPS OF SAN FRANSISCO
L	11	MISC. CANS, STRING, PLASTIC AND METAL
L	12	PIECES OF LOCK IN A CORNMEAL CONTAINER
L	13	TOOL BOX IN GREEN BAG
L	14	PIECE OF PIPE (POSSIBLE PIECE OF RIFLE)
L	15	RADIO SONDE - MEASURES TEMP., HUMIDITY, ECT.
L	16	METAL PARTS AND PIECES

ITEM	DESCRIPTION
L 17	WELDING TYPE MASK
L 18	TATER TOT BOX CONTAINING MISC. BOOKS AND MAPS
L 19	TAN DUFFEL BAG CONTAINING CLOTHING AND TWO ADDITIONAL DUFFEL TYPE BAGS
L 20	METAL PARTS AND PIECES, CHAINS, LOCKS, AND POSSIBLE TRAPS
L 21	WIRE SCREEN
L 22	BOW STRIGS AND ARROWS IN AQUIVER
L 23	ONE STEAK KNIFE
L 24	PIPES (MISC. SIZES)
L 25	PIPES AND A BOWL
L 26	L - SHAPED PIPE
L 27	SECTION OF PIPE
L 28	SECTION OF PIPE
L 29	PLASTIC BAG CONTAINING BLACK JACKET
L 30	BOMB COMPONENTS
L 31	TWO ROLLS OF BROWN PAPER MARKED "300", CAN CONTAINING WIRE MARKED "QQ" AND DOCUMENTS
L 32	BOX MARKED "ALL 1 OR 10 Q OR QQ" (HANDWRITTEN), METAL TUBES, WIRING, SPRINGS, BALL TRIGGER IN TINFOIL, STAPLER, 9V BATTERY, AND SMALL COPPER COLORED TUBING
L 32A	COPPER COLORED TUBING REMOVED FROM ITEM L-32
L 33	BOOKS WITH "5Q" ON CONTAINER
L 34	LETTERS

ITEM	DESCRIPTION
L 35	SAMSONITE BRIEFCASE CONTAINING UNIVERSITY OF MICHIGAN DEGREES ECT.
L 36	GRAY CASE CONTAINING TYPEWRITER
L 37	LARGE GREEN AMMO CAN THAT CONTAINED ITEM L-4
L 38	TV WIRE WITH CORD AROUND IT
L 39	YEARBOOKS IN GREEN PLASTIC BAG
L 40	GREEN TARP AND TWINE
L 41	BOX OF CLOTHING AND TOWELS
L 42	RAIN PONCHO TYPE MATERIAL
L 43	TYPEWRITER PARTS
L 44	SECTION OF PIPE
L 45	VARIOUS PAPER AND TWINE
L 46	"SEARS" BOX CONTAINING ARROWS
L 47	12 SAW BLADES
L 48	A SECTION OF ROPE
L 49	A SECTION OF WOOD
L 50	FIVE BOTTLES LABELED "SALTPETER"
L 51	FIVE BOTTLES LABELED "SALTPETER"
L 52	FIVE BOTTLES LABELED "SALTPETER" AND PLASTIC BAG "30"
L 53	GLASS CONTAINER WITH OFF-WHITE PRILLS

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	ITEM	DESCRIPTION
L	54	BOTTLE MARKED "CALUMET" CONTAINING WHITE POWDER
L	55	PLASTIC CONTAINER WITH WHITE CLUMPY POWDER
L	56	PLASTIC BOTTLE WITH BLACK CHUNKY MATERIAL IN PAPER AND HAND LABELED "MEZELA #2, NUEVO LOTE EXP 103"
L	57	CONTAINER OF WHITE POWDER LABELED KC103 POTASSIUM 99.95% PURE
L	58	CONTAINER OF WHITE POWDER
L	59	CONTAINER OF YELLOW CRYSTALS WITH PLASTIC BAGS
L	60	CONTAINER OF WHITE POWDER
L	61	SIX SEALED BOTTLES LABELED SULFER
L	62	PLASTIC BAG AND CONTAINER OF YELLOW POWDER LABELED "SULFER"
L	63	PLASTIC BAG CONTAINING TWO PIECES OF WOOD AND MAKE-UP
L	64	SOLDER WIRE AND PLASTIC BAG
L	65	CONTAINER LABELED "SALT"
L	66	JAR OF WHITE CYSTALLINE SUBSTANCE AND NOTE "AMMONIUM NITRATE"
L	67	ONE GALLON JUG LABELED "ABIETIC ACID", AND SAMPLE TAKEN FROM THE JUG (TWO PLASTIC BAGS)
L	68	BOTTLE LABELED "AMMONIUM NITRATE NH-4NO-3"
L	69	TWO CANS IN BAGS LABELED "ABIETIC ACID"
L	70	TWO BOTTLES LABELED AS ALUMINUM AND BOX LID WITH EXPERIMENT INFO.
L	71	VARIOUS CONTAINERS MARKED AS "ALUMINUM MATERIALS"
L	72	THIS ITEM WAS NOT USED

ITEM	DESCRIPTION
L 73	PIECE OF WIRE
L 74	PIECE OF WOOD
L 75	TWO STEAK KNIVES
L 76	LARGE PLASTIC CONTAINER LABELED "NaCl3 + NaCl"
L 77	TWO PIECES OF WOOD AND THREE STRIPS OF WOOD
MA 1	BOX OF 52 BOOKS
MA 2	BOX OF 41 BOOKS AND 23 INDEX CARDS
MA 3	PAIR OF GLOVES
MA 4	METAL PAN AND STICK
MA 5	APPEARS TO BE A HAND DOME CALENDAR
MA 6	CAN WITH PAPER ADDRESSES
MA 7	CAN WITH MATCHES AND WOOD FRAGMENTS
MA 8	THREE TOOLS
MA 9	PART OF RADIO
MA 10	DOCUMENTS
MA 11	TIN WITH WIRE ACROSS TOP
MA 12	TOOLS IN "TIDE" DETERGENT BOX
MA 13	CONTAINER OF FINE TWINE
MA 14	SMALL RATCHET, TWEEZERS AND A POCKET KNIFE

ITEM	DESCRIPTION
MA 15	FOUR MEASURING SPOONS
MA 16	TOOLS IN A CAN
MA 17	BLUE ZIPPERED SWEATSHIRT
MA 18	BLUE HOOD AND OLD TOWEL
MA 19	TWO PAIR OF PLASTIC GLASSES
MA 20	BLUE JACKET
MA 21	GREEN HOODED JACKET
MA 22	METAL POT
MA 23	PLASTIC BAG CONTAINING CANS AND HOSES
MA 24	A CUTTING OF GREEN JACKET
MA 25	ONE PLASTIC CONTAINER LABELED "CITRIC ACID" CONTAINING WHITE POWDER
MA 26	MAGNET
MA 27	ONE PLASTIC BOTTLE CONTAINING METALLIC GRANULAR MATERIAL
MA 28	WOOD AND SCREWS
MA 29	RED COLORED VICE
MA 30	PIECES OF METAL
MA 31	MEDALLION
MA 32	DRAWINGS AND DOCUMENTS
MA 33	CLAMP

ITEM	DESCRIPTION
MA 34	BOTTLE OF WHITE POWDER LABELED "NaCl"
MA 35	NOTE: ITEMs MA-35 THRU MA-54 WERE NOT USED
MA 55	WOOD PIECES AND SCREEN
MB 1	74 BOOKS
MB 2	29 BOOKS/DOCUMENTS
MB 3	FOLDED PAPERS WITH CHEMICAL RESIDUE
MB 4	RECORDER & CASE
MB 5	TWO EMPTY METAL CANS
MB 6	THREE ARROWS
MB 7	ONE ROCK
MB 8	FOUR COPPER TUBES
MB 9	PLASTIC JAR CONTAINING TRIGGERING DEVICES, EACH NUMBERED WITH MASKING TAP TAG
MB 10	THREE PAIRS OF SCISSORS
MB 11	ONE PLASTIC BOTTLE OF GLUE, LABEL "ELMER'S MUCILAGE"
MB 12	ONE TUBE OF "DURO SUPER GLUE"
MB 13	ONE METAL CAN CONTAINING THREE TUBES OF PAINT IN THE FOLLOWING COLORS: MEDIUM CADMIUM RED, RAW AMBER, DEEP PERMANENT GREEN
MB 14	ONE METAL CAN CONTAINING WICKS AND STRINGS WITH A PIECE OF NEWSPAPER INSIDE TO KEEP CONTENTS FROM MOVING ABOUT
MB 15	TWO PAINT KITS; SMALLER ONE IN BLACK METAL CONTAINER LABELED "PRANG WATER COLORS", LARGER ONE IN YELLOW AND CLEAR PLASTIC CONTAINER
MB 16	ONE WOOD HANDLED KNIFE, CONTAINED IN A SHEATH MADE OF NEWSPAPER

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	ITEM	DESCRIPTION
MB	17	ONE T-SHAPED METAL PIPE OR BRACKET WITH SERIAL NUMBER "GM-4" AND PARTIAL SERIAL NUMBER "...3658391"
MB	18	TWO SMALL METAL TINS
MB	19	ONE METAL CAN
MB	20	ONE WHITE PLASTIC SHOPPING BAG CONTAINING STEEL WIRE, HANDWRITTEN NOTATION ON OUTSIDE OF BAG "S ...", AND HANDWRITTEN NOTATION ON PACKAGES OF WIRE "COAST TO COAST, HELENA, JULY, 1994"
MB	21	ONE METAL CAN, LABEL "DEL MONTE WHOLE LEAF SPINACH", CONTAINING MELTED METAL FRAGMENTS
MB	22	ONE PAPER BAG CONTAINING WHITE ELECTRICAL EXTENSION CORDS; BAG WRAPPED IN STRAPPING TAPE
MB	23	ONE SMALL METAL CAN
MB	24	NINE METAL CAN
MB	25	TWO SMALL METAL CANS
MB	26	ONE SMALL WHITE CERAMIC CRUCIBLE
MB	27	TWO OFF-WHITE COLORED CERAMIC CRUCIBLE LIDS
MB	28	ONE BROWN CLASP ENVELOPE MARKED "AUTOBIOGRAPHY"
MB	29	"GRIP-LINE" RUBBER STAMP KIT
MB	30	PLASTIC BAG CONTAINING SEVERAL NOTEBOOKS, ENVELOPES AND MISC. HANWRITTEN DOCUMENTS
MB	31	ONE BROWN PAPER BAG CONTAINING TWO PACKAGES OF NOTEBOOK FILLER PAPER
MB	32	ONE PAPER BACK BOOK ENTITLED, "GROWING UP ABSURD", BY PAUL GOODMAN
MB	33	MISC. MAPS
MB	34	ONE BOX OF REYNOLDS ALUMINUM FOIL WITH RED RUBBER BAND AROUND IT
MB	35	THREE METAL BOTTLE CAPS LABELED "NAZOLA CORN OIL"

ITEM	DESCRIPTION
MB 36	PIECE OF CUT PIPE
MB 37	BOTTOM PORTION OF UNFIRED CARTRIDGE
MB 38	ONE "HANSON, MODEL 1509" SCALE, WRAPPED IN BROWN PAPER WITH MASKING TAPE
MB 39	BROWN PLASTIC JAR "NATURES BEST" CONTAINING FIRED CARTRIDGE CASINGS
MB 40	ONE BROWN WOODEN HANDLE POCKET KNIFE
MB 41	PICK/HATCHET TOOL
MB 42	KNIFE IN TATTERED WHITE CLOTH SHEATH
MB 43	HUNTING KNIFE IN LEATHER SHEATH
MB 44	WOOD HANDLED FILE
MB 45	SEVEN LARGE DRILL BITS
MB 46	"GREAT NECK #50" HACKSAW
MB 47	ONE DRILLING BASE
MB 48	ONE HAND SAW
MB 49	ONE HAND SAW
MB 50	ONE BROWN PLASTIC OBLONG "HERSHEY" CANNISTER WITH LID
MB 51	THREE BROWN THIN CARDBOARD PAPER TRAYS
MB 52	THREE BROWN THIN CARDBOARD PAPER TRAYS
MB 53	TWO BROWN THIN CARDBOARD PAPER TRAYS
MB 54	ONE COIL OF WIRE AND METAL PARTS

ITEM	DESCRIPTION
MB 55	ONE PACKAGE OF "MEAD" BRAND TYPING PAPER, WITH BOTTOM HALF IN PAPER AND STRAPPING TAPE
MB 56	STUDENT GUIDES AND PUBLICATIONS FROM THE UNIVERSITY OF MONTANA AND CARROLL COLLEGE
MB 57	ONE BROWN PLASTIC OBLONG "HERSHEY" CANNISTER WITH LID
MB 58	NUMEROUS CONTAINERS (METAL, PLASTIC AND CARDBOARD) CONTAINING A VARIETY OF NAILS AND METAL FASTENERS
MB 59	NUMEROUS CONTAINERS (METAL, PLASTIC, GLASS, AND CARDBOARD) CONTAINING A VARIETY OF BOLTS, SCREWS AND METAL FASTENERS
MB 60	TWO WHITE PLASTIC BUTANE CIGARETTE LIGHTERS
MB 61	ONE "CALUMET" BAKING POWDER CANNISTER CONTAINING ONE RED "LE WATCH" BRAND WATCH, WATCH PARTS, AND MISC. METAL PARTS
MB 62	ONE BROWN PLASTIC OBLONG CONTAINER, CONTAINING ONE MOUSE TRAP, ONE PIECE OF INNER TUBE VALVE, AND ONE ORANGE PLASTIC BAG CONTAINING WIRE
MB 63	ONE YELLOW PLASTIC BUCKET/PAIL
MB 64	SIX CAST METALLIC OBJECTS
MB 65	CONE SHAPED METALLIC CASTING
MB 66	ONE CAST METALLIC OBJECT
MB 67	TEN CANNISTERS CONTAINING VARIOUS METAL SAMPLES AND ONE ROUND METAL OBJECT
MB 68	ONE METAL CAN CONTAINING NUTS, BOLTS AND OTHER METAL OBJECTS
MB 69	ONE CARDBOARD CANNISTER CONTAINING SMALL AMOUNT OF WHITE POWDER. THE CANNISTER IS LABELED "SHOPPERS VALUE QUICK OATS"
MB 70	ONE CARDBOARD CANNISTER CONTAINING SMALL AMOUNT OF WHITE POWDER. THE CANNISTER IS LABELED "SHOPPERS VALUE QUICK OATS"
MB 71	ONE PLASTIC BOTTLE LABELED "CHATEAU 70% ISOPROPYL RUBBING ALCOHOL", CONTAINING SPRINGS AND OTHER METAL OBJECTS
MB 72	ONE "CALUMET BAKING POWDER" CANNISTER CONTAINING MACHINED METAL PARTS
MB 73	ONE "CALUMET BAKING POWDER" CANNISTER CONTAINING PARTS OF A POCKET KNIFE BLADE AND OTHER ASSORTED METAL PARTS

ITEM		DESCRIPTION
MB	74	"JOHNSON & JOHNSON MEDICATED BAND-AID" METAL CAN CONTAINING VARIOUS METAL PARTS
MB	75	ONE METAL CAN CONTAINING WIRE AND OTHER METAL PARTS
MB	76	ONE CYLINDRICAL "QUAKER YELLOW CORN MEAL" CARDBOARD CANNISTER CONTAINING TWO SPOOLS OF SOLDER
MB	77	ONE CYLINDRICAL "QUAKER OATS" CARDBOARD CANNISTER CONTAINING WIRES, A SWITCH, AND AN ALLIGATOR CLIP
MB	78	BOTTOM HALF OF CARDBOARD INSTANT MILK BOX CONTAINING TUBE OF "TRUBOND" CLEAR SILICONE CAULK, CLEAR PLASTIC BOX OF SCREW DRIVERS WITH MASKING TAPE LABEL "254", WIRE BRUSH, A LEVEL, THREE PAINT BRUSHES, A PAPER BAG CONTAINING SMALL SQUAR MAGNETS, AND MISC. METAL PARTS
MB	79	HAND DRILL WITH BLUE AND RED WOOD HANDLE
MB	80	NINE PIECES OF WOOD APPROXIMATELY 8" LONG (APPEARS SIMILAR TO PANELING STRIPS)
MB	81	MISC. PIECES OF METAL, INCLUDING TIN CAN LID, BALL OF ALUMINUM FOIL, TWO PIECES OF BLUE HACK SAW BLADE, PIPE FITTINGS IN "T" FORMATION, AND PAIR OF PLIERS
MB	82	GROUP OF METAL FASTNERS, BUNDLED TOGETHER WITH BLUE RUBBER BAND
MB	83	TWO WHITE HOMEMADE ENVELOPES, ONE WITH HANWRITTEN NOTATION "WIRE", THE OTHER "DUMP"
MB	84	THREE YELLOW RUBBER GLOVES, ONE LABELED "ANSELL" BRAND, ANOTHER LABELED "LARGE, PLAYTEX, DOVER, DEL.". ALL THREE HAD THE WRIST AREA CUT OFF.
MB	85	ONE CUT PORTION OF A BATTERY, "RADIOSONDE, NSN-6135-01-054-2098, VIZ MFG. CO., 335 E. PIERCE ST., PHILA, PA, 19144 USA, PATENT NO. 3205.096", WRAPPED IN A PIECE OF NEWSPAPER DATED NOV. 22, 1995, PAGE 4 OF THE CONSUMER PRESS
MB	86	SMALL PLASTIC CONTAINER WITH STRIP OF BLACK TAPE AROUND IT AND TORN WHITE HANDWRITTEN LAEL "LIMA DURAS DE HIERRO PARCIALMENTE LIMPIAS", CONTAINING BROWNISH-BLACK POWDER BELIEVED TO BE ALUMINUM
MB	87	TWO PLASTIC BOTTLES OF GLUE, ONE LABELED "ROSS MUCILAGE FOR PAPERWORK", THE OTHER LABELED "ROSS KANGAROO MUCILAGE"
MB	88	ONE METAL NUT CRACKER
MB	89	ONE METAL "HERSHEY'S COCOA" CAN CONTAINING MISC. NUTS AND BOLTS
MB	90	QUACKER YELLOW CORN MEAL CONTAINER WITH HANDWRITTEN NOTATION ON TOP "TRANSFORMER", CONTAINING ELECTRICAL WIRE AND MISC. ELECTRICAL PARTS
MB	91	ONE METAL "HERSHEY'S COCA" CAN CONTAINING MISC. METAL PARTS

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ITEM	DESCRIPTION
MB 92	ONE BROWN PLASTIC CONTAINER CONTAINING TRACE MATERIAL
MB 93	"CALUMET DOUBLE ACTION BAKING POWDER" METAL CONTAINER CONTAINING A LUMP OF METAL
MB 94	ONE SMALL "SHOPPERS VALUE TOMATO PASTE" CAN CONTAINING RESISTERS AND A TAN PLASTIC SHOPPING BAG CONTAINING RESISTERS
MB 95	SEVEN ROLLED UP MAPS
MB 96	HOMEMADE OLIVE GREEN CLOTH POUCH CONTAINING A TAN PLASTIC SHOPPING BAG WITH THREE MATCHBOOKS WITH PLAYING CARD SYMBOLS ON IT, TWO PLASTIC BAGS WITH SMALL PIECES OF WOOD IN THEM, AND A COMPASS ON A STRING, AND A RED RUBBER BAND. BLUE DENIM PATCHES AND VARIOUS PIECES OF STRING ALL OVER OUTSIDE OF POUCH.
MB 97	MISC. PIECES OF CURVED WIRE, METAL CAP IN DOUGHNUT SHAPE, AND ROUND PIECE OF METAL CUT IN STRIPS AROUND THE EDGES
MB 98	"GOLD MEDAL" FLOUR SACH CONTAINING MISC. DEBRIS (TO INCLUDE SOIL, WOOD, AND HAIR)
MB 99	TAN PLASTIC SHOPPING BAG CONTAINING VARIOUS TYPES OF CORD AND TWINE
MB 100	"FLAVORITE LARGE PITTED RIPE OLIVES" CAN CONTAINING LARGE AMOUNT OF SCREWS AND HANDWRITTEN NOTE "BURNED AND SOAKED IN CORRODING SOLUTION - CLEAN"
MB 101	GLASS JAR WITH RED METAL LID AND HANWRITTEN NOTE ATTACHED WITH MASKING TAPE WHICH STATES, "ALUMINUM FROM SOME TYPE OF PAINT - TYPE OF PAINT UNKNOWN". THE JAR CONTAINED CLUMPS OF SILVER-GREY COLORED SUBSTANCE.
MB 102	TWO OPEN SMALL ORANGE PLASTIC CONTAINERS COVERED WITH PIECES OF NEWSPAPER, ONE SECURED WITH A TAN RUBBER BAND
MB 103	ONE METAL RING AND A SPOOL OF BROWN THREAD LABELED "AMERICAN THREAD CO., STAMFORD, CT. 100% POLYESTER"
MB 104	METAL FILES WRAPPED IN ORANGE AND CLEAR PLASTIC BAG, WITH WHITE PIECE OF PAPER ATTACHED WITH A BLACK RUBBER BAND, WHICH APPEARS TO BE SOME KIND OF MATHMATICAL EQUATIONS
MB 105	ONE METAL CAN CONTAINING MISC. PIECES OF COPPER
MB 106	BROWN CARDBOARD BOX CONTAINING MISC. GRINDING WHEELS AND PIECES OF METAL
MB 107	"QUAKER YELLOW CORN MEAL" CARDBOARD CONTAINER CONTAINING PIECES OF SCREENING MATERIAL
MB 108	ONE HACK SAW BLADE WITH RED COLOR ON EACH END
MB 109	ONE METAL CAN CONTAINING MISC. SCREWS, METAL PARTS, AND A WHITE ENVELOPE WITH SILVER COIN PIECES IN IT

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ITEM	DESCRIPTION
MB 110	TWO PIECES OF SPLINTERED HARD WOOD, WRAPPED IN A SHEET OF NEWSPAPER, PRONT PAGE OF "MISSOULIAN", FRIDAY, SEPT. 16, 1988
MB 111	THREE PAGES OF HANDWRITTEN NOTES ATTACHED TOGETHER WITH A METAL PAPER FASTNER, AND ROLLED UP USING A LARGE TAN RUBBER BAND
MB 112	ONE SPOOL OF TWINE SECRUED WITH A PIECE OF MASKING TAPE
MB 113	ONE SMALL BROWN PLASTIC BOTTLE, LABELED "NATURE MADE THERAPEUTIC M", WITH A PIECE OF MASKING TAPE AROUND IT, WITH HANDWRITTEN NOTATIONS "COARSE ALUMINUM FILINGS"
MB 114	ONE SMALL METAL CAN CONTAINING SMALL CLUMPS OF METAL. THE CAN IS COVERED WITH A PIECE OF NEWSPAPER AND SECURED WITH A DIRTY WHITE RUBBER BAND
MB 115	ONE "CALUMET BAKING POWDER" CAN CONTAINING SOLDERING WIRE
MB 116	ONE SMALL METAL CONTAINER (APPEARS EMPTY)
MB 117	ONE SMALL METAL CAN WITH WIRE HANDLE THROUGH IT, AND ONE PIECE OF METAL
MB 118	SEVEN METAL CASTINGS
MB 119	ONE SMALL BROWN PLASTIC BOTTLE LABELED "NATURE MADE THERAPEUTIC M" WITH PAPER LABEL ATTACHED WITH MASKING TAPE, WITH HANDWRITTEN NOTATIONS "ALLUMINUM FILINGS FROM OUR BIG BLOCK OF CAST ALUMINUM 5.1 oz"
MB 120	ONE "CARNATION DRY MILK" CARDBOARD CONTAINER.
MB 120A	SMALL ORANGE PLASTIC BOTTLE WITH WHITE PLASTIC CAP, WITH PIECE OF MASKING TAPE AROUND IT WITH HANDWRITTEN NOTATIONS "Ag Cl, SLIGHTLY PHOTO-DECOMPOSED"
MB 120AA	ONE WHITISH PLASTIC BOTTLE WITH BLACK CAP, LABEL "MANGANESE DIOXIDE (TECHNICAL) CONTACT WITH OTHER MATERIAL MAY CAUSE FIRE. DO NOT GRIND. DO NOT BREATHE DUST. 8J28D, 1/4 lbs., ANALYTICAL & RESEARCH CHEMICALS, INC."
MB 120B	SMALL BROWN PLASTIC BOTTLE WITH BLACK CAP, WITH PIECE OF MASKING TAPE AROUND IT, WITH HANDWRITTEN NOTATIONS "LITHORGETMINIUM & FREE LEAD NOT VERY PURE"
MB 120C	SMALL PLASTIC ORANGE CONTAINER WITH WHITE PLASTIC CAP, WITH A PIECE OF BLACK TAPE AROUND IT SECURING A WHITE LABEL WITH HANDWRITTEN NOTATION "Fe2 03, .347 UNITS, Exp. 51, LOT (bi) WITHOUT H2 S04"
MB 120D	SMALL PLASTIC TUBE CONTAINING BLUE POWDER. THE TUBE HAD MASKING TAPE AROUND IT, WITH THE HANDWRITTEN NOTATION "Cu S04 5H20 COPPER SULFATE"
MB 120E	SMALL GLASS JAR WITH RED AND WHITE CHECKERED METAL CAP CONTAINING WHITE FLAKY SUBSTANCE, WITH MASKING TAPE AROUND IT, WITH HANDWRITTEN NOTATIONS "NH4 Cl AMMOTITAN CHLORIDE Exp. 136"

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ITEM	DESCRIPTION
MB 120F	SMALL PLASTIC BOTTLE LABELED "SUPREME BRAND ASPIRIN TABLETS" CONTAINING PINK COLORED STRIPS OF PAPER AND WHITE LABEL "LITMUS PAPER NEUTRAL"
MB 120G	ONE SMALL WHITE PLASTIC BOTTLE WITH WHITE METAL CAP, LABELED "BAYER ASPIRIN", WITH MASKING TAPE AROUND IT, WITH HANDWRITTEN NOTATIONS "LEAD CHLORIDE - CONTAMINATED WITH SOME HYDROXIDE, OXIDE, OR CARBONATE OF LEAD"
MB 120H	WHITISH PLASTIC BOTTLE WITH RED PLASTIC CAP, CONTAINING A GREYISH POWDER
MB 120I	SMALL GREY PLASTIC BOX LABELED "PHYDRION VIVID, DOUBLE ROLL 5.5 TO 9.5, CATALOG NO. 168"
MB 120J	SMALL BROWN PLASTIC BOTTLE WITH WHITE PLASTIC CAP, WITH NOTEBOOK PAPER LABEL TAPED ON WITH MASKING TAPE WITH HANDWRITTEN NOTATIONS "Na2 Co3 FROM RED DEVIL LYE. SHOULD BE REASONABLY PURE, IF RED DEVIL LYE IS. (NO, NOT VERY PURE)"
MB 120K	WHITE PAPER ENVELOPE WRAPPED WITH MASKING TAPE WITH HANDWRITTEN NOTATIONS "ELMER'S BRAND MUCILAGE"
MB 120L	WHITISH PLASTIC BOTTLE WITH WHITE CAP LABELD "ORANGE". THE BOTTLE HAD A WHITE PAPER LABEL SECURED WITH MASKING TAPE. THE LABEL CONTAINED THE FOLLOWING HANDWRITTEN NOTATION "Fe(OH)2 PARTIALLY (OR WHOLLY?) OXIDIZED TO Fe(oh)3 Exp. 51, Lot E"
MB 120M	SMALL BROWN PLASTIC BOTTLE LABELED "THERAPEUTIC M" WITH MASKING TAPE AROUND IT, WITH HANDWRITTEN NOTATIONS "LEAD ACETATE, LEAD HYDROXIDE, LEAD CARBONATE, UNKNOWN PROPORTIONS, NOT VERY PURE"
MB 120N	ONE "CALUMET BAKING POWDER" CANS WITH PAPER LABEL SECURED WITH MASKING TAPE, WITH HANDWRITTEN NOTATIONS "BLACK SAND PRESUMABLY CONSIST LARGELY OF Fe O45"
MB 120O	WHITE PLASTIC BOTTLE WITH WHITE PLASTIC CAP LABELED "NDC 0923-0371-03 POWDERED ALUM (AMMONIUM ALUM) ASTRINGENT, WHITEWORTH"
MB 120P	WHITE PLASTIC BOTTLE WITH WHITE METAL CAP. BOTTLE CONTAINED A LABEL "McKESSON BORIC ACID CRYSTALS NF", AND HAD A SMALL WHITE PRICE TAG "112-1755, KSHME, BERGUMS, 1.95"
MB 120Q	SMALL TAN CARDBOARD BOX LABELED "FUEL COMPRESSED, TRIOXANE, RATION HEATING, F.S.N. 9110-263-9865, 3 BARS, SPECIFICATION: MIL-F-10805C, CAN-TITE RUBBER CORPORATION, INWOOD, L.I., NEW YORK 11696"
MB 120R	ONE BROWN PLASTIC "OSCO CASTOR OIL" BOTTLE WITH WHITE PLASTIC CAP.
MB 120S	ONE "GRAPE SUPER SIP" PLASTIC BOTTLE WITH PAPER LABEL SECURED WITH MASKING TAPE BEARING HANDWRITTEN NOTATION "Fe2 03 Exp. 51, LOT (di)"
MB 120T	SMALL CLEAR GLASS "FOLGERS" JAR WITH GOLD COLORED PLASTIC CAP CONTAINING GREENISH-GREY CRYSTALS. THE JAR WAS MASKING TAPE WRAPPED AROUND IT WITH THE HANDWRITTEN NOTATION "GREENISH PRECIPITATE (PRESUMABLY A COPPER COMPOUND) FROM Exp. 241."

ITEM	DESCRIPTION
MB 120U	WHITE PLASTIC "McKESSON BORIC ACID POWDER NF" BOTTLE WITH WHITE METAL CAP. THE BOTTLE HAS A SMALL WHITE PRICE TAG BEARING THE FOLLOWING INFORMATION "112-1797 H3HG BERGUMS 1.77"
MB 120V	ONE WHITISH PLASTIC "RASPBERRY SUPER SIP" BOTTLE WITH WHITE PLASTIC CAP WITH MASKING TAPE ACROSS AND AROUND CAP AND MASKING TAPE AROUND BOTTLE WITH HANDWRITTEN NOTATIONS "AgCl, HEAVILY CONTAMINATED WITH Al COMPOUNDS AND OTHER CRAP"
MB 120W	WHITE ELONGATED PLASTIC BOTTLE WITH WHITE PLASTIC CAP, LABEL "LAXITIVE" (BRAND NAME NOT VISIBLE) WITH WHITE PAPER LABEL SECURED WITH MASKING TAPE, WITH HANDWRITTEN NOTATIONS "MIXTURE OF LITHANGE AND MINIUM, POSSIBLY CONTAMINATED WITH OTHER OXIDES OF Pb, ALSO PERHAPS CARBONATE AND NITRATE OF Pb, HYDROXIDE, AND A LITTLE FREE LEAD"
MB 120X	CLEAR GLASS JAR, WITH WHITISH PLASTIC STOPPER TYPE CAP, WITH WHITE PAPER LABEL SECURED WITH HANDWRITTEN NOTATIONS "AMORPHOUS CARBON (MADE BY HEATING SUCROSE)" CONTAINING A BLACK POWDERY SUBSTANCE
MB 120Y	METAL CAN, COVERED WITH A PIECE OF NEWSPAPER, SECURED WITH MASKING TAPE WITH HANDWRITTEN NOTATIONS "ALDER CHARCOAL"
MB 120Z	OBLONG WHITISH PLASTIC CONTAINER, WITH BLACK CAP, WITH BLACK TAPE AND MASKING TAPE AROUND THE CAP, LABEL "ALDRICH SCIENTIFIC, P3191, 500g, POTASSIUM CARBONATE, ANHYDROUS GRANULAR TECHNICAL, K, Co, FW 138.21, ALDRICH SCIENTIFIC, 5415 JACKWOOD DR., SAN ANTONIO, TX 78238-1897, LOT 9C06G"
MB 121	ROD SHAPED PIECES OF DARK COLORED/BLACKISH POWDER, WRAPPED IN HANDWRITTEN NOTE, INSIDE A RED AND WHITE CHECKERED BREAD BAG.
MB 122	THREE BUNDLES OF CLEAR GLASS TUBING; ONE WRAPPED IN A PAGE OF CONSUMER PRESS NEWSPAPER DATED JUNE 21, 1995, AND SECURED WITH YELLOW AND WHITE RUBBER BANDS; ANOTHER IS WRAPPED IN LARGE POCKET BUBBLE WRAP, WITH HANDWRITTEN NOTATION "5 m.m. PYREX TUBING"; ANOTHER IS WRAPPED IN LARGE POCKET BUBBLE WRAP WITH HANDWRITTEN NOTATION "10 m.m. PYREX TUBING", ALL WRAPPED TOGETHER IN A MISSOULIAN NEWSPAPER DATED JANUARY 16, 1991.
MB 123	ONE WHITE PORCELAIN MORTAR AND PESTLE, WRAPPED IN CONSUMER PRESS NEWSPAPER DATED APRIL 5, 1995, PAGE 26; AND SECURED WITH A YELLOW RUBBER BAND
MB 124	METAL CAN WITH HANDWRITTEN NOTATION "12:00AM", CONTAINING TWO METAL CASTINGS
MB 125	ROUND CARDBOARD CANNISTER, LABEL "OLD FASHIONED QUAKER OATS", WITH HANDWRITTEN NOTATIONS ON THE TOP "RUBBER TUBING, FUNNELS, BULBS, ETC.". THE CANISTER CONTAINS ASSORTED PIECES OF RUBBER TUBING, A SMALL PIECE OF GLASS TUBING, A BLACK RUBBER STOPPER, TWO METAL CLIPS AND ONE SMALLER ROUND CARDBOARD CANNISTER. THE SMALLER CANNISTER IS A "QUAKER YELLOW CORN MEAL" CONTAINER WITH HANDWRITTEN NOTATION ON THE TOP "PLASTIC AND GLASS TUBING, SHORT PIECES". THIS SMALLER CONTAINER CONTAINS ASSORTED PIECES OF PLASTIC AND RUBBER TUBING, SEVERAL BLACK RUBBER STOPPERS AND TWO METAL CLIPS
MB 126	ONE STAINLESS STEEL .22 CALIBER REVOLVER AND NINE .22 CALIBER ROUNDS OF AMMUNITION. THE REVOLVER IS FURTHER DESCRIBED AS AN "H & R INC. U.S.A., MODEL 930, SERIAL# AE 1935. THE REVOLVER HAS A BLACK HANDLE WHICH IS WRAPPED IN MASKING TAPE.
MB 127	ONE PACKAGE OF "GILLETTE SUPER BLUE BLADES" AND A VARIETY OF STRING AND TWINE BOUND TOGETHER WITH A BLUE RUBBER BAND IN A WHITE PIECE OF PAPER. THE PAPER HAS THE HANDWRITTEN NOTATION "ADDITIONAL TIES FOR BIG SHELTER CLOTH"

ITEM	DESCRIPTION
MB 128	ONE YELLOW AND BLACK PLASTIC "TRUE VALUE" FLASHLIGHT WITH LIGHTBULB IN IT BUT NO BATTERIES
MB 129	CARDBOARD BOX WITH U.S. POST OFFICE METERED MAIL "KANSAS CITY, MO, OCT. 27, '76", CONTAINING VARIOUS SPOOL OF TWINE, BUNDLES OF STRING, AND NUMEROUS STRIPS OF LEATHER
MB 130	ONE CARDBOARD BOX WHICH HAD CONTAINED ITEMS MB-79, MB-81, MB-83, MB-84, AND MB-86
MB 131	ONE METAL CAN CONTAINING PIECES OF CARVED WOOD AND CARVED BONE
MB 132	ONE "BAND-AID BRAND PLASTIC STRIPS" METAL CAN WRAPPED IN A PLASTIC BAG, SECURED WITH A BLUE RUBBER BAND, CONTAINING FINE STRANDS OF COPPER WIRE
MB 133	ONE PIECE OF WAVY WIRE BENT IN THE FORM OF A CIRCLE
MB 134	TAN PLASTIC SHOPPING BAG CONTAINING ONE CUT BRASS BRACKET/PIPE FITTING, TWO SMAL PIECES OF COPPER TUBING (ONE PIECE HAS MASKING TAPE AROUND IT), FOUR PLASTIC CONTAINERS (TWO WHITISH PLASTIC WITH WHITE METAL TOPS, ONE WHITISH PLASTIC WITH A RED PLASTIC TOP, AND ONE ORANGE PLASTIC WITH A WHITE PLASTIC TOP) EACH CONTAINING COPPER AND/OR OTHER METAL FRAGMENTS
MB 135	ONE ROUND, CARDBOARD "OLD FASHIONED QUAKER OATS" CANNISTER, CONTAINING AN ELECTRONICS TESTER, SER. NO. B003413B5, WITH HANDWRITTEN NOTE ON MASKING TAPE ON FRONT "NOTE: WHEN ON 'HIGH' THE AMMETER GIVES INCORRECT READING. SEE EXP. 242."; HANDWRITTEN NOTE ON TOP OF CANNISTER, "AMMETER", BETWEEN TWO INTERSECTING PIECES OF MASKING TAPE
MB 136	ONE CLEAR PLASTIC BOX, CONTAINING ONE LONG FLAT HEAD NAIL, ONE PIECE OF WIRE, AND ASSORTED PIECES OF METAL
MB 137	ONE SMALL CLEAR GLASS JAR, WITH RED AND WHITE CHECKERED METAL CAP, CONTAINING TWO STAPLES (FOR WOOD) AND A SMALL AMOUNT OF GOLD, SHINY GRANULES AND FLAKES
MB 138	ONE ORANGISH-YELLOW ELONGATED PLASTIC CONTAINER/BOX, CONTAINING NAILS, SMALL PIECES OF WOOD, AND SEWING INSTRUMENTS AND MATERIALS
MB 139	ONE ROLL OF "GOULD QUIKSTIK" BROWN PACKING TAPE, LABEL INSIDE ROLL "GOULD PACKAGING, INC., VANCOUVER, WA. 98666"
MB 140	ONE PAIR OF PLIERS
MB 141	ONE UNOPENED PACKAGE OF "COGHLAN'S WATERPROOF WOODEN MATCHES", "COGHLAN'S LTD., WINNIPEG, CANADA, MADE IN AUSTRALIA", CONTAINING FOUR BOXES OF MATCHES
MB 142	ONE WHITE PLASTIC BAG, CONTAINING A WHITE PLASTIC FACE MASK, WITH STRING AND RUBBER BAND ATTACHED TO IT, AND AN EMPTY PACKAGE OF "FLEXCO PRODUCTS, INC. REPLACEMENT MICRO-FOAM FILTERS FOR PROTECTIVE MASK"
MB 143	ONE PIECE OF COPPER TUBING

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ITEM	DESCRIPTION
MB 144	ONE METAL CAN CONTAINING A WHITE TOOTHBRUSH, BOTTLE CAPS, BALLS OF ALUMINUM FOIL, PIECES OF SCREENING MATERIAL, AND VARIOUS METAL PIECES
MB 145	ONE SMALL ROUND CARDBOARD "QUAKER YELLOW CORN MEAL" CANNISTER, CONTAINING NUMEROUS HOSE CLAMPS AND METAL BRACKETS, WITH HANDWRITTEN NOTATION ON THE TOP OF THE CANNISTER "HOSE CLAMPS ETC."
MB 146	TWO BLUE AND TWO ORANGE PLASTIC FUNNELS, AND ONE WHITE HOME MADE CLOTH FILTER FOR FUNNEL
MB 147	ONE PAPER "GOLD MEDAL WHOLE WHEAT FLOUR" BAG, CONTAINING SEVERAL LARGE NAILS, SECURED SHUT WITH A DIRTY TAN RUBBER BAND
MB 148	ONE WHITE PLASTIC JAR, WITH WHITE METAL CAP, LABEL "R"XALL SUBLIMED SULFUR, N.F. (FLOWERS OF SULFUR), PARASITICIDE-SCABICIDE"
MB 149	ONE SMALL, SQUARE, YELLOW TIN, LABLE "JOHN WAGNER & SONS, RARE FLOWERY JASMINE TEA", CONTAINING ONE SMALL METAL WASHER, AND SEVERAL SMALL PIECES OF WIRE
MB 150	ONE PLASTIC BREAD BAG, SECURED WITH A SHOE LACE, CONTAINING FIVE SMALL CONTAINERS: (1) ONE ORANGE PLASTIC BOTTLE, WITH WHITE PLASTIC LID, WITH MASKING TAPE AROUND IT, WITH HANDWRITTEN NOTE "THERMITE LACED WITH CHLORATE MIXURE"; (2) ONE ORANGE PLASTIC CONTAINER, WITH WHITE PLASTIC CAP, WITH MASKING TAPE ON IT, WITH HANDWRITTEN NOTATION "EXP. 118"; (3) ONE ORANGE PLASTIC BOTTLE, WITH WHITE PLASTIC LID, WITH MASKING TAPE AROUND IT, WITH HANDWRITTEN NOTATION "KCLO3 + S + CHARCOAL + MUCILAGE"; (4) ONE ORANGE PLASTIC CONTAINER, WITH WHITE PLASTIC CAP, WITH MASKING TAPE AROUND IT, WITH HANDWRITTEN NOTATIONS "AL + S"; (5) ONE SMALL METAL CONTAINER, SILVER COLOR, WITH MASKING TAPE AROUND IT, WITH HANDWRITTEN NOTATION "SMOKELESS POWDER FROM REMINGTON .30-06 BRONZE POINTS"
MB 151	ONE TAN PLASTIC SHOPPING BAG, CONTAINING THREE ALUMINUM FOIL ENVELOPES/POUCHES; EACH WITH MASKING TAPE LABELS WITH HANDWRITTEN NOTATIONS: (1) "RESTOS PARCIALMENTE CUAJADOS DE MEZCLA 206-1(a) de EXPS 225, 228, 245, MEZCLA 206-1(A)"; (2) "MIX 158-4 (SLIGHTLY MODIFIED) FROM EXP. 244 CLEAN AND CAN BE USED."; (3) "MIX 158-4 EXP. 244. CLOTTED WITH ACETONE."
MB 152	ONE METAL CAN, WITH WHITE PAPER LABEL ATTACHED WITH STRAPPING FILAMENT TAPE, WITH HANDWRITTEN NOTATIONS "EXP. 126 PITTSBURGH CONTAINER #2"
MB 153	ONE CLEAR PLASTIC JAR, WITH WHITE METAL LID, WITH MASKING TAPEAROUND IT, WITH HANDWRITTEN NOTATIONS "(AL + S) + THERMITE"
MB 154	ONE PAPER CONTAINER OF "FLAVOTIE FINE GRANULATED SUGAR", SECURED WITH TWO LARGE RUBBER BANDS
MB 155	ONE PAPER "GOLD MEDAL WHOLE WHEAT FLOUR FLOUR" SACK, WITH HANDWRITTEN NOTATION "DUMP IN LINCOLN" AT THE BOTTON, CONTAINING MISCELLANEOUS DEBRIS (TO INCLUDE SOIL, SMALL PIECES OF WOOD, METAL, SCREWS, AND BOLTS), SECURED WITH A RUBBER BAND
MB 156	WHITE PLASTIC BAG, CONTAINING ONE LARGE ROUND CARDBOARD "QUAKER OLD FASHIONED OATS" CANNISTER, WITH HANDWRITTEN NOTATIONS "CLASS 1 NO RUST" ON INTERSECTING PIECES OF PACKING TAPE ON TOP, CONTAINING A LARGE VARIETY OF METAL PIECES AND WIRE
MB 157	ONE WHITE PLASTIC BAG, CONTAINING ONE SMALL, ROUND, CARDBOARD "QUAKER YELLOW CORN MEAL" CANNISTER, CONTAINING ONE ALUMINUM FOIL ENVELOPE/POUCH, CONTAINING "FLASH POWDER"; HANDWRITTEN NOTATIONS ON TOP OF CANNISTER "SPOONS" AND "EXP. 220" (CROSSED THROUGH)

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ITEM	DESCRIPTION
MB 158	ROUND, METAL "CALUMET BAKING POWDER" CAN, WITH WHITE PAPER LABEL SECURED WITH MASKING TAPE, WITH HANDWRITTEN NOTATIONS "Na2CO3 - IMPURE. PROBABLY CONTAMINATED WITH NaHCO3, NaCL, and NaCLO3. THIS IS THE FIRST LOT OF CRYSTALS REMOVED MARCH 23. ANDSECOND LOT."
MB 159	ONE BROWN PLASTIC BOTTLE, WITH CLEAR PLASTIC LID, LABEL "OSCO DRUG VITAMIN MINERAL FORMULA", WITH MASKING TAPE AROUND IT, WITH HANDWRITTEN NOTATIONS "CRUDE KCLO3, MEDIUM KCLO3, CONTENT. MUST BE FILTERED."
MB 160	BLUE POWDER LIKE SUBSTANCE
MB 161	WHITE PLASTIC BOTTLE, LABEL "RIT LIQUID DYE", WITH MASKING TAPE AROUND IT, WITH HANDWRITTEN NOTATIONS "CaSO4 (NOT DRY)"
MB 162	BROWN PLASTIC BOTTLE, WITH WHITE METAL CAP, AND PINK COLORED PLASTIC TWISTED UNDER CAP, WITH MASKING TAPE AROUND BOTTLE, WITH HANDWRITTEN NOTATIONS, "MOSTLY KCL, WITH MODEST AMOUNT KCLO3, TARE WITH CAP = 0.6 OZ."
MB 163	ONE METAL CAN, WITH ALUMINUM FOIL PRESSED OVER THE TOP, WITH WHITE PAPER LABEL SECURED WITH MASKING TAPE, WITH HANDWRITTEN NOTATIONS, "CUIDADO MUY SENSIBILIZADO MEZCLA C DE EXP. 90 ESTA ESTA LA MISMA QUE LA MEZELA #5", CONTAINING LARGE BLACK PARTICLES
MB 164	ONE GLASS BOTTLE, WITH WHITE METAL CAP, LABEL "McKESSON GLYCERIN USP, #21315, McKESSON LABORATORIES, DUBLIN, CA. 94566"
MB 165	LIQUID SAMPLE FROM BOTTLE MARKED "SODIUM TARTRATE"
MB 166	LIQUID SAMPLE FROM BOTTLE MARKED "KCL"
MB 167	WHITISH PLASTIC BOTTLE, WITH WHITE METAL CAP, WITH CLEAR PLASTIC TWISTED UNDER CAP, WITH LABEL "McKESSON SALTPETER (POTASSIUM NITRATE)", WITH SMALL BRIGHT YELLOWISH-GREEN PRICE TAG "BERGUM DRUG, WHY PAY MORE? $1.73"
MB 168	SMALL BROWN BOTTLE, WITH WHITE PLASTIC CAP, WITH MASKING TAPE AROUND BOTTLE, WITH HANDWRITTEN NOTATIONS "CRUDE KCLO3 GOOD PURITY, EXCEPT THAT IT MUST BE FILTERED. TARE WITH CAP = 0.6 OZ."
MB 169	ONE CLEAR PLASTIC BOTTLE, WITH CLEAR PLASTIC CAP, WITH PINK PLASTIC TWISTED UNDER CAP, WITH MASKING TAPE AROUND BOTTLE, WITH HANDWRITTEN NOTATIONS, "CRUDE KCLO3 - GOOD PURITY" (TWICE)
MB 170	ONE ROUND CARDBOARD AND METAL CANNISTER, LABEL "CLABBER GIRL BAKING POWDER", CONTAINING SILVER-GREY POWDERY SUBSTANCE
MB 171	TWO SMALL WHITE CARDBOARD BOXES, LABEL "POTASSIUM CHROMATE K. CrO, FOR LAB USE ONLY, HAGEMOW LABS, INC., MANITOWOC, WIS.", IN A WHITE PLASTIC SHOPPING BAG
MB 172	ONE WHITE PLASTIC SHOPPING BAG, CONTAINING A WHITE POWDERY SUBSTANCE, AND CONTAINING A SMALL CLEAR PLASTIC BAGGIS WITH AN ALUMINUM FOIL ENVELOPE/POUCH, CONTAINING A POWDERY SUBSTANCE (POSSIBLY "FLASH POWDER")

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ITEM	DESCRIPTION
MB 173	ONE SMALL PLASTIC ORANGE CONTAINER, WITH WHITE PLASTIC CAP, WITH WHITE PAPER LABEL SECURED WITH MASKING TAPE, WITH HANDWRITTEN NOTATIONS "BaSO4 MAY BE CONTAMINATED WITH A LITTLE MgCL2 AND SMALLER AMOUNT OF MgSO2"
MB 174	SMALL WHITE PLASTIC JAR, WITH WHITE METAL CAP, WITH HANDWRITTEN NOTATION "SMALLEST", CONTAINING METAL SCREW/BOLT AND NUT
MB 175	ONE WHITISH PLASTIC BOTTLE, WITH WHITE METAL CAP, WITH MASKING TAPE AROUND BOTTLE, WITH HANDWRITTEN NOTATIONS "PURE SUCROSE GROUND FINE"
MB 176	ONE CLEAR GLASS JAR, WITH WHITE METAL CAP, WITH PICTURE OF A LION ON THE CAP AND THE NAME "WAGNER", WITH MASKING TAPE AROUND JAR, WITH HANDWRITTEN NOTATIONS "CUPRIC HYDROXIDE?" (CROSSED OUT) AND "PROBABLY BASIC CARBONATE Cu2(OH)2 CO3, CONTAINING BLUE POWDERY SUBSTANCE
MB 177	WHITISH PLASTIC BOTTLE, WITH WHITE METAL CAP, AND CLEAR PLASTIC TWISTED UNDER CAP, LABEL "McKESSON BORIC ACID CRYSTALS NF, NDC 0022-0144-85", AND SMALL SQUARE BRIGHT YELLOWISH-GREEN PRICE TAG "BERGUM DRUG WHY PAY MORE? $1.93"
MB 178	ONE WHITE PLASTIC BOTTLE, WITH WHITE PLASTIC CAP, LABEL "FLOWERS OF SULFUR USP, WHITEWORTH INC., GARDENA, CA. 90248, NDC 0923-3500-03", WITH MASKING TAPE AROUND THE BASE, WITH A SMALL WHITE SQUARE PRICE TAG "BERGUMS 217-6956 L5GJ8 $5.17"
MB 179	SMALL ORANGE PLASTIC CONTAINER, WITH WHITE PLASTIC CAP, WITH MASKING TAPE AROUND CONTAINER, WITH HANDWRITTEN NOTATIONS "SILVER OXIDE Ag2O"
MB 180	ONE SMALL CLEAR GLASS JAR, WITH WHITE METAL CAP, WITH HANDWRITTEN NOTATIONS "WASHED CHARCOAL VERY FINELY GROUND", CONTAINING BLACK POWDERY SUBSTANCE
MB 181	ONE SMALL ORANGE PLASTIC CONTAINER, WITH WHITE PLASTIC CAP, WITH BLACK TAPE AROUND IT SECURING A WHITE PAPER LABEL, WITH HANDWRITTEN NOTATIONS "Fe2O3 EXP. 51, LOT (bi), WITH H2SO4"
MB 182	ONE ROUND METAL CAN, LABEL "CALUMET BAKING POWDR", WITH A PIECE OF NEWSPAPER OVER THE TOP, SECURED WITH MASKING TAPE AROUND THE CAN, WITH HANDWRITTEN NOTATIONS "PERFECTLY CLEAN", AND ONE ROUND BROWN CARDBOARD CANNISTER, WITH SILVER COLORED METAL LID, CONTAINING A POWDERY SUBSTANCE (POSSIBLY "FLASH POWDER")
MB 183	UNKNOWN POWDER
MB 184	GLASS BOTTLE CONTAINING CLEAR LIQUID
MB 185	RUBBER BANDS AND TIES
MB 186	TWO PIECES OF METAL
MB 187	SMALL PIECE OF CUT METAL
MB 188	(3) RAZOR, (1) THERMOMETER

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ITEM	DESCRIPTION
MB 189	CORDAGE
MB 190	TWO PLASTIC CONTAINERS WITH WHITE CRYSTALLINE MATERIAL
MB 191	(5) PAIRS OF GLASSES AND (1) CLEAR LENS
MB 192	LONG PIECE OF INNER TUBE
MB 193	TWO CANS OF ADHESIVES
MB 194	.25 CALIBER GUN (RAVEN ARMS), MAGAZINE CONTAINING SIX BULLETS, AND ONE BULLET
MB 195	VACUUM DEBRIS
MB 196	VACUUM DEBRIS
MB 197	DUST AND DEBRIS
MB 198	VACUUM DEBRIS
MB 199	VACUUM DEBRIS
MB 200	SCREWS
MC 1	THREE BLUE BINDERS
MC 2	TWO BINDERS
MC 3	TWO BINDERS
MC 4	TWO BINDERS
MC 5	MISC. DOCUMENTS IN YELLOW ENVELOPES
MC 6	36 BOOKS
MC 7	GLOVES

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ITEM	DESCRIPTION
MC 8	SHOE INSOLES
MC 9	NYLON & CORD
MC 10	RIFLE SCOPE WRAPPED IN PLASTIC
MC 11	GREENISH COLORED COAT
MC 12	VITAMIN JAR CONATAINING STEEL PINS
MC 13	RAG PILLOW
MC 14	BLANKET
MC 15	THREE MITTENS AND TWO BOOTS
MC 16	TWO WOOD PLANKS (ONE WITH ALUMINUM COVERING)
MC 17	BLUE SCARF
MC 18	SCARF (TURQUOISE AND GREEN)
MC 19	RED HAT
MC 20	STRAPPING
MC 21	BOLT ACTION 22 CALIBER RIFLE
MC 22	REMINGTON MODEL .700 3006 #6292650
MC 23	STRAW MAT AND STRINGS
MC 24	INFORMATION ON WHITE PAPER RE. 30-06
MC 25	WOODEN/METAL CONTRAPTION
MC 26	ONE HAND BOWED WOOD SAW

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ITEM		DESCRIPTION
MC	27	BOOK SHELF
MC	28	METAL BRACKET
MC	29	SCREEN SAMPLE
MC	30	WOOD AND NAILS
MD	1	TWO CHECK BOXES, ONE CONTAINS A TOOTHBRUSH THE OTHER CONTAINS A DENTAL INSTRUMENT
MD	2	ENVELOPES, HANDWRITTEN DOCUMENTS AND MISC. DOCUMENTS
MD	3	TWO BOOKS OF CHECKS #135-159 AND #160-184, ACCOUNT NUMBER 001 04219 12 IN THE NAME OF THEODORE J. KACZYNSKI FROM THE WESTERN FEDERAL SAVINGS BANK.
MD	4	ENVELOPES CONTAINING MISC. DOCUMENTS
MD	5	BROWN BOX CONTAINING ENVELOPES CONTAINING MISC. DOCUMENTS
MD	6	PADDED ENVELOPES AND SELF ADHESIVE LABELS IN TAN PLASTIC "OSCO DRUG" SHOPPING BAG
MD	7	ONE BOX OF MEAD ENVELOPES, ONE PACKAGE OF SELF-ADHESIVE LABELS, AND ONE PACKAGE OF HOLE REINFORCERS
MD	8	ONE BLUE SPIRAL NOTEBOOK AND ONE BLACK VINYL NOTEBOOK
MD	9	PLASTIC SHOPPING BAG CONTAINING MONTANA DRIVER'S LICENCE, $32.00 CASH, AND MISC. HANDWRITTEN NOTES
MD	10	ONE SMALL TOMATO PASTE CAN CONTAINING 87 CENTS AND A BLACK WATCH AND RECEIPT
MD	11	TWO METAL CANS CONTAINING "SECRETS" BOX, PAPER CLIPS AND KEYS
MD	12	TWO METAL CANS CONTAINING PIPE CLEANERS, WRITING INSTRUMENTS, RULERS AND A WATCH
MD	13	STACK OF MAPS RUBBER BANDED TOGETHER
MD	14	TWO SMALL CARDBOARDED BOXES AND TYPEWRITER RIBBONS
MD	15	PLASTIC CONTAINER WITH ASSORTED MAPS AND MATCHBOOK FROM "UNITED SYSTEM STORES", LOMBARD, ILLINOIS

	ITEM	DESCRIPTION
MD	16	SIX BOOKS: EASTERN MYSTICISM, BASIMOV'S GUIDE TO THE BIBLE, HOLY BIBLE-DICTIONARY CONCORDANCE, COMES THE COMRADE, LES MISERABLE VOLUMES I and II
MD	17	PLASTIC K-MART SHOPPING BAG CONTAINING CARBON PAPER AND MISC. PAPER
MD	18	THREE NOTEBOOK BINDERS AND A PAD OF COLORED CONSTRUCTION PAPER
MD	19	NOTEBOOK AND MISC. PAPERS
MD	20	CAN OPENER
MD	21	METAL CONTAINER/CAN (APPEARS TO BE EMPTY)
MD	22	METAL CONTAINER/CAN LABELED "VEG-ALL" (APPEARS TO BE EMPTY)
MD	23	METAL CONTAINER/CAN (APPEARS TO BE EMPTY)
MD	24	BLACK, OBLONG METAL CAN (APPEARS TO BE EMPTY)
MD	25	BLACK, OBLONG METAL CAN (APPEARS TO BE EMPTY)
MD	26	BLACK, OBLONG METAL CAN (APPEARS TO BE EMPTY)
MD	27	ONE CLEAR GLASS JAR CONTAINING VISIBLE RESIDUE
MD	28	ONE CLEAR GLASS JAR CONTAINING DENTAL BRIDGE
MD	29	ONE PLASTIC JAR LABELED "HONEY USDA FOOD" (APPEARS EMPTY)
MD	30	ONE BLACK, OBLONG METAL CAN (APPEARS EMPTY)
MD	31	FOUR BROWN, OBLONG PLASTIC LIDS
MD	32	ONE SMALL PLASTIC JAR WITH PARTIAL LABEL (APPEARS EMPTY)
MD	33	ONE SMALL PLASTIC JAR, BROWN WITH ORANGE LABEL "NUTRI-PLUS, CALCIUM, MAGNESIUM AND ZINC" (APPEARS EMPTY)
MD	34	ONE SMALL PLASTIC JAR, LABELED "CALCIUM HYDROXIDE, USP" (APPEARS EMPTY)

ITEM	DESCRIPTION
MD 35	ONE METAL CAN (APPEARS EMPTY)
MD 36	ONE METAL CAN COVERED WITH PAPER AND RUBBER BAND
MD 37	ONE METAL CAN LABELED "VEG-ALL" (APPEARS EMPTY)
MD 38	ONE SMALL METAL CAN (APPEARS EMPTY)
MD 39	ONE CONTAINER OF MORTON SALT
MD 40	ONE WHITE "MIX 'N DRINK" PLASTIC CUP
MD 41	ONE WHITE "MIX 'N DRINK" PLASTIC CUP
MD 42	ONE WHITE "MIX 'N DRINK" PLASTIC CUP
MD 43	ONE WHITE "MIX 'N DRINK" PLASTIC CUP
MD 44	ONE WHITE PLASTIC CUP
MD 45	BOX OF "PROVERB SERIES" MATCHBOOS, CONTAINING 21 MATCHBOOKS
MD 46	RAZOR BLADES, WRAPPED IN ALUMINUM FOIL
MD 47	ONE SMALL TIN CAN CONTAINING VISIBLE RESIDUE
MD 48	ONE GLASS JAR WITH BLUE METAL LID
MD 49	ONE METAL FRYING PAN WITHOUT HANDLE
MD 50	ONE METAL CAN
MD 51	ONE GLASS JAR LABELED "ADAMS UNSALTED 100% NATURAL PEANUT BUTTER" AND EXTRA LID (APPEARS EMPTY)
MD 52	BOTTOM-HALF OF PLASTIC WATER JUG, PARTIAL LABEL "DISTILLED WATER"
MD 53	ONE METAL CAN (APPEARS EMPTY)

ITEM	DESCRIPTION
MD 54	ONE METAL CAN (APPEARS EMPTY)
MD 55	ONE METAL CAN (APPEARS EMPTY)
MD 56	ONE METAL CAN LABELED "DEL MONTE DICED TOMATOES" (APPEARS EMPTY)
MD 57	ONE METAL CAN LABELED "VEG-ALL" (APPEARS EMPTY)
MD 58	ONE SMALL METAL CAN (APPEARS EMPTY)
MD 59	ONE CARDBOARD BOX FULL OF MISC. DOCUMENTS, ENVELOPES AND LEATHER PORTFOLIO
MD 60	GREEN CANVAS U.S. ARMY BACKPACK
MD 61	KHAKI COLORED CLOTH, SOMEWHAT DETRIORATED AND RESSEMBLING A SKI MASK
MD 62	WOODEN HANDLED HAMMER
MD 63	ONE PACKAGE OF SAW BLADES
MD 64	ONE LONG BLADED BLACK HANDLED KNIFE
MD 65	SAW (HANDSAW)
MD 66	ONE WOODEN, APPARENTLY HAND-MADE, MEASURING INSTRUMENT
MD 67	ONE SMALL BROWN GLASS BOTTLE
MD 68	METAL CAN CONTAINING SPENT CARTRIDGE CASINGS
MD 69	ONE BAKING POWDER CANNISTER WITH MASKING TAPE LABEL, HANDWRITTEN, "TRIGGER SPRING FOR .22 RIFLE"
MD 70	TWO PACKAGES OF WATER PROOF MATCHES, AND ONE MATCHBOOK
MD 71	ONE RED METAL BOX CONTAINING GUN CLEANING KIT, LABELED "SEARS, CAL.30 6 20253"
MD 72	ONE PIECE OF METAL WITH CURLED END

ITEM	DESCRIPTION
MD 73	ONE COIL OF ROPE
MD 74	ONE SMALL, ROUND, CARDBOARD "QUAKER YELLOW CORN MEAL" CANNISTER, CONTAINING WHITE POWDERY SUBSTANCE
MD 75	ONE WHITE PLASTIC JAR, WITH BLACK PLASTIC CAP, LABEL "2919 TARTARIC ACID M.F. HUNCO LABORATORY, TEXARKANA, TEXAS 75501", WITH PORTION OF RED TAMPER RESISTANT TAPE ACROSS THE CAP, AND A SMALL, WHITE SQUARE PRICE TAG "247-9996 IEUR, BERGUNS $8.83"; LABEL STATES "FILL AUG. 3 - 83, EXP. MAY - 88"
MD 76	ONE LARGE WHITISH PLASTIC JAR, WITH WHITE PLASTIC CAP, LABEL "NDC-0395-2285-01 HUNCO LABORATORY, PLASTER OF PARIS (DENTAL)",CONTAINING WHITE POWDERY SUBSTANCE
MD 77	WOOD PIECES
MD 78	STAPLES
MD 79	WIRE RING
MD 80	SCABBARD
MD 81	FEATHERS
MD 82	THIS ITEM# WAS NOT USED
MD 83	SHELF
ME 1	STEEL/METAL SCREEN WITH WOOD FRAME
ME 2	WOOD BRACE AND SCREW
ME 3	SCREWS AND NAILS
ME 4	TWO PULLEYS
ME 5	SCREWS
ME 6	STAPLES
ME 7	CORDAGE
ME 8	SCREWS AND WIRES

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ITEM		DESCRIPTION
ME	9	STRAINER, HOOKS
ME	10	WIRE
MF	1	VACUUM SWEEPINGS OF MAIN FLOOR
MF	2	FILINGS/DEBRIS
MF	3	FILE (TOOL)
MF	4	FILE WITH RED HANDLE
MF	5	METAL FILES
MF	6	BRUSHED DEBRIS
MF	7	PACKAGE OF MANILO ENVELOPES
MF	8	BROWN BAGS/NEWSPAPERS
MF	9	DEBRIS/CARDBOARD
MF	10	FOLDED CARDBOARD BOX
MF	11	PLASTIC BOTTLE (CUT IN HALF) WITH ROLLED NOTEBOOK PAPERS
MF	12	IMPROVISED EXPLOSIVE DEVICE (IED) CONTAINED IN A CARDBOARD BOX, WRAPPED IN PLASTIC BAGS WITH VARIOUS TAPE AND RUBBER BANDS
MF	12A	PIPEBOMB
MF	12AA	OUTER PIPE WITH ATTACHED METAL FRAGMENTS
MF	12AB	PIPE SHAVING AND FILLER
MF	12AC	END PLUG/METAL FRAGMENTS
MF	12AD	TAPE AND TWINE, OUTER WRAP OF PIPE

ITEM	DESCRIPTION
MF 12AE	IMPROVISED DETONATOR AND FILLER
MF 12AF	BULK FILLER
MF 13	THIS ITEMW WAS NOT USED
MF 14	SMALL BLUE SPIRAL NOTEBOOK CONTAINING HANDWRITTEN NOTES IN TAT PLASTIC SHOPPING BAG WITH RUBBER BANDS
MF 15	SIX TWIGS FROM PAPER CONTAINER
MF 16	PLIERS/VISE GRIP
MF 17	CARDBOARD CYLINDER CONTAINER
MF 18	HATCHET
MF 19	TRAVELING KIT - NYLON BAG WITH CONTENTS, WITH LIST OF ITEMS.
MF 20	NAILS
MF 21	SHOES - WITH DOUBLE SOLE OF DIFFERENT SIZES (Contained in a plastic bag)
MF 22	ALLUMINUM RECTANGULAR PAN
MF 23	BATTERIES (SIZE C - 2 BATTERIES)
MF 24	BOX OF WAX PAPER
MF 25	PIECE OF WOOD WITH A PIECE OF WAX PAPER
MF 26	BROWN SWEATER ROLLED IN PLASTIC BAG
MF 27	DIRTY GREEN TARP - IN PLASTIC BAG
MF 28	HAT, BROWN BAG, CAMOFLAGE JACKET, GREEN/BROWN PANTS and CANVAS JACKET CONTAINED IN PLASTIC BAG
MF 29	PLASTIC RAIN GEAR (PANCHO)

ITEM	DESCRIPTION
MF 30	BROWN PLASTIC RAIN COAT
MF 31	KNIFE
MF 32	MAPS OF LOCAL AREA (2 MAPS)
MF 33	CANVAS GREEN/BROWN FACE MASK AND BLACK CANVAS FACE MASK
MF 34	RADIO AND MAP OF LINCOLN, MT., AREA
MF 35	WHITE RAGS TIED TOGETHER
MF 36	PLASTIC BAG WITH TWO FISH HOOKS, STRING, AND TWO BOXES OF MATCHES.
MF 37	POCKET KNIFE
MF 38	PIECES OF WOOD IN PLASTIC
MF 39	PLASTIC GARBAGE BAG/BAG CONTAINING CLOTHING STRIPS
MF 40	IODIZED SALT IN BOTTLE
MF 41	AMMO PACK AND WATER PROOF MATCHES
MF 42	PIPE APPROXIMATELY 6 1/2 FOOT LONG
MF 43	HAND-MADE GUN WITH SPENT CARTRIDGE
MF 44	WOOD BOARDS IN FOIL
MF 45	DEBRIS
MF 46	MISC. WOOD WITH SCREWS AND NAILS TO INCLUDE PIECES FROM THE WOOD BIN ITSELF, BED, AND BED FRAME
MF 47	ONE LARGE PIECE OF WOOD BIN
MF 48	ONE BOTTLE OF TRAZADONE/ANTI-DEPRESSANT

ITEM	DESCRIPTION
MF 49	WOODEN FRAGMENTS
MF 50	WOODEN FRAGMENTS IN PLASTIC CONTAINER
MF 51	TIN CONTAINING HANDTOOLS
MF 52	TWO SPADES/HAND SHOVELS
MF 53	SIX METAL BARS
MF 54	LONG PIECE OF METAL
MF 55	NEWSPAPER ARTICLES
MF 56	CORN MEAL BOX CONTAINING SPOOLS, WOOD, AND FOAM
MF 57	TWO AXES
MF 58	PIECE OF CABLE
MF 59	PLASTIC BAG OF STITCHING HOOP AND THREAD
MF 60	PLASTIC BAG CONTAINING FILTER PAPER TO MEASURE BURN AND DOCUMENTS EXPLAINING IT
MF 61	MISC. METAL PIECES, SCREWS, BOLTS, ETC
MF 62	PAIR OF FORGING PLIERS
MF 63	PIECES OF WOOD
MF 64	SPRINGS AND NOTE ON ENVELOPE IN QUICK OATS BOX
MF 65	MISC. METAL AND BRASS IN QUICK OATS BOX
MF 66	TIN CAN LIDS IN QUICK OATS BOX
MF 67	METAL CAN

ITEM	DESCRIPTION
MF 68	CARDBOARD CAN WITH TRACE
MF 69	METAL POT AND LID
MF 70	CALUMET CAN CONTAINING WAX TYPE SUBSTANCE
MF 71	PIECE OF SHEET METAL
MF 72	A CUT PORTION OF AXE BLADE
MF 73	METAL CAN CONTAINING UNKNOWN RESIDUE
MF 74	METAL CAN CONTAINING UNKNOWN RESIDUE
MF 75	METAL CAN CONTAINING UNKNOWN RESIDUE
MF 76	METAL CAN CONTAINING UNKNOWN RESIDUE
MF 77	METAL CAN CONTAINING UNKNOWN RESIDUE
MF 78	METAL CAN CONTAINING UNKNOWN RESIDUE
MF 79	CARDBOARD BOX OF WIRE AND A PLASTIC BAG
MF 80	CARDBOARD CONTAINER WITHIN ONE METAL CAN
MF 81	PLASTIC CONTAINER
MF 82	MISC. PIPES, METAL ROD AND A TIRE TOOL
MF 83	BLACK POWDER AND SMOKELESS POWDER
MF 84	LOOSE METAL PARTS
MF 85	PLASTIC BUCKET CONTAINING THICK BLACK MATERIAL
MF 86	PAPER BAG CONTAINING METAL CONTAINER WITH METAL TOPS AND WIRE

ITEM	DESCRIPTION
MF 87	ONE PLASTIC BAG CONTAINING VARIOUS DRILL BITS AND OTHER METAL ITEMS
MF 88	METAL CONTAINER OF BLACK GRANULAR MATERIAL
MF 89	METAL CONTAINER CONTAINING WHITE POWDER MATERIAL
MF 90	THREE PLASTIC BOTTLES LABELED "ALCOHOL" CONTAINING LIQUID
MF 91	TWO METAL FRAGMENTS
MF 92	ONE WHITE PLASTIC CONTAINER OF WHITE POWDER
MF 93	ONE METAL CAN CONTAINING KEYS AND TWINE
MF 94	PLASTIC CONTAINER OF WHITE POWDER
MF 95	TWO SAMPLE, ONE EACH FROM TWO PAINT CANS
MF 96	SAMPLE OF ASH TAKEN FROM POT
MF 97	SAMPLE OF ASH TAKEN FROM WOOD STOVE
MF 98	AMMUNITION FOR .22 CALIBER
MF 99	AMMUNITION
MF 100	GREEN NOTEBOOK
MF 101	VACUUM DEBRIS
MF 102	VACUUM DEBRIS
MF 103	WOOD
OC 1	TOOL MADE WITH REBAR
OC 2	SAMPLE OF CABIN WALL

ITEM		DESCRIPTION
OC	3	STAPLES REMOVED FROM HOMEMADE LADDER
OC	4	CORRODED METAL LIKE MATERIAL
OC	5	PAINT CAN WITH ACETONE CAN IN IT
OC	6	SCREEN WIRE
OC	7	PAINT CAN WITH ACETONE
OC	8	PIECE OF GREEN LICENSE PLATE
OC	9	SAMPLE OF SCREEN
OC	10	PAINT SCRAPINGS
OC	11	PAINT SCRAPINGS
OC	12	CAN OF ADHESIVE
OC	13	GLAZING COMPOUND
OC	14	CAN LABELED ACETONE
R	1	CERAMIC BOWL
R	2	CERAMIC CUP
R	3	CERAMIC CUP
R	4	CERAMIC CUP
R	5	RUSTED SHEET METAL
R	6	TWO STRIPS OF BURNT STEEL
RSP	1	((ED) PARTIAL SECTION OF WOODEN BOX.

ITEM	DESCRIPTION
RSP 1A	(IED) PIECE OF LABEL FROM THE WOODEN BOX.
RSP 2A	(IED) PIECE OF LABEL FROM THE WOODEN BOX.
RSP 2	THIS ITEM WAS NOT USED
RSP 3	(IED) PARTIAL SECTION OF WOODEN BOX.
RSP 4	(IED) PACKAGING MATERIAL.
RSP 5	(IED) MISC. DEBRIS

(END OF REPORT)

MORE DETAILED INVENTORY
W/ CHAIN OF CUSTODY.

UNABOM / SEARCH WARRANT

RETURN

AJOR CASE# 75
49A-SF-106204

Date Printed: 04/11/96

COLLECTED: 04/04/96

EVIDENCE COLLECTED AT RESIDENCE OF THEODORE KAZCYNSKI
HCR# 30, BOX 27, LINCOLN, MONTANA

ITEM		WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
L	1	LOFT	BROWN TYPEWRITER CASE CONTAINING A TYPEWRITER	FRANK R. DOYLE	Y	Indirect	Plastic Bag
MA	1	TOP SHELF - SOUTH WALL	BOX OF 52 BOOKS	MIKE KUMMERMAN	G	Indirect	Box
MA	2	TOP SHELF - SOUTH WALL	BOX OF 41 BOOKS AND 23 INDEX CARDS	MIKE KUMMERMAN	Y	Indirect	Box
MA	3	TOP SHELF - SOUTH WALL	PAIR OF GLOVES	MIKE KUMMERMAN	Y	Indirect	Plastic Bag
MA	4	TOP SHELF - SOUTH WALL	METAL PAN AND STICK	MIKE KUMMERMAN	Y	Indirect	Plastic Bag
MB	1	WEST WALL TOP SHELF	74 BOOKS	DAVID ALFORD	G	Indirect	Boxed
MB	2	WEST WALL TOP SHELF	29 BOOKS/DOCUMENTS	DAVID ALFORD	G	Indirect	Boxed
MB	3	WEST WALL TOP SHELF	FOLDED PAPERS WITH CHEMICAL RESIDUE	DAVID ALFORD	G	Indirect	Plastic Bag
MB	4	WEST WALL TOP SHELF	RECORDER & CASE	DAVID ALFORD	G	Indirect	Plastic Bag
MB	5	WEST WALL TOP SHELF	TWO EMPTY METAL CANS	DAVID ALFORD	G	Indirect	Plastic Bag
MB	6	WEST WALL TOP SHELF	THREE ARROWS	DAVID ALFORD	G	Indirect	Cardboard Cover
MB	7	WEST WALL TOP SHELF	ONE ROCK	DAVID ALFORD	G	Indirect	Paper Bag
MB	8	WEST WALL TOP SHELF	FOUR COPPER TUBES	DAVID ALFORD	G	Indirect	Plastic Bag
MC	1	TOP SHELF ABOVE BED	THREE BLUE BINDERS	DAVID ALFORD	Y	Indirect	Plastic Bag
MC	2	TOP SHELF ABOVE BED	TWO BINDERS	DAVID ALFORD	Y	Indirect	Plastic Bag

TE: The "X" next to the ITEM indicates that the item is SPECIAL in some way.
next to the ITEM indicates that the item contains Document(s).

COLLECTED: 04/04/96

EVIDENCE COLLECTED AT RESIDENCE OF THEODORE KAZCYNSKI
HCR# 30, BOX 27, LINCOLN, MONTANA

ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MC 3	TOP SHELF ABOVE BED	TWO BINDERS	DAVID ALFORD	Y	Indirect	Plastic Bag
MC 4	TOP SHELF ABOVE BED	TWO BINDERS	DAVID ALFORD	Y	Indirect	Plastic Bag
MC 5	TOP SHELF ABOVE BED	MISC. DOCUMENTS IN YELLOW ENVELOPES	DAVID ALFORD	Y	Indirect	Plastic Bag
MC 6	TOP SHELF ABOVE BED	36 BOOKS	DAVID ALFORD	Y	Indirect	Boxed
MC 7	TOP SHELF ABOVE BED	GLOVES	DAVID ALFORD	G	Indirect	Plastic Bag
MC 8	TOP SHELF ABOVE BED	SHOE INSOLES	DAVID ALFORD	G	Indirect	Plastic Bag
MC 9	TOP SHELF ABOVE BED	NYLON & CORD	DAVID ALFORD	G	Indirect	Plastic Bag
MC 10	TOP SHELF ABOVE BED	RIFLE SCOPE WRAPPED IN PLASTIC	DAVID ALFORD	G	Indirect	Plastic Bag
MF 1	MAIN FLOOR	VACUUM SWEEPINGS OF MAIN FLOOR	DOUGLAS W. DEEDRICK	N	Indirect	Plastic Bag
MF 2	UNDER CHAIR - MAIN FLOOR	FILINGS/DEBRIS	DOUGLAS W. DEEDRICK	N	Indirect	Plastic Bag
MF 3	FRONT RIGHT CORNER STOVE - MAIN FLOOR	FILE (TOOL)	DOUGLAS W. DEEDRICK	Y	Indirect	Plastic Bag
MF 4	FRONT RIGHT CORNER STOVE - MAIN FLOOR	FILE WITH RED HANDLE	DOUGLAS W. DEEDRICK	Y	Indirect	Plastic Bag
MF 5	FRONT RIGHT CONER OF STOVE - MAIN FLOOR	METAL FILES	DOUGLAS W. DEEDRICK	Y	Indirect	Plastic Bag
MF 6	FROM HEARTH IN FRONT OF STOVE - MAIN FLOOR	BRUSHED DEBRIS	DOUGLAS W. DEEDRICK	N	Indirect	Plastic Bag
MF 7	FROM BOX ON FLOOR BEHIND DOOR	PACKAGE OF MANLO ENVELOPES	DOUGLAS W. DEEDRICK	Y	Indirect	Plastic Bag
MF 8	FROM BOX ON FLOOR BEHIND DOOR	BROWN BAGS/NEWSPAPERS	DOUGLAS W. DEEDRICK	Y	Indirect	Plastic Bag

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COLLECTED: 04/04/96

EVIDENCE COLLECTED AT RESIDENCE OF THEODORE KAZCYNSKI
HCR# 30, BOX 27, LINCOLN, MONTANA

ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MF 9	FROM BOX ON FLOOR BEHIND DOOR	DEBRIS/CARDBOARD	DOUGLAS W. DEEDRICK	Y	Indirect	Plastic Ba...
MF 10	ON FLOOR BEHIND DOOR	FOLDED CARDBOARD BOX	DOUGLAS W. DEEDRICK	Y	Indirect	Plastic Ba...

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COLLECTED: 04/05/96

EVIDENCE COLLECTED AT RESIDENCE OF THEODORE KAZCYNSKI
HCR# 30, BOX 27, LINCOLN, MONTANA

ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MC 11	TOP OF BED	GREENISH COLORED COAT	WILLIAM A. FORSYTH	Y	Indirect	Plastic Bag
MC 12	TOP OF BED	VITAMIN JAR CONATAINING STEEL PINS	WILLIAM A. FORSYTH	Y	Indirect	Plastic Bag
MC 13	TOP OF BED	RAG PILLOW	WILLIAM A. FORSYTH	Y	Indirect	Plastic Bag
MC 14	TOP OF BED	BLANKET	WILLIAM A. FORSYTH	Y	Indirect	Plastic Bag
MC 15	TOP OF BED	THREE MITTENS AND TWO BOOTS	WILLIAM A. FORSYTH	Y	Indirect	Plastic Bag
MC 16	UNDER BED	TWO WOOD PLANKS (ONE WITH ALUMINUM COVERING)	WILLIAM A. FORSYTH	Y	Indirect	Plastic Bag
MF 11	ON THE FLOOR UNDER THE BED	PLASTIC BOTTLE (CUT IN HALF) WITH ROLLED NOTEBOOK PAPERS	WILLIAM A. FORSYTH	Y	Indirect	Paper Bag
R 1	TOP OF ROCK FORMATION	CERAMIC BOWL	MARIO GALINDO	Y	Indirect	Paper Bag
R 2	TOP OF ROCK FORMATION	CERAMIC CUP	MARIO GALINDO	Y	Indirect	Paper Bag
R 3	TOP OF ROCK FORMATION	CERAMIC CUP	MARIO GALINDO	Y	Indirect	Paper Bag
R 4	TOP OF ROCK FORMATION	CERAMIC CUP	MARIO GALINDO	Y	Indirect	Paper Bag
R 5	TOP OF ROCK FORMATION	RUSTED SHEET METAL	MARIO GALINDO	Y	Indirect	Paper Bag
R 6	CAMPSITE NEAR ROCK FORMATION	TWO STRIPS OF BURNT STEEL	MARIO GALINDO	Y	Indirect	Paper Bag

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EVIDENCE COLLECTED AT RESIDENCE OF THEODORE KAZCYNSKI
HCR# 30, BOX 27, LINCOLN, MONTANA

ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
DEV 1		(CONTROL SAMPLE) ONE WINCHESTER SUPER X SHOTGUN ROUND	ANN-MARGARET HINKLE	N	Indirect	Plastic Bag
MB 9	TOP SHELF, NEAR SOUTHWEST CORNER	PLASTIC JAR CONTAINING TRIGGERING DEVICES, EACH NUMBERED WITH MASKING TAP TAG	TRACEY RILEY	Y	Indirect	Plastic Bag
MC 17	HANGING ON WIRE ABOVE BED/COT	BLUE SCARF	WILLIAM A. FORSYTH	Y	Indirect	Paper Bag
MC 18	HANGING ON WIRE ABOVE BED/COT	SCARF (TURQUOISE AND GREEN)	WILLIAM A. FORSYTH	Y	Indirect	Paper Bag
MD 1	SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	TWO CHECK BOXES, ONE CONTAINS A TOOTHBRUSH THE OTHER CONTAINS A DENTAL INSTRUMENT	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 2	SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	ENVELOPES, HANDWRITTEN DOCUMENTS AND MISC. DOCUMENTS	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 3	SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	TWO BOOKS OF CHECKS #135-159 AND #160-184, ACCOUNT NUMBER 001 04219 12 IN THE NAME OF THEODORE J. KAZCYNSKI FROM THE WESTERN FEDERAL SAVINGS BANK.	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 4	SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	ENVELOPES CONTAINING MISC. DOCUMENTS	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 5	SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	BROWN BOX CONTAINING ENVELOPES CONTAINING MISC. DOCUMENTS	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 6	SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	PADDED ENVELOPES AND SELF ADHESIVE LABELS IN TAN PLASTIC "OSCO DRUG" SHOPPING BAG	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 7	SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	ONE BOX OF MEAD ENVELOPES, ONE PACKAGE OF SELF-ADHESIVE LABELS, AND ONE PACKAGE OF HOLE REINFORCERS	DAVID ALFORD	Y	Indirect	Plastic Bag

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HCR# 30, BOX 27, LINCOLN, MONTANA

ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MD 8	SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	ONE BLUE SPIRAL NOTEBOOK AND ONE BLACK VINYL NOTEBOOK	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 9	SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	PLASTIC SHOPPING BAG CONTAINING MONTANA DRIVER'S LICENCE, $32.00 CASH, AND MISC. HANDWRITTEN NOTES	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 10	SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	ONE SMALL TOMATO PASTE CAN CONTAINING 87 CENTS AND A BLACK WATCH AND RECEIPT	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 11	SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	TWO METAL CANS CONTAINING "SECRETS" BOX, PAPER CLIPS AND KEYS	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 12	SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	TWO METAL CANS CONTAINING PIPE CLEANERS, WRITING INSTRUMENTS, RULERS AND A WATCH	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 13	SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	STACK OF MAPS RUBBER BANDED TOGETHER	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 14	SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	TWO SMALL CARDBOARDED BOXES AND TYPEWRITER RIBBONS	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 15	SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	PLASTIC CONTAINER WITH ASSORTED MAPS AND MATCHBOOK FROM "UNITED SYSTEM STORES", LOMBARD, ILLINOIS	DAVID ALFORD	Y	Indirect	Paper Bag
MD 16	SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	SIX BOOKS: EASTERN MYSTICISM, BASIMOV'S GUIDE TO THE BIBLE, HOLY BIBLE-DICTIONARY CONCORDANCE, COMES THE COMRADE, LES MISERABLE VOLUMES I and II	DAVID ALFORD	Y	Indirect	Paper Bag
MD 17	SECOND SHELF FROM THE TOP, SOUTHEAST CORNER, EAST WALL, INSIDE FRONT DOOR	PLASTIC K-MART SHOPPING BAG CONTAINING CARBON PAPER AND MISC. PAPER	DAVID ALFORD	Y	Indirect	Plastic Bag

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ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MD 18	SECOND SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	THREE NOTEBOOK BINDERS AND A PAD OF COLORED CONSTRUCTION PAPER	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 19	SECOND SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	NOTEBOOK AND MISC. PAPERS	DAVID ALFORD	Y	Indirect	Paper Bag
MD 20	SECOND SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	CAN OPENER	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 21	THIRD SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	METAL CONTAINER/CAN (APPEARS TO BE EMPTY)	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 22	THIRD SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	METAL CONTAINER/CAN LABELED "VEG-ALL" (APPEARS TO BE EMPTY)	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 23	THIRD SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	METAL CONTAINER/CAN (APPEARS TO BE EMPTY)	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 24	THIRD SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	BLACK, OBLONG METAL CAN (APPEARS TO BE EMPTY)	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 25	THIRD SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	BLACK, OBLONG METAL CAN (APPEARS TO BE EMPTY)	DAVID ALFORD	Y	Indirect	Plastic Bag

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HCR# 30, BOX 27, LINCOLN, MONTANA

ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MD 26	THIRD SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	BLACK, OBLONG METAL CAN (APPEARS TO BE EMPTY)	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 27	THIRD SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	ONE CLEAR GLASS JAR CONTAINING VISIBLE RESIDUE	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 28	THIRD SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	ONE CLEAR GLASS JAR CONTAINING DENTAL BRIDGE	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 29	THIRD SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	ONE PLASTIC JAR LABELED "HONEY USDA FOOD" (APPEARS EMPTY)	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 30	THIRD SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	ONE BLACK, OBLONG METAL CAN (APPEARS EMPTY)	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 31	THIRD SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	FOUR BROWN, OBLONG PLASTIC LIDS	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 32	THIRD SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	ONE SMALL PLASTIC JAR WITH PARTIAL LABEL (APPEARS EMPTY)	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 33	THIRD SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	ONE SMALL PLASTIC JAR, BROWN WITH ORANGE LABEL "NUTRI-PLUS, CALCIUM, MAGNESIUM AND ZINC" (APPEARS EMPTY)	DAVID ALFORD	Y	Indirect	Plastic Bag

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ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MD 34	THIRD SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	ONE SMALL PLASTIC JAR, LABELED "CALCIUM HYDROXIDE, USP" (APPEARS EMPTY)	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 35	THIRD SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	ONE METAL CAN (APPEARS EMPTY)	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 36	THIRD SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	ONE METAL CAN COVERED WITH PAPER AND RUBBER BAND	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 37	THIRD SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	ONE METAL CAN LABELED "VEG-ALL" (APPEARS EMPTY)	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 38	THIRD SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	ONE SMALL METAL CAN (APPEARS EMPTY)	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 39	THIRD SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	ONE CONTAINER OF MORTON SALT	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 40	FOURTH SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	ONE WHITE "MIX 'N DRINK" PLASTIC CUP	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 41	FOURTH SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	ONE WHITE "MIX 'N DRINK" PLASTIC CUP	DAVID ALFORD	Y	Indirect	Plastic Bag

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HCR# 30, BOX 27, LINCOLN, MONTANA

ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MD 42	FOURTH SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	ONE WHITE "MIX 'N DRINK" PLASTIC CUP	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 43	FOURTH SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	ONE WHITE "MIX 'N DRINK" PLASTIC CUP	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 44	FOURTH SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	ONE WHITE PLASTIC CUP	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 45	FIFTH SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	BOX OF "PROVERB SERIES" MATCHBOOS, CONTAINING 21 MATCHBOOKS	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 46	FIFTH SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	RAZOR BLADES, WRAPPED IN ALUMINUM FOIL	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 47	FIFTH SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	ONE SMALL TIN CAN CONTAINING VISIBLE RESIDUE	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 48	FOURTH SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	ONE GLASS JAR WITH BLUE METAL LID	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 49	FOURTH SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	ONE METAL FRYING PAN WITHOUT HANDLE	DAVID ALFORD	Y	Indirect	Plastic Bag

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HCR# 30, BOX 27, LINCOLN, MONTANA

ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MD 50	FIFTH SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	ONE METAL CAN	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 51	FIFTH SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	ONE GLASS JAR LABELED "ADAMS UNSALTED 100% NATURAL PEANUT BUTTER" AND EXTRA LID (APPEARS EMPTY)	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 52	FIFTH SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	BOTTOM-HALF OF PLASTIC WATER JUG, PARTIAL LABEL "DISTILLED WATER"	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 53	FIFTH SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	ONE METAL CAN (APPEARS EMPTY)	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 54	FIFTH SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	ONE METAL CAN (APPEARS EMPTY)	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 55	SIXTH SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	ONE METAL CAN (APPEARS EMPTY)	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 56	SIXTH SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	ONE METAL CAN LABELED "DEL MONTE DICED TOMATOES" (APPEARS EMPTY)	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 57	SIXTH SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	ONE METAL CAN LABELED "VEG-ALL" (APPEARS EMPTY)	DAVID ALFORD	Y	Indirect	Plastic Bag

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HCR# 30, BOX 27, LINCOLN, MONTANA

ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MD 58	SIXTH SHELF FROM THE TOP, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	ONE SMALL METAL CAN (APPEARS EMPTY)	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 59	FLOOR UNDERNEATH SHELVES, SOUTHEAST CORNER, TOP SHELF, EAST WALL, INSIDE FRONT DOOR	ONE CARDBOARD BOX FULL OF MISC. DOCUMENTS, ENVELOPES AND LEATHER PORTFOLIO	DAVID ALFORD	Y	Indirect	Cardboard Box
MF 12	UNDER BED	IMPROVISED EXPLOSIVE DEVICE (IED) CONTAINED IN A CARDBOARD BOX, WRAPPED IN PLASTIC BAGS WITH VARIOUS TAPE AND RUBBER BANDS	WILLIAM A. FORSYTH	Y	Indirect	Paper Bag
MF 12A	WITHIN ITEM MF 12	PIPEBOMB	WILLIAM A. FORSYTH	Y	Indirect	Paper Bag
MF 14	IN BOX ON FLOOR, UNDER BED.	SMALL BLUE SPIRAL NOTEBOOK CONTAINING HANDWRITTEN NOTES IN TAT PLASTIC SHOPPING BAG WITH RUBBER BANDS	DONALD SACHTLEBEN	G	Indirect	Plastic Bag
MF 15	FLOOR UNDER BED (Oat Cereal container cut in half).	SIX TWIGS FROM PAPER CONTAINER	WILLIAM A. FORSYTH	G	Indirect	Paper Bag
MF 16	TOP OF BED	PLIERS/VISE GRIP	WILLIAM A. FORSYTH	G	Indirect	Paper Bag
MF 17	UNDER BED ON FLOOR	CARDBOARD CYLINDER CONTAINER	WILLIAM A. FORSYTH	G	Indirect	Paper Bag
MF 18	UNDER THE BED IN A BOX WHICH CONTAINED ITEMS MF18 - MF45, EXCLUDING ITEM MF20	HATCHET	WILLIAM A. FORSYTH	G	Indirect	Paper Bag
MF 19	UNDER THE BED IN A BOX WHICH CONTAINED ITEMS MF18 - MF45, EXCLUDING ITEM MF20	TRAVELING KIT - NYLON BAG WITH CONTENTS, WITH LIST OF ITEMS.	WILLIAM A. FORSYTH	G	Indirect	Paper Bag
MF 20	REMOVED FROM BED AND FOAM	NAILS	WILLIAM A. FORSYTH	G	Indirect	Plastic Bag

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ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MF 21	UNDER THE BED IN A BOX WHICH CONTAINED ITEMS MF18 - MF45, EXCLUDING ITEM MF20	SHOES - WITH DOUBLE SOLE OF DIFFERENT SIZES (Contained in a plastic bag)	WILLIAM A. FORSYTH	G	Indirect	Paper Bag
MF 22	UNDER THE BED IN A BOX WHICH CONTAINED ITEMS MF18 - MF45, EXCLUDING ITEM MF20	ALLUMINUM RECTANGULAR PAN	WILLIAM A. FORSYTH	G	Indirect	Plastic Bag
MF 23	UNDER THE BED IN A BOX WHICH CONTAINED ITEMS MF18 - MF45, EXCLUDING ITEM MF20	BATTERIES (SIZE C - 2 BATTERIES)	WILLIAM A. FORSYTH	G	Indirect	Plastic Bag
MF 24	UNDER THE BED IN A BOX WHICH CONTAINED ITEMS MF18 - MF45, EXCLUDING ITEM MF20	BOX OF WAX PAPER	WILLIAM A. FORSYTH	G	Indirect	Paper Bag
MF 25	UNDER THE BED IN A BOX WHICH CONTAINED ITEMS MF18 - MF45, EXCLUDING ITEM MF20	PIECE OF WOOD WITH A PIECE OF WAX PAPER	WILLIAM A. FORSYTH	G	Indirect	Paper Bag
MF 26	UNDER THE BED IN A BOX WHICH CONTAINED ITEMS MF18 - MF45, EXCLUDING ITEM MF20	BROWN SWEATER ROLLED IN PLASTIC BAG	WILLIAM A. FORSYTH	G	Indirect	Paper Bag
MF 27	UNDER THE BED IN A BOX WHICH CONTAINED ITEMS MF18 - MF45, EXCLUDING ITEM MF20	DIRTY GREEN TARP - IN PLASTIC BAG	WILLIAM A. FORSYTH	G	Indirect	Paper Bag
MF 28	UNDER THE BED IN A BOX WHICH CONTAINED ITEMS MF18 - MF45, EXCLUDING ITEM MF20	HAT, BROWN BAG, CAMOFLAGE JACKET, GREEN/BROWN PANTS and CANVAS JACKET CONTAINED IN PLASTIC BAG	WILLIAM A. FORSYTH	G	Indirect	Paper Bag
MF 29	UNDER THE BED IN A BOX WHICH CONTAINED ITEMS MF18 - MF45, EXCLUDING ITEM MF20	PLASTIC RAIN GEAR (PANCHO)	WILLIAM A. FORSYTH	G	Indirect	Paper Bag
MF 30	UNDER THE BED IN A BOX WHICH CONTAINED ITEMS MF18 - MF45, EXCLUDING ITEM MF20	BROWN PLASTIC RAIN COAT	WILLIAM A. FORSYTH	G	Indirect	Paper Bag
MF 31	UNDER THE BED IN A BOX WHICH CONTAINED ITEMS MF18 - MF45, EXCLUDING ITEM MF20	KNIFE	WILLIAM A. FORSYTH	G	Indirect	Plastic Bag

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ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MF 32	UNDER THE BED IN A BOX WHICH CONTAINED ITEMS MF18 - MF45, EXCLUDING ITEM MF20	MAPS OF LOCAL AREA (2 MAPS)	WILLIAM A. FORSYTH	G	Indirect	Plastic Bag
MF 33	UNDER THE BED IN A BOX WHICH CONTAINED ITEMS MF18 - MF45, EXCLUDING ITEM MF20	CANVAS GREEN/BROWN FACE MASK AND BLACK CANVAS FACE MASK	WILLIAM A. FORSYTH	G	Indirect	Paper Bag
MF 34	UNDER THE BED IN A BOX WHICH CONTAINED ITEMS MF18 - MF45, EXCLUDING ITEM MF20	RADIO AND MAP OF LINCOLN, MT., AREA	WILLIAM A. FORSYTH	G	Indirect	Paper Bag
MF 35	UNDER THE BED IN A BOX WHICH CONTAINED ITEMS MF18 - MF45, EXCLUDING ITEM MF20	WHITE RAGS TIED TOGETHER	WILLIAM A. FORSYTH	G	Indirect	Paper Bag
MF 36	UNDER THE BED IN A BOX WHICH CONTAINED ITEMS MF18 - MF45, EXCLUDING ITEM MF20	PLASTIC BAG WITH TWO FISH HOOKS, STRING, AND TWO BOXES OF MATCHES.	WILLIAM A. FORSYTH	G	Indirect	Paper Bag
MF 37	UNDER THE BED IN A BOX WHICH CONTAINED ITEMS MF18 - MF45, EXCLUDING ITEM MF20	POCKET KNIFE	WILLIAM A. FORSYTH	G	Indirect	Plastic Bag
MF 38	UNDER THE BED IN A BOX WHICH CONTAINED ITEMS MF18 - MF45, EXCLUDING ITEM MF20	PIECES OF WOOD IN PLASTIC	WILLIAM A. FORSYTH	G	Indirect	Paper Bag
MF 39	UNDER THE BED IN A BOX WHICH CONTAINED ITEMS MF18 - MF45, EXCLUDING ITEM MF20	PLASTIC GARBAGE BAG/BAG CONTAINING CLOTHING STRIPS	WILLIAM A. FORSYTH	G	Indirect	Paper Bag
MF 40	UNDER THE BED IN A BOX WHICH CONTAINED ITEMS MF18 - MF45, EXCLUDING ITEM MF20	IODIZED SALT IN BOTTLE	WILLIAM A. FORSYTH	Y	Indirect	Plastic Bag
MF 41	UNDER THE BED IN A BOX WHICH CONTAINED ITEMS MF18 - MF45, EXCLUDING ITEM MF20	AMMO PACK AND WATER PROOF MATCHES	WILLIAM A. FORSYTH	G	Indirect	Plastic Bag
MF 42	UNDER THE BED IN A BOX WHICH CONTAINED ITEMS MF18 - MF45, EXCLUDING ITEM MF20	PIPE APPROXIMATELY 6 1/2 FOOT LONG	WILLIAM A. FORSYTH	G	Indirect	Paper Wrap

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COLLECTED: 04/06/96

EVIDENCE COLLECTED AT RESIDENCE OF THEODORE KAZCYNSKI
HCR# 30, BOX 27, LINCOLN, MONTANA

ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MF 43	UNDER THE BED IN A BOX WHICH CONTAINED ITEMS MF18 - MF45, EXCLUDING ITEM MF20	HAND-MADE GUN WITH SPENT CARTRIDGE	WILLIAM A. FORSYTH	G	Indirect	Box
MF 44	UNDER THE BED IN A BOX WHICH CONTAINED ITEMS MF18 - MF45, EXCLUDING ITEM MF20	WOOD BOARDS IN FOIL	WILLIAM A. FORSYTH	G	Indirect	Paper Bag
MF 45	IN BOTTOM OF BOX WHICH CONTAINED ITEMS MF18 - MF44.	DEBRIS	WILLIAM A. FORSYTH	G	Indirect	Plastic Bag

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COLLECTED: 04/07/96

EVIDENCE COLLECTED AT RESIDENCE OF THEODORE KAZCYNSKI
HCR# 30, BOX 27, LINCOLN, MONTANA

ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MA 5	ON SOUTH WALL EAST OF WINDOW	APPEARS TO BE A HAND DONE CALENDAR	WILLIAM A. FORSYTH	N	Indirect	Plastic Bag
MA 6	ON THE WORKBENCH LOCATED AT THE SOUTH WALL	CAN WITH PAPER ADDRESSES	WILLIAM A. FORSYTH	N	Indirect	Paper Bag
MA 7	ON THE WORKBENCH LOCATED AT THE SOUTH WALL	CAN WITH MATCHES AND WOOD FRAGMENTS	WILLIAM A. FORSYTH	N	Indirect	Paper Bag
MA 8	ON THE WORKBENCH LOCATED AT THE SOUTH WALL	THREE TOOLS	WILLIAM A. FORSYTH	N	Indirect	Paper Bag
MA 9	ON THE WORKBENCH LOCATED AT THE SOUTH WALL	PART OF RADIO	WILLIAM A. FORSYTH	N	Indirect	Paper Bag
MA 10	ON THE WORKBENCH LOCATED AT THE SOUTH WALL	DOCUMENTS	WILLIAM A. FORSYTH	N	Indirect	Plastic Bag
MA 11	ON THE WORKBENCH LOCATED AT THE SOUTH WALL	TIN WITH WIRE ACROSS TOP	WILLIAM A. FORSYTH	N	Indirect	Plastic Bag
MA 12	ON THE WORKBENCH LOCATED UNDER THE WINDOW	TOOLS IN "TIDE" DETERGENT BOX	WILLIAM A. FORSYTH	N	Indirect	Paper Bag
MA 13	ON THE WORKBENCH LOCATED UNDER THE WINDOW	CONTAINER OF FINE TWINE	WILLIAM A. FORSYTH	N	Indirect	Paper Bag
MA 14	ON THE WORKBENCH LOCATED UNDER THE WINDOW	SMALL RATCHET, TWEEZERS AND A POCKET KNIFE	WILLIAM A. FORSYTH	N	Indirect	Paper Bag
MA 15	HANGING ON THE SOUTH WALL WEST OF THE WINDOW	FOUR MEASURING SPOONS	WILLIAM A. FORSYTH	N	Indirect	Plastic Bag

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COLLECTED: 04/07/96

EVIDENCE COLLECTED AT RESIDENCE OF THEODORE KAZCYNSKI
HCR# 30, BOX 27, LINCOLN, MONTANA

ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MA 16	HANGING ON THE SOUTH WALL WEST OF THE WINDOW	TOOLS IN A CAN	WILLIAM A. FORSYTH	N	Indirect	Paper Bag
MA 17	HANGING ON THE SOUTH WALL WEST OF THE WINDOW	BLUE ZIPPERED SWEATSHIRT	WILLIAM A. FORSYTH	N	Indirect	Paper Bag
MA 18	HANGING ON SOUTH WALL, WEST SHELF	BLUE HOOD AND OLD TOWEL	WILLIAM A. FORSYTH	N	Indirect	Paper Bag
MA 19	SOUTH WALL, WEST OF WINDOW	TWO PAIR OF PLASTIC GLASSES	WILLIAM A. FORSYTH	N	Indirect	Paper Bag
MA 20	ON WALL WEST OF WINDOW	BLUE JACKET	WILLIAM A. FORSYTH	N	Indirect	Paper Bag
MA 21	ON WALL WEST OF WINDOW	GREEN HOODED JACKET	WILLIAM A. FORSYTH	N	Indirect	Paper Bag
MA 22	ON WALL WEST OF WINDOW	METAL POT	WILLIAM A. FORSYTH	N	Indirect	Paper Bag
MA 23	ON WALL WEST OF WINDOW	PLASTIC BAG CONTAINING CANS AND HOSES	WILLIAM A. FORSYTH	N	Indirect	Paper Bag
MA 24	ON WALL WEST OF WINDOW	A CUTTING OF GREEN JACKET	WILLIAM A. FORSYTH	N	Indirect	Paper Bag
MB 10	HANGING ON NAIL IN SHELVES ON WEST WALL	THREE PAIRS OF SCISSORS	DAVID ALFORD	Y	Indirect	Paper Bag/Wrap
MB 11	SECOND SHELF FROM TOP, NORTH END, WEST WALL	ONE PLASTIC BOTTLE OF GLUE, LABEL "ELMER'S MUCILAGE"	DAVID ALFORD	Y	Indirect	Plastic Bag
MB 12	SECOND SHELF FROM TOP, NORTH END, WEST WALL	ONE TUBE OF "DURO SUPER GLUE"	DAVID ALFORD	Y	Indirect	Plastic Bag
MB 13	SECOND SHELF FROM TOP, NORTH END, WEST WALL	ONE METAL CAN CONTAINING THREE TUBES OF PAINT IN THE FOLLOWING COLORS: MEDIUM CADMIUM RED, RAW AMBER, DEEP PERMINENT GREEN	DAVID ALFORD	Y	Indirect	Plastic Bag

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EVIDENCE COLLECTED AT RESIDENCE OF THEODORE KAZCYNSKI
HCR# 30, BOX 27, LINCOLN, MONTANA

ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MB 14	SECOND SHELF FROM TOP, NORTH END, WEST WALL	ONE METAL CAN CONTAINING WICKS AND STRINGS WITH A PIECE OF NEWSPAPER INSIDE TO KEEP CONTENTS FROM MOVING ABOUT	DAVID ALFORD	Y	Indirect	Plastic Bag
MB 15	SECOND SHELF FROM TOP, NORTH END, WEST WALL	TWO PAINT KITS; SMALLER ONE IN BLACK METAL CONTAINER LABELED "PRANG WATER COLORS", LARGER ONE IN YELLOW AND CLEAR PLASTIC CONTAINER	DAVID ALFORD	Y	Indirect	Plastic Bag
MB 16	SECOND SHELF FROM TOP, NORTH END, WEST WALL	ONE WOOD HANDLED KNIFE, CONTAINED IN A SHEATH MADE OF NEWSPAPER	DAVID ALFORD	Y	Indirect	Plastic Bag
MB 17	IN MIDDLE OF SECOND SHELF FROM TOP, NORTH END, WEST WALL	ONE T-SHAPED METAL PIPE OR BRACKET WITH SERIAL NUMBER "GM-4" AND PARTIAL SERIAL NUMBER "...3658391"	DAVID ALFORD	Y	Indirect	Plastic Bags
MC 19	WOODEN SHELF ON NORTH WALL	RED HAT	WILLIAM A. FORSYTH	N	Indirect	Paper Bag
MC 20	NORTH WALL ABOVE COT	STRAPPING	WILLIAM A. FORSYTH	N	Indirect	Plastic Bag
MC 21	HANGING ON NORTH WALL ABOVE COT	BOLT ACTION 22 CALIBER RIFLE	WILLIAM A. FORSYTH	N	Indirect	Paper Bag
MC 22	HANGING ON NORTH WALL ABOVE COT	REMINGTON MODEL .700 3006 #6292650	WILLIAM A. FORSYTH	N	Indirect	Paper Bag
MC 23	HOOK ON NORTH WALL ABOVE COT	STRAW HAT AND STRINGS	WILLIAM A. FORSYTH	N	Indirect	Paper Bag
MC 24	ON NORTH WALL ABOVE COT AND RIFLES	INFORMATION ON WHITE PAPER RE. 30-06	WILLIAM A. FORSYTH	N	Indirect	Plastic Bag
MC 25	NORTH WALL ABOVE COT	WOODEN/METAL CONTRAPTION	WILLIAM A. FORSYTH	N	Indirect	Box
MD 60	HOOK ON BACK OF FRONT DOOR	GREEN CANVAS U.S. ARMY BACKPACK	WILLIAM A. FORSYTH	Y	Indirect	Paper Bag
MD 61	HOOK ON BACK OF FRONT DOOR TO RESIDENCE	KHAKI COLORED CLOTH, SOMEWHAT DETRIORATED AND RESSEMBLING A SKI MASK	WILLIAM A. FORSYTH	Y	Indirect	Paper Bag

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HCR# 30, BOX 27, LINCOLN, MONTANA

ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MD 62	HANGING ON NAIL IN EAST WALL SOUTH OF FRONT DOOR TO RESIDENCE	WOODEN HANDLED HAMMER	DAVID ALFORD	Y	Indirect	Paper Bag
MD 63	HANGING ON NAIL IN EAST WALL NORTH OF FRONT DOOR TO RESIDENCE	ONE PACKAGE OF SAW BLADES	DAVID ALFORD	Y	Indirect	Paper Bag
MD 64	HANGING ON NAIL IN EAST WALL, NORTH OF FRONT DOOR TO RESIDENCE	ONE LONG BLADED BLACK HANDLED KNIFE	DAVID ALFORD	Y	Indirect	Cardboard&Paper
MD 65	HANGING ON NAIL IN EAST WALL ON NORTH SIDE OF FRONT DOOR TO RESIDENCE	SAW (HANDSAW)	DAVID ALFORD	Y	Indirect	Cardboard&Paper
MD 66	HANGING ON WIRE HOOK ON EAST WALL NORTH OF FRONT DOOR TO RESIDENCE	ONE WOODEN, APPARENTLY HAND-MADE, MEASURING INSTRUMENT	DAVID ALFORD	Y	Indirect	Paper Wrap/Bag
MD 67	LOWER SHELF ON EAST WALL, NORTHEAST CORNER	ONE SMALL BROWN GLASS BOTTLE	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 68	LOWER SHELF ON EAST WALL, NORTHEAST CORNER	METAL CAN CONTAINING SPENT CARTRIDGE CASINGS	DAVID ALFORD	Y	Indirect	Plastic Bags
MD 69	LOWER SHELF, EAST WALL, NORTHEAST CORNER	ONE BAKING POWDER CANNISTER WITH MASKING TAPE LABEL, HANDWRITTEN, "TRIGGER SPRING FOR .22 RIFLE"	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 70	LOWER SHELF, EAST WALL, NORTHEAST CORNER	TWO PACKAGES OF WATER PROOF MATCHES, AND ONE MATCHBOOK	DAVID ALFORD	Y	Indirect	Plastic Bag
MD 71	UPPER SHELF, EAST WALL, NORTHEAST CORNER	ONE RED METAL BOX CONTAINING GUN CLEANING KIT, LABELED "SEARS, CAL.30 6 20253"	DAVID ALFORD	Y	Indirect	Paper Wrap/Bag
MD 72	UPPER SHELF, EAST WALL, NORTHEAST CORNER	ONE PIECE OF METAL WITH CURLED END	DAVID ALFORD	Y	Indirect	Plastic Bag

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HCR# 30, BOX 27, LINCOLN, MONTANA

ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MD 73	HANGING ON NAIL IN EAST WALL, NORTH OF FRONT DOOR TO RESIDENCE	ONE COIL OF ROPE	DAVID ALFORD	Y	Indirect	Paper Bag
MF 48	UNDER BED/COT	ONE BOTTLE OF TRAZADONE/ANTI-DEPRESSANT	WILLIAM A. FORSYTH	N	Indirect	Plastic Bag
MF 49	UNDER BED/COT BETWEEN WOOD BIN AND MAIN FRAME	WOODEN FRAGMENTS	WILLIAM A. FORSYTH	N	Indirect	Paper Bag
MF 50	ON FLOOR NEXT TO STOVE	WOODEN FRAGMENTS IN PLASTIC CONTAINER	WILLIAM A. FORSYTH	N	Indirect	Paper Bag
MF 51	SOUTHWEST CORNER UNDER HANGING JACKETS	TIN CONTAINING HANDTOOLS	WILLIAM A. FORSYTH	N	Indirect	Paper Bag
MF 52	BETWEEN SOUTH WALL AND STOVE	TWO SPADES/HAND SHOVELS	WILLIAM A. FORSYTH	N	Indirect	Paper Bag
MF 53	BETWEEN SOUTH WALL AND STOVE	SIX METAL BARS	WILLIAM A. FORSYTH	N	Indirect	Paper Bag
MF 54	AGAINST SOUTH WALL WEST OF WINDOW	LONG PIECE OF METAL	WILLIAM A. FORSYTH	N	Indirect	Paper Bag
OC 1	LEANING AGAINST WALL JUST NORTH OF THE DOOR (JUST OUTSIDE DOOR)	TOOL MADE WITH REBAR	WILLIAM A. FORSYTH	N	Indirect	Paper Bag
OC 2	EAST SIDE ABOVE RIGHT OF DOOR	SAMPLE OF CABIN WALL	WILLIAM A. FORSYTH	N	Indirect	Paper Bag
RSP 1	IN RENDER SAFE PROCEDURE PIT	(IED) PARTIAL SECTION OF WOODEN BOX.	FRANK R. DOYLE	Y	Indirect	Plastic Bag
RSP 1A	IN RENDER SAFE PROCEDURE PIT	(IED) PIECE OF LABEL FROM THE WOODEN BOX.	FRANK R. DOYLE	Y	Direct	Plastic Bag
RSP 2A	IN RENDER SAFE PROCEDURE PIT	(IED) PIECE OF LABEL FROM THE WOODEN BOX.	FRANK R. DOYLE	Y	Direct	Plastic Bag
RSP 3	IN RENDER SAFE PIT	(IED) PARTIAL SECTION OF WOODEN BOX.	FRANK R. DOYLE	Y	Indirect	Plastic Bag
RSP 4	IN RENDER SAFE PIT	(IED) PACKAGING MATERIAL.	FRANK R. DOYLE	Y	Indirect	Plastic Bag

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EVIDENCE COLLECTED AT RESIDENCE OF THEODORE KAZCYNSKI
HCR# 30, BOX 27, LINCOLN, MONTANA

ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
RSP 5	IN RENDER SAFE PIT	(IED) MISC. DEBRIS	FRANK R. DOYLE	Y	Indirect	Paper Bag

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COLLECTED: 04/08/96

EVIDENCE COLLECTED AT RESIDENCE OF THEODORE KAZCYNSKI
HCR# 30, BOX 27, LINCOLN, MONTANA

	ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
	L 2	NORTHWEST CORNER OF LOFT	BOX CONTAINING FISHING GEAR	WILLIAM A. FORSYTH		Indirect	Paper Bag
	L 3	NORTHWEST CORNER OF LOFT	LABELED CAN OF PLASTER OF PARIS	WILLIAM A. FORSYTH		Indirect	Paper Bag
D	L 4	IN LARGE AMMO CANTAINER LOCATED ON THE NORTH/CENTRAL SECTION OF THE LOFT	TYPEWRITER, STAMPS, MISC. WRAPPED PAPERS, AND DOCUMENTS	WILLIAM A. FORSYTH	3-10,13-	Indirect	Cardboard Box
	L 5	NORTHWEST CORNER OF LOFT	OATS CAN CONTAINING FOIL WRAPPED TRIGGER SWITCH	WILLIAM A. FORSYTH			Paper Bag
	L 6	NORTHWEST CORNER OF LOFT	MISC. METAL SHAVINGS, WIRES, BEARINGS, ETC. IN OAT CONTAINERS	WILLIAM A. FORSYTH		Indirect	Paper Bag
	L 7	WEST CENTRAL SECTION OF LOFT	BACKPACK FRAME CONTAINING MISC. PIPES AND CORDAGE	WILLIAM A. FORSYTH		Indirect	Cardboard
	L 8	WEST CENTRAL SECTION OF LOFT	NORTHWEST TERRITORY HIKING SHOES (BROWN GREEN)	WILLIAM A. FORSYTH		Indirect	Paper
	L 9	NORTHWEST CORNER OF LOFT	BLACK PEPPER CAN CONTAINING SEVERAL METAL PIECES AND A PLASTIC BOTTLE LABELED "STRYCHNINE OATS"	WILLIAM A. FORSYTH		Indirect	Paper
D	L 10	CENTER OF LOFT	ONE "ALDRICH" BOX CONTAINING MISC. PAPERS, NEWSPAPER CLIPPINGS, BUS SCHEDULE, ADDRESSES OF CORPORATE OFFICIALS, AND MAPS OF SAN FRANSISCO	WILLIAM A. FORSYTH		Indirect	Cardboard Box
	L 11	CENTER OF LOFT	MISC. CANS, STRING, PLASTIC AND METAL	WILLIAM A. FORSYTH		Indirect	Paper
	L 12	NORTHWEST CORNER OF LOFT	PIECES OF LOCK IN A CORNMEAL CONTAINER	WILLIAM A. FORSYTH		Indirect	Paper
	L 13	NORTHWEST CORNER OF LOFT	TOOL BOX IN GREEN BAG	WILLIAM A. FORSYTH		Indirect	Paper
	L 14	NORTHWEST CORNER OF LOFT	PIECE OF PIPE (POSSIBLE PIECE OF RIFLE)	WILLIAM A. FORSYTH		Indirect	Paper
	L 15	NORTHWEST CORNER OF LOFT	RADIO SONDE - MEASURES TEMP., HUMIDITY, ECT.	WILLIAM A. FORSYTH		Indirect	Paper

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HCR# 30, BOX 27, LINCOLN, MONTANA

ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
L 16	NORTHWEST CORNER OF LOFT	METAL PARTS AND PIECES	WILLIAM A. FORSYTH		Indirect	Paper
L 17	CENTER AREA OF LOFT	WELDING TYPE MASK	WILLIAM A. FORSYTH		Indirect	Paper
L 18	NORTH CENTRAL SECTION OF LOFT	TATER TOT BOX CONTAINING MISC. BOOKS AND MAPS	WILLIAM A. FORSYTH		Indirect	Original Box
L 19	CENTER SECTION OF LOFT	TAN DUFFEL BAG CONTAINING CLOTHING AND TWO ADDITIONAL DUFFEL TYPE BAGS	WILLIAM A. FORSYTH		Indirect	Paper
L 20	WEST CENTRAL SECTION OF LOFT	METAL PARTS AND PIECES, CHAINS, LOCKS, AND POSSIBLE TRAPS	WILLIAM A. FORSYTH		Indirect	Box
L 21	WEST CENTRAL SECTION OF LOFT	WIRE SCREEN	WILLIAM A. FORSYTH		Indirect	Paper
L 22	HANGING FROM NORTH CENTRAL SECTION OF LOFT	BOW STRIGS AND ARROWS IN AQUIVER	WILLIAM A. FORSYTH		Indirect	Paper
L 23	CENTRAL SECTION OF LOFT	ONE STEAK KNIFE	WILLIAM A. FORSYTH		Indirect	Paper
L 24	SOUTHWEST CORNER OF LOFT	PIPES (MISC. SIZES)	WILLIAM A. FORSYTH		Indirect	Box
L 25	SOUTHWEST CORNER OF LOFT	PIPES AND A BOWL	WILLIAM A. FORSYTH		Indirect	Box
L 26	SOUTHWEST CORNER OF LOFT	L - SHAPED PIPE	WILLIAM A. FORSYTH		Indirect	Paper
L 27	WEST CENTRAL SECTION OF LOFT	SECTION OF PIPE	WILLIAM A. FORSYTH		Indirect	Paper
L 28	WEST CENTRAL SECTION OF LOFT	SECTION OF PIPE	WILLIAM A. FORSYTH		Indirect	Paper
L 29	CENTRAL SECTION OF LOFT	PLASTIC BAG CONTAINING BLACK JACKET	WILLIAM A. FORSYTH		Indirect	Paper
L 30	SOUTH CENTRAL SECTION OF LOFT	BOMB COMPONENTS	WILLIAM A. FORSYTH		Indirect	Box

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HCR# 30, BOX 27, LINCOLN, MONTANA

ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
L 31	NORTH CENTRAL SECTION OF LOFT	TWO ROLLS OF BROWN PAPER MARKED "3QQ", CAN CONTAINING WIRE MARKED "QQ" AND DOCUMENTS	WILLIAM A. FORSYTH		Indirect	Paper
L 32	NORTH CENTRAL SECTION OF LOFT	BOX MARKED "ALL 1 OR 10 Q OR QQ" (HANDWRITTEN), METAL TUBES, WIRING, SPRINGS, BALL TRIGGER IN TINFOIL, STAPLER, 9V BATTERY, AND SMALL COPPER COLORED TUBING	WILLIAM A. FORSYTH	Y	Direct	
L 32A	NORTH CENTRAL SECTION OF LOFT	COPPER COLORED TUBING REMOVED FROM ITEM L-32	WILLIAM A. FORSYTH	Y	Indirect	
L 33	NORTHEAST SECTION OF LOFT	BOOKS WITH "5Q" ON CONTAINER	WILLIAM A. FORSYTH		Direct	
L 34	NORTHEAST SECTION OF LOFT	LETTERS	WILLIAM A. FORSYTH		Indirect	
L 35	EAST CENTRAL SECTION OF LOFT	SAMSONITE BRIEFCASE CONTAINING UNIVERSITY OF MICHIGAN DEGREES ECT.	WILLIAM A. FORSYTH		Direct	Box
L 36	NORTHEAST CORNER SECTION OF LOFT	GRAY CASE CONTAINING TYPEWRITER	WILLIAM A. FORSYTH		Direct	Box
L 37	NORTH CENTRAL SECTION OF LOFT	LARGE GREEN AMMO CAN THAT CONTAINED ITEM L-4	WILLIAM A. FORSYTH		Direct	Box
L 38	EAST CENTRAL SECTION OF LOFT	TV WIRE WITH CORD AROUND IT	WILLIAM A. FORSYTH		Indirect	Paper
L 39	CENTRAL AREA OF EAST WALL	YEARBOOKS IN GREEN PLASTIC BAG	WILLIAM A. FORSYTH		Indirect	Paper
L 40	NORTHEAST AREA OF LOFT	GREEN TARP AND TWINE	WILLIAM A. FORSYTH		Indirect	Paper
L 41	SOUTHEAST CORNER OF LOFT	BOX OF CLOTHING AND TOWELS	WILLIAM A. FORSYTH		Indirect	Paper
L 42	SOUTHEAST CORNER OF LOFT	RAIN PONCHO TYPE MATERIAL	WILLIAM A. FORSYTH		Indirect	Paper
L 43	SOUTHEAST CORNER OF LOFT	TYPEWRITER PARTS	WILLIAM A. FORSYTH	Log# 8	Indirect	Paper

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HCR# 30, BOX 27, LINCOLN, MONTANA

ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MB 18	SECOND SHELF FROM THE TOP, CENTER OF SHELVES, WEST WALL	TWO SMALL METAL TINS	DAVID ALFORD	Y	Indirect	Plastic Bag
MB 19	SECOND SHELF FROM THE TOP, CENTER OF SHELVES, WEST WALL	ONE METAL CAN	DAVID ALFORD	Y	Indirect	Plastic Bag
MB 20	SECOND SHELF FROM THE TOP, CENTER OF SHELVES, WEST WALL	ONE WHITE PLASTIC SHOPPING BAG CONTAINING STEEL WIRE, HANDWRITTEN NOTATION ON OUTSIDE OF BAG "S ...", AND HANDWRITTEN NOTATION ON PACKAGES OF WIRE "COAST TO COAST, HELENA, JULY, 1994"	DAVID ALFORD	Y	Indirect	Plastic Bag
MB 21	SECOND SHELF FROM THE TOP, CENTER OF SHELVES, WEST WALL	ONE METAL CAN, LABEL "DEL MONTE WHOLE LEAF SPINACH", CONTAINING MELTED METAL FRAGMENTS	DAVID ALFORD	Y	Indirect	Plastic Bag
MB 22	SECOND SHELF FROM THE TOP, CENTER OF SHELVES, WEST WALL	ONE PAPER BAG CONTAINING WHITE ELECTRICAL EXTENSION CORDS; BAG WRAPPED IN STRAPPING TAPE	DAVID ALFORD	Y	Indirect	Plastic Bag
MB 23	SECOND SHELF FROM THE TOP, CENTER OF SHELVES, WEST WALL	ONE SMALL METAL CAN	DAVID ALFORD	Y	Indirect	Plastic Bag
MB 24	SECOND SHELF FROM THE TOP, CENTER OF SHELVES, WEST WALL	NINE METAL CAN	DAVID ALFORD	Y	Indirect	Plastic Bag
MB 25	SECOND SHELF FROM THE TOP, CENTER OF SHELVES, WEST WALL	TWO SMALL METAL CANS	DAVID ALFORD	Y	Indirect	Plastic Bag
MB 26	SECOND SHELF FROM THE TOP, CENTER OF SHELVES, WEST WALL	ONE SMALL WHITE CERAMIC CRUCIBLE	DAVID ALFORD	Y	Indirect	Cardboard Box
MB 27	SECOND SHELF FROM THE TOP, CENTER OF SHELVES, WEST WALL	TWO OFF-WHITE COLORED CERAMIC CRUCIBLE LIDS	DAVID ALFORD	Y	Indirect	Plastic & Paper

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EVIDENCE COLLECTED AT RESIDENCE OF THEODORE KAZCYNSKI
HCR# 30, BOX 27, LINCOLN, MONTANA

ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MB 28	SIXTH SHELF FROM THE TOP, CENTER OF SHELVES, WEST WALL	ONE BROWN CLASP ENVELOPE MARKED "AUTOBIOGRAPHY"	DAVID ALFORD	Y	Indirect	Paper Bag
MB 29	SIXTH SHELF FROM THE TOP, MIDDLE SECTION, SOUTH END, WEST WALL	"GRIP-LINE" RUBBER STAMP KIT	DAVID ALFORD	Y	Indirect	Plastic & Paper
MB 30	SIXTH SHELF FROM THE TOP, MIDDLE SECTION, SOUTH END, WEST WALL	PLASTIC BAG CONTAINING SEVERAL NOTEBOOKS, ENVELOPES AND MISC. HANWRITTEN DOCUMENTS	DAVID ALFORD	Y	Indirect	Paper Bag
MB 31	SIXTH SHELF FROM THE TOP, MIDDLE SECTION, SOUTH END, WEST WALL	ONE BROWN PAPER BAG CONTAINING TWO PACKAGES OF NOTEBOOK FILLER PAPER	DAVID ALFORD	Y	Indirect	Paper Bag
MB 32	SIXTH SHELF FROM THE TOP, MIDDLE SECTION, SOUTH END, WEST WALL	ONE PAPER BACK BOOK ENTITLED, "GROWING UP ABSURD", BY PAUL GOODMAN	DAVID ALFORD	Y	Indirect	Plastic Bag
MB 33	SIXTH SHELF FROM THE TOP, MIDDLE SECTION, SOUTH END, WEST WALL	MISC. MAPS	DAVID ALFORD	Y	Indirect	Plastic Bag
MB 34	SECOND SHELF FROM THE TOP, MIDDLE SECTION, WEST WALL	ONE BOX OF REYNOLDS ALUMINUM FOIL WITH RED RUBBER BAND AROUND IT	DAVID ALFORD	Y	Indirect	Paper Bag
MB 35	SECOND SHELF FROM THE TOP, MIDDLE SECTION, WEST WALL	THREE METAL BOTTLE CAPS LABELED "MAZOLA CORN OIL"	DAVID ALFORD	Y	Indirect	Paper Bag
MB 36	SECOND SHELF FROM THE TOP, MIDDLE SECTION, WEST WALL	PIECE OF CUT PIPE	DAVID ALFORD	Y	Indirect	Plastic & Paper
MB 37	SECOND SHELF FROM THE TOP, MIDDLE SECTION, WEST WALL	BOTTOM PORTION OF UNFIRED CARTRIDGE	DAVID ALFORD	Y	Indirect	Plastic & Paper
MB 38	THIRD SHELF FROM THE TOP, MIDDLE SECTION, WEST WALL	ONE "HANSON, MODEL 1509" SCALE, WRAPPED IN BROWN PAPER WITH MASKING TAPE	DAVID ALFORD	Y	Indirect	Paper

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ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MB 39	SECOND SHELF FROM THE TOP, MIDDLE SECTION, WEST WALL	BROWN PLASTIC JAR "NATURES BEST" CONTAINING FIRED CARTRIDGE CASINGS	DAVID ALFORD	Y	Indirect	Plastic Bag
MB 40	THIRD SHELF FROM THE TOP, NORTH END, WEST WALL	ONE BROWN WOODEN HANDLE POCKET KNIFE	DAVID ALFORD	Y	Indirect	Plastic Bag
MB 41	FOURTH SHELF FROM THE TOP, NORTH END, WEST WALL	PICK/HATCHET TOOL	DAVID ALFORD	Y	Indirect	Paper Bags
MB 42	THIRD SHELF FROM THE TOP, NORTH END, WEST WALL	KNIFE IN TATTERED WHITE CLOTH SHEATH	DAVID ALFORD	Y	Indirect	Paper Bag
MB 43	THIRD SHELF FROM THE TOP, NORTH END, WEST WALL	HUNTING KNIFE IN LEATHER SHEATH	DAVID ALFORD	Y	Indirect	Paper Bag
MB 44	FOURTH SHELF FROM THE TOP, NORTH END, WEST WALL	WOOD HANDLED FILE	DAVID ALFORD	Y	Indirect	Paper & Bag
MB 45	FOURTH SHELF FROM THE TOP, NORTH END, WEST WALL	SEVEN LARGE DRILL BITS	DAVID ALFORD	Y	Indirect	Paper
MB 46	HANGING ON NAIL IN WALL, BELOW THE FOURTH SHELF FROM THE TOP, NORTH END, WEST WALL	"GREAT NECK #50" HACKSAW	DAVID ALFORD	Y	Indirect	Paper & Bag
MB 47	HANGING ON NAIL IN WALL, BELOW THE FOURTH SHELF FROM THE TOP, NORTH END, WEST WALL	ONE DRILLING BASE	DAVID ALFORD	Y	Indirect	Paper Bag
MB 48	HANGING ON WIRE IN WALL, BELOW THE FOURTH SHELF FROM THE TOP, NORTH END, WEST WALL	ONE HAND SAW	DAVID ALFORD	Y	Indirect	Brown Paper

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ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MB 49	HANGING ON WIRE IN WALL, BELOW THE FOURTH SHELF FROM THE TOP, NORTH END, WEST WALL	ONE HAND SAW	DAVID ALFORD	Y	Indirect	Brown Paper
MB 50	SIXTH SHELF FROM THE TOP, MIDDLE SECTION, WEST WALL	ONE BROWN PLASTIC OBLONG "HERSHEY" CANNISTER WITH LID	DAVID ALFORD	Y	Indirect	Plastic Bag
MB 51	FIFTH SHELF FROM THE TOP, MIDDLE SECTION, WEST WALL	THREE BROWN THIN CARDBOARD PAPER TRAYS	DAVID ALFORD	Y	Indirect	Plastic Bag
MB 52	FIFTH SHELF FROM THE TOP, MIDDLE SECTION, WEST WALL	THREE BROWN THIN CARDBOARD PAPER TRAYS	DAVID ALFORD	Y	Indirect	Plastic Bag
MB 53	FOURTH SHELF FROM THE TOP, MIDDLE SECTION, WEST WALL	TWO BROWN THIN CARDBOARD PAPER TRAYS	DAVID ALFORD	Y	Indirect	Plastic Bag
MB 54	FOURTH SHELF FROM THE TOP, MIDDLE SECTION, WEST WALL	ONE COIL OF WIRE AND METAL PARTS	DAVID ALFORD	Y	Indirect	Plastic & Paper
MB 55	FIFTH SHELF FROM THE TOP, MIDDLE SECTION, WEST WALL	ONE PACKAGE OF "MEAD" BRAND TYPING PAPER, WITH BOTTOM HALF IN PAPER AND STRAPPING TAPE	DAVID ALFORD	Y	Indirect	Plastic Bag
MB 56	FIFTH SHELF FROM THE TOP, MIDDLE SECTION, WEST WALL	STUDENT GUIDES AND PUBLICATIONS FROM THE UNIVERSITY OF MONTANA AND CARROLL COLLEGE	DAVID ALFORD	Y	Indirect	Plastic Bag
MB 57	SIXTH SHELF FROM THE TOP, NORTH END, WEST WALL	ONE BROWN PLASTIC OBLONG "HERSHEY" CANNISTER WITH LID	DAVID ALFORD	Y	Indirect	Plastic Bag
MB 58	SIXTH SHELF FROM THE TOP, NORTH END, WEST WALL	NUMEROUS CONTAINERS (METAL, PLASTIC AND CARDBOARD) CONTAINING A VARIETY OF NAILS AND METAL FASTENERS	DAVID ALFORD	Y	Indirect	Plastic Bag

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ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MB 59	FIFTH SHELF FROM THE TOP, NORTH END, WEST WALL	NUMEROUS CONTAINERS (METAL, PLASTIC, GLASS, AND CARDBOARD) CONTAINING A VARIETY OF BOLTS, SCREWS AND METAL FASTENERS	DAVID ALFORD	Y	Indirect	Plastic Bag
MB 60	FIFTH SHELF FROM THE TOP, NORTH END, WEST WALL	TWO WHITE PLASTIC BUTANE CIGARETTE LIGHTERS	DAVID ALFORD	Y	Indirect	Plastic Bag
MB 61	FIFTH SHELF FROM THE TOP, NORTH END, WEST WALL	ONE "CALUMET" BAKING POWDER CANNISTER CONTAINING ONE RED "LE WATCH" BRAND WATCH, WATCH PARTS, AND MISC. METAL PARTS	DAVID ALFORD	Y	Indirect	Plastic & Paper
MB 62	FIFTH SHELF FROM THE TOP, NORTH END, WEST WALL	ONE BROWN PLASTIC OBLONG CONTAINER, CONTAINING ONE MOUSE TRAP, ONE PIECE OF INNER TUBE VALVE, AND ONE ORANGE PLASTIC BAG CONTAINING WIRE	DAVID ALFORD	Y	Indirect	Plastic Bag
MB 63	FIFTH SHELF FROM THE TOP, NORTH END, WEST WALL	ONE YELLOW PLASTIC BUCKET/PAIL	DAVID ALFORD	Y	Indirect	Paper Bag
MB 64	FOURTH SHELF FROM THE TOP, NORTH END, WEST WALL	SIX CAST METALLIC OBJECTS	DAVID ALFORD	Y	Indirect	Paper Bag
MB 65	FOURTH SHELF FROM THE TOP, NORTH END, WEST WALL	CONE SHAPED METALLIC CASTING	DAVID ALFORD	Y	Indirect	Paper Bag
MB 66	FOURTH SHELF FROM THE TOP, NORTH END, WEST WALL	ONE CAST METALLIC OBJECT	DAVID ALFORD	Y	Indirect	Paper & Bag
MB 67	FOURTH SHELF FROM THE TOP, NORTH END, WEST WALL	TEN CANNISTERS CONTAINING VARIOUS METAL SAMPLES AND ONE ROUND METAL OBJECT	DAVID ALFORD	Y	Indirect	Triple Paper Bag
MB 68	FOURTH SHELF FROM THE TOP, NORTH END, WEST WALL	ONE METAL CAN CONTAINING NUTS, BOLTS AND OTHER METAL OBJECTS	DAVID ALFORD	Y	Indirect	Paper & Bag

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ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MB 69	FOURTH SHELF FROM THE TOP, MIDDLE SECTION, WEST WALL	ONE CARDBOARD CANNISTER CONTAINING SMALL AMOUNT OF WHITE POWDER. THE CANNISTER IS LABELED "SHOPPERS VALUE QUICK OATS"	DAVID ALFORD	Y	Indirect	Plastic Bag
MB 70	FOURTH SHELF FROM THE TOP, MIDDLE SECTION, WEST WALL	ONE CARDBOARD CANNISTER CONTAINING SMALL AMOUNT OF WHITE POWDER. THE CANNISTER IS LABELED "SHOPPERS VALUE QUICK OATS"	DAVID ALFORD	Y	Indirect	Paper Bag
MB 71	THIRD SHELF FROM THE TOP, MIDDLE SECTION, WEST WALL	ONE PLASTIC BOTTLE LABELED "CHATEAU 70% ISOPROPYL RUBBING ALCOHOL", CONTAINING SPRINGS AND OTHER METAL OBJECTS	DAVID ALFORD	Y	Indirect	Plastic Bag
MB 72	THIRD SHELF FROM THE TOP, MIDDLE SECTION, WEST WALL	ONE "CALUMET BAKING POWDER" CANNISTER CONTAINING MACHINED METAL PARTS	DAVID ALFORD	Y	Indirect	Plastic Bag
MB 73	THIRD SHELF FROM THE TOP, MIDDLE SECTION, WEST WALL	ONE "CALUMET BAKING POWDER" CANNISTER CONTAINING PARTS OF A POCKET KNIFE BLADE AND OTHER ASSORTED METAL PARTS	DAVID ALFORD	Y	Indirect	Plastic Bag
MB 74	THIRD SHELF FROM THE TOP, MIDDLE SECTION, WEST WALL	"JOHNSON & JOHNSON MEDICATED BAND-AID" METAL CAN CONTAINING VARIOUS METAL PARTS	DAVID ALFORD	Y	Indirect	Plastic Bag
MB 75	THIRD SHELF FROM THE TOP, MIDDLE SECTION, WEST WALL	ONE METAL CAN CONTAINING WIRE AND OTHER METAL PARTS	DAVID ALFORD	Y	Indirect	Plastic Bag
MB 76	THIRD SHELF FROM THE TOP, NORTH END, WEST WALL	ONE CYLINDRICAL "QUAKER YELLOW CORN MEAL" CARDBOARD CANNISTER CONTAINING TWO SPOOLS OF SOLDER	DAVID ALFORD	Y	Indirect	Plastic Bag
MB 77	THIRD SHELF FROM THE TOP, NORTH END, WEST WALL	ONE CYLINDRICAL "QUAKER OATS" CARDBOARD CANNISTER CONTAINING WIRES, A SWITCH, AND AN ALLIGATOR CLIP	DAVID ALFORD	Y	Indirect	Plastic Bag
MC 26	ON WALL OVER WOOD PILE	ONE HAND BOWED WOOD SAW	WILLIAM A. FORSYTH	Y	Indirect	

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ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MF 46	INSIDE CABIN	MISC. WOOD WITH SCREWS AND NAILS TO INCLUDE PIECES FROM THE WOOD BIN ITSELF, BED, AND BED FRAME	WILLIAM A. FORSYTH		Indirect	Cardboard Box
MF 47	INSIDE CABIN	ONE LARGE PIECE OF WOOD BIN	WILLIAM A. FORSYTH		Indirect	Cardboard Paper
OC 3	IN HOMEMADE LADDER	STAPLES REMOVED FROM HOMEMADE LADDER	DOUGLAS W. DEEDRICK			

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HCR# 30, BOX 27, LINCOLN, MONTANA

ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
L 44	S.W. CORNER OF CABIN	SECTION OF PIPE	WILLIAM A. FORSYTH		Indirect	Paper
L 45	WEST CENTRAL SECTION OF CABIN	VARIOUS PAPER AND TWINE	WILLIAM A. FORSYTH		Indirect	Paper
L 46	HANGING ON A HOOK FROM THE NORTH CENTRAL SECTION OF THE ROOF	"SEARS" BOX CONTAINING ARROWS	WILLIAM A. FORSYTH		Indirect	Paper
L 47	NORTH CENTRAL CORNDER OF THE CABIN	12 SAW BLADES	WILLIAM A. FORSYTH		Indirect	Paper
L 48	CENTER OF CABIN	A SECTION OF ROPE	WILLIAM A. FORSYTH		Indirect	Paper
L 49	SOUTH CENTRAL SECTION OF CABIN	A SECTION OF WOOD	WILLIAM A. FORSYTH		Indirect	Paper
L 50	NORTH CENTRAL SECTION OF CABIN	FIVE BOTTLES LABELED "SALTPETER"	RONALD L. KELLY		Direct	Pink ziplock
L 51	NORTH CENTRAL SECTION OF CABIN	FIVE BOTTLES LABELED "SALTPETER"	RONALD L. KELLY		Direct	Pink ziplock
L 52	NORTH CENTRAL SECTION OF CABIN	FIVE BOTTLES LABELED "SALTPETER" AND PLASTIC BAG "3Q"	RONALD L. KELLY		Direct	Plastic
L 53	NORTH CENTRAL SECTION OF CABIN	GLASS CONTAINER WITH OFF-WHITE PRILLS	RONALD L. KELLY		Direct	Plastic
L 54	NORTH CENTRAL SECTION OF CABIN	BOTTLE MARKED "CALUMET" CONTAINING WHITE POWDER	RONALD L. KELLY		Direct	Plastic
L 55	NORTH CENTRAL SECTION OF CABIN	PLASTIC CONTAINER WITH WHITE CLUMPY POWDER	RONALD L. KELLY		Direct	Plastic
L 56	NORTH CENTRAL SECTION OF CABIN	PLASTIC BOTTLE WITH BLACK CHUNKY MATERIAL IN PAPER AND HAND LABELED "MEZELA #2, NUEVO LOTE EXP 103"	RONALD L. KELLY		Direct	Plastic
L 57	NORTH CENTRAL SECTION OF CABIN	CONTAINER OF WHITE POWDER LABELED KC103 POTASSIUM 99.95% PURE	RONALD L. KELLY		Direct	Plastic
L 58	NORTH CENTRAL SECTION OF CABIN	CONTAINER OF WHITE POWDER	RONALD L. KELLY		Direct	Plastic

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ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
L 59	NORTH CENTRAL SECTION OF CABIN	CONTAINER OF YELLOW CRYSTALS WITH PLASTIC BAGS	RONALD L. KELLY		Direct	Plastic
L 60	NORTH CENTRAL SECTION OF CABIN	CONTAINER OF WHITE POWDER	RONALD L. KELLY		Direct	Plastic
L 61	NORTH CENTRAL SECTION OF CABIN	SIX SEALED BOTTLES LABELED SULFER	RONALD L. KELLY		Direct	Plastic
L 62	NORTH CENTRAL SECTION OF CABIN	PLASTIC BAG AND CONTAINER OF YELLOW POWDER LABELED "SULFER"	RONALD L. KELLY		Direct	Plastic
L 63	NORTH CENTRAL SECTION OF CABIN	PLASTIC BAG CONTAINING TWO PIECES OF WOOD AND MAKE-UP	WILLIAM A. FORSYTH		Indirect	
L 64	NORTH CENTRAL SECTION OF CABIN	SOLDER WIRE AND PLASTIC BAG	WILLIAM A. FORSYTH		Indirect	Plastic Bag
L 65	NORTH CENTRAL SECTION OF CABIN	CONTAINER LABELED "SALT"	RONALD L. KELLY		Direct	Plastic Bag
L 66	NORTH CENTRAL SECTION OF CABIN	JAR OF WHITE CYSTALLINE SUBSTANCE AND NOTE "AMMONIUM NITRATE"	RONALD L. KELLY		Direct	Plastic Bag
L 67	NORTH CENTRAL SECTION OF CABIN	ONE GALLON JUG LABELED "ABIETIC ACID", AND SAMPLE TAKEN FROM THE JUG (TWO PLASTIC BAGS)	RONALD L. KELLY		Direct	Plastic & Paper
L 68	NORTH CENTRAL SECTION OF CABIN	BOTTLE LABELED "AMMONIUM NITRATE NH-4NO-3"	RONALD L. KELLY		Direct	Plastic
L 69	NORTH CENTRAL SECTION OF CABIN	TWO CANS IN BAGS LABELED "ABIETIC ACID"	RONALD L. KELLY		Direct	Plastic
L 70	NORTH CENTRAL SECTION OF CABIN	TWO BOTTLES LABELED AS ALUMINUM AND BOX LID WITH EXPERIMENT INFO.	RONALD L. KELLY		Direct	Plastic
L 71	NORTH CENTRAL SECTION OF CABIN	VARIOUS CONTAINERS MARKED AS "ALUMINUM MATERIALS"	RONALD L. KELLY		Direct	Plastic
MA 25	ON WORK BENCH NEAR WALL	ONE PLASTIC CONTAINER LABELED "CITRIC ACID" CONTAINING WHITE POWDER	RONALD L. KELLY		Direct	Plastic

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ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MA 26	ON WORK BENCH BELOW WINDOW	MAGNET	DAVID ALFORD		Indirect	Plastic
MA 27	ON WORK BENCH NEAR WALL	ONE PLASTIC BOTTLE CONTAINING METALLIC GRANULAR MATERIAL	RONALD L. KELLY		Direct	Plastic
MA 55	NORTH WEST CORNER	WOOD PIECES AND SCREEN	WILLIAM A. FORSYTH		Indirect	Paper
MB 78	THIRD SHELF FROM THE TOP, NORTH END, WEST WALL	BOTTOM HALF OF CARDBOARD INSTANT MILK BOX CONTAINING TUBE OF "TRUBOND" CLEAR SILICONE CAULK, CLEAR PLASTIC BOX OF SCREW DRIVERS WITH MASKING TAPE LABEL "254", WIRE BRUSH, A LEVEL, THREE PAINT BRUSHES, A PAPER BAG CONTAINING SMALL SQUAR MAGNETS, AND MISC. METAL PARTS	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 79	FOURTH SHELF FROM THE TOP, SOUTH END, WEST WALL	HAND DRILL WITH BLUE AND RED WOOD HANDLE	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 80	FOURTH SHELF FROM THE TOP, SOUTH END, WEST WALL	NINE PIECES OF WOOD APPROXIMATELY 8" LONG (APPEARS SIMILAR TO PANELING STRIPS)	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 81	FOURTH SHELF FROM THE TOP, SOUTH END, WEST WALL	MISC. PIECES OF METAL, INCLUDING TIN CAN LID, BALL OF ALUMINUM FOIL, TWO PIECES OF BLUE HACK SAW BLADE, PIPE FITTINGS IN "T" FORMATION, AND PAIR OF PLIERS	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 82	FOURTH SHELF FROM THE TOP, SOUTH END, WEST WALL	GROUP OF METAL FASTNERS, BUNDLED TOGETHER WITH BLUE RUBBER BAND	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 83	FOURTH SHELF FROM THE TOP, SOUTH END, WEST WALL	TWO WHITE HOMEMADE ENVELOPES, ONE WITH HANWRITTEN NOTATION "WIRE", THE OTHER "DUMP"	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 84	FOURTH SHELF FROM THE TOP, SOUTH END, WEST WALL	THREE YELLOW RUBBER GLOVES, ONE LABELED "ANSELL" BRAND, ANOTHER LABELED "LARGE, PLAYTEX, DOVER, DEL.". ALL THREE HAD THE WRIST AREA CUT OFF.	KATHERINE I. TANG - WILCO	Y	Indirect	

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MB 85	IN A BOX ON THE FOURTH SHELF FROM THE TOP, SOUTH END, WEST WALL	ONE CUT PORTION OF A BATTERY, "RADIOSONDE, NSN-6135-01-054-2098, VIZ MFG. CO., 335 E. PIERCE ST., PHILA, PA, 19144 USA, PATENT NO. 3205.096", WRAPPED IN A PIECE OF NEWSPAPER DATED NOV. 22, 1995, PAGE 4 OF THE CONSUMER PRESS	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 86	IN A BOX ON THE FOURTH SHELF FROM THE TOP, SOUTH END, WEST WALL	SMALL PLASTIC CONTAINER WITH STRIP OF BLACK TAPE AROUND IT AND TORN WHITE HADWRITTEN LAEL "LIMA DURAS DE HIERRO PARCIALMENTE LIMPIAS", CONTAINING BROWNISH-BLACK POWDER BELIEVED TO BE ALUMINUM	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 87	THIRD SHELF FROM THE TOP, SOUTH END, WEST WALL	TWO PLASTIC BOTTLES OF GLUE, ONE LABELED "ROSS MUCILAGE FOR PAPERWORK", THE OTHER LABELED "ROSS KANGAROO MUCILAGE"	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 88	FOURTH SHELF FROM THE TOP, SOUTH END, WEST WALL	ONE METAL NUT CRACKER	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 89	SIXTH SHELF FROM THE TOP, SOUTH END, WEST WALL	ONE METAL "HERSHEY'S COCOA" CAN CONTAINING MISC. NUTS AND BOLTS	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 90	SIXTH SHELF FROM THE TOP, SOUTH END, WEST WALL	QUACKER YELLOW CORN MEAL CONTAINER WITH HANDWRITTEN NOTATION ON TOP "TRANSFORMER", CONTAINING ELECTRICAL WIRE AND MISC. ELECTRICAL PARTS	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 91	SIXTH SHELF FROM THE TOP, SOUTH END, WEST WALL	ONE METAL "HERSHEY'S COCA" CAN CONTAINING MISC. METAL PARTS	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 92	IN CARDBOARD BOX ON THE FOURTH SHELF FROM THE TOP, SOUTH END, WEST WALL	ONE BROWN PLASTIC CONTAINER CONTAINING TRACE MATERIAL	KATHERINE I. TANG - WILCO	Y	Indirect	

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MB 93	SIXTH SHELF FROM THE TOP, SOUTH END, WEST WALL	"CALUMET DOUBLE ACTION BAKING POWDER" METAL CONTAINER CONTAINING A LUMP OF METAL	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 94	SIXTH SHELF FROM THE TOP, SOUTH END, WEST WALL	ONE SMALL "SHOPPERS VALUE TOMATO PASTE" CAN CONTAINING RESISTERS AND A TAN PLASTIC SHOPPING BAG CONTAINING RESISTERS	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 95	FOURTH SHELF FROM THE TOP, NORTHWEST CORNER, WEST WALL	SEVEN ROLLED UP MAPS	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 96	FOURTH SHELF FROM THE TOP, NORTHWEST CORNER, WEST WALL	HOMEMADE OLIVE GREEN CLOTH POUCH CONTAINING A TAN PLASTIC SHOPPING BAG WITH THREE MATCHBOOKS WITH PLAYING CARD SYMBOLS ON IT, TWO PLASTIC BAGS WITH SMALL PIECES OF WOOD IN THEM, AND A COMPASS ON A STRING, AND A RED RUBBER BAND. BLUE DENIM PATCHES AND VARIOUS PIECES OF STRING ALL OVER OUTSIDE OF POUCH.	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 97	FOURTH SHELF FROM THE TOP, SOUTH SIDE, WEST WALL	MISC. PIECES OF CURVED WIRE, METAL CAP IN DOUGHNUT SHAPE, AND ROUND PIECE OF METAL CUT IN STRIPS AROUND THE EDGES	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 98	FOURTH SHELF FROM THE TOP, MIDDLE AREA, WEST WALL	"GOLD MEDAL" FLOUR SACH CONTAINING MISC. DEBRIS (TO INCLUDE SOIL, WOOD, AND HAIR)	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 99	FIFTH SHELF FROM THE TOP, N.W. CORNER, WEST WALL	TAN PLASTIC SHOPPING BAG CONTAINING VARIOUS TYPES OF CORD AND TWINE	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 100	FOURTH SHELF FROM THE TOP, SOUTH END, WEST WALL	"FLAVORITE LARGE PITTED RIPE OLIVES" CAN CONTAINING LARGE AMOUNT OF SCREWS AND HANDWRITTEN NOTE "BURNED AND SOAKED IN CORRODING SOLUTION - CLEAN"	KATHERINE I. TANG - WILCO	Y	Indirect	

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COLLECTED: 04/09/96

EVIDENCE COLLECTED AT RESIDENCE OF THEODORE KAZCYNSKI
HCR# 30, BOX 27, LINCOLN, MONTANA

ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MB 101	THIRD SHELF FROM THE TOP, SOUTH END, WEST WALL	GLASS JAR WITH RED METAL LID AND HANWRITTEN NOTE ATTACHED WITH MASKING TAPE WHICH STATES, "ALUMINUM FROM SOME TYPE OF PAINT - TYPE OF PAINT UNKNOWN". THE JAR CONTAINED CLUMPS OF SILVER-GREY COLORED SUBSTANCE.	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 102	FOURTH SHELF FROM THE TOP, SOUTH END, WEST WALL	TWO OPEN SMALL ORANGE PLASTIC CONTAINERS COVERED WITH PIECES OF NEWSPAPER, ONE SECURED WITH A TAN RUBBER BAND	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 103	SIXTH SHELF FROM THE TOP, N.W. CORNER, WEST WALL	ONE METAL RING AND A SPOOL OF BROWN THREAD LABELED "AMERICAN THREAD CO., STAMFORD, CT. 100% POLYESTER"	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 104	THIRD SHELF FROM THE TOP, SOUTH END, WEST WALL	METAL FILES WRAPPED IN ORANGE AND CLEAR PLASTIC BAG, WITH WHITE PIECE OF PAPER ATTACHED WITH A BLACK RUBBER BAND, WHICH APPEARS TO BE SOME KIND OF MATHMATICAL EQUATIONS	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 105	THIRD SHELF FROM THE TOP, SOUTH END, WEST WALL	ONE METAL CAN CONTAINING MISC. PIECES OF COPPER	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 106	FIFTH SHELF FROM THE TOP, N.W. CORNER, WEST WALL	BROWN CARDBOARD BOX CONTAINING MISC. GRINGING WHEELS AND PIECES OF METAL	KATHERINE I. TANG - WILCO	Y	Indirect	Brown Paper
MB 107	SIXTH SHELF FROM THE TOP, N.W. CORNER, WEST WALL	"QUAKER YELLOW CORN MEAL" CARDBOARD CONTAINER CONTAINING PIECES OF SCREENING MATERIAL	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 108	FOURTH SHELF FROM THE TOP, SOUTH END, WEST WALL	ONE HACK SAW BLADE WITH RED COLOR ON EACH END	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 109	FOURTH SHELF FROM THE TOP, SOUTH END, WEST WALL	ONE METAL CAN CONTAINING MISC. SCREWS, METAL PARTS, AND A WHITE ENVELOPE WITH SILVER COIN PIECES IN IT	KATHERINE I. TANG - WILCO	Y	Indirect	

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MB 110	THIRD SHELF FROM THE TOP, N.W. CORNER, WEST WALL	TWO PIECES OF SPLINTERED HARD WOOD, WRAPPED IN A SHEET OF NEWSPAPER, PRONT PAGE OF "MISSOULIAN", FRIDAY, SEPT. 16, 1988	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 111	THIRD SHELF FROM THE TOP, SOUTH END, WEST WALL	THREE PAGES OF HANDWRITTEN NOTES ATTACHED TOGETHER WITH A METAL PAPER FASTNER, AND ROLLED UP USING A LARGE TAN RUBBER BAND	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 112	THIRD SHELF FROM THE TOP, SOUTH END, WEST WALL	ONE SPOOL OF TWINE SECRUED WITH A PIECE OF MASKING TAPE	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 113	THIRD SHELF FROM THE TOP, MIDDLE SECTION, WEST WALL	ONE SMALL BROWN PLASTIC BOTTLE, LABELED "NATURE MADE THERAPEUTIC M", WITH A PIECE OF MASKING TAPE AROUND IT, WITH HANDWRITTEN NOTATIONS "COARSE ALUMINUM FILINGS"	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 114	THIRD SHELF FROM THE TOP, MIDDLE SECTION, WEST WALL	ONE SMALL METAL CAN CONTAINING SMALL CLUMPS OF METAL. THE CAN IS COVERED WITH A PIECE OF NEWSPAPER AND SECURED WITH A DIRTY WHITE RUBBER BAND	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 115	THIRD SHELF FROM THE TOP, MIDDLE SECTION, WEST WALL	ONE "CALUMET BAKING POWDER" CAN CONTAINING SOLDERING WIRE	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 116	THIRD SHELF FROM THE TOP, MIDDLE SECTION, WEST WALL	ONE SMALL METAL CONTAINER (APPEARS EMPTY)	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 117	SECOND SHELF FROM THE TOP, SOUTH END, WEST WALL	ONE SMALL METAL CAN WITH WIRE HANDLE THROUGH IT, AND ONE PIECE OF METAL	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 118	THIRD SHELF FROM THE TOP, SOUTH END, WEST WALL	SEVEN METAL CASTINGS	KATHERINE I. TANG - WILCO	Y	Indirect	

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ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MB 119	SECOND SHELF FROM THE TOP, SOUTH END, WEST WALL	ONE SMALL BROWN PLASTIC BOTTLE LABELED "NATURE MADE THERAPEUTIC M" WITH PAPER LABEL ATTACHED WITH MASKING TAPE, WITH HANDWRITTEN NOTATIONS "ALLUMINUM FILINGS FROM OUR BIG BLOCK OF CAST ALUMINUM 5.1 oz"	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 120	THIRD SHELF FROM THE TOP, N.W. CORNER, WEST WALL	ONE "CARNATION DRY MILK" CARDBOARD CONTAINER.	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 120A	INSIDE OF ITEM MB-120	SMALL ORANGE PLASTIC BOTTLE WITH WHITE PLASTIC CAP, WITH PIECE OF MASKING TAPE AROUND IT WITH HANDWRITTEN NOTATIONS "Ag Cl, SLIGHTLY PHOTO-DECOMPOSED"	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 120AA	FOUND WITHIN ITEM MB-120	ONE WHITISH PLASTIC BOTTLE WITH BLACK CAP, LABEL "MANGANESE DIOXIDE (TECHNICAL) CONTACT WITH OTHER MATERIAL MAY CAUSE FIRE. DO NOT GRIND. DO NOT BREATHE DUST. 8J28D, 1/4 lbs., ANALYTICAL & RESEARCH CHEMICALS, INC."		Y	Indirect	
MB 120B	INSIDE OF ITEM MB-120	SMALL BROWN PLASTIC BOTTLE WITH BLACK CAP, WITH PIECE OF MASKING TAPE AROUND IT, WITH HANDWRITTEN NOTATIONS "LITHORGETMINIUM & FREE LEAD NOT VERY PURE"	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 120C	INSIDE OF ITEM MB-120	SMALL PLASTIC ORANGE CONTAINER WITH WHITE PLASTIC CAP, WITH A PIECE OF BLACK TAPE AROUND IT SECURING A WHITE LABEL WITH HANDWRITTEN NOTATION "Fe2 03, .347 UNITS, Exp. 51, LOT (bi) WITHOUT H2 SO4"	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 120D	INSIDE OF ITEM MB-120	SMALL PLASTIC TUBE CONTAINING BLUE POWDER. THE TUBE HAD MASKING TAPE AROUND IT, WITH THE HANDWRITTEN NOTATION "Cu SO4 5H2O COPPER SULFATE"	KATHERINE I. TANG - WILCO	Y	Indirect	

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ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MB 120E	INSIDE OF ITEM MB-120	SMALL GLASS JAR WITH RED AND WHITE CHECKERED METAL CAP CONTAINING WHITE FLAKY SUBSTANCE, WITH MASKING TAPE AROUND IT, WITH HANDWRITTEN NOTATIONS "NH4 Cl AMMOTITAM CHLORIDE Exp. 136"	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 120F	INSIDE OF ITEM MB-120	SMALL PLASTIC BOTTLE LABELED "SUPREME BRAND ASPIRIN TABLETS" CONTAINING PINK COLORED STRIPS OF PAPER AND WHITE LABEL "LITMUS PAPER NEUTRAL"	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 120G	INSIDE OF ITEM MB-120	ONE SMALL WHITE PLASTIC BOTTLE WITH WHITE METAL CAP, LABELED "BAYER ASPIRIN", WITH MASKING TAPE AROUND IT, WITH HANDWRITTEN NOTATIONS "LEAD CHLORIDE - CONTAMINATED WITH SOME HYDROXIDE, OXIDE, OR CARBONATE OF LEAD"	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 120H	INSIDE OF ITEM MB-120	WHITISH PLASTIC BOTTLE WITH RED PLASTIC CAP, CONTAINING A GREYISH POWDER	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 120I	INSIDE OF ITEM MB-120	SMALL GREY PLASTIC BOX LABELED "PHYDRION VIVID, DOUBLE ROLL 5.5 TO 9.5, CATALOG NO. 168"	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 120J	INSIDE OF ITEM MB-120	SMALL BROWN PLASTIC BOTTLE WITH WHITE PLASTIC CAP, WITH NOTEBOOK PAPER LABEL TAPED ON WITH MASKING TAPE WITH HANDWRITTEN NOTATIONS "Na2 Co3 FROM RED DEVIL LYE. SHOULD BE REASONABLY PURE, IF RED DEVIL LYE IS. (NO, NOT VERY PURE)"	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 120K	INSIDE OF ITEM MB-120	WHITE PAPER ENVELOPE WRAPPED WITH MASKING TAPE WITH HANDWRITTEN NOTATIONS "ELMER'S BRAND MUCILAGE"	KATHERINE I. TANG - WILCO	Y	Indirect	

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ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MB 120L	INSIDE OF ITEM MB-120	WHITISH PLASTIC BOTTLE WITH WHITE CAP LABELD "ORANGE". THE BOTTLE HAD A WHITE PAPER LABEL SECURED WITH MASKING TAPE. THE LABEL CONTAINED THE FOLLOWING HANDWRITTEN NOTATION "Fe(OH)2 PARTIALLY (OR WHOLLY?) OXIDIZED TO Fe(oh)3 Exp. 51, Lot E"	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 120M	INSIDE OF ITEM MB-120	SMALL BROWN PLASTIC BOTTLE LABELED "THERAPEUTIC M" WITH MASKING TAPE AROUND IT, WITH HANDWRITTEN NOTATIONS "LEAD ACETATE, LEAD HYDROXIDE, LEAD CARBONATE, UNKNOWN PROPORTIONS, NOT VERY PURE"	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 120N	INSIDE OF ITEM MB-120	ONE "CALUMET BAKING POWDER" CANS WITH PAPER LABEL SECURED WITH MASKING TAPE, WITH HANDWRITTEN NOTATIONS "BLACK SAND PRESUMABLY CONSIST LARGELY OF Fe 045"	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 120O	INSIDE OF ITEM MB-120	WHITE PLASTIC BOTTLE WITH WHITE PLASTIC CAP LABELED "NDC 0923-0371-03 POWDERED ALUM (AMMONIUM ALUM) ASTRINGENT, WHITEWORTH"	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 120P	INSIDE OF ITEM MB-120	WHITE PLASTIC BOTTLE WITH WHITE METAL CAP. BOTTLE CONTAINED A LABEL "McKESSON BORIC ACID CRYSTALS NF", AND HAD A SMALL WHITE PRICE TAG "112-1755, K3MME, BERGUMS, 1.93"	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 120Q	INSIDE OF ITEM MB-120	SMALL TAN CARDBOARD BOX LABELED "FUEL COMPRESSED, TRIOXANE, RATION HEATING, F.S.N. 9110-263-9865, 3 BARS, SPECIFICATION: MIL-F-10805C, CAN-TITE RUBBER CORPORATION, INWOOD, L.I., NEW YORK 11696"	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 120R	INSIDE OF ITEM MB-120	ONE BROWN PLASTIC "OSCO CASTOR OIL" BOTTLE WITH WHITE PLASTIC CAP.	KATHERINE I. TANG - WILCO	Y	Indirect	

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MB 120S	INSIDE OF ITEM MB-120	ONE "GRAPE SUPER SIP" PLASTIC BOTTLE WITH PAPER LABEL SECURED WITH MASKING TAPE BEARING HANDWRITTEN NOTATION "Fe2 03 Exp. 51, LOT (di)"	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 120T	INSIDE OF ITEM MB-120	SMALL CLEAR GLASS "FOLGERS" JAR WITH GOLD COLORED PLASTIC CAP CONTAINING GREENISH-GREY CRYSTALS. THE JAR HAS MASKING TAPE WRAPPED AROUND IT WITH THE HANDWRITTEN NOTATION "GREENISH PRECIPITATE (PRESUMABLY A COPPER COMPOUND) FROM Exp. 241."	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 120U	INSIDE OF ITEM MB-120	WHITE PLASTIC "McKESSON BORIC ACID POWDER NF" BOTTLE WITH WHITE METAL CAP. THE BOTTLE HAS A SMALL WHITE PRICE TAG BEARING THE FOLLOWING INFORMATION "112-1797 H3HG BERGUMS 1.77"	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 120V	FOUND WITHIN ITEM MB-120	ONE WHITISH PLASTIC "RASPBERRY SUPER SIP" BOTTLE WITH WHITE PLASTIC CAP WITH MASKING TAPE ACROSS AND AROUND CAP AND MASKING TAPE AROUND BOTTLE WITH HANDWRITTEN NOTATIONS "AgCl, HEAVILY CONTAMINATED WITH A1 COMPOUNDS AND OTHER CRAP"		Y	Indirect	
MB 120W	FOUND WITHIN ITEM MB-120	WHITE ELONGATED PLASTIC BOTTLE WITH WHITE PLASTIC CAP, LABEL "LAXITIVE" (BRAND NAME NOT VISIBLE) WITH WHITE PAPER LABEL SECURED WITH MASKING TAPE, WITH HANDWRITTEN NOTATIONS "MIXTURE OF LITHANGE AND MINIUM, POSSIBLY CONTAMINATED WITH OTHER OXIDES OF Pb, ALSO PERHAPS CARBONATE AND NITRATE OF Pb, HYDROXIDE, AND A LITTLE FREE LEAD"		Y	Indirect	

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HCR# 30, BOX 27, LINCOLN, MONTANA

ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MB 120X	FOUND WITHIN ITEM MB-120	CLEAR GLASS JAR, WITH WHITISH PLASTIC STOPPER TYPE CAP, WITH WHITE PAPER LABEL SECURED WITH HANDWRITTEN NOTATIONS "AMORPHOUS CARBON (MADE BY HEATING SUCROSE)" CONTAINING A BLACK POWDERY SUBSTANCE		Y	Indirect	
MB 120Y	FOUND WITHIN ITEM MB-120	METAL CAN, COVERED WITH A PIECE OF NEWSPAPER, SECURED WITH MASKING TAPE WITH HANDWRITTEN NOTATIONS "ALDER CHARCOAL"		Y	Indirect	
MB 120Z	FOUND WITHIN ITEM MB-120	OBLONG WHITISH PLASTIC CONTAINER, WITH BLACK CAP, WITH BLACK TAPE AND MASKING TAPE AROUND THE CAP, LABEL "ALDRICH SCIENTIFIC, P3191, 500g, POTASSIUM CARBONATE, ANHYDROUS GRANULAR TECHNICAL, K, Co, FW 138.21, ALDRICH SCIENTIFIC, 5415 JACKWOOD DR., SAN ANTONIO, TX 78238-1897, LOT 9C06G"		Y	Indirect	
MB 121	SECOND SHELF FROM THE TOP, SOUTH END, WEST WALL	ROD SHAPED PIECES OF DARK COLORED/BLACKISH POWDER, WRAPPED IN HANDWRITTEN NOTE, INSIDE A RED AND WHITE CHECKERED BREAD BAG.		Y	Indirect	
MB 122	THIRD SHELF FROM THE TOP, SOUTH END, WEST WALL	THREE BUNDLES OF CLEAR GLASS TUBING; ONE WRAPPED IN A PAGE OF CONSUMER PRESS NEWSPAPER DATED JUNE 21, 1995, AND SECURED WITH YELLOW AND WHITE RUBBER BANDS; ANOTHER IS WRAPPED IN LARGE POCKET BUBBLE WRAP, WITH HANDWRITTEN NOTATION "5 m.m. PYREX TUBING"; ANOTHER IS WRAPPED IN LARGE POCKET BUBBLE WRAP WITH HANDWRITTEN NOTATION "10 m.m. PYREX TUBING", ALL WRAPPED TOGETHER IN A MISSOULIAN NEWSPAPER DATED JANUARY 16, 1991.		Y	Indirect	
MB 123	THIRD SHELF FROM THE TOP, MIDDLE SECTION, WEST WALL	ONE WHITE PORCELAIN MORTAR AND PESTLE, WRAPPED IN CONSUMER PRESS NEWSPAPER DATED APRIL 5, 1995, PAGE 26; AND SECURED WITH A YELLOW RUBBER BAND		Y	Indirect	

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ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MB 124	SECOND SHELF FROM THE TOP, SOUTH END, WEST WALL	METAL CAN WITH HANDWRITTEN NOTATION "12:00AM", CONTAINING TWO METAL CASTINGS		Y	Indirect	
MB 125	THIRD SHELF FROM THE TOP, MIDDLE SECTION, WEST WALL	ROUND CARDBOARD CANNISTER, LABEL "OLD FASHIONED QUAKER OATS", WITH HANDWRITTEN NOTATIONS ON THE TOP "RUBBER TUBING, FUNNELS, BULBS, ETC.". THE CANISTER CONTAINS ASSORTED PIECES OF RUBBER TUBING, A SMALL PIECE OF GLASS TUBING, A BLACK RUBBER STOPPER, TWO METAL CLIPS AND ONE SMALLER ROUND CARDBOARD CANNISTER. THE SMALLER CANNISTER IS A "QUAKER YELLOW CORN MEAL" CONTAINER WITH HANDWRITTEN NOTATION ON THE TOP "PLASTIC AND GLASS TUBING, SHORT PIECES". THIS SMALLER CONTAINER CONTAINS ASSORTED PIECES OF PLASTIC AND RUBBER TUBING, SEVERAL BLACK RUBBER STOPPERS AND TWO METAL CLIPS		Y	Indirect	
MB 126	SIXTH SHELF FROM THE TOP, N.W. CORNER, WEST WALL	ONE STAINLESS STEEL .22 CALIBER REVOLVER AND NINE .22 CALIBER ROUNDS OF AMMUNITION. THE REVOLVER IS FURTHER DESCRIBED AS AN "H & R INC. U.S.A., MODEL 930, SERIAL# AE 1935. THE REVOLVER HAS A BLACK HANDLE WHICH IS WRAPPED IN MASKING TAPE.		Y	Indirect	
MB 127	SECOND SHELF FROM THE TOP, N.W. CORNER, WEST WALL	ONE PACKAGE OF "GILLETTE SUPER BLUE BLADES" AND A VARIETY OF STRING AND TWINE BOUND TOGETHER WITH A BLUE RUBBER BAND IN A WHITE PIECE OF PAPER. THE PAPER HAS THE HANDWRITTEN NOTATION "ADDITIONAL TIES FOR BIG SHELTER CLOTH"		Y	Indirect	
MB 128	FOURTH SHELF FROM THE TOP, N.W. CORNER, WEST WALL	ONE YELLOW AND BLACK PLASTIC "TRUE VALUE" FLASHLIGHT WITH LIGHTBULB IN IT BUT NO BATTERIES		Y	Indirect	

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MB 129	FOURTH SHELF FROM THE TOP, N.W. CORNER, WEST WALL	CARDBOARD BOX WITH U.S. POST OFFICE METERED MAIL "KANSAS CITY, MO, OCT. 27, '76", CONTAINING VARIOUS SPOOL OF TWINE, BUNDLES OF STRING, AND NUMEROUS STRIPS OF LEATHER		Y	Indirect	
MB 130	FOURTH SHELF FROM THE TOP, SOUTH END, WEST WALL	ONE CARDBOARD BOX WHICH HAD CONTAINED ITEMS MB-79, MB-81, MB-83, MB-84, AND MB-86		Y	Indirect	
MB 131	THIRD SHELF FROM THE TOP, N.W. CORNER, WEST WALL	ONE METAL CAN CONTAINING PIECES OF CARVED WOOD AND CARVED BONE		Y	Indirect	
MB 132	IN A CARDBOARD BOX ON THE FOURTH SHELF FROM THE TOP, SOUTH END, WEST WALL	ONE "BAND-AID BRAND PLASTIC STRIPS" METAL CAN WRAPPED IN A PLASTIC BAG, SECURED WITH A BLUE RUBBER BAND, CONTAINING FINE STRANDS OF COPPER WIRE		Y	Indirect	
MB 133	SIXTH SHELF FROM THE TOP, SOUTH END, WEST WALL	ONE PIECE OF WAVY WIRE BENT IN THE FORM OF A CIRCLE		Y	Indirect	
MB 134	FOURTH SHELF FROM THE TOP, SOUTH END, WEST WALL	TAN PLASTIC SHOPPING BAG CONTAINING ONE CUT BRASS BRACKET/PIPE FITTING, TWO SMAL PIECES OF COPPER TUBING (ONE PIECE HAS MASKING TAPE AROUND IT), FOUR PLASTIC CONTAINERS (TWO WHITISH PLASTIC WITH WHITE METAL TOPS, ONE WHITISH PLASTIC WITH A RED PLASTIC TOP, AND ONE ORANGE PLASTIC WITH A WHITE PLASTIC TOP) EACH CONTAINING COPPER AND/OR OTHER METAL FRAGMENTS		Y	Indirect	

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MB 135	FIRST SHELF, NW CORNER, WEST WALL	ONE ROUND, CARDBOARD "OLD FASHIONED QUAKER OATS" CANNISTER, CONTAINING AN ELECTRONICS TESTER, SER. NO. 800341385, WITH HANDWRITTEN NOTE ON MASKING TAPE ON FRONT "NOTE: WHEN ON 'HIGH' THE AMMETER GIVES INCORRECT READING. SEE EXP. 242."; HANDWRITTEN NOTE ON TOP OF CANNISTER, "AMMETER", BETWEEN TWO INTERSECTING PIECES OF MASKING TAPE	WILLIAM A. FORSYTH	Y	Indirect	
MB 136	SIXTH SHELF FROM THE TOP, SOUTH END, WEST WALL	ONE CLEAR PLASTIC BOX, CONTAINING ONE LONG FLAT HEAD NAIL, ONE PIECE OF WIRE, AND ASSORTED PIECES OF METAL	DAVID ALFORD	Y	Indirect	
MB 137	FOURTH SHELF FROM THE TOP, SOUTH END, WEST WALL	ONE SMALL CLEAR GLASS JAR, WITH RED AND WHITE CHECKERED METAL CAP, CONTAINING TWO STAPLES (FOR WOOD) AND A SMALL AMOUNT OF GOLD, SHINY GRANUALS AND FLAKES	DAVID ALFORD	Y	Indirect	
MB 138	THIRD SHELF FROM THE TOP, NORTH END, WEST WALL	ONE ORANGISH-YELLOW ELONGATED PLASTIC CONTAINER/BOX, CONTAINING NAILS, SMALL PIECES OF WOOD, AND SEWING INSTRUMENTS AND MATERIALS	DAVID ALFORD	Y	Indirect	
MB 139	SECOND SHELF FROM THE TOP, NW CORNER, WEST WALL	ONE ROLL OF "GOULD QUIKSTIK" BROWN PACKING TAPE, LABEL INSIDE ROLL "GOULD PACKAGING, INC., VANCOUVER, WA. 98666"	WILLIAM A. FORSYTH	Y	Indirect	
MB 140	FOURTH SHELF FROM THE TOP, SOUTH END, WEST WALL	ONE PAIR OF PLIERS	DAVID ALFORD	Y	Indirect	
MB 141	SECOND SHELF FROM THE TOP, NW CORNER, WEST WALL	ONE UNOPENED PACKAGE OF "COGHLAN'S WATERPROOF WOODEN MATCHES", "COGHLAN'S LTD., WINNIPEG, CANADA, MADE IN AUSTRALIA", CONTAINING FOUR BOXES OF MATCHES	WILLIAM A. FORSYTH	Y	Indirect	

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MB 142	SECOND SHELF FROM THE TOP, NW CORNER, WEST WALL	ONE WHITE PLASTIC BAG, CONTAINING A WHITE PLASTIC FACE MASK, WITH STRING AND RUBBER BAND ATTACHED TO IT, AND AN EMPTY PACKAGE OF "FLEXO PRODUCTS, INC. REPLACEMENT MICRO-FOAM FILTERS FOR PROTECTIVE MASK"	WILLIAM A. FORSYTH	Y	Indirect	
MB 143	UNDER A BOX ON THE FOURTH SHELF FROM THE TOP, SOUTH END, WEST WALL	ONE PIECE OF COPPER TUBING	DAVID ALFORD	Y	Indirect	
MB 144	THIRD SHELF FROM THE TOP, MIDDLE SECTION, WEST WALL	ONE METAL CAN CONTAINING A WHITE TOOTHBRUSH, BOTTLE CAPS, BALLS OF ALUMINUM FOIL, PIECES OF SCREENING MATERIAL, AND VARIOUS METAL PIECES	DAVID ALFORD	Y	Indirect	
MB 145	THIRD SHELF FROM THE TOP, NORTH END, WEST WALL	ONE SMALL ROUND CARDBOARD "QUAKER YELLOW CORN MEAL" CANNISTER, CONTAINING NUMEROUS HOSE CLAMPS AND METAL BRACKETS, WITH HANDWRITTEN NOTATION ON THE TOP OF THE CANNISTER "HOSE CLAMPS ETC."	DAVID ALFORD	Y	Indirect	
MB 146	FIFTH SHELF FROM THE TOP, SOUTH END, WEST WALL	TWO BLUE AND TWO ORANGE PLASTIC FUNNELS, AND ONE WHITE HOME MADE CLOTH FILTER FOR FUNNEL	DAVID ALFORD	Y	Indirect	
MB 147	FOURTH SHELF FROM THE TOP, SOUTH END, WEST WALL	ONE PAPER "GOLD MEDAL WHOLE WHEAT FLOUR" BAG, CONTAINING SEVERAL LARGE NAILS, SECURED SHUT WITH A DIRTY TAN RUBBER BAND	RONALD L. KELLY	Y	Indirect	
MB 148	THIRD SHELF FROM THE TOP, SOUTH END, WEST WALL	ONE WHITE PLASTIC JAR, WITH WHITE METAL CAP, LABEL "REXALL SUBLIMED SULFUR, N.F. (FLOWERS OF SULFUR), PARASITICIDE-SCABICIDE"	RONALD L. KELLY	Y	Indirect	
MB 149	THIRD SHELF FROM THE TOP, SOUTH END, WEST WALL	ONE SMALL, SQUARE, YELLOW TIN, LABLE "JOHN WAGNER & SONS, RARE FLOWERY JASMINE TEA", CONTAINING ONE SMALL METAL WASHER, AND SEVERAL SMALL PIECES OF WIRE	RONALD L. KELLY	Y	Indirect	

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COLLECTED: 04/09/96

EVIDENCE COLLECTED AT RESIDENCE OF THEODORE KAZCYNSKI
HCR# 30, BOX 27, LINCOLN, MONTANA

ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MB 150	THIRD SHELF FROM THE TOP, SOUTH END, WEST WALL	ONE PLASTIC BREAD BAG, SECURED WITH A SHOE LACE, CONTAINING FIVE SMALL CONTAINERS: (1) ONE ORANGE PLASTIC BOTTLE, WITH WHITE PLASTIC LID, WITH MASKING TAPE AROUND IT, WITH HANDWRITTEN NOTE "THERMITE LACED WITH CHLORATE MIXURE"; (2) ONE ORANGE PLASTIC CONTAINER, WITH WHITE PLASTIC CAP, WITH MASKING TAPE ON IT, WITH HANDWRITTEN NOTATION "EXP. 118"; (3) ONE ORANGE PLASTIC BOTTLE, WITH WHITE PLASTIC LID, WITH MASKING TAPE AROUND IT, WITH HANDWRITTEN NOTATION "KCL03 + S + CHARCOAL + MUCILAGE"; (4) ONE ORANGE PLASTIC CONTAINER, WITH WHITE PLASTIC CAP, WITH MASKING TAPE AROUND IT, WITH HANDWRITTEN NOTATIONS "AL + S"; (5) ONE SMALL METAL CONTAINER, SILVER COLOR, WITH MASKING TAPE AROUND IT, WITH HANDWRITTEN NOTATION "SMOKELESS POWDER FROM REMINGTON .30-06 BRONZE POINTS"	RONALD L. KELLY	Y	Indirect	
MB 151	THIRD SHELF FROM THE TOP, SOUTH END, WEST WALL	ONE TAN PLASTIC SHOPPING BAG, CONTAINING THREE ALUMINUM FOIL ENVELOPES/POUCHES; EACH WITH MASKING TAPE LABELS WITH HANDWRITTEN NOTATIONS: (1) "RESTOS PARCIALMENTE CUAJADOS DE MEZCLA 206-1(a) de EXPS 225, 228, 245, MEZCLA 206-1(A)"; (2) "MIX 158-4 (SLIGHTLY MODIFIED) FROM EXP. 244 CLEAN AND CAN BE USED."; (3) "MIX 158-4 EXP. 244. CLOTTED WITH ACETONE."	RONALD L. KELLY	Y	Indirect	
MB 152	THIRD SHELF FROM THE TOP, SOUTH END, WEST WALL	ONE METAL CAN, WITH WHITE PAPER LABEL ATTACHED WITH STRAPPING FILAMENT TAPE, WITH HANDWRITTEN NOTATIONS "EXP. 126 PITTSBURGH CONTAINER #2"	RONALD L. KELLY	Y	Indirect	
MB 153	THIRD SHELF FROM THE TOP, SOUTH END, WEST WALL	ONE CLEAR PLASTIC JAR, WITH WHITE METAL LID, WITH MASKING TAPEAROUND IT, WITH HANDWRITTEN NOTATIONS "(AL + S) + THERMITE"	RONALD L. KELLY	Y	Indirect	

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ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MB 154	THIRD SHELF FROM THE TOP, SOUTH END, WEST WALL	ONE PAPER CONTAINER OF "FLAVOTIE FINE GRANULATED SUGAR", SECURED WITH TWO LARGE RUBBER BANDS	RONALD L. KELLY	Y	Indirect	
MB 155	THIRD SHELF FROM THE TOP, SOUTH END, WEST WALL	ONE PAPER "GOLD MEDAL WHOLE WHEAT FLOUR FLOUR" SACK, WITH HANDWRITTEN NOTATION "DUMP IN LINCOLN" AT THE BOTTOM, CONTAINING MISCELLAMEOUS DEBRIS (TO INCLUDE SOIL, SMALL PIECES OF WOOD, METAL, SCREWS, AND BOLTS), SECURED WITH A RUBBER BAND	RONALD L. KELLY	Y	Indirect	
MB 156	THIRD SHELF FROM THE TOP, SOUTH END, WEST WALL	WHITE PLASTIC BAG, CONTAINING ONE LARGE ROUND CARDBOARD "QUAKER OLD FASHIONED OATS" CANNISTER, WITH HANDWRITTEN NOTATIONS "CLASS 1 NO RUST" ON INTERSECTING PIECES OF PACKING TAPE ON TOP, CONTAINING A LARGE VARIETY OF METAL PIECES AND WIRE	RONALD L. KELLY	Y	Indirect	
MB 157	SECOND SHELF FROM THE TOP, SOUTH END, WEST WALL	ONE WHITE PLASTIC BAG, CONTAINING ONE SMALL, ROUND, CARDBOARD "QUAKER YELLOW CORN MEAL" CANNISTER, CONTAINING ONE ALUMINUM FOIL ENVELOPE/POUCH, CONTAINING "FLASH POWDER"; HANDWRITTEN NOTATIONS ON TOP OF CANNISTER "SPOONS" AND "EXP. 220" (CROSSED THROUGH)	RONALD L. KELLY	Y	Indirect	
MB 158	ON A SHELF IN THE SW CORNER, WEST WALL	ROUND, METAL "CALUMET BAKING POWDER" CAN, WITH WHITE PAPER LABEL SECURED WITH MASKING TAPE, WITH HANDWRITTEN NOTATIONS "Na2C03 - IMPURE. PROBABLY CONTAMINATED WITH NaHCU3, NaCL, and NaCL03. THIS IS THE FIRST LOT OF CRYSTALS REMOVED MARCH 23. ANDSECOND LOT."	RONALD L. KELLY	Y	Indirect	
MB 159	ON A SHELF IN THE SW CORNER, WEST WALL	ONE BROWN PLASTIC BOTTLE, WITH CLEAR PLASTIC LID, LABEL "OSCO DRUG VITAMIN MINERAL FORMULA", WITH MASKING TAPE AROUND IT, WITH HANDWRITTEN NOTATIONS "CRUDE KCL03, MEDIUM KCL03, CONTENT. MUST BE FILTERED."	RONALD L. KELLY	Y	Indirect	

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ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MB 160	IN COFFEE POT, ON FOURTH SHELF FROM THE TOP, SOUTH END, WEST WALL	BLUE POWDER LIKE SUBSTANCE	RONALD L. KELLY	Y	Indirect	PLASTIC BAG
MB 161	SECOND SHELF FROM THE TOP, NW CORNER, WEST WALL	WHITE PLASTIC BOTTLE, LABEL "RIT LIQUID DYE", WITH MASKING TAPE AROUND IT, WITH HANDWRITTEN NOTATIONS "CaSO4 (NOT DRY)"	RONALD L. KELLY	Y	Indirect	
MB 162	FOURTH SHELF FROM THE TOP, SOUTH END, WEST WALL	BROWN PLASTIC BOTTLE, WITH WHITE METAL CAP, AND PINK COLORED PLASTIC TWISTED UNDER CAP, WITH MASKING TAPE AROUND BOTTLE, WITH HANDWRITTEN NOTATIONS, "MOSTLY KCL, WITH MODEST AMOUNT KCLO3, TARE WITH CAP = 0.6 OZ."	RONALD L. KELLY	Y	Indirect	
MB 163	SECOND SHELF FROM THE TOP, SOUTH END, WEST WALL	ONE METAL CAN, WITH ALUMINUM FOIL PRESSED OVER THE TOP, WITH WHITE PAPER LABEL SECURED WITH MASKING TAPE, WITH HANDWRITTEN NOTATIONS, "CUIDADO MUY SENSIBILIZADO MEZCLA C DE EXP. 90 ESTA ESTA LA MISMA QUE LA MEZELA #5", CONTAINING LARGE BLACK PARTICLES	RONALD L. KELLY	Y	Indirect	
MB 164	SECOND SHELF FROM THE TOP, NW CORNER, WEST WALL	ONE GLASS BOTTLE, WITH WHITE METAL CAP, LABEL "McKESSON GLYCERIN USP, #21315, McKESSON LABORATORIES, DUBLIN, CA. 94566"	KATHERINE I. TANG - WILCO	Y	Indirect	
MB 165	SECOND SHELF FROM THE TOP, NW CORNER, WEST WALL	LIQUID SAMPLE FROM BOTTLE MARKED "SODIUM TARTRATE"	RONALD L. KELLY	Y	Indirect	
MB 166	SECOND SHELF FROM THE TOP, NW CORNER, WEST WALL	LIQUID SAMPLE FROM BOTTLE MARKED "KCL"	RONALD L. KELLY	Y	Indirect	

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ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MB 167	SECOND SHELF FROM THE TOP, NW CORNER, WEST WALL	WHITISH PLASTIC BOTTLE, WITH WHITE METAL CAP, WITH CLEAR PLASTIC TWISTED UNDER CAP, WITH LABEL "McKESSON SALTPETER (POTASSIUM NITRATE)", WITH SMALL BRIGHT YELLOWISH-GREEN PRICE TAG "BERGUM DRUG, WHY PAY MORE? $1.73"	RONALD L. KELLY	Y	Indirect	
MB 168	SECOND SHELF FROM THE TOP, WEST WALL	SMALL BROWN BOTTLE, WITH WHITE PLASTIC CAP, WITH MASKING TAPE AROUND BOTTLE, WITH HANDWRITTEN NOTATIONS "CRUDE KCLO3 GOOD PURITY, EXCEPT THAT IT MUST BE FILTERED. TARE WITH CAP = 0.6 OZ."	RONALD L. KELLY	Y	Indirect	
MB 169	SECOND SHELF FROM THE TOP, WEST WALL	ONE CLEAR PLASTIC BOTTLE, WITH CLEAR PLASTIC CAP, WITH PINK PLASTIC TWISTED UNDER CAP, WITH MASKING TAPE AROUND BOTTLE, WITH HANDWRITTEN NOTATIONS, "CRUDE KCLO3 - GOOD PURITY" (TWICE)	RONALD L. KELLY	Y	Indirect	
MB 170	SECOND SHELF FROM THE TOP, WEST WALL	ONE ROUND CARDBOARD AND METAL CANNISTER, LABEL "CLABBER GIRL BAKING POWDER", CONTAINING SILVER-GREY POWDERY SUBSTANCE	RONALD L. KELLY	Y	Indirect	
MB 171	SECOND SHELF FROM THE TOP, WEST WALL	TWO SMALL WHITE CARDBOARD BOXES, LABEL "POTASSIUM CHROMATE K. CrO, FOR LAB USE ONLY, HAGENOW LABS, INC., MANITOWOC, WIS.", IN A WHITE PLASTIC SHOPPING BAG	RONALD L. KELLY	Y	Indirect	
MB 172	SECOND SHELF FROM THE TOP, WEST WALL	ONE WHITE PLASTIC SHOPPING BAG, CONTAINING A WHITE POWDERY SUBSTANCE, AND CONTAINING A SMALL CLEAR PLASTIC BAGGIS WITH AN ALUMINUM FOIL ENVELOPE/POUCH, CONTAINING A POWDERY SUBSTANCE (POSSIBLY "FLASH POWDER")	RONALD L. KELLY	Y	Indirect	

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HCR# 30, BOX 27, LINCOLN, MONTANA

ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MB 173	SECOND SHELF FROM THE TOP, WEST WALL	ONE SMALL PLASTIC ORANGE CONTAINER, WITH WHITE PLASTIC CAP, WITH WHITE PAPER LABEL SECURED WITH MASKING TAPE, WITH HANDWRITTEN NOTATIONS "BaSO4 MAY BE CONTAMINATED WITH A LITTLE MgCL2 AND SMALLER AMOUNT OF MgSO2"	RONALD L. KELLY	Y	Indirect	
MB 174	SECOND SHELF FROM THE TOP, WEST WALL	SMALL WHITE PLASTIC JAR, WITH WHITE METAL CAP, WITH HANDWRITTEN NOTATION "SMALLEST", CONTAINING METAL SCREW/BOLT AND NUT	RONALD L. KELLY	Y	Indirect	
MB 175	SECOND SHELF FROM THE TOP, WEST WALL	ONE WHITISH PLASTIC BOTTLE, WITH WHITE METAL CAP, WITH MASKING TAPE AROUND BOTTLE, WITH HANDWRITTEN NOTATIONS "PURE SUCROSE GROUND FINE"	RONALD L. KELLY	Y	Indirect	
MB 176	SECOND SHELF FROM THE TOP, WEST WALL	ONE CLEAR GLASS JAR, WITH WHITE METAL CAP, WITH PICTURE OF A LION ON THE CAP AND THE NAME "WAGNER", WITH MASKING TAPE AROUND JAR, WITH HANDWRITTEN NOTATIONS "CURIC HYDROXIDE?" (CROSSED OUT) AND "PROBABLY BASIC CARBONATE Cu2(OH)2 C03, CONTAINING BLUE POWDERY SUBSTANCE	RONALD L. KELLY	Y	Indirect	
MB 177	SECOND SHELF FROM THE TOP, WEST WALL	WHITISH PLASTIC BOTTLE, WITH WHITE METAL CAP, AND CLEAR PLASTIC TWISTED UNDER CAP, LABEL "McKESSON BORIC ACID CRYSTALS NF, NDC 0022-0144-85", AND SMALL SQUARE BRIGHT YELLOWISH-GREEN PRICE TAG "BERGUM DRUG WHY PAY MORE? $1.93"	RONALD L. KELLY	Y	Indirect	
MB 178	SECOND SHELF FROM THE TOP, WEST WALL	ONE WHITE PLASTIC BOTTLE, WITH WHITE PLASTIC CAP, LABEL "FLOWERS OF SULFUR USP, WHITEWORTH INC., GARDENA, CA. 90248, NDC 0923-3500-03", WITH MASKING TAPE AROUND THE BASE, WITH A SMALL WHITE SQUARE PRICE TAG "BERGUMS 217-6956 L5GJB $5.17"	RONALD L. KELLY	Y	Indirect	

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ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MB 179	SECOND SHELF FROM THE TOP, WEST WALL	SMALL ORANGE PLASTIC CONTAINER, WITH WHITE PLASTIC CAP, WITH MASKING TAPE AROUND CONTAINER, WITH HANDWRITTEN NOTATIONS "SILVER OXIDE Ag2O"	RONALD L. KELLY	Y	Indirect	
MB 180	SECOND SHELF FROM THE TOP, WEST WALL	ONE SMALL CLEAR GLASS JAR, WITH WHITE METAL CAP, WITH HANDWRITTEN NOTATIONS "WASHED CHARCOAL VERY FINELY GROUND", CONTAINING BLACK POWDERY SUBSTANCE	RONALD L. KELLY	Y	Indirect	
MB 181	SECOND SHELF FROM THE TOP, WEST WALL	ONE SMALL ORANGE PLASTIC CONTAINER, WITH WHITE PLASTIC CAP, WITH BLACK TAPE AROUND IT SECURING A WHITE PAPER LABEL, WITH HANDWRITTEN NOTATIONS "Fe2O3 EXP. 51, LOT (bi), WITH H2SO4"	RONALD L. KELLY	Y	Indirect	
MB 182	SECOND SHELF FROM THE TOP,SOUTH END, WEST WALL SECOND SHELF FROM THE TOP, SOUTH END, WEST WALL	ONE ROUND METAL CAN, LABEL "CALUMET BAKING POWEDR", WITH A PIECE OF NEWSPAPER OVER THE TOP, SECURED WITH MASKING TAPE AROUND THE CAN, WITH HANDWRITTEN NOTATIONS "PERFECTLY CLEAN", AND ONE ROUND BROWN CARDBOARD CANNISTER, WITH SILVER COLORED METAL LID, CONTAINING A POWDERY SUBSTANCE (POSSIBLY "FLASH POWDER")	RONALD L. KELLY	Y	Indirect	
MD 74	FOURTH SHELF FROM THE TOP,SOUTHEAST CORNER, WEST WALL SECOND SHELF FROM THE TOP, SOUTH END, WEST WALL	ONE SMALL, ROUND, CARDBOARD "QUAKER YELLOW CORN MEAL" CANNISTER, CONTAINING WHITE POWDERY SUBSTANCE	RONALD L. KELLY	Y	Indirect	
MD 75	FOURTH SHELF FROM THE TOP,SOUTHEAST CORNER, WEST WALL SECOND SHELF FROM THE TOP, SOUTH END, WEST WALL	ONE WHITE PLASTIC JAR, WITH BLACK PLASTIC CAP, LABEL "2919 TARTARIC ACID N.F. HUMCO LABORATORY, TEXARKANA, TEXAS 75501", WITH PORTION OF RED TAMPER RESISTANT TAPE ACROSS THE CAP, AND A SMALL, WHITE SQUARE PRICE TAG "247-9996 IEUR, BERGUMS $8.83"; LABEL STATES "FILL AUG. 3 - 83, EXP. MAY - 88"	RONALD L. KELLY,	Y	Indirect	

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ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MD 76	FOURTH SHELF FROM THE TOP,SOUTHEAST CORNER, WEST WALL SECOND SHELF FROM THE TOP, SOUTH END, WEST WALL	ONE LARGE WHITISH PLASTIC JAR, WITH WHITE PLASTIC CAP, LABEL "NDC-0395-2285-01 HUMCO LABORATORY, PLASTER OF PARIS (DENTAL)",CONTAINING WHITE POWDERY SUBSTANCE	RONALD L. KELLY	Y	Indirect	
ME 1	CEILING NEAR STOVE	STEEL/METAL SCREEN WITH WOOD FRAME	WILLIAM A. FORSYTH	Y	Indirect	Paper
MF 12AA	COMPONENT OF ITEM MF-12(A)	OUTER PIPE WITH ATTACHED METAL FRAGMENTS	FRANK R. DOYLE	Y	Indirect	Plastic
MF 12AB	COMPONENT OF ITEM MF-12(A)	PIPE SHAVING AND FILLER	FRANK R. DOYLE	Y	Indirect	Plastic
MF 12AC	COMPONENT OF ITEM MF-12(A)	END PLUG/METAL FRAGMENTS	FRANK R. DOYLE	Y	Indirect	Plastic
MF 12AD	COMPONENT OF ITEM MF-12(A)	TAPE AND TWINE, OUTER WRAP OF PIPE	FRANK R. DOYLE	Y	Indirect	Plastic
MF 12AE	COMPONENT OF ITEM MF-12(A)	IMPROVISED DETONATOR AND FILLER	FRANK R. DOYLE	Y	Direct	2-Canisters
MF 12AF	COMPONENT OF ITEM MF-12(A)	BULK FILLER	FRANK R. DOYLE	Y	Indirect	2-Boxes
MF 56	NORTHWEST CORNER	CORN MEAL BOX CONTAINING SPOOLS, WOOD, AND FOAM	WILLIAM A. FORSYTH		Indirect	Paper
MF 57	NORTHWEST CORNER	TWO AXES	WILLIAM A. FORSYTH		Indirect	Paper
MF 58	NORTHWEST CORNER	PIECE OF CABLE	WILLIAM A. FORSYTH		Indirect	Paper
MF 59	NORTHWEST CORNER	PLASTIC BAG OF STITCHING HOOP AND THREAD	WILLIAM A. FORSYTH		Indirect	Plastic
MF 60	NORTHWEST CORNER	PLASTIC BAG CONTAINING FILTER PAPER TO MEASURE BURN AND DOCUMENTS EXPLAINING IT	WILLIAM A. FORSYTH		Indirect	Plastic
MF 61	CENTRAL SECTION OF CABIN	MISC. METAL PIECES, SCREWS, BOLTS, ETC	WILLIAM A. FORSYTH		Indirect	Paper

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ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MF 62	NEAR WEST WALL, CENTER SECTION OF CABIN	PAIR OF FORGING PLIERS	WILLIAM A. FORSYTH		Indirect	Paper
MF 63	NORTHWEST CORNER OF CABIN	PIECES OF WOOD	WILLIAM A. FORSYTH		Indirect	Paper
MF 64	SOUTHWEST CORNER	SPRINGS AND NOTE ON ENVELOPE IN QUICK OATS BOX	WILLIAM A. FORSYTH		Indirect	Paper
MF 65	SOUTHWEST CORNER OF CABIN	MISC. METAL AND BRASS IN QUICK OATS BOX	WILLIAM A. FORSYTH		Indirect	Paper
MF 66	CENTRAL WEST WALL	TIN CAN LIDS IN QUICK OATS BOX	WILLIAM A. FORSYTH		Indirect	Paper
MF 67	WEST END CENTRAL UNDER SHELVES	METAL CAN	DAVID ALFORD		Indirect	Paper
MF 68		CARDBOARD CAN WITH TRACE	DAVID ALFORD		Indirect	Paper
MF 69	WEST WALL CENTRAL	METAL POT AND LID	DAVID ALFORD		Indirect	Paper
MF 70	WEST WALL CENTRAL	CALUMET CAN CONTAINING WAX TYPE SUBSTANCE	WILLIAM A. FORSYTH		Indirect	Paper
MF 71	BEHIND STOVE	PIECE OF SHEET METAL	DAVID ALFORD		Indirect	Paper
MF 72	BEHIND STOVE	A CUT PORTION OF AXE BLADE	DAVID ALFORD		Indirect	Paper
MF 73	BEHIND STOVE	METAL CAN CONTAINING UNKNOWN RESIDUE	DAVID ALFORD		Indirect	Paper
MF 74	BEHIND STOVE	METAL CAN CONTAINING UNKNOWN RESIDUE	DAVID ALFORD		Indirect	Paper
MF 75	BEHIND STOVE	METAL CAN CONTAINING UNKNOWN RESIDUE	DAVID ALFORD		Indirect	Paper Bag
MF 76	BEHIND STOVE	METAL CAN CONTAINING UNKNOWN RESIDUE	DAVID ALFORD		Indirect	Paper Bag
MF 77	BEHIND STOVE	METAL CAN CONTAINING UNKNOWN RESIDUE	DAVID ALFORD		Indirect	Paper Bag

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MF 78	BEHIND STOVE	METAL CAN CONTAINING UNKNOWN RESIDUE	DAVID ALFORD		Indirect	Paper Bag
MF 79	IN A WHITE BUCKET LOCATED AT THE SW CORNER OF THE CABIN	CARDBOARD BOX OF WIRE AND A PLASTIC BAG	DAVID ALFORD		Indirect	Paper Bag
MF 80	MIDDLE UNDER SHELVES	CARDBOARD CONTAINER WITHIN ONE METAL CAN	DAVID ALFORD		Indirect	Paper Bag
MF 81	BEHIND STOVE	PLASTIC CONTAINER	DAVID ALFORD		Indirect	Paper Bag
MF 82	SW CORNER OF CABIN	MISC. PIPES, METAL ROD AND A TIRE TOOL	DAVID ALFORD		Indirect	Paper Bag
MF 83	BESIDE STOVE	BLACK POWDER AND SMOKELESS POWDER	DAVID ALFORD		Indirect	Plastic Bag
MF 84	S. NEAR W. WALL	LOOSE METAL PARTS	RONALD L. KELLY		Indirect	Paper Bag
MF 85	SW CORNER OF CABIN	PLASTIC BUCKET CONTAINING THICK BLACK MATERIAL	RONALD L. KELLY		Indirect	Plastic Bag
MF 86	SOUTH END OF CABIN	PAPER BAG CONTAINING METAL CONTAINER WITH METAL TOPS AND WIRE	RONALD L. KELLY		Indirect	Plastic Bag
MF 87		ONE PLASTIC BAG CONTAINING VARIOUS DRILL BITS AND OTHER METAL ITEMS	RONALD L. KELLY		Indirect	Paper Bag
MF 88	MIDDLE BELOW SHELVES	METAL CONTAINER OF BLACK GRANULAR MATERIAL	RONALD L. KELLY		Indirect	
MF 89	CENTER, WEST FLOOR	METAL CONTAINER CONTAINING WHITE POWDER MATERIAL	RONALD L. KELLY		Direct	
MF 90	UNDER BED, N.E. CORNER OF CABIN	THREE PLASTIC BOTTLES LABELED "ALCOHOL" CONTAINING LIQUID	RONALD L. KELLY		Direct	Can
MF 91	BEHIND STOVE	TWO METAL FRAGMENTS	DAVID ALFORD		Indirect	Plastic & Paper

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ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MF 92	S.E. CORNER OF CABIN	ONE WHITE PLASTIC CONTAINER OF WHITE POWDER	RONALD L. KELLY		Direct	Plastic
MF 93	UNDER WORK BENCH, S.E. CORNER OF CABIN	ONE METAL CAN CONTAINING KEYS AND TWINE	WILLIAM A. FORSYTH		Indirect	Plastic Bag
MF 94	S.E. CORNER OF CABIN	PLASTIC CONTAINER OF WHITE POWDER	RONALD L. KELLY		Direct	Plastic Bag
MF 95	BY WOOD STOVE	TWO SAMPLE, ONE EACH FROM TWO PAINT CANS	DAVID ALFORD		Indirect	Plastic Bag
MF 96	BY WOOD STOVE	SAMPLE OF ASH TAKEN FROM POT	DAVID ALFORD		Indirect	Plastic Bag
MF 97	WITHIN WOOD STOVE	SAMPLE OF ASH TAKEN FROM WOOD STOVE	DAVID ALFORD		Indirect	Plastic Bag
OC 4	ON THE GROUND IN A PUDDLE OF WATER APPROXIMATELY 15 FEET N.E. OF THE CABIN	CORRODED METAL LIKE MATERIAL	RONALD L. KELLY		Indirect	Can

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L 73		PIECE OF WIRE	RONALD L. KELLY			
L 74		PIECE OF WOOD	DAVID ALFORD			
L 75		TWO STEAK KNIVES	DAVID ALFORD			
L 76		LARGE PLASTIC CONTAINER LABELED "NaCl3 + NaCl"	RONALD L. KELLY			
L 77		TWO PIECES OF WOOD AND THREE STRIPS OF WOOD	RONALD L. KELLY			
MA 28	SOUTH WALL NEAR CEILING	WOOD AND SCREWS	RONALD L. KELLY			
MA 29	ON WORKBENCH	RED COLORED VICE	DAVID ALFORD			
MA 30	ON TOP OF WORK BENCH	PIECES OF METAL	DAVID ALFORD			
MA 31	ON WALL ABOVE WORK BENCH	MEDALLION	DAVID ALFORD			
MA 32	ON WALL ABOVE WORK BENCH	DRAWINGS AND DOCUMENTS	DAVID ALFORD			
MA 33	BELOW WORK BENCH	CLAMP	DAVID ALFORD			
MA 34	SHELF OF WORK BENCH	BOTTLE OF WHITE POWDER LABELED "NaCl"	RONALD L. KELLY			
MB 183	N.W. CORNER (SHELVES)	UNKNOWN POWDER	DAVID ALFORD			
MB 184	SHELF BEHIND WALL	GLASS BOTTLE CONTAINING CLEAR LIQUID	RONALD L. KELLY			
MB 185	SHELVES (N.W. WALL)	RUBBER BANDS AND TIES	DAVID ALFORD			
MB 186	LOWER SHELF WEST WALL	TWO PIECES OF METAL	DAVID ALFORD			

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The "D" next to the ITEM indicates that the item contains Document(s).

COLLECTED: 04/10/96

EVIDENCE COLLECTED AT RESIDENCE OF THEODORE KAZCYNSKI
HCR# 30, BOX 27, LINCOLN, MONTANA

ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MB 187	LOWER SHELF WEST WALL	SMALL PIECE OF CUT METAL	DAVID ALFORD			
MB 188	SHELF NORTH WALL	(3) RAZOR, (1) THERMOMETER	DAVID ALFORD			
MB 189	SHELF NORTHWEST CORNER	CORDAGE	DAVID ALFORD			
MB 190	SHELF NORTHWEST CORNER	TWO PLASTIC CONTAINERS WITH WHITE CRYSTALLINE MATERIAL	DAVID ALFORD			
MB 191	SHELF NORTHWEST CORNER	(5) PAIRS OF GLASSES AND (1) CLEAR LENS	DAVID ALFORD			
MB 192	THIRD SHELF, NORTH END	LONG PIECE OF INNER TUBE	DAVID ALFORD			
MB 193	SHELVES NORTHWEST CORNER	TWO CANS OF ADHESIVES	DAVID ALFORD			
MB 194	SHELVES	.25 CALIBER GUN (RAVEN ARMS), MAGAZINE CONTAINING SIX BULLETS, AND ONE BULLET	DAVID ALFORD			
MB 195	SHELVES N.W. CORNER	VACUUM DEBRIS	DAVID ALFORD			
MB 196	FLOOR UNDER SHELVES WEST WALL	VACUUM DEBRIS	DAVID ALFORD			
MB 197	UNDER SHELVES ALONG WEST WALL	DUST AND DEBRIS	DAVID ALFORD			
MB 198	SOUTHEAST CORNER	VACUUM DEBRIS	DAVID ALFORD			
MB 199	ALL SHELVES EXCEPT N.W. CORNER	VACUUM DEBRIS	DAVID ALFORD			
MB 200	TOP SHELF S.E. CORNER	SCREWS	DAVID ALFORD			
MC 27	WALL OVER BED	BOOK SHELF	DAVID ALFORD			
MC 28	TOP OF BED AREA	METAL BRACKET	DAVID ALFORD			

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COLLECTED: 04/10/96

EVIDENCE COLLECTED AT RESIDENCE OF THEODORE KAZCYNSKI
HCR# 30, BOX 27, LINCOLN, MONTANA

ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
MC 29	ABOVE WINDOW	SCREEN SAMPLE	DAVID ALFORD			
MC 30	ABOVE WINDOW	WOOD AND NAILS	DAVID ALFORD			
MD 77	EAST WALL OVER BED	WOOD PIECES	DAVID ALFORD			
MD 78	ON DOOR FRAME	STAPLES	ANN-MARGARET HINKLE			
MD 79	BESIDE DOOR	WIRE RING	DAVID ALFORD			
MD 80	BY BED	SCABBARD	DAVID ALFORD			
MD 81	EAST WALL	FEATHERS	DAVID ALFORD			
MD 83	OVER BED	SHELF	DAVID ALFORD			
ME 2	S.E. CORNER	WOOD BRACE AND SCREW	RONALD L. KELLY			
ME 3	TAKEN FROM VARIOUS POINTS IN CABIN	SCREWS AND NAILS	DAVID ALFORD			
ME 4	MIDDLE OF CEILING	TWO PULLEYS	DAVID ALFORD			
ME 5	CEILING	SCREWS	RONALD L. KELLY			
ME 6	CEILING AROUND STOVE PIPE	STAPLES	DAVID ALFORD			
ME 7	TAKEN FROM VARIOUS POINTS IN CABIN	CORDAGE	TOM MONAHL			
ME 8	TAKEN FROM VARIOUS POINTS IN CABIN	SCREWS AND WIRES	DAVID ALFORD			
ME 9	HANGING FROM CEILING	STRAINER, HOOKS	DAVID ALFORD			

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COLLECTED: 04/10/96

EVIDENCE COLLECTED AT RESIDENCE OF THEODORE KAZCYNSKI
HCR# 30, BOX 27, LINCOLN, MONTANA

ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
ME 10	BETWEEN BOOK SHELVES	WIRE	DAVID ALFORD			
MF 55	ON FLOOR	NEWSPAPER ARTICLES	DAVID ALFORD			
MF 98	AROUND AREA OF BED/COT	AMMUNITION FOR .22 CALIBER	DAVID ALFORD			
MF 99	UNDER BUNK	AMMUNITION	DAVID ALFORD			
MF 100	N.E. CORNER	GREEN NOTEBOOK	DAVID ALFORD			
MF 101	WORKBENCH EAST END	VACUUM DEBRIS	DAVID ALFORD			
MF 102	CREVICES ON WORK BENCH AND SHELF AROUND INSIDE OF WINDOW FRAME ON SOUTH WALL	VACUUM DEBRIS	DAVID ALFORD			
MF 103	COVERING OPENING TO CRAWL SPACE	WOOD	DAVID ALFORD			
OC 5	S.E. CORNER OF CABIN	PAINT CAN WITH ACETONE CAN IN IT	ANN-MARGARET HINKLE			
OC 6	NEAR WOODPILE	SCREEN WIRE	DAVID ALFORD			
OC 7	CRAWL SPACE, S.E. CORNER	PAINT CAN WITH ACETONE	ANN-MARGARET HINKLE			
OC 8	CRAWL SPACE, SOUTHSIDE	PIECE OF GREEN LICENSE PLATE	DAVID ALFORD			
OC 9	SOUTHSIDE WINDOW	SAMPLE OF SCREEN	DAVID ALFORD			
OC 10	REMOVED FROM RED BIKE - WEST SIDE OF LEANTO	PAINT SCRAPINGS	MICHAEL STAPLETON			
OC 11	REMOVED FROM RED BIKE - EAST SIDE OF LEANTO	PAINT SCRAPINGS	MICHAEL STAPLETON			

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:OLLECTED: 04/10/96

EVIDENCE COLLECTED AT RESIDENCE OF THEODORE KAZCYNSKI
HCR# 30, BOX 27, LINCOLN, MONTANA

ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
OC 12	LEANTO	CAN OF ADHESIVE	MICHAEL STAPLETON			
OC 13	UNDER HOUSE	GLAZING COMPOUND	RONALD L. KELLY			
OC 14	UNDER HOUSE AT S.E. CORNER	CAN LABELED ACETONE	RONALD L. KELLY			

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OLLECTED:

EVIDENCE COLLECTED AT RESIDENCE OF THEODORE KAZCYNSKI
HCR# 30, BOX 27, LINCOLN, MONTANA

ITEM	WHERE FOUND	DESCRIPTION	RECOVERED BY:	PHOTO	MARKING	PACKAGING METHOD
L 72		THIS ITEM# WAS NOT USED				
MA 35		NOTE: ITEM#s MA-35 THRU MA-54 WERE NOT USED				
MD 82		THIS ITEM# WAS NOT USED				
MF 13		THIS ITEM# WAS NOT USED				
RSP 2		THIS ITEM# WAS NOT USED				

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(END OF REPORT)

AO 93 Rev 5/85 Search Warrant

RETURN

DATE WARRANT RECEIVED	DATE AND TIME WARRANT EXECUTED	COPY OF WARRANT AND RECEIPT FOR ITEMS LEFT WITH
4/3/96	4/3/96 12:20 PM	TO MR. KACZYNSKI, THROUGH SPECIAL AGENT TONY MAXWELL, FBI

INVENTORY MADE IN THE PRESENCE OF

SPECIAL AGENT TONY MAXWELL, FBI

INVENTORY OF PERSON OR PROPERTY TAKEN PURSUANT TO THE WARRANT

SEE ATTACHED INVENTORY OF ITEMS SEIZED INCORPORATED HEREIN BY REFERENCE.

CERTIFICATION

I swear that this inventory is a true and detailed account of the person or property taken by me on the warrant.

Tony A. Tuscki

Subscribed, sworn to, and returned before me this date.

Charles S. Lovell
U.S. Judge ~~or Magistrate~~

April 15, 1996
Date

Date Printed: 04/11/96

INVENTORY OF ITEMS SEIZED AT THE RESIDENCE OF
THEODORE KAZCYNSKI, HCR# 30, BOX 27, LINCOLN, MONTANA

ITEM	DESCRIPTION
DEV 1	(CONTROL SAMPLE) ONE WINCHESTER SUPER X SHOTGUN ROUND
L 1	BROWN TYPEWRITER CASE CONTAINING A TYPEWRITER
L 2	BOX CONTAINING FISHING GEAR
L 3	LABELED CAN OF PLASTER OF PARIS
L 4	TYPEWRITER, STAMPS, MISC. WRAPPED PAPERS, AND DOCUMENTS
L 5	OATS CAN CONTAINING FOIL WRAPPED TRIGGER SWITCH
L 6	MISC. METAL SHAVINGS, WIRES, BEARINGS, ETC. IN OAT CONTAINERS
L 7	BACKPACK FRAME CONTAINING MISC. PIPES AND CORDAGE
L 8	NORTHWEST TERRITORY HIKING SHOES (BROWN GREEN)
L 9	BLACK PEPPER CAN CONTAINING SEVERAL METAL PIECES AND A PLASTIC BOTTLE LABELED "STRYCHNINE OATS"
L 10	ONE "ALDRICH" BOX CONTAINING MISC. PAPERS, NEWSPAPER CLIPPINGS, BUS SCHEDULE, ADDRESSES OF CORPORATE OFFICIALS, AND MAPS OF SAN FRANSISCO
L 11	MISC. CANS, STRING, PLASTIC AND METAL
L 12	PIECES OF LOCK IN A CORNMEAL CONTAINER
L 13	TOOL BOX IN GREEN BAG
L 14	PIECE OF PIPE (POSSIBLE PIECE OF RIFLE)
L 15	RADIO SONDE - MEASURES TEMP., HUMIDITY, ECT.
L 16	METAL PARTS AND PIECES

ITEM	DESCRIPTION
L 17	WELDING TYPE MASK
L 18	TATER TOT BOX CONTAINING MISC. BOOKS AND MAPS
L 19	TAN DUFFEL BAG CONTAINING CLOTHING AND TWO ADDITIONAL DUFFEL TYPE BAGS
L 20	METAL PARTS AND PIECES, CHAINS, LOCKS, AND POSSIBLE TRAPS
L 21	WIRE SCREEN
L 22	BOW STRIGS AND ARROWS IN AQUIVER
L 23	ONE STEAK KNIFE
L 24	PIPES (MISC. SIZES)
L 25	PIPES AND A BOWL
L 26	L - SHAPED PIPE
L 27	SECTION OF PIPE
L 28	SECTION OF PIPE
L 29	PLASTIC BAG CONTAINING BLACK JACKET
L 30	BOMB COMPONENTS
L 31	TWO ROLLS OF BROWN PAPER MARKED "3QQ", CAN CONTAINING WIRE MARKED "QQ" AND DOCUMENTS
L 32	BOX MARKED "ALL 1 OR 10 Q OR QQ" (HANDWRITTEN), METAL TUBES, WIRING, SPRINGS, BALL TRIGGER IN TINFOIL, STAPLER, 9V BATTERY, AND SMALL COPPER COLORED TUBING
L 32A	COPPER COLORED TUBING REMOVED FROM ITEM L-32
L 33	BOOKS WITH "5Q" ON CONTAINER
L 34	LETTERS

ITEM	DESCRIPTION
L 35	SAMSONITE BRIEFCASE CONTAINING UNIVERSITY OF MICHIGAN DEGREES ECT.
L 36	GRAY CASE CONTAINING TYPEWRITER
L 37	LARGE GREEN AMMO CAN THAT CONTAINED ITEM L-4
L 38	TV WIRE WITH CORD AROUND IT
L 39	YEARBOOKS IN GREEN PLASTIC BAG
L 40	GREEN TARP AND TWINE
L 41	BOX OF CLOTHING AND TOWELS
L 42	RAIN PONCHO TYPE MATERIAL
L 43	TYPEWRITER PARTS
L 44	SECTION OF PIPE
L 45	VARIOUS PAPER AND TWINE
L 46	"SEARS" BOX CONTAINING ARROWS
L 47	12 SAW BLADES
L 48	A SECTION OF ROPE
L 49	A SECTION OF WOOD
L 50	FIVE BOTTLES LABELED "SALTPETER"
L 51	FIVE BOTTLES LABELED "SALTPETER"
L 52	FIVE BOTTLES LABELED "SALTPETER" AND PLASTIC BAG "3Q"
L 53	GLASS CONTAINER WITH OFF-WHITE PRILLS

ITEM		DESCRIPTION
L	54	BOTTLE MARKED "CALUMET" CONTAINING WHITE POWDER
L	55	PLASTIC CONTAINER WITH WHITE CLUMPY POWDER
L	56	PLASTIC BOTTLE WITH BLACK CHUNKY MATERIAL IN PAPER AND HAND LABELED "MEZELA #2, NUEVO LOTE EXP 103"
L	57	CONTAINER OF WHITE POWDER LABELED KC103 POTASSIUM 99.95% PURE
L	58	CONTAINER OF WHITE POWDER
L	59	CONTAINER OF YELLOW CRYSTALS WITH PLASTIC BAGS
L	60	CONTAINER OF WHITE POWDER
L	61	SIX SEALED BOTTLES LABELED SULFER
L	62	PLASTIC BAG AND CONTAINER OF YELLOW POWDER LABELED "SULFER"
L	63	PLASTIC BAG CONTAINING TWO PIECES OF WOOD AND MAKE-UP
L	64	SOLDER WIRE AND PLASTIC BAG
L	65	CONTAINER LABELED "SALT"
L	66	JAR OF WHITE CYSTALLINE SUBSTANCE AND NOTE "AMMONIUM NITRATE"
L	67	ONE GALLON JUG LABELED "ABIETIC ACID", AND SAMPLE TAKEN FROM THE JUG (TWO PLASTIC BAGS)
L	68	BOTTLE LABELED "AMMONIUM NITRATE NH-4NO-3"
L	69	TWO CANS IN BAGS LABELED "ABIETIC ACID"
L	70	TWO BOTTLES LABELED AS ALUMINUM AND BOX LID WITH EXPERIMENT INFO.
L	71	VARIOUS CONTAINERS MARKED AS "ALUMINUM MATERIALS"
L	72	THIS ITEM# WAS NOT USED

ITEM	DESCRIPTION
L 73	PIECE OF WIRE
L 74	PIECE OF WOOD
L 75	TWO STEAK KNIVES
L 76	LARGE PLASTIC CONTAINER LABELED "NaCl3 + NaCl"
L 77	TWO PIECES OF WOOD AND THREE STRIPS OF WOOD
MA 1	BOX OF 52 BOOKS
MA 2	BOX OF 41 BOOKS AND 23 INDEX CARDS
MA 3	PAIR OF GLOVES
MA 4	METAL PAN AND STICK
MA 5	APPEARS TO BE A HAND DONE CALENDAR
MA 6	CAN WITH PAPER ADDRESSES
MA 7	CAN WITH MATCHES AND WOOD FRAGMENTS
MA 8	THREE TOOLS
MA 9	PART OF RADIO
MA 10	DOCUMENTS
MA 11	TIN WITH WIRE ACROSS TOP
MA 12	TOOLS IN "TIDE" DETERGENT BOX
MA 13	CONTAINER OF FINE TWINE
MA 14	SMALL RATCHET, TWEEZERS AND A POCKET KNIFE

ITEM	DESCRIPTION
MA 15	FOUR MEASURING SPOONS
MA 16	TOOLS IN A CAN
MA 17	BLUE ZIPPERED SWEATSHIRT
MA 18	BLUE HOOD AND OLD TOWEL
MA 19	TWO PAIR OF PLASTIC GLASSES
MA 20	BLUE JACKET
MA 21	GREEN HOODED JACKET
MA 22	METAL POT
MA 23	PLASTIC BAG CONTAINING CANS AND HOSES
MA 24	A CUTTING OF GREEN JACKET
MA 25	ONE PLASTIC CONTAINER LABELED "CITRIC ACID" CONTAINING WHITE POWDER
MA 26	MAGNET
MA 27	ONE PLASTIC BOTTLE CONTAINING METALLIC GRANULAR MATERIAL
MA 28	WOOD AND SCREWS
MA 29	RED COLORED VICE
MA 30	PIECES OF METAL
MA 31	MEDALLION
MA 32	DRAWINGS AND DOCUMENTS
MA 33	CLAMP

ITEM	DESCRIPTION
MA 34	BOTTLE OF WHITE POWDER LABELED "NaCl"
MA 35	NOTE: ITEM#s MA-35 THRU MA-54 WERE NOT USED
MA 55	WOOD PIECES AND SCREEN
MB 1	74 BOOKS
MB 2	29 BOOKS/DOCUMENTS
MB 3	FOLDED PAPERS WITH CHEMICAL RESIDUE
MB 4	RECORDER & CASE
MB 5	TWO EMPTY METAL CANS
MB 6	THREE ARROWS
MB 7	ONE ROCK
MB 8	FOUR COPPER TUBES
MB 9	PLASTIC JAR CONTAINING TRIGGERING DEVICES, EACH NUMBERED WITH MASKING TAP TAG
MB 10	THREE PAIRS OF SCISSORS
MB 11	ONE PLASTIC BOTTLE OF GLUE, LABEL "ELMER'S MUCILAGE"
MB 12	ONE TUBE OF "DURO SUPER GLUE"
MB 13	ONE METAL CAN CONTAINING THREE TUBES OF PAINT IN THE FOLLOWING COLORS: MEDIUM CADMIUM RED, RAW AMBER, DEEP PERMINENT GREEN
MB 14	ONE METAL CAN CONTAINING WICKS AND STRINGS WITH A PIECE OF NEWSPAPER INSIDE TO KEEP CONTENTS FROM MOVING ABOUT
MB 15	TWO PAINT KITS; SMALLER ONE IN BLACK METAL CONTAINER LABELED "PRANG WATER COLORS", LARGER ONE IN YELLOW AND CLEAR PLASTIC CONTAINER
MB 16	ONE WOOD HANDLED KNIFE, CONTAINED IN A SHEATH MADE OF NEWSPAPER

ITEM	DESCRIPTION
MB 17	ONE T-SHAPED METAL PIPE OR BRACKET WITH SERIAL NUMBER "GM-4" AND PARTIAL SERIAL NUMBER "...3658391"
MB 18	TWO SMALL METAL TINS
MB 19	ONE METAL CAN
MB 20	ONE WHITE PLASTIC SHOPPING BAG CONTAINING STEEL WIRE, HANDWRITTEN NOTATION ON OUTSIDE OF BAG "S ...", AND HANDWRITTEN NOTATION ON PACKAGES OF WIRE "COAST TO COAST, HELENA, JULY, 1994"
MB 21	ONE METAL CAN, LABEL "DEL MONTE WHOLE LEAF SPINACH", CONTAINING MELTED METAL FRAGMENTS
MB 22	ONE PAPER BAG CONTAINING WHITE ELECTRICAL EXTENSION CORDS; BAG WRAPPED IN STRAPPING TAPE
MB 23	ONE SMALL METAL CAN
MB 24	NINE METAL CAN
MB 25	TWO SMALL METAL CANS
MB 26	ONE SMALL WHITE CERAMIC CRUCIBLE
MB 27	TWO OFF-WHITE COLORED CERAMIC CRUCIBLE LIDS
MB 28	ONE BROWN CLASP ENVELOPE MARKED "AUTOBIOGRAPHY"
MB 29	"GRIP-LINE" RUBBER STAMP KIT
MB 30	PLASTIC BAG CONTAINING SEVERAL NOTEBOOKS, ENVELOPES AND MISC. HANWRITTEN DOCUMENTS
MB 31	ONE BROWN PAPER BAG CONTAINING TWO PACKAGES OF NOTEBOOK FILLER PAPER
MB 32	ONE PAPER BACK BOOK ENTITLED, "GROWING UP ABSURD", BY PAUL GOODMAN
MB 33	MISC. MAPS
MB 34	ONE BOX OF REYNOLDS ALUMINUM FOIL WITH RED RUBBER BAND AROUND IT
MB 35	THREE METAL BOTTLE CAPS LABELED "MAZOLA CORN OIL"

ITEM	DESCRIPTION
MB 36	PIECE OF CUT PIPE
MB 37	BOTTOM PORTION OF UNFIRED CARTRIDGE
MB 38	ONE "HANSON, MODEL 1509" SCALE, WRAPPED IN BROWN PAPER WITH MASKING TAPE
MB 39	BROWN PLASTIC JAR "NATURES BEST" CONTAINING FIRED CARTRIDGE CASINGS
MB 40	ONE BROWN WOODEN HANDLE POCKET KNIFE
MB 41	PICK/HATCHET TOOL
MB 42	KNIFE IN TATTERED WHITE CLOTH SHEATH
MB 43	HUNTING KNIFE IN LEATHER SHEATH
MB 44	WOOD HANDLED FILE
MB 45	SEVEN LARGE DRILL BITS
MB 46	"GREAT NECK #50" HACKSAW
MB 47	ONE DRILLING BASE
MB 48	ONE HAND SAW
MB 49	ONE HAND SAW
MB 50	ONE BROWN PLASTIC OBLONG "HERSHEY" CANNISTER WITH LID
MB 51	THREE BROWN THIN CARDBOARD PAPER TRAYS
MB 52	THREE BROWN THIN CARDBOARD PAPER TRAYS
MB 53	TWO BROWN THIN CARDBOARD PAPER TRAYS
MB 54	ONE COIL OF WIRE AND METAL PARTS

ITEM	DESCRIPTION
MB 55	ONE PACKAGE OF "MEAD" BRAND TYPING PAPER, WITH BOTTOM HALF IN PAPER AND STRAPPING TAPE
MB 56	STUDENT GUIDES AND PUBLICATIONS FROM THE UNIVERSITY OF MONTANA AND CARROLL COLLEGE
MB 57	ONE BROWN PLASTIC OBLONG "HERSHEY" CANNISTER WITH LID
MB 58	NUMEROUS CONTAINERS (METAL, PLASTIC AND CARDBOARD) CONTAINING A VARIETY OF NAILS AND METAL FASTENERS
MB 59	NUMEROUS CONTAINERS (METAL, PLASTIC, GLASS, AND CARDBOARD) CONTAINING A VARIETY OF BOLTS, SCREWS AND METAL FASTENERS
MB 60	TWO WHITE PLASTIC BUTANE CIGARETTE LIGHTERS
MB 61	ONE "CALUMET" BAKING POWDER CANNISTER CONTAINING ONE RED "LE WATCH" BRAND WATCH, WATCH PARTS, AND MISC. METAL PARTS
MB 62	ONE BROWN PLASTIC OBLONG CONTAINER, CONTAINING ONE MOUSE TRAP, ONE PIECE OF INNER TUBE VALVE, AND ONE ORANGE PLASTIC BAG CONTAINING WIRE
MB 63	ONE YELLOW PLASTIC BUCKET/PAIL
MB 64	SIX CAST METALLIC OBJECTS
MB 65	CONE SHAPED METALLIC CASTING
MB 66	ONE CAST METALLIC OBJECT
MB 67	TEN CANNISTERS CONTAINING VARIOUS METAL SAMPLES AND ONE ROUND METAL OBJECT
MB 68	ONE METAL CAN CONTAINING NUTS, BOLTS AND OTHER METAL OBJECTS
MB 69	ONE CARDBOARD CANNISTER CONTAINING SMALL AMOUNT OF WHITE POWDER. THE CANNISTER IS LABELED "SHOPPERS VALUE QUICK OATS"
MB 70	ONE CARDBOARD CANNISTER CONTAINING SMALL AMOUNT OF WHITE POWDER. THE CANNISTER IS LABELED "SHOPPERS VALUE QUICK OATS"
MB 71	ONE PLASTIC BOTTLE LABELED "CHATEAU 70% ISOPROPYL RUBBING ALCOHOL", CONTAINING SPRINGS AND OTHER METAL OBJECTS
MB 72	ONE "CALUMET BAKING POWDER" CANNISTER CONTAINING MACHINED METAL PARTS
MB 73	ONE "CALUMET BAKING POWDER" CANNISTER CONTAINING PARTS OF A POCKET KNIFE BLADE AND OTHER ASSORTED METAL PARTS

ITEM	DESCRIPTION
MB 74	"JOHNSON & JOHNSON MEDICATED BAND-AID" METAL CAN CONTAINING VARIOUS METAL PARTS
MB 75	ONE METAL CAN CONTAINING WIRE AND OTHER METAL PARTS
MB 76	ONE CYLINDRICAL "QUAKER YELLOW CORN MEAL" CARDBOARD CANNISTER CONTAINING TWO SPOOLS OF SOLDER
MB 77	ONE CYLINDRICAL "QUAKER OATS" CARDBOARD CANNISTER CONTAINING WIRES, A SWITCH, AND AN ALLIGATOR CLIP
MB 78	BOTTOM HALF OF CARDBOARD INSTANT MILK BOX CONTAINING TUBE OF "TRUBOND" CLEAR SILICONE CAULK, CLEAR PLASTIC BOX OF SCREW DRIVERS WITH MASKING TAPE LABEL "254", WIRE BRUSH, A LEVEL, THREE PAINT BRUSHES, A PAPER BAG CONTAINING SMALL SQUAR MAGNETS, AND MISC. METAL PARTS
MB 79	HAND DRILL WITH BLUE AND RED WOOD HANDLE
MB 80	NINE PIECES OF WOOD APPROXIMATELY 8" LONG (APPEARS SIMILAR TO PANELING STRIPS)
MB 81	MISC. PIECES OF METAL, INCLUDING TIN CAN LID, BALL OF ALUMINUM FOIL, TWO PIECES OF BLUE HACK SAW BLADE, PIPE FITTINGS IN "T" FORMATION, AND PAIR OF PLIERS
MB 82	GROUP OF METAL FASTNERS, BUNDLED TOGETHER WITH BLUE RUBBER BAND
MB 83	TWO WHITE HOMEMADE ENVELOPES, ONE WITH HANWRITTEN NOTATION "WIRE", THE OTHER "DUMP"
MB 84	THREE YELLOW RUBBER GLOVES, ONE LABELED "ANSELL" BRAND, ANOTHER LABELED "LARGE, PLAYTEX, DOVER, DEL.". ALL THREE HAD THE WRIST AREA CUT OFF.
MB 85	ONE CUT PORTION OF A BATTERY, "RADIOSONDE, NSN-6135-01-054-2098, VIZ MFG. CO., 335 E. PIERCE ST., PHILA, PA, 19144 USA, PATENT NO. 3205.096", WRAPPED IN A PIECE OF NEWSPAPER DATED NOV. 22, 1995, PAGE 4 OF THE CONSUMER PRESS
MB 86	SMALL PLASTIC CONTAINER WITH STRIP OF BLACK TAPE AROUND IT AND TORN WHITE HADWRITTEN LAEL "LIMA DURAS DE HIERRO PARCIALMENTE LIMPIAS", CONTAINING BROWNISH-BLACK POWDER BELIEVED TO BE ALUMINUM
MB 87	TWO PLASTIC BOTTLES OF GLUE, ONE LABELED "ROSS MUCILAGE FOR PAPERWORK", THE OTHER LABELED "ROSS KANGAROO MUCILAGE"
MB 88	ONE METAL NUT CRACKER
MB 89	ONE METAL "HERSHEY'S COCOA" CAN CONTAINING MISC. NUTS AND BOLTS
MB 90	QUACKER YELLOW CORN MEAL CONTAINER WITH HANDWRITTEN NOTATION ON TOP "TRANSFORMER", CONTAINING ELECTRICAL WIRE AND MISC. ELECTRICAL PARTS
MB 91	ONE METAL "HERSHEY'S COCA" CAN CONTAINING MISC. METAL PARTS

ITEM	DESCRIPTION
MB 92	ONE BROWN PLASTIC CONTAINER CONTAINING TRACE MATERIAL
MB 93	"CALUMET DOUBLE ACTION BAKING POWDER" METAL CONTAINER CONTAINING A LUMP OF METAL
MB 94	ONE SMALL "SHOPPERS VALUE TOMATO PASTE" CAN CONTAINING RESISTERS AND A TAN PLASTIC SHOPPING BAG CONTAINING RESISTERS
MB 95	SEVEN ROLLED UP MAPS
MB 96	HOMEMADE OLIVE GREEN CLOTH POUCH CONTAINING A TAN PLASTIC SHOPPING BAG WITH THREE MATCHBOOKS WITH PLAYING CARD SYMBOLS ON IT, TWO PLASTIC BAGS WITH SMALL PIECES OF WOOD IN THEM, AND A COMPASS ON A STRING, AND A RED RUBBER BAND. BLUE DENIM PATCHES AND VARIOUS PIECES OF STRING ALL OVER OUTSIDE OF POUCH
MB 97	MISC. PIECES OF CURVED WIRE, METAL CAP IN DOUGHNUT SHAPE, AND ROUND PIECE OF METAL CUT IN STRIPS AROUND THE EDGES
MB 98	"GOLD MEDAL" FLOUR SACH CONTAINING MISC. DEBRIS (TO INCLUDE SOIL, WOOD, AND HAIR)
MB 99	TAN PLASTIC SHOPPING BAG CONTAINING VARIOUS TYPES OF CORD AND TWINE
MB 100	"FLAVORITE LARGE PITTED RIPE OLIVES" CAN CONTAINING LARGE AMOUNT OF SCREWS AND HANDWRITTEN NOTE "BURNED AND SOAKED IN CORRODING SOLUTION - CLEAN"
MB 101	GLASS JAR WITH RED METAL LID AND HANWRITTEN NOTE ATTACHED WITH MASKING TAPE WHICH STATES, "ALUMINUM FROM SOME TYPE OF PAINT - TYPE OF PAINT UNKNOWN". THE JAR CONTAINED CLUMPS OF SILVER-GREY COLORED SUBSTANCE.
MB 102	TWO OPEN SMALL ORANGE PLASTIC CONTAINERS COVERED WITH PIECES OF NEWSPAPER, ONE SECURED WITH A TAN RUBBER BAND
MB 103	ONE METAL RING AND A SPOOL OF BROWN THREAD LABELED "AMERICAN THREAD CO., STAMFORD, CT. 100% POLYESTER"
MB 104	METAL FILES WRAPPED IN ORANGE AND CLEAR PLASTIC BAG, WITH WHITE PIECE OF PAPER ATTACHED WITH A BLACK RUBBER BAND, WHICH APPEARS TO BE SOME KIND OF MATHMATICAL EQUATIONS
MB 105	ONE METAL CAN CONTAINING MISC. PIECES OF COPPER
MB 106	BROWN CARDBOARD BOX CONTAINING MISC. GRINGING WHEELS AND PIECES OF METAL
MB 107	"QUAKER YELLOW CORN MEAL" CARDBOARD CONTAINER CONTAINING PIECES OF SCREENING MATERIAL
MB 108	ONE HACK SAW BLADE WITH RED COLOR ON EACH END
MB 109	ONE METAL CAN CONTAINING MISC. SCREWS, METAL PARTS, AND A WHITE ENVELOPE WITH SILVER COIN PIECES IN IT

ITEM	DESCRIPTION
MB 110	TWO PIECES OF SPLINTERED HARD WOOD, WRAPPED IN A SHEET OF NEWSPAPER, PRONT PAGE OF "MISSOULIAN", FRIDAY, SEPT. 16, 1988
MB 111	THREE PAGES OF HANDWRITTEN NOTES ATTACHED TOGETHER WITH A METAL PAPER FASTNER, AND ROLLED UP USING A LARGE TAN RUBBER BAND
MB 112	ONE SPOOL OF TWINE SECRUED WITH A PIECE OF MASKING TAPE
MB 113	ONE SMALL BROWN PLASTIC BOTTLE, LABELED "NATURE MADE THERAPEUTIC M", WITH A PIECE OF MASKING TAPE AROUND IT, WITH HANDWRITTEN NOTATIONS "COARSE ALUMINUM FILINGS"
MB 114	ONE SMALL METAL CAN CONTAINING SMALL CLUMPS OF METAL. THE CAN IS COVERED WITH A PIECE OF NEWSPAPER AND SECURED WITH A DIRTY WHITE RUBBER BAND
MB 115	ONE "CALUMET BAKING POWDER" CAN CONTAINING SOLDERING WIRE
MB 116	ONE SMALL METAL CONTAINER (APPEARS EMPTY)
MB 117	ONE SMALL METAL CAN WITH WIRE HANDLE THROUGH IT, AND ONE PIECE OF METAL
MB 118	SEVEN METAL CASTINGS
MB 119	ONE SMALL BROWN PLASTIC BOTTLE LABELED "NATURE MADE THERAPEUTIC M" WITH PAPER LABEL ATTACHED WITH MASKING TAPE, WITH HANDWRITTEN NOTATIONS "ALLUMINUM FILINGS FROM OUR BIG BLOCK OF CAST ALUMINUM 5.1 oz"
MB 120	ONE "CARNATION DRY MILK" CARDBOARD CONTAINER.
MB 120A	SMALL ORANGE PLASTIC BOTTLE WITH WHITE PLASTIC CAP, WITH PIECE OF MASKING TAPE AROUND IT WITH HANDWRITTEN NOTATIONS "Ag Cl, SLIGHTLY PHOTO-DECOMPOSED".
MB 120AA	ONE WHITISH PLASTIC BOTTLE WITH BLACK CAP, LABEL "MANGANESE DIOXIDE (TECHNICAL) CONTACT WITH OTHER MATERIAL MAY CAUSE FIRE. DO NOT GRIND. DO NOT BREATHE DUST. 8J28D, 1/4 lbs., ANALYTICAL & RESEARCH CHEMICALS, INC."
MB 120B	SMALL BROWN PLASTIC BOTTLE WITH BLACK CAP, WITH PIECE OF MASKING TAPE AROUND IT, WITH HANDWRITTEN NOTATIONS "LITHORGETMINIUM & FREE LEAD NOT VERY PURE"
MB 120C	SMALL PLASTIC ORANGE CONTAINER WITH WHITE PLASTIC CAP, WITH A PIECE OF BLACK TAPE AROUND IT SECURING A WHITE LABEL WITH HANDWRITTEN NOTATION "Fe2 O3, .347 UNITS, Exp. 51, LOT (bi) WITHOUT H2 SO4"
MB 120D	SMALL PLASTIC TUBE CONTAINING BLUE POWDER. THE TUBE HAD MASKING TAPE AROUND IT, WITH THE HANDWRITTEN NOTATION "Cu SO4 5H2O COPPER SULFATE"
MB 120E	SMALL GLASS JAR WITH RED AND WHITE CHECKERED METAL CAP CONTAINING WHITE FLAKY SUBSTANCE, WITH MASKING TAPE AROUND IT, WITH HANDWRITTEN NOTATIONS "NH4 Cl AMMOTITAM CHLORIDE Exp. 136"

ITEM	DESCRIPTION
MB 120F	SMALL PLASTIC BOTTLE LABELED "SUPREME BRAND ASPIRIN TABLETS" CONTAINING PINK COLORED STRIPS OF PAPER AND WHITE LABEL "LITMUS PAPER NEUTRAL"
MB 120G	ONE SMALL WHITE PLASTIC BOTTLE WITH WHITE METAL CAP, LABELED "BAYER ASPIRIN", WITH MASKING TAPE AROUND IT, WITH HANDWRITTEN NOTATIONS "LEAD CHLORIDE - CONTAMINATED WITH SOME HYDROXIDE, OXIDE, OR CARBONATE OF LEAD"
MB 120H	WHITISH PLASTIC BOTTLE WITH RED PLASTIC CAP, CONTAINING A GREYISH POWDER
MB 120I	SMALL GREY PLASTIC BOX LABELED "PHYDRION VIVID, DOUBLE ROLL 5.5 TO 9.5, CATALOG NO. 168"
MB 120J	SMALL BROWN PLASTIC BOTTLE WITH WHITE PLASTIC CAP, WITH NOTEBOOK PAPER LABEL TAPED ON WITH MASKING TAPE WITH HANDWRITTEN NOTATIONS "Na2 Co3 FROM RED DEVIL LYE. SHOULD BE REASONABLY PURE, IF RED DEVIL LYE IS. (NO, NOT VERY PURE)"
MB 120K	WHITE PAPER ENVELOPE WRAPPED WITH MASKING TAPE WITH HANDWRITTEN NOTATIONS "ELMER'S BRAND MUCILAGE"
MB 120L	WHITISH PLASTIC BOTTLE WITH WHITE CAP LABELD "ORANGE". THE BOTTLE HAD A WHITE PAPER LABEL SECURED WITH MASKING TAPE. THE LABEL CONTAINED THE FOLLOWING HANDWRITTEN NOTATION "Fe(OH)2 PARTIALLY (OR WHOLLY?) OXIDIZED TO Fe(oh)3 Exp. 51, Lot E"
MB 120M	SMALL BROWN PLASTIC BOTTLE LABELED "THERAPEUTIC M" WITH MASKING TAPE AROUND IT, WITH HANDWRITTEN NOTATIONS "LEAD ACETATE, LEAD HYDROXIDE, LEAD CARBONATE, UNKNOWN PROPORTIONS, NOT VERY PURE"
MB 120N	ONE "CALUMET BAKING POWDER" CANS WITH PAPER LABEL SECURED WITH MASKING TAPE, WITH HANDWRITTEN NOTATIONS "BLACK SAND PRESUMABLY CONSIST LARGELY OF Fe O45"
MB 120O	WHITE PLASTIC BOTTLE WITH WHITE PLASTIC CAP LABELED "NDC 0923-0371-03 POWDERED ALUM (AMMONIUM ALUM) ASTRINGENT, WHITEWORTH"
MB 120P	WHITE PLASTIC BOTTLE WITH WHITE METAL CAP. BOTTLE CONTAINED A LABEL "McKESSON BORIC ACID CRYSTALS NF", AND HAD A SMALL WHITE PRICE TAG "112-1755, KIMME, BERGUMS, 1.93"
MB 120Q	SMALL TAN CARDBOARD BOX LABELED "FUEL COMPRESSED, TRIOXANE, RATION HEATING, F.S.N. 9110-263-9865, 3 BARS, SPECIFICATION: MIL-F-10805C, CAN-TITE RUBBER. CORPORATION, INWOOD, L.I., NEW YORK 11696"
MB 120R	ONE BROWN PLASTIC "OSCO CASTOR OIL" BOTTLE WITH WHITE PLASTIC CAP.
MB 120S	ONE "GRAPE SUPER SIP" PLASTIC BOTTLE WITH PAPER LABEL SECURED WITH MASKING TAPE BEARING HANDWRITTEN NOTATION "Fe2 O3 Exp. 51, LOT (di)"
MB 120T	SMALL CLEAR GLASS "FOLGERS" JAR WITH GOLD COLORED PLASTIC CAP CONTAINING GREENISH-GREY CRYSTALS. THE JAR HAS MASKING TAPE WRAPPED AROUND IT WITH THE HANDWRITTEN NOTATION "GREENISH PRECIPITATE (PRESUMABLY A COPPER COMPOUND) FROM Exp. 241."

ITEM	DESCRIPTION
MB 120U	WHITE PLASTIC "McKESSON BORIC ACID POWDER NF" BOTTLE WITH WHITE METAL CAP. THE BOTTLE HAS A SMALL WHITE PRICE TAG BEARING THE FOLLOWING INFORMATION "112-1797 H3HG BERGUMS 1.77"
MB 120V	ONE WHITISH PLASTIC "RASPBERRY SUPER SIP" BOTTLE WITH WHITE PLASTIC CAP WITH MASKING TAPE ACROSS AND AROUND CAP AND MASKING TAPE AROUND BOTTLE WITH HANDWRITTEN NOTATIONS "AgCl, HEAVILY CONTAMINATED WITH A1 COMPOUNDS AND OTHER CRAP"
MB 120W	WHITE ELONGATED PLASTIC BOTTLE WITH WHITE PLASTIC CAP, LABEL "LAXITIVE" (BRAND NAME NOT VISIBLE) WITH WHITE PAPER LABEL SECURED WITH MASKING TAPE, WITH HANDWRITTEN NOTATIONS "MIXTURE OF LITHANGE AND MINIUM, POSSIBLY CONTAMINATED WITH OTHER OXIDES OF Pb, ALSO PERHAPS CARBONATE AND NITRATE OF Pb, HYDROXIDE, AND A LITTLE FREE LEAD"
MB 120X	CLEAR GLASS JAR, WITH WHITISH PLASTIC STOPPER TYPE CAP, WITH WHITE PAPER LABEL SECURED WITH HANDWRITTEN NOTATIONS "AMORPHOUS CARBON (MADE BY HEATING SUCROSE)" CONTAINING A BLACK POWDERY SUBSTANCE
MB 120Y	METAL CAN, COVERED WITH A PIECE OF NEWSPAPER, SECURED WITH MASKING TAPE WITH HANDWRITTEN NOTATIONS "ALDER CHARCOAL"
MB 120Z	OBLONG WHITISH PLASTIC CONTAINER, WITH BLACK CAP, WITH BLACK TAPE AND MASKING TAPE AROUND THE CAP, LABEL "ALDRICH SCIENTIFIC, P3191, 500g, POTASSIUM CARBONATE, ANHYDROUS GRANULAR TECHNICAL, K, Co, FW 138.21, ALDRICH SCIENTIFIC, 5415 JACKWOOD DR., SAN ANTONIO, TX 78238-1897, LOT 9C06G"
MB 121	ROD SHAPED PIECES OF DARK COLORED/BLACKISH POWDER, WRAPPED IN HANDWRITTEN NOTE, INSIDE A RED AND WHITE CHECKERED BREAD BAG.
MB 122	THREE BUNDLES OF CLEAR GLASS TUBING; ONE WRAPPED IN A PAGE OF CONSUMER PRESS NEWSPAPER DATED JUNE 21, 1995, AND SECURED WITH YELLOW AND WHITE RUBBER BANDS; ANOTHER IS WRAPPED IN LARGE POCKET BUBBLE WRAP, WITH HANDWRITTEN NOTATION "5 m.m. PYREX TUBING"; ANOTHER IS WRAPPED IN LARGE POCKET BUBBLE WRAP WITH HANDWRITTEN NOTATION "10 m.m. PYREX TUBING", ALL WRAPPED TOGETHER IN A MISSOULIAN NEWSPAPER DATED JANUARY 16, 1991.
MB 123	ONE WHITE PORCELAIN MORTAR AND PESTLE, WRAPPED IN CONSUMER PRESS NEWSPAPER DATED APRIL 5, 1995, PAGE 26; AND SECURED WITH A YELLOW RUBBER BAND
MB 124	METAL CAN WITH HANDWRITTEN NOTATION "12:00AM", CONTAINING TWO METAL CASTINGS
MB 125	ROUND CARDBOARD CANNISTER, LABEL "OLD FASHIONED QUAKER OATS", WITH HANDWRITTEN NOTATIONS ON THE TOP "RUBBER TUBING, FUNNELS, BULBS, ETC.". THE CANISTER CONTAINS ASSORTED PIECES OF RUBBER TUBING, A SMALL PIECE OF GLASS TUBING, A BLACK RUBBER STOPPER, TWO METAL CLIPS AND ONE SMALLER ROUND CARDBOARD CANNISTER. THE SMALLER CANNISTER IS A "QUAKER YELLOW CORN MEAL" CONTAINER WITH HANDWRITTEN NOTATION ON THE TOP "PLASTIC AND GLASS TUBING, SHORT PIECES". THIS SMALLER CONTAINER CONTAINS ASSORTED PIECES OF PLASTIC AND RUBBER TUBING, SEVERAL BLACK RUBBER STOPPERS AND TWO METAL CLIPS
MB 126	ONE STAINLESS STEEL .22 CALIBER REVOLVER AND NINE .22 CALIBER ROUNDS OF AMMUNITION. THE REVOLVER IS FURTHER DESCRIBED AS AN "H & R INC. U.S.A., MODEL 930, SERIAL# AE 1935. THE REVOLVER HAS A BLACK HANDLE WHICH IS WRAPPED IN MASKING TAPE.
MB 127	ONE PACKAGE OF "GILLETTE SUPER BLUE BLADES" AND A VARIETY OF STRING AND TWINE BOUND TOGETHER WITH A BLUE RUBBER BAND IN A WHITE PIECE OF PAPER. THE PAPER HAS THE HANDWRITTEN NOTATION "ADDITIONAL TIES FOR BIG SHELTER CLOTH"

ITEM	DESCRIPTION
MB 128	ONE YELLOW AND BLACK PLASTIC "TRUE VALUE" FLASHLIGHT WITH LIGHTBULB IN IT BUT NO BATTERIES
MB 129	CARDBOARD BOX WITH U.S. POST OFFICE METERED MAIL "KANSAS CITY, MO, OCT. 27, '76", CONTAINING VARIOUS SPOOL OF TWINE, BUNDLES OF STRING, AND NUMEROUS STRIPS OF LEATHER
MB 130	ONE CARDBOARD BOX WHICH HAD CONTAINED ITEMS MB-79, MB-81, MB-83, MB-84, AND MB-86
MB 131	ONE METAL CAN CONTAINING PIECES OF CARVED WOOD AND CARVED BONE
MB 132	ONE "BAND-AID BRAND PLASTIC STRIPS" METAL CAN WRAPPED IN A PLASTIC BAG, SECURED WITH A BLUE RUBBER BAND, CONTAINING FINE STRANDS OF COPPER WIRE
MB 133	ONE PIECE OF WAVY WIRE BENT IN THE FORM OF A CIRCLE
MB 134	TAN PLASTIC SHOPPING BAG CONTAINING ONE CUT BRASS BRACKET/PIPE FITTING, TWO SMAL PIECES OF COPPER TUBING (ONE PIECE HAS MASKING TAPE AROUND IT), FOUR PLASTIC CONTAINERS (TWO WHITISH PLASTIC WITH WHITE METAL TOPS, ONE WHITISH PLASTIC WITH A RED PLASTIC TOP, AND ONE ORANGE PLASTIC WITH A WHITE PLASTIC TOP) EACH CONTAINING COPPER AND/OR OTHER METAL FRAGMENTS
MB 135	ONE ROUND, CARDBOARD "OLD FASHIONED QUAKER OATS" CANNISTER, CONTAINING AN ELECTRONICS TESTER, SER. NO. 800341385, WITH HANDWRITTEN NOTE ON MASKING TAPE ON FRONT "NOTE: WHEN ON 'HIGH' THE AMMETER GIVES INCORRECT READING. SEE EXP. 242."; HANDWRITTEN NOTE ON TOP OF CANNISTER, "AMMETER", BETWEEN TWO INTERSECTING PIECES OF MASKING TAPE
MB 136	ONE CLEAR PLASTIC BOX, CONTAINING ONE LONG FLAT HEAD NAIL, ONE PIECE OF WIRE, AND ASSORTED PIECES OF METAL
MB 137	ONE SMALL CLEAR GLASS JAR, WITH RED AND WHITE CHECKERED METAL CAP, CONTAINING TWO STAPLES (FOR WOOD) AND A SMALL AMOUNT OF GOLD, SHINY GRANUALS AND FLAKES
MB 138	ONE ORANGISH-YELLOW ELONGATED PLASTIC CONTAINER/BOX, CONTAINING NAILS, SMALL PIECES OF WOOD, AND SEWING INSTRUMENTS AND MATERIALS
MB 139	ONE ROLL OF "GOULD QUIKSTIK" BROWN PACKING TAPE, LABEL INSIDE ROLL "GOULD PACKAGING, INC., VANCOUVER, WA. 98666"
MB 140	ONE PAIR OF PLIERS
MB 141	ONE UNOPENED PACKAGE OF "COGHLAN'S WATERPROOF WOODEN MATCHES", "COGHLAN'S LTD., WINNIPEG, CANADA, MADE IN AUSTRALIA", CONTAINING FOUR BOXES OF MATCHES
MB 142	ONE WHITE PLASTIC BAG, CONTAINING A WHITE PLASTIC FACE MASK, WITH STRING AND RUBBER BAND ATTACHED TO IT, AND AN EMPTY PACKAGE OF "FLEXO PRODUCTS, INC. REPLACEMENT MICRO-FOAM FILTERS FOR PROTECTIVE MASK"
MB 143	ONE PIECE OF COPPER TUBING

ITEM	DESCRIPTION
MB 144	ONE METAL CAN CONTAINING A WHITE TOOTHBRUSH, BOTTLE CAPS, BALLS OF ALUMINUM FOIL, PIECES OF SCREENING MATERIAL, AND VARIOUS METAL PIECES
MB 145	ONE SMALL ROUND CARDBOARD "QUAKER YELLOW CORN MEAL" CANNISTER, CONTAINING NUMEROUS HOSE CLAMPS AND METAL BRACKETS, WITH HANDWRITTEN NOTATION ON THE TOP OF THE CANNISTER "HOSE CLAMPS ETC."
MB 146	TWO BLUE AND TWO ORANGE PLASTIC FUNNELS, AND ONE WHITE HOME MADE CLOTH FILTER FOR FUNNEL
MB 147	ONE PAPER "GOLD MEDAL WHOLE WHEAT FLOUR" BAG, CONTAINING SEVERAL LARGE NAILS, SECURED SHUT WITH A DIRTY TAN RUBBER BAND
MB 148	ONE WHITE PLASTIC JAR, WITH WHITE METAL CAP, LABEL "REXALL SUBLIMED SULFUR, N.F. (FLOWERS OF SULFUR), PARASITICIDE-SCABICIDE"
MB 149	ONE SMALL, SQUARE, YELLOW TIN, LABLE "JOHN WAGNER & SONS, RARE FLOWERY JASMINE TEA", CONTAINING ONE SMALL METAL WASHER, AND SEVERAL SMALL PIECES OF WIRE
MB 150	ONE PLASTIC BREAD BAG, SECURED WITH A SHOE LACE, CONTAINING FIVE SMALL CONTAINERS: (1) ONE ORANGE PLASTIC BOTTLE, WITH WHITE PLASTIC LID, WITH MASKING TAPE AROUND IT, WITH HANDWRITTEN NOTE "THERMITE LACED WITH CHLORATE MIXURE"; (2) ONE ORANGE PLASTIC CONTAINER, WITH WHITE PLASTIC CAP, WITH MASKING TAPE ON IT, WITH HANDWRITTEN NOTATION "EXP. 118"; (3) ONE ORANGE PLASTIC BOTTLE, WITH WHITE PLASTIC LID, WITH MASKING TAPE AROUND IT, WITH HANDWRITTEN NOTATION "KCLO3 + S + CHARCOAL + MUCILAGE"; (4) ONE ORANGE PLASTIC CONTAINER, WITH WHITE PLASTIC CAP, WITH MASKING TAPE AROUND IT, WITH HANDWRITTEN NOTATIONS "AL + S"; (5) ONE SMALL METAL CONTAINER, SILVER COLOR, WITH MASKING TAPE AROUND IT, WITH HANDWRITTEN NOTATION "SMOKELESS POWDER FROM REMINGTON .30-06 BRONZE POINTS"
MB 151	ONE TAN PLASTIC SHOPPING BAG, CONTAINING THREE ALUMINUM FOIL ENVELOPES/POUCHES; EACH WITH MASKING TAPE LABELS WITH HANDWRITTEN NOTATIONS: (1) "RESTOS PARCIALMENTE CUAJADOS DE MEZCLA 206-1(a) de EXPS 225, 228, 245, MEZCLA 206-1(A)"; (2) "MIX 158-4 (SLIGHTLY MODIFIED) FROM EXP. 244 CLEAN AND CAN BE USED."; (3) "MIX 158-4 EXP. 244. CLOTTED WITH ACETONE."
MB 152	ONE METAL CAN, WITH WHITE PAPER LABEL ATTACHED WITH STRAPPING FILAMENT TAPE, WITH HANDWRITTEN NOTATIONS "EXP. 126 PITTSBURGH CONTAINER #2"
MB 153	ONE CLEAR PLASTIC JAR, WITH WHITE METAL LID, WITH MASKING TAPEAROUND IT, WITH HANDWRITTEN NOTATIONS "(AL + S) + THERMITE"
MB 154	ONE PAPER CONTAINER OF "FLAVOTIE FINE GRANULATED SUGAR", SECURED WITH TWO LARGE RUBBER BANDS
MB 155	ONE PAPER "GOLD MEDAL WHOLE WHEAT FLOUR FLOUR" SACK, WITH HANDWRITTEN NOTATION "DUMP IN LINCOLN" AT THE BOTTOM, CONTAINING MISCELLAMEOUS DEBRIS (TO INCLUDE SOIL, SMALL PIECES OF WOOD, METAL, SCREWS, AND BOLTS), SECURED WITH A RUBBER BAND
MB 156	WHITE PLASTIC BAG, CONTAINING ONE LARGE ROUND CARDBOARD "QUAKER OLD FASHIONED OATS" CANNISTER, WITH HANDWRITTEN NOTATIONS "CLASS 1 NO RUST" ON INTERSECTING PIECES OF PACKING TAPE ON TOP, CONTAINING A LARGE VARIETY OF METAL PIECES AND WIRE
MB 157	ONE WHITE PLASTIC BAG, CONTAINING ONE SMALL, ROUND, CARDBOARD "QUAKER YELLOW CORN MEAL" CANNISTER, CONTAINING ONE ALUMINUM FOIL ENVELOPE/POUCH, CONTAINING "FLASH POWDER"; HANDWRITTEN NOTATIONS ON TOP OF CANNISTER "SPOONS" AND "EXP. 220" (CROSSED THROUGH)

ITEM	DESCRIPTION
MB 158	ROUND, METAL "CALUMET BAKING POWDER" CAN, WITH WHITE PAPER LABEL SECURED WITH MASKING TAPE, WITH HANDWRITTEN NOTATIONS "Na2C03 - IMPURE. PROBABLY CONTAMINATED WITH NaHCU3, NaCL, and NaCL03. THIS IS THE FIRST LOT OF CRYSTALS REMOVED MARCH 23. ANDSECOND LOT."
MB 159	ONE BROWN PLASTIC BOTTLE, WITH CLEAR PLASTIC LID, LABEL "OSCO DRUG VITAMIN MINERAL FORMULA", WITH MASKING TAPE AROUND IT, WITH HANDWRITTEN NOTATIONS "CRUDE KCL03, MEDIUM KCL03, CONTENT. MUST BE FILTERED."
MB 160	BLUE POWDER LIKE SUBSTANCE
MB 161	WHITE PLASTIC BOTTLE, LABEL "RIT LIQUID DYE", WITH MASKING TAPE AROUND IT, WITH HANDWRITTEN NOTATIONS "CaS04 (NOT DRY)"
MB 162	BROWN PLASTIC BOTTLE, WITH WHITE METAL CAP, AND PINK COLORED PLASTIC TWISTED UNDER CAP, WITH MASKING TAPE AROUND BOTTLE, WITH HANDWRITTEN NOTATIONS, "MOSTLY KCL, WITH MODEST AMOUNT KCL03, TARE WITH CAP = 0.6 OZ."
MB 163	ONE METAL CAN, WITH ALUMINUM FOIL PRESSED OVER THE TOP, WITH WHITE PAPER LABEL SECURED WITH MASKING TAPE, WITH HANDWRITTEN NOTATIONS, "CUIDADO MUY SENSIBILIZADO MEZCLA C DE EXP. 90 ESTA ESTA LA MISMA QUE LA MEZELA #5", CONTAINING LARGE BLACK PARTICLES
MB 164	ONE GLASS BOTTLE, WITH WHITE METAL CAP, LABEL "McKESSON GLYCERIN USP, #21315, McKESSON LABORATORIES, DUBLIN, CA. 94566"
MB 165	LIQUID SAMPLE FROM BOTTLE MARKED "SODIUM TARTRATE"
MB 166	LIQUID SAMPLE FROM BOTTLE MARKED "KCL"
MB 167	WHITISH PLASTIC BOTTLE, WITH WHITE METAL CAP, WITH CLEAR PLASTIC TWISTED UNDER CAP, WITH LABEL "McKESSON SALTPETER (POTASSIUM NITRATE)", WITH SMALL BRIGHT YELLOWISH-GREEN PRICE TAG "BERGUM DRUG, WHY PAY MORE? $1.73"
MB 168	SMALL BROWN BOTTLE, WITH WHITE PLASTIC CAP, WITH MASKING TAPE AROUND BOTTLE, WITH HANDWRITTEN NOTATIONS "CRUDE KCL03 GOOD PURITY, EXCEPT THAT IT MUST BE FILTERED. TARE WITH CAP = 0.6 OZ."
MB 169	ONE CLEAR PLASTIC BOTTLE, WITH CLEAR PLASTIC CAP, WITH PINK PLASTIC TWISTED UNDER CAP, WITH MASKING TAPE AROUND BOTTLE, WITH HANDWRITTEN NOTATIONS, "CRUDE KCL03 - GOOD PURITY" (TWICE)
MB 170	ONE ROUND CARDBOARD AND METAL CANNISTER, LABEL "CLABBER GIRL BAKING POWDER", CONTAINING SILVER-GREY POWDERY SUBSTANCE
MB 171	TWO SMALL WHITE CARDBOARD BOXES, LABEL "POTASSIUM CHROMATE K. CrO, FOR LAB USE ONLY, HAGENOW LABS, INC., MANITOWOC, WIS.", IN A WHITE PLASTIC SHOPPING BAG
MB 172	ONE WHITE PLASTIC SHOPPING BAG, CONTAINING A WHITE POWDERY SUBSTANCE, AND CONTAINING A SMALL CLEAR PLASTIC BAGGIS WITH AN ALUMINUM FOIL ENVELOPE/POUCH, CONTAINING A POWDERY SUBSTANCE (POSSIBLY "FLASH POWDER")

ITEM	DESCRIPTION
MB 173	ONE SMALL PLASTIC ORANGE CONTAINER, WITH WHITE PLASTIC CAP, WITH WHITE PAPER LABEL SECURED WITH MASKING TAPE, WITH HANDWRITTEN NOTATIONS "BaSO4 MAY BE CONTAMINATED WITH A LITTLE MgCL2 AND SMALLER AMOUNT OF MgSO2"
MB 174	SMALL WHITE PLASTIC JAR, WITH WHITE METAL CAP, WITH HANDWRITTEN NOTATION "SMALLEST", CONTAINING METAL SCREW/BOLT AND NUT
MB 175	ONE WHITISH PLASTIC BOTTLE, WITH WHITE METAL CAP, WITH MASKING TAPE AROUND BOTTLE, WITH HANDWRITTEN NOTATIONS "PURE SUCROSE GROUND FINE"
MB 176	ONE CLEAR GLASS JAR, WITH WHITE METAL CAP, WITH PICTURE OF A LION ON THE CAP AND THE NAME "WAGNER", WITH MASKING TAPE AROUND JAR, WITH HANDWRITTEN NOTATIONS "CURIC HYDROXIDE?" (CROSSED OUT) AND "PROBABLY BASIC CARBONATE Cu2(OH)2 CO3, CONTAINING BLUE POWDERY SUBSTANCE
MB 177	WHITISH PLASTIC BOTTLE, WITH WHITE METAL CAP, AND CLEAR PLASTIC TWISTED UNDER CAP, LABEL "McKESSON BORIC ACID CRYSTALS NF, NDC 0022-0144-85", AND SMALL SQUARE BRIGHT YELLOWISH-GREEN PRICE TAG "BERGUM DRUG WHY PAY MORE? $1.93"
MB 178	ONE WHITE PLASTIC BOTTLE, WITH WHITE PLASTIC CAP, LABEL "FLOWERS OF SULFUR USP, WHITEWORTH INC., GARDENA, CA. 90248, NDC 0923-3500-03", WITH MASKING TAPE AROUND THE BASE, WITH A SMALL WHITE SQUARE PRICE TAG "BERGUMS 217-6956 L5GJB $5.17"
MB 179	SMALL ORANGE PLASTIC CONTAINER, WITH WHITE PLASTIC CAP, WITH MASKING TAPE AROUND CONTAINER, WITH HANDWRITTEN NOTATIONS "SILVER OXIDE Ag2O"
MB 180	ONE SMALL CLEAR GLASS JAR, WITH WHITE METAL CAP, WITH HANDWRITTEN NOTATIONS "WASHED CHARCOAL VERY FINELY GROUND", CONTAINING BLACK POWDERY SUBSTANCE
MB 181	ONE SMALL ORANGE PLASTIC CONTAINER, WITH WHITE PLASTIC CAP, WITH BLACK TAPE AROUND IT SECURING A WHITE PAPER LABEL, WITH HANDWRITTEN NOTATIONS "Fe2O3 EXP. 51, LOT (bi), WITH H2SO4"
MB 182	ONE ROUND METAL CAN, LABEL "CALUMET BAKING POWEDR", WITH A PIECE OF NEWSPAPER OVER THE TOP, SECURED WITH MASKING TAPE AROUND THE CAN, WITH HANDWRITTEN NOTATIONS "PERFECTLY CLEAN", AND ONE ROUND BROWN CARDBOARD CANNISTER, WITH SILVER COLORED METAL LID, CONTAINING A POWDERY SUBSTANCE (POSSIBLY "FLASH POWDER")
MB 183	UNKNOWN POWDER
MB 184	GLASS BOTTLE CONTAINING CLEAR LIQUID
MB 185	RUBBER BANDS AND TIES
MB 186	TWO PIECES OF METAL
MB 187	SMALL PIECE OF CUT METAL
MB 188	(3) RAZOR, (1) THERMOMETER

ITEM	DESCRIPTION
MB 189	CORDAGE
MB 190	TWO PLASTIC CONTAINERS WITH WHITE CRYSTALLINE MATERIAL
MB 191	(5) PAIRS OF GLASSES AND (1) CLEAR LENS
MB 192	LONG PIECE OF INNER TUBE
MB 193	TWO CANS OF ADHESIVES
MB 194	.25 CALIBER GUN (RAVEN ARMS), MAGAZINE CONTAINING SIX BULLETS, AND ONE BULLET
MB 195	VACUUM DEBRIS
MB 196	VACUUM DEBRIS
MB 197	DUST AND DEBRIS
MB 198	VACUUM DEBRIS
MB 199	VACUUM DEBRIS
MB 200	SCREWS
MC 1	THREE BLUE BINDERS
MC 2	TWO BINDERS
MC 3	TWO BINDERS
MC 4	TWO BINDERS
MC 5	MISC. DOCUMENTS IN YELLOW ENVELOPES
MC 6	36 BOOKS
MC 7	GLOVES

ITEM	DESCRIPTION
MC 8	SHOE INSOLES
MC 9	NYLON & CORD
MC 10	RIFLE SCOPE WRAPPED IN PLASTIC
MC 11	GREENISH COLORED COAT
MC 12	VITAMIN JAR CONATAINING STEEL PINS
MC 13	RAG PILLOW
MC 14	BLANKET
MC 15	THREE MITTENS AND TWO BOOTS
MC 16	TWO WOOD PLANKS (ONE WITH ALUMINUM COVERING)
MC 17	BLUE SCARF
MC 18	SCARF (TURQUOISE AND GREEN)
MC 19	RED HAT
MC 20	STRAPPING
MC 21	BOLT ACTION 22 CALIBER RIFLE
MC 22	REMINGTON MODEL .700 3006 #6292650
MC 23	STRAW HAT AND STRINGS
MC 24	INFORMATION ON WHITE PAPER RE. 30-06
MC 25	WOODEN/METAL CONTRAPTION
MC 26	ONE HAND BOWED WOOD SAW

ITEM	DESCRIPTION
MC 27	BOOK SHELF
MC 28	METAL BRACKET
MC 29	SCREEN SAMPLE
MC 30	WOOD AND NAILS
MD 1	TWO CHECK BOXES, ONE CONTAINS A TOOTHBRUSH THE OTHER CONTAINS A DENTAL INSTRUMENT
MD 2	ENVELOPES, HANDWRITTEN DOCUMENTS AND MISC. DOCUMENTS
MD 3	TWO BOOKS OF CHECKS #135-159 AND #160-184, ACCOUNT NUMBER 001 04219 12 IN THE NAME OF THEODORE J. KAZCYNSKI FROM THE WESTERN FEDERAL SAVINGS BANK.
MD 4	ENVELOPES CONTAINING MISC. DOCUMENTS
MD 5	BROWN BOX CONTAINING ENVELOPES CONTAINING MISC. DOCUMENTS
MD 6	PADDED ENVELOPES AND SELF ADHESIVE LABELS IN TAN PLASTIC "OSCO DRUG" SHOPPING BAG
MD 7	ONE BOX OF MEAD ENVELOPES, ONE PACKAGE OF SELF-ADHESIVE LABELS, AND ONE PACKAGE OF HOLE REINFORCERS
MD 8	ONE BLUE SPIRAL NOTEBOOK AND ONE BLACK VINYL NOTEBOOK
MD 9	PLASTIC SHOPPING BAG CONTAINING MONTANA DRIVER'S LICENCE, $32.00 CASH, AND MISC. HANDWRITTEN NOTES
MD 10	ONE SMALL TOMATO PASTE CAN CONTAINING 87 CENTS AND A BLACK WATCH AND RECEIPT
MD 11	TWO METAL CANS CONTAINING "SECRETS" BOX, PAPER CLIPS AND KEYS
MD 12	TWO METAL CANS CONTAINING PIPE CLEANERS, WRITING INSTRUMENTS, RULERS AND A WATCH
MD 13	STACK OF MAPS RUBBER BANDED TOGETHER
MD 14	TWO SMALL CARDBOARDED BOXES AND TYPEWRITER RIBBONS
MD 15	PLASTIC CONTAINER WITH ASSORTED MAPS AND MATCHBOOK FROM "UNITED SYSTEM STORES", LOMBARD, ILLINOIS

ITEM	DESCRIPTION
MD 16	SIX BOOKS: EASTERN MYSTICISM, BASIMOV'S GUIDE TO THE BIBLE, HOLY BIBLE-DICTIONARY CONCORDANCE, COMES THE COMRADE, LES MISERABLE VOLUMES I and II
MD 17	PLASTIC K-MART SHOPPING BAG CONTAINING CARBON PAPER AND MISC. PAPER
MD 18	THREE NOTEBOOK BINDERS AND A PAD OF COLORED CONSTRUCTION PAPER
MD 19	NOTEBOOK AND MISC. PAPERS
MD 20	CAN OPENER
MD 21	METAL CONTAINER/CAN (APPEARS TO BE EMPTY)
MD 22	METAL CONTAINER/CAN LABELED "VEG-ALL" (APPEARS TO BE EMPTY)
MD 23	METAL CONTAINER/CAN (APPEARS TO BE EMPTY)
MD 24	BLACK, OBLONG METAL CAN (APPEARS TO BE EMPTY)
MD 25	BLACK, OBLONG METAL CAN (APPEARS TO BE EMPTY)
MD 26	BLACK, OBLONG METAL CAN (APPEARS TO BE EMPTY)
MD 27	ONE CLEAR GLASS JAR CONTAINING VISIBLE RESIDUE
MD 28	ONE CLEAR GLASS JAR CONTAINING DENTAL BRIDGE
MD 29	ONE PLASTIC JAR LABELED "HONEY USDA FOOD" (APPEARS EMPTY)
MD 30	ONE BLACK, OBLONG METAL CAN (APPEARS EMPTY)
MD 31	FOUR BROWN, OBLONG PLASTIC LIDS
MD 32	ONE SMALL PLASTIC JAR WITH PARTIAL LABEL (APPEARS EMPTY)
MD 33	ONE SMALL PLASTIC JAR, BROWN WITH ORANGE LABEL "NUTRI-PLUS, CALCIUM, MAGNESIUM AND ZINC" (APPEARS EMPTY)
MD 34	ONE SMALL PLASTIC JAR, LABELED "CALCIUM HYDROXIDE, USP" (APPEARS EMPTY)

ITEM	DESCRIPTION
MD 35	ONE METAL CAN (APPEARS EMPTY)
MD 36	ONE METAL CAN COVERED WITH PAPER AND RUBBER BAND
MD 37	ONE METAL CAN LABELED "VEG-ALL" (APPEARS EMPTY)
MD 38	ONE SMALL METAL CAN (APPEARS EMPTY)
MD 39	ONE CONTAINER OF MORTON SALT
MD 40	ONE WHITE "MIX 'N DRINK" PLASTIC CUP
MD 41	ONE WHITE "MIX 'N DRINK" PLASTIC CUP
MD 42	ONE WHITE "MIX 'N DRINK" PLASTIC CUP
MD 43	ONE WHITE "MIX 'N DRINK" PLASTIC CUP
MD 44	ONE WHITE PLASTIC CUP
MD 45	BOX OF "PROVERB SERIES" MATCHBOOS, CONTAINING 21 MATCHBOOKS
MD 46	RAZOR BLADES, WRAPPED IN ALUMINUM FOIL
MD 47	ONE SMALL TIN CAN CONTAINING VISIBLE RESIDUE
MD 48	ONE GLASS JAR WITH BLUE METAL LID
MD 49	ONE METAL FRYING PAN WITHOUT HANDLE
MD 50	ONE METAL CAN
MD 51	ONE GLASS JAR LABELED "ADAMS UNSALTED 100% NATURAL PEANUT BUTTER" AND EXTRA LID (APPEARS EMPTY)
MD 52	BOTTOM-HALF OF PLASTIC WATER JUG, PARTIAL LABEL "DISTILLED WATER"
MD 53	ONE METAL CAN (APPEARS EMPTY)

ITEM	DESCRIPTION
MD 54	ONE METAL CAN (APPEARS EMPTY)
MD 55	ONE METAL CAN (APPEARS EMPTY)
MD 56	ONE METAL CAN LABELED "DEL MONTE DICED TOMATOES" (APPEARS EMPTY)
MD 57	ONE METAL CAN LABELED "VEG-ALL" (APPEARS EMPTY)
MD 58	ONE SMALL METAL CAN (APPEARS EMPTY)
MD 59	ONE CARDBOARD BOX FULL OF MISC. DOCUMENTS, ENVELOPES AND LEATHER PORTFOLIO
MD 60	GREEN CANVAS U.S. ARMY BACKPACK
MD 61	KHAKI COLORED CLOTH, SOMEWHAT DETRIORATED AND RESSEMBLING A SKI MASK
MD 62	WOODEN HANDLED HAMMER
MD 63	ONE PACKAGE OF SAW BLADES
MD 64	ONE LONG BLADED BLACK HANDLED KNIFE
MD 65	SAW (HANDSAW)
MD 66	ONE WOODEN, APPARENTLY HAND-MADE, MEASURING INSTRUMENT
MD 67	ONE SMALL BROWN GLASS BOTTLE
MD 68	METAL CAN CONTAINING SPENT CARTRIDGE CASINGS
MD 69	ONE BAKING POWDER CANNISTER WITH MASKING TAPE LABEL, HANDWRITTEN, "TRIGGER SPRING FOR .22 RIFLE"
MD 70	TWO PACKAGES OF WATER PROOF MATCHES, AND ONE MATCHBOOK
MD 71	ONE RED METAL BOX CONTAINING GUN CLEANING KIT, LABELED "SEARS, CAL.30 6 20253"
MD 72	ONE PIECE OF METAL WITH CURLED END

ITEM	DESCRIPTION
MD 73	ONE COIL OF ROPE
MD 74	ONE SMALL, ROUND, CARDBOARD "QUAKER YELLOW CORN MEAL" CANNISTER, CONTAINING WHITE POWDERY SUBSTANCE
MD 75	ONE WHITE PLASTIC JAR, WITH BLACK PLASTIC CAP, LABEL "2919 TARTARIC ACID N.F. HUMCO LABORATORY, TEXARKANA, TEXAS 75501", WITH PORTION OF RED TAMPER RESISTANT TAPE ACROSS THE CAP, AND A SMALL, WHITE SQUARE PRICE TAG "247-9996 IEUR, BERGUMS $8.83"; LABEL STATES "FILL AUG. 3 - 83, EXP. MAY - 88"
MD 76	ONE LARGE WHITISH PLASTIC JAR, WITH WHITE PLASTIC CAP, LABEL "NDC-0395-2285-01 HUMCO LABORATORY, PLASTER OF PARIS (DENTAL)",CONTAINING WHITE POWDERY SUBSTANCE
MD 77	WOOD PIECES
MD 78	STAPLES
MD 79	WIRE RING
MD 80	SCABBARD
MD 81	FEATHERS
MD 82	THIS ITEM# WAS NOT USED
MD 83	SHELF
ME 1	STEEL/METAL SCREEN WITH WOOD FRAME
ME 2	WOOD BRACE AND SCREW
ME 3	SCREWS AND NAILS
ME 4	TWO PULLEYS
ME 5	SCREWS
ME 6	STAPLES
ME 7	CORDAGE
ME 8	SCREWS AND WIRES

ITEM	DESCRIPTION
ME 9	STRAINER, HOOKS
ME 10	WIRE
MF 1	VACUUM SWEEPINGS OF MAIN FLOOR
MF 2	FILINGS/DEBRIS
MF 3	FILE (TOOL)
MF 4	FILE WITH RED HANDLE
MF 5	METAL FILES
MF 6	BRUSHED DEBRIS
MF 7	PACKAGE OF MANLO ENVELOPES
MF 8	BROWN BAGS/NEWSPAPERS
MF 9	DEBRIS/CARDBOARD
MF 10	FOLDED CARDBOARD BOX
MF 11	PLASTIC BOTTLE (CUT IN HALF) WITH ROLLED NOTEBOOK PAPERS
MF 12	IMPROVISED EXPLOSIVE DEVICE (IED) CONTAINED IN A CARDBOARD BOX, WRAPPED IN PLASTIC BAGS WITH VARIOUS TAPE AND RUBBER BANDS
MF 12A	PIPEBOMB
MF 12AA	OUTER PIPE WITH ATTACHED METAL FRAGMENTS
MF 12AB	PIPE SHAVING AND FILLER
MF 12AC	END PLUG/METAL FRAGMENTS
MF 12AD	TAPE AND TWINE, OUTER WRAP OF PIPE

ITEM	DESCRIPTION
MF 12AE	IMPROVISED DETONATOR AND FILLER
MF 12AF	BULK FILLER
MF 13	THIS ITEM# WAS NOT USED
MF 14	SMALL BLUE SPIRAL NOTEBOOK CONTAINING HANDWRITTEN NOTES IN TAT PLASTIC SHOPPING BAG WITH RUBBER BANDS
MF 15	SIX TWIGS FROM PAPER CONTAINER
MF 16	PLIERS/VISE GRIP
MF 17	CARDBOARD CYLINDER CONTAINER
MF 18	HATCHET
MF 19	TRAVELING KIT - NYLON BAG WITH CONTENTS, WITH LIST OF ITEMS.
MF 20	NAILS
MF 21	SHOES - WITH DOUBLE SOLE OF DIFFERENT SIZES (Contained in a plastic bag)
MF 22	ALLUMINUM RECTANGULAR PAN
MF 23	BATTERIES (SIZE C - 2 BATTERIES)
MF 24	BOX OF WAX PAPER
MF 25	PIECE OF WOOD WITH A PIECE OF WAX PAPER
MF 26	BROWN SWEATER ROLLED IN PLASTIC BAG
MF 27	DIRTY GREEN TARP - IN PLASTIC BAG
MF 28	HAT, BROWN BAG, CAMOFLAGE JACKET, GREEN/BROWN PANTS and CANVAS JACKET CONTAINED IN PLASTIC BAG
MF 29	PLASTIC RAIN GEAR (PANCHO)

ITEM	DESCRIPTION
MF 30	BROWN PLASTIC RAIN COAT
MF 31	KNIFE
MF 32	MAPS OF LOCAL AREA (2 MAPS)
MF 33	CANVAS GREEN/BROWN FACE MASK AND BLACK CANVAS FACE MASK
MF 34	RADIO AND MAP OF LINCOLN, MT., AREA
MF 35	WHITE RAGS TIED TOGETHER
MF 36	PLASTIC BAG WITH TWO FISH HOOKS, STRING, AND TWO BOXES OF MATCHES.
MF 37	POCKET KNIFE
MF 38	PIECES OF WOOD IN PLASTIC
MF 39	PLASTIC GARBAGE BAG/BAG CONTAINING CLOTHING STRIPS
MF 40	IODIZED SALT IN BOTTLE
MF 41	AMMO PACK AND WATER PROOF MATCHES
MF 42	PIPE APPROXIMATELY 6 1/2 FOOT LONG
MF 43	HAND-MADE GUN WITH SPENT CARTRIDGE
MF 44	WOOD BOARDS IN FOIL
MF 45	DEBRIS
MF 46	MISC. WOOD WITH SCREWS AND NAILS TO INCLUDE PIECES FROM THE WOOD BIN ITSELF, BED, AND BED FRAME
MF 47	ONE LARGE PIECE OF WOOD BIN
MF 48	ONE BOTTLE OF TRAZADONE/ANTI-DEPRESSANT

ITEM	DESCRIPTION
MF 49	WOODEN FRAGMENTS
MF 50	WOODEN FRAGMENTS IN PLASTIC CONTAINER
MF 51	TIN CONTAINING HANDTOOLS
MF 52	TWO SPADES/HAND SHOVELS
MF 53	SIX METAL BARS
MF 54	LONG PIECE OF METAL
MF 55	NEWSPAPER ARTICLES
MF 56	CORN MEAL BOX CONTAINING SPOOLS, WOOD, AND FOAM
MF 57	TWO AXES
MF 58	PIECE OF CABLE
MF 59	PLASTIC BAG OF STITCHING HOOP AND THREAD
MF 60	PLASTIC BAG CONTAINING FILTER PAPER TO MEASURE BURN AND DOCUMENTS EXPLAINING IT
MF 61	MISC. METAL PIECES, SCREWS, BOLTS, ETC
MF 62	PAIR OF FORGING PLIERS
MF 63	PIECES OF WOOD
MF 64	SPRINGS AND NOTE ON ENVELOPE IN QUICK OATS BOX
MF 65	MISC. METAL AND BRASS IN QUICK OATS BOX
MF 66	TIN CAN LIDS IN QUICK OATS BOX
MF 67	METAL CAN

ITEM	DESCRIPTION
MF 68	CARDBOARD CAN WITH TRACE
MF 69	METAL POT AND LID
MF 70	CALUMET CAN CONTAINING WAX TYPE SUBSTANCE
MF 71	PIECE OF SHEET METAL
MF 72	A CUT PORTION OF AXE BLADE
MF 73	METAL CAN CONTAINING UNKNOWN RESIDUE
MF 74	METAL CAN CONTAINING UNKNOWN RESIDUE
MF 75	METAL CAN CONTAINING UNKNOWN RESIDUE
MF 76	METAL CAN CONTAINING UNKNOWN RESIDUE
MF 77	METAL CAN CONTAINING UNKNOWN RESIDUE
MF 78	METAL CAN CONTAINING UNKNOWN RESIDUE
MF 79	CARDBOARD BOX OF WIRE AND A PLASTIC BAG
MF 80	CARDBOARD CONTAINER WITHIN ONE METAL CAN
MF 81	PLASTIC CONTAINER
MF 82	MISC. PIPES, METAL ROD AND A TIRE TOOL
MF 83	BLACK POWDER AND SMOKELESS POWDER
MF 84	LOOSE METAL PARTS
MF 85	PLASTIC BUCKET CONTAINING THICK BLACK MATERIAL
MF 86	PAPER BAG CONTAINING METAL CONTAINER WITH METAL TOPS AND WIRE

ITEM	DESCRIPTION
MF 87	ONE PLASTIC BAG CONTAINING VARIOUS DRILL BITS AND OTHER METAL ITEMS
MF 88	METAL CONTAINER OF BLACK GRANULAR MATERIAL
MF 89	METAL CONTAINER CONTAINING WHITE POWDER MATERIAL
MF 90	THREE PLASTIC BOTTLES LABELED "ALCOHOL" CONTAINING LIQUID
MF 91	TWO METAL FRAGMENTS
MF 92	ONE WHITE PLASTIC CONTAINER OF WHITE POWDER
MF 93	ONE METAL CAN CONTAINING KEYS AND TWINE
MF 94	PLASTIC CONTAINER OF WHITE POWDER
MF 95	TWO SAMPLE, ONE EACH FROM TWO PAINT CANS
MF 96	SAMPLE OF ASH TAKEN FROM POT
MF 97	SAMPLE OF ASH TAKEN FROM WOOD STOVE
MF 98	AMMUNITION FOR .22 CALIBER
MF 99	AMMUNITION
MF 100	GREEN NOTEBOOK
MF 101	VACUUM DEBRIS
MF 102	VACUUM DEBRIS
MF 103	WOOD
OC 1	TOOL MADE WITH REBAR
OC 2	SAMPLE OF CABIN WALL

ITEM		DESCRIPTION
OC	3	STAPLES REMOVED FROM HOMEMADE LADDER
OC	4	CORRODED METAL LIKE MATERIAL
OC	5	PAINT CAN WITH ACETONE CAN IN IT
OC	6	SCREEN WIRE
OC	7	PAINT CAN WITH ACETONE
OC	8	PIECE OF GREEN LICENSE PLATE
OC	9	SAMPLE OF SCREEN
OC	10	PAINT SCRAPINGS
OC	11	PAINT SCRAPINGS
OC	12	CAN OF ADHESIVE
OC	13	GLAZING COMPOUND
OC	14	CAN LABELED ACETONE
R	1	CERAMIC BOWL
R	2	CERAMIC CUP
R	3	CERAMIC CUP
R	4	CERAMIC CUP
R	5	RUSTED SHEET METAL
R	6	TWO STRIPS OF BURNT STEEL
RSP	1	(IED) PARTIAL SECTION OF WOODEN BOX.

ITEM	DESCRIPTION
RSP 1A	(IED) PIECE OF LABEL FROM THE WOODEN BOX.
RSP 2A	(IED) PIECE OF LABEL FROM THE WOODEN BOX.
RSP 2	THIS ITEM# WAS NOT USED
RSP 3	(IED) PARTIAL SECTION OF WOODEN BOX.
RSP 4	(IED) PACKAGING MATERIAL.
RSP 5	(IED) MISC. DEBRIS

(END OF REPORT)

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

HELENA DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. THEODORE JOHN KACZYNSKI, Defendant.	Crim No. MCR 96-6-H-CCL **MOTION TO RETURN PROPERTY, DISMISS COMPLAINT, STAY GRAND JURY PROCEEDINGS AND PROHIBIT FURTHER PROSECUTION**

COMES NOW Theodore Kaczynski (Kaczynski), by and through his undersigned counsel, and moves the Court for an order that would (i) return the property taken from his cabin; (ii) dismiss the complaint pending against him, (iii) during the pendency of this motion temporarily prohibit the United States from indicting him for any federal crime, in any federal district, which is in any way connected to the so-called "unabomber" investigation, and also (iv)

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that would permanently enjoin the government from prosecuting Mr. Kaczynski for such charges altogether.

This motion is based on this notice and is made pursuant to the 4th, 5th and 6th Amendments to the United States Constitution, and under the aegis of Rule 41(e) of the Federal Rules of Criminal Procedure.

The reasons and authority for these requests are more fully set forth in the supporting memorandum of argument and authority that we have filed herewith.

WHEREFORE Kaczynski prays that the Court will consider these motions and grant the relief requested herein.

Respectfully Submitted April 14, 1996.

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CERTIFICATE OF SERVICE

I hereby certify that on April 15, 1996, a true and accurate copy of the above and foregoing was duly served upon the following counsel of record by: _____ fax transmission; ✓ hand delivery; or _____ depositing the same in the United States Mail, postage prepaid, addressed as follows:

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

HELENA DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. THEODORE JOHN KACZYNSKI, Defendant.	Crim No. MCR 96-6-H-CCL **MEMORANDUM IN SUPPORT OF MOTION TO RETURN PROPERTY, TO DISMISS COMPLAINT AND TO PROHIBIT FURTHER PROSECUTION**

Theodore John Kaczynski (Kaczynski) has moved the Court for an order that would return his property, dismiss the complaint pending against him, and prohibit the government from prosecuting him further for crimes related to the so called "unabomber" investigation. This memorandum supports that motion.

JURISDICTION

Rule 41(e) of the Federal Rules of Criminal Procedure allows for the filing of a pre-indictment motion for return of property in

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the "district court for the district in which the property was seized" *Id. Also see, Center Art Galleries-Hawaii v. United States of America*, 875 F.2d 747, 752 (9th Cir. 1989), quoting with apparent approval *United States v. Roberts*, 852 F.2d 671 (2nd Cir. 1988).

Courts have divided on the standard applicable to pre-indictment, as opposed to post-indictment, Rule 41(e) motions. For example, in *In re Campola*, 543 F.Supp. 115 (N.D. N.Y. 1982) the court held that a pre-indictment motion for return of property should only be considered when the following factors are satisfied.

(1) when there has been a clear showing of a search and seizure in callous disregard of the fourth amendment or some other constitutional or statutory provision;

(2) when the movant would suffer irreparable injury if relief is not granted; and

(3) when the movant is without an adequate remedy at law.

Another district court, however, holds that Rule 41(e) requires consideration of a pre-indictment suppression motion without regard to such restrictions, which are usually applicable to lawsuits requesting equitable relief. *Roberts v. United States*, 656 F.Supp. 929, 932-33 (S.D.N.Y. 1987), *rev'd on other gr.* 852 F.2d 671 (2d Cir. 1988), *cert. denied*, 488 U.S. 993, 109 S.Ct. 556, 102 L.Ed.2d 583 (1988).

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Without waiving his right to argue later on that the non-restrictive standard of *Roberts* applies, Kaczynski asserts that he meets the factors set forth in *Campola*. First, as the discussion below indicates, there is sufficient evidence to justify the tentative conclusion that the United States deliberately and systematically leaked information to the media in derogation of Kaczynski's 4th and 5th Amendment rights. Second, without quick and decisive action by this Court through treatment of this motion, Kaczynski will forever be denied his constitutional entitlement to an unbiased grand jury indictment(s), therefore the potential for irreparable harm is substantial. And, third, there simply is no other remedy. The government should not be allowed to proceed before various grand juries throughout the country, that have been permanently poisoned by the government's outrageous conduct in disclosing to the media the highly incriminating nature of the evidence taken from Kaczynski's cabin. Because, once those indictments are handed up, and undoubtedly they will be, the government will be able to argue that proceeding to trial before a petit jury is the appropriate cure for its misbehavior. *See United States v. Mechanik*, 475 U.S. 66, 67, 106 S.Ct. 938, 940 (1986) (petit jury's guilty verdict demonstrates that there was probable cause to charge the defendant thus convictions must stand despite Rule 6 violation).

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Therefore, the Court should act now and take this inevitable argument out of the government's quiver, by making an immediate determination of the issues raised herein. And in the meantime, while these issues are being considered, the Court should prohibit the government from going before any grand jury, in any district on any charge, until a decision on this motion has been rendered.

Having stated the jurisdictional base for this motion, we now proceed to argue its merits.

INTRODUCTION

This case began on April 3, 1996, when the government applied to this Court under seal for a warrant to search Kaczynski's cabin at Lincoln, Montana. After considering the application the Court granted the government's request and a search warrant was issued.

In due course a search of Kaczynski's cabin ensued. And almost immediately media reports started coming over the airwaves (radio and T.V.) that an unidentified person, thought to be the "unabomber", had been apprehended. These initial reports went unabated for several hours. Thereafter, similar reports were issued containing more details. Not only did these later reports identify Kaczynski as the "unabomber", they also contained blow-by-blow accounts of the alleged evidence being taken by the government agents from his cabin. Next the print media became involved and

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newspapers across the country began publishing similar type stories. And this pattern continues, even at this writing.

The burden to conduct a fair and thorough prosecution undoubtedly falls to the government. And in no manner do we challenge the government's right to do so. However, in carrying out such duties prosecutors are subject to constraints and responsibilities that do not apply to other lawyers. While it can generally be said that lawyers representing private parties must do everything ethically permissible to advance their clients' interests, lawyers and their investigative agents representing the government in criminal cases serve truth and justice first. The prosecutor's job is not just to win, but to win fairly, staying well within the rules. For example, it has been specifically held that

> The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor -- indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

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Berger v. United States, 295 U.S. 78, 88, 55 S.Ct. 629, 633 (1935) *overruled on other grounds*, *Stirone v. United States*, 361 U.S. 212, 80 S.Ct. 270 (1960). And, in a similar vein, Justice Douglas once warned

> The function of the prosecutor under the Federal Constitution is not to tack as many skins of victims as possible to the wall. [H]er function is to vindicate the right of the people as expressed in the laws and give those accused of crime a fair trial.

Donnelly v. DeChristoforo, 416 U.S. 637, 648-49, 94 S.Ct. 1868, 1874 (1974) (Douglas, J. dissenting).

Thus, although the warrant granted the government the right to search Kaczynski's cabin, at the same time it was the government's responsibility to do so in a manner that would be considerate of Mr. Kaczynski's statutory and constitutional rights. Yet in this latter respect the government has utterly, miserably, and most of all deliberately, failed. And blame for this condition must be assigned to those responsible for it.

Against this background Kaczynski makes three contentions.

CONTENTIONS

First, Kaczynski has a right to due process and equal protection, under the United States Constitution, which includes the right to an unbiased grand jury process. *See* U.S. Const. Amend. 5. Also Kaczynski has the right to be free from

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unreasonable search and seizure and to a fair trial under the 4th and 6th Amendments, respectively.

Second, these rights have been irreversibly abridged by the government's deliberate and unlawful disclosure of the evidence allegedly seized and/or information allegedly obtained as a result of the search of Kaczynski's cabin.

Third, the government should be held accountable for this calculated destruction of Kaczynski's rights through the imposition of three sanctions: (i) return of all of the property taken from his cabin; (ii) dismissal of the pending complaint, and (iii) an order from the Court that would temporarily, and then permanently, prohibit the government from prosecuting Kaczynski any further.

We now address these three contentions.

ARGUMENT AND AUTHORITY

Kaczynski has the rights to due process and equal protection which includes an unbiased grand jury process.

The due process provision of the 5th Amendment was intended to guarantee procedural standards adequate and appropriate to protect at all times people charged with or suspected of crime by those holding positions of power and authority. *Chambers v. State of Florida*, 309 U.S. 227, 236, 60 S.Ct. 472, 476-477 (1940). Also, the Due Process Clause of the 5th Amendment to the United States

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Constitution includes a guarantee of equal protection that is parallel to that which is contained in the 14th Amendment. *See*, e.g., *Weinberger v. Wisenfield*, 420 U.S. 636, 638, n.2, 95 S.Ct. 1225, 1228, n.2. An action that violates equal protection when committed by a state actor violates the due process clause of the 5th Amendment when committed by a federal actor. *Johnson v. Robison*, 415 U.S. 361, 364-365, n.4, 94 S.Ct. 1160, 1165, n.4 (1974).

Furthermore, the 5th Amendment affords the accused the right to be indicted by an unbiased grand jury. *See e.g. Beck v. Washington*, 369 U.S. 541, 546, 82 S.Ct. 955, 958 (1962) (due process probably entitles the accused to an unbiased grand jury in venues that employ such a procedure). The grand jury is part of our constitutional heritage, which was brought to this country with the common law. It functions as a "barrier to reckless or unfounded charges." *United States v. Mandujano*, 425 U.S. 564, 571 96 S.Ct. 1768, 1774 (1976). For centuries the office of the grand jury has been to provide a shield against "arbitrary or oppressive action, by insuring that serious criminal accusations will be brought only upon the considered judgment of a representative body of citizens acting under oath and under judicial instruction and guidance." Ibid.

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In contrast to these overarching due process rights contained in the 5th Amendment, the 4th and 6th Amendments embody more particular guarantees. Under the former the people enjoy the right to be free from "unreasonable searches and seizures." *See, e.g. United States v. Hotchkiss*, 60 F.Supp. 405, 407 (Dist. Ct. Maryland 1945) (whether search and seizure is unreasonable depends on whether what was done and found bears reasonable relation to authority then possessed or transcends it to become oppressive). And under the 6th Amendment the accused enjoys the right to a fair, speedy and public trial. *See, e.g., Duncan v. Louisiana*, 391 U.S. 145, 194, 88 S.Ct. 1444 (1968) (right to jury trial is a fundamental one).

These rights have been irreversibly abridged.

Since April 3, 1996, the government has been intentionally leaking highly prejudicial information to the print and electronic news media. To prove this we have annexed hereto a survey of news articles (*See* Appendix A). These articles contain information concerning damning evidence alleged to have been found in Kaczynski's cabin. And in each instance the source for such information was a government agent.

In our second appendix (*See* Appendix B), we share with the Court a simple word search that we conducted on a news source

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database. The word configuration that we used for the search was: "**KACZYNSKI UNA-BOMB FEDERAL OFFICIAL ANONYMOUS SOURCE**". This word formula turned up ***2,204 stories throughout America***.[1]

This pattern of deliberate disclosure by government officials has unalterably compromised Kaczynski's constitutional rights in two separate but related ways. First, it rendered the search of Kaczynski's cabin "unreasonable" within the meaning of the Fourth Amendment. In simple terms, it was constitutionally unreasonable within the meaning of the 4th Amendment for government officials and agents to provide the media minute-by-minute, graphic descriptions of the evidence being collected, when they knew that such evidence would eventually have to be put before a grand jury or juries in order to bring charges.

These deliberate disclosures poisoned the entire population of grand jurors within the United States against Mr. Kaczynski. Thus, by carrying out the search of the cabin in the unreasonable manner described above, the government has made it forever impossible for

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[1] Later in this memorandum we ask for an evidentiary hearing so that we can prove to the Court that the government is responsible for the leaks (*see* pp 11 and 12 below). Also at that hearing we expect to provide more detailed statistical information concerning the number, content and sources of damning stories that have been published throughout America. Here we note for sake of emphasis that what we have included in Appendices A and B is just the proverbial tip of the iceberg, and is only representative of the proof we expect to bring before the Court.

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Mr. Kaczynski to obtain his constitutional entitlement to an unbiased review of the evidence by the grand jury.

The government's conduct in this case has been primitive and most nearly resembles the lynch mob mentality depicted in such classics as the *Ox Bo Incident* (Walter C. Clark, 1943), just to name one. The criminal trial process is not like an election to be won through the use of the T.V., radio and newspapers. It is a cautious and controlled series of procedures designed to determine fairly the actual guilt or innocence of the accused. In Mr. Kaczynski's case the possibility that he could ever be afforded anything that might even remotely resemble that process has been forever lost.

The government's predictable response to all of this will be two-sided. First, the government will contend that it is not responsible for the leaks. And then it will argue that Mr. Kaczynski would never be able to show that he was prejudiced by them in any event. In anticipation of these unsatisfactory responses Kaczynski argues as follows.

On the first point we concede that "it is not asking too much that the burden of showing essential unfairness be sustained by him who claims such injustice." *United States v. Handy*, 351 U.S. 454, 462, 76 S.Ct. 965, 970 (1956). But the party who bears such a burden must be given an adequate opportunity to fulfill it. Thus,

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if the government's rejoinder to these papers in any way suggests that it is not responsible for the lethal media blitz that has been occurring over the past couple of weeks, Kaczynski is entitled to an evidentiary hearing to prove that assertion wrong.[2]

In this connection we would envision calling as witnesses at such a hearing the media personnel who printed or reported some of the more egregious stories, to have them name their government sources in open court. Furthermore, we anticipate calling as a witness the Deputy Attorney General of the United States in charge of the Criminal Division of the Department of Justice to determine what, if any, measures were taken before the search warrant was executed, and then later after the leaks started occurring, to insure that security would be maintained, *vis-a-vis*, the evidence and information being collected during the search.

On the second anticipated government argument (Kaczynski's inability to show prejudice) we argue that this case presents a situation where the structural protections of the grand jury have

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[2] On the issue of the requirement for a hearing on this motion *see United States v. Handy*, 351 U.S. 454, 462, 76 S.Ct. 965, 970 (1956) ("[p]etitioner has been given ample opportunity to prove that he has been denied due process of law" based on atmosphere of hysteria and prejudice resulting from news coverage). And also *Wood v. Georgia*, 370 U.S. 375, 387, 82 S.Ct. 1364, 1371 (1962) (record "barren" of findings necessary to support conclusion that county sheriff interfered with grand jury process by incendiary public comments). By implication these cases suggest that upon an adequate initial showing on issues such as these, an evidentiary hearing and findings are required.

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been so compromised by the government's misconduct that any remaining process would be fundamentally unfair, thereby allowing for a presumption of prejudice. Cases of this ilk are exemplified by *Vasquez v. Hillery*, 474 U.S. 254, 106 S.Ct. 617 (1986) where it was held that racial discrimination in selection of grand jurors compelled dismissal of the indictment. In addition to involving an error of constitutional magnitude, the court in *Vasquez* noted that other remedies were impractical and it could be presumed that a discriminatorily selected grand jury would treat the defendant unfairly. In *Ballard v. United States*, 329 U.S. 187, 67 S.Ct. 261 (1946) the court reached a similar conclusion where women had been excluded from the grand jury. Thus the nature of the violations in *Vasquez* and *Ballard* controlled and allowed for the presumption of prejudice.

In *United States v. Russell*, 411 U.S. 423, 431-432, 93 S.Ct. 1637, 1643 (1973) the court observed that conceivably a situation could one day arise in which "the conduct of [government] agents is so outrageous that due process principles ***would absolutely bar the government from invoking judicial process to obtain a conviction***" Id. (emphasis added). Thus Kaczynski argues that in combination *Vasquez*, *Ballard* and *Russell*, provide the legal framework necessary to warrant the granting of a hearing on these issues, and to

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justify serious consideration of the drastic remedies of dismissal and no further prosecution that we pray for herein.

CONCLUSION

WHEREFORE, Kaczynski prays that the Court will entertain this motion in the context of an evidentiary hearing, and in the meantime prohibit the government from indicting Mr. Kaczynski in any district in these United States.

Respectfully Submitted April 14, 1996.

MICHAEL DONAHOE
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CERTIFICATE OF SERVICE

I hereby certify that on April 15, 1996, a true and accurate copy of the above and foregoing was duly served upon the following counsel of record by: ____ fax transmission; ✓ hand delivery; or ____ depositing the same in the United States Mail, postage prepaid, addressed as follows:

Bernard F. Hubley
Assistant United States Attorney
United States Attorney's Office
100 N. Park Ave., Suite 100
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Debbi S Allen

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APPENDIX A

GREAT FALLS TRIBUNE, APRIL 4, 1996

Page 1 A member of the Unabom task force, speaking to The Associated Press on condition of anonymity, identified the man as Ted John Kaczynski and said he had been using many aliases.

Page 8A Rick Smith, who retired just on Friday from the FBI in San Francisco, headquarters of the Unabom task force, said the force had half a dozen good suspects in the case in recent months, and all but one of them appeared less likely to be the Unabomber as the investigation continued. The one who became more likely is the man in Montana, he said. "On this particular instance, the further we went along the more likely it was he was a viable suspect. So I think the FBI's fairly certain they have the right man," he said.

BILLINGS GAZETTE, APRIL 4, 1996

Page 1 Sources told The Gazette federal officials have "extremely damaging" evidence against 55-year-old Ted John Kaczynski,....A source close to the case told The Gazette officials have a document of Kaczynski's written years ago that mirrors the Unabomber's 35,000-word manifesto.

THE MONTEREY COUNTY HERALD, APRIL 5, 1996

Page 12A Federal officials said searchers also found two manual typewriters. The Unabomber has sent a sheaf of typed letters over the past few years, and investigators wanted to compare those with the typewriters.

THE BILLINGS GAZETTE, APRIL 5, 1996

Page 2A David Kaczynski was torn between duty to country and loyalty to family before he pointed investigators toward his older brother as a possible suspect in the 18-year series of Unabomber attacks, federal agents said Thursday. Ultimately, Kaczynski got an acquaintance, a Washington lawyer, to relay his suspicions to the FBI in early January, according to agents who requested anonymity.

THE INDEPENDENT RECORD, APRIL 5, 1996

Page 4A He [Kaczynski] submitted to lengthy questioning without requesting a lawyer, another federal official [said]....

Noting the lack of electricity at the cabin, agents said the Unabomber could have built his meticulous bombs without power tools, one official said.

Page 5A " We know he was a smashing success professionally. He graduates from Harvard at the age of 20, gets his Ph.D. in Michigan and then gets a job in the mathematics department at Berkeley," said Michael Rustigan, a criminologist at San Francisco State University who assisted in crafting the investigative profile used by the Unabom Task Force. "This is absolutely the premier mathematics department in the nation and he gets a job there as an assistant professor. He has one of the most brilliant careers in the country before him, and then he quits after two years. What happened? That's the question. What happened?" "This kind of success is truly an exception for serial killers," Rustigan said.

Page 8A The officials denied a CBS News report that alibi evidence for two bombings had been uncovered. "Nothing has been found that precludes him from being the Unabomber," said a senior federal official in Washington.

BILLINGS GAZETTE, APRIL 6, 1996

Page 1 **Typewriter is a match, says federal official**
(Headline)

A manual typewriter found in Theodore J. Kaczynski's shack appears to be the one the Unabomber used to type his letters and his grand manifesto about the evils of technology, a federal official said Friday.

Two manual typewrites were taken from the cabin and were being analyzed at FBI headquarters in Washington, but "it looks like the manifesto and the letters from the Unabomber were typed on" one of them, according to the official in Washington , who spoke on condition of anonymity. "We'll know for sure after the detailed lab analysis."

A federal agent speaking on condition of anonymity said the search of the hand-built 10-by-12 foot cabin was going slowly for fear of booby traps.

THE NEW YORK TIMES, APRIL 7, 1996

Page 1 Yesterday, investigators trying to connect Mr. Kaczynski to the bombings determined that, as they had suspected, he had frequently ridden intercity buses, which would have allowed him to travel from Montana to both Utah and Northern California, where the bomber had been active since 1981.

Page 13 Federal agents say Theodore Kaczynski lived in Salt Lake City for a while in the early 1980's - though city and state agencies there say they have no record of him - and the bomber's activities shifted there then.

HOUSTON CHRONICLE, APRIL 7, 1996

ABC News reported late Friday that agents found intricately carved wooden boxes in the shack. Carved videocassette-sized wooden boxes, sometimes made from four different woods, were used in some of the Unabomber's bombs.

The Washington Post Saturday quoted an unnamed official in Washington as saying they were "99.9 percent sure" that Kaczynski is the Unabomber, who began his campaign of terror in 1978 when a person was injured by a bomb that exploded at Northwestern University in Evanston, Ill.

In other developments Saturday, U.S. News and World Report reported that, according to U.S. Department of Justice sources, Kaczynski had relied on his family to support him over the years, receiving thousands of dollars from them. That could explain how a man with no visible means of support could have traveled the county planting or mailing bombs.

THE SACRAMENTO BEE, APRIL 7, 1996

So far, Kaczynski has been charged with nothing more than a single count of possessing bomb components. But the federal source said investigators who have been hunting the Unabomber are uncovering a wealth of information inside his ramshackle hovel and are "150 percent certain" they have their man.

Investigators looked at the documents, including letters that Kaczynski had written over the years to his mother, Wanda, and were stunned: They read like an introduction to the manifesto. "I said, 'This guy either wrote the manuscript or he is very close to the person who did,' "said a federal investigator.

MISSOULIAN, APRIL 7, 1996

Page B2

Investigators defuse bomb
(Headline)

Investigators discovered and defused a live bomb in the cabin of Theodore Kaczynski, the former math professor suspected of being the elusive Unabomber, a federal law officer said Saturday.

Agents, who have been warily searching Kaczynski's cabin since he was taken into custody Wednesday believe the bomb they diffused Friday was intended for someone in particular, said the official. Authorities now have little doubt that they have apprehended the man responsible for placing or mailing bombs that have killed three people and injured 23 others over the past 18 years, said the official, who spoke on condition of anonymity. "I've been working this case since 1985," he said. "If it isn't him, I don't know who it is."

CHICAGO TRIBUNE, APRIL 7, 1996

Page 1

Search by FBI yields live bomb
(Headline)

The explosive apparently was intended for a specific target, said one federal official, refusing to elaborate.

THE MONTANA STANDARD, APRIL 8, 1996

The Chicago Tribune reported Sunday that federal agents in mid-March searched a shed at the Kaczynski family home in the Chicago suburb of Lombard, Ill., and found matches, traces of gunpowder and half-empty containers of compounds used in making explosive devices. The newspaper, citing unnamed sources, said agents also determined that Kaczynski was in the Chicago area when the first four Unabomber devices were planted or mailed from there in the late 1970's and early 1980's.

THE SACRAMENTO BEE, APRIL 8, 1996

Federal sources, speaking on a condition of anonymity, said he [Kaczynski] may have stayed in Northern California for months at a time.

Federal sources have told The Bee that they are "150 percent" certain that Kaczynski, 53, is the elusive bomber who has eluded them for almost 18 years.

The sources, speaking on condition of anonymity, said they have uncovered a "gold mine" of evidence in his Montana cabin linking him to the bombings, including manual typewriters they believe may have been used for typing his 35, 000-word anarchistic manifesto.

MISSOULIAN, APRIL 8, 1996

Page 1 Federal agents searching the cabin of former University of California, Berkeley, math professor Theodore Kaczynski have found evidence directly connecting him to at least one of the bombings carried out by the elusive Unabomber, a source familiar with the investigation said Sunday.

Investigators also disclosed Sunday that the bomb discovered in Kaczynski's cabin over the weekend was not only fully constructed, but had batteries attached to it - a key step in the final arming of a bomb.

So linking Kaczynski even to one of the 16 bombs is a significant step toward connecting him to all - a connection that investigators are growing increasingly confident of being able to make. "It's there" said a federal source, who requested anonymity.

AUSTIN AMERICAN-STATESMAN, APRIL 9, 1996

One official described the similarities between one of the bombs found in the cabin and one used in a fatal attack as striking, akin to two cars of the same make and model. "It was as if once he found the right design, he stuck with it," the official said.

NEW YORK POST, APRIL 9, 1996

Page 4 Law-enforcement officials say the former Berkeley professor is the mastermind behind a 17-year bombing campaign - apparently driven by a hatred of technology - that killed three people and wounded 23.

GREAT FALLS TRIBUNE, APRIL 10, 1996

Page 1 Sources said investigators have discovered "something big" in the form of evidence that is more conclusive than anything yet disclosed.

It took 17 years to arrest a suspect in the Unabomber attacks, but the book industry isn't waiting that long to cash in. On April 25, Pocket Books will rush into publication "Unabomber: On the Trail of America's Most-Wanted Serial Killer" ($5.99), by former FBI unit chief John Douglas and Mark Olshaker. The book recounts the FBI's long pursuit of the elusive Unabomber from the first of the 16 bombings, which have killed three and wounded 23, through suspect Theodore Kaczynski's capture in Montana last week. The book will include photographs. Douglas, an expert on criminal personality profiling, created the FBI's first profile of the Unabomber.

THE INDEPENDENT RECORD, APRIL 10, 1996

Page 1

Victim links
Names found in Kaczynski's papers
(Headline)

The names of Unabomber victims have turned up in Theodore Kaczynski's writings found at his wilderness cabin, and federal agents have discovered possible causal contacts between him and four victims, officials said Tuesday.

"There is a general consistency in the written plans and the physical evidence found at the cabin scene, with the Unabomber's work," said a law enforcement official in Washington, commenting only on conditions of anonymity. "The names of some victims were found in the cabin", he said, declining to disclose them or in what form they appeared.

THE SACRAMENTO BEE, April 10, 1996

Kaczynski is being held on a single charge of possessing bomb components, but federal sources have said the are certain he is the Unabomber and more charges will follow.

Federal sources told The Bee that agents have found a list of categories of individuals who may have been future bombing targets - including executives and social climbers.

"He obviously did not plan to keep his promise (to cease bombing)," a federal source said.

Federal sources have said they are amassing evidence that Kaczynski, who lived like a hermit in Montana, traveled to Northern California and stayed for weeks or months at [a] time.

THE INDEPENDENT RECORD, APRIL 11, 1996

Page 7A

Report: Kaczynski had clothes that matched famous police sketch
(Headline)

Federal agents searching the Montana cabin of Unabomber suspect Theodore Kaczynski found aviator sunglasses and a sweatshirt similar to those seen by the only known witness to a Unabomber attack, newspapers in Chicago and San Francisco reported on Wednesday. The Chicago Tribune and San Francisco Examiner, citing an unidentified law enforcement official, said the shirt and glasses were found on Tuesday.

NBC Nightly News reported Wednesday that a live bomb found in Kaczynski's cabin had been wrapped for mailing and given a phony return address. It had not yet been addressed to anyone, the network said.

THE INDEPENDENT RECORD, APRIL 12, 1996

Page 4A Information from Justice Department sources indicates that Kaczynski apparently moved from Montana back to Chicago sometime that year. The first bomb detonated at Northwestern University in May 1978.

Page 7A "From IR wire service" The Boston Globe quoted an FBI sources.... The source also offered elaboration on evidence already obtained by agents. The manual typewriter reported by some newspapers to have matched the writing on the Unabomber's anti-technology manifesto in fact matched the labels on letters from the Unabomber to his targets, not the manifesto. In addition, a large number of maps with markings consistent with Unabomber attack sites were recovered, the source said.

THE WASHINGTON POST, APRIL 13, 1996

Page 1 **Reputed 'Manifesto' Recovered**
Bomb Suspect's Cabin Yields Draft Version In Search, Officials Say
(Headline)

Page 10 Officials this week confirmed that names of some Unabomb victims - and possible intended victims - had been found in unspecified documents inside Kaczynski's cabin.

The increasing evidence against Kaczynski is "overwhelming," said one senior official involved in the case.

THE NEW YORK TIMES, APRIL 13, 1996

Page 1 **BOMBER MANIFESTO IS FOUND IN CABIN, LAW OFFICIALS SAY WEEK'S HUNT IN MONTANA**

Manuscript Adds Crucial Piece to Body of Other Evidence - Tie to 3rd Typewriter

(Headline)

Page 1 Federal law-enforcement officials said today that agents searching Theodore J. Kaczynski's Montana cabin had found the original typewritten manuscript of the Unabomber's 35,000-word manifesto, a powerful piece of evidence that has convinced the authorities that they have the long-sought serial terrorist.

"If we lose this one," one law-enforcement official said, "we'd better close up and go home." The officials said the manuscript left little room for doubt that Mr. Kaczynski was the Unabomber. The officials said they believed that the manuscript found at the cabin was a master copy. From it, the Unabomber laboriously typed the copies of the manifesto that he sent to The New York Times and The Washington Post in June 1995, they said. Moreover, the officials said that along with the manifesto had been found an original of a letter sent by the Unabomber to The Times last year.

Near the manuscript in the loft of the tiny one-room cabin, agents found a third manual typewriter. The first two typewrites found did not match the typewriting on the manuscripts sent to the newspapers, and officials said today that they were relieved that preliminary tests had confirmed that the type on the third machine matched the typewriting of the manuscripts.

Page 10

Copy of Unabomber's Manifesto has Been Found in Suspect's Cabin Officials Say

(Headline)

Page 10 The officials said agents had also found handwritten notations that might refer to some of the bomber's victims in a loose-leaf notebook found in Mr. Kaczynski's cabin. The notations mentioned geneticists, airlines and computer technology.

The officials said the discovery of the manuscript in the cabin was a legally significant find in a search that has already yielded much physical evidence.

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CLIENT IDENTIFIER: ALLEN/KACZYNSKI
DATE OF REQUEST: 04/15/96
THE CURRENT DATABASE IS ALLNEWS

YOUR TERMS AND CONNECTORS QUERY:

KACZYNSKI UNA-BOMB! & FEDERAL-OFFICIAL ANONYMOUS SOURCE & DA(AFT 4/3/96 & BEF 4/16/96)

PAGE 1

CITATIONS LIST
Database: ALLNEWS

Search Result Documents: 2204[1]

1. 4/15/96 Wall St. J. A1 1996 WL-WSJ 3098830 The Wall Street Journal What's News World-Wide Word Count: 673

2. 4/15/96 Wall St. J. (Page Number Unavailable Online) 1996 WL-WSJ 3098812 The Wall Street Journal LEISURE & ARTS Television: Bombs Bursting on Air By Dorothy Rabinowitz Word Count: 911

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[1] Note that the list above continues for another 300 pages. The entire list was not attached in order to conserve the Court's time. The list is available if the Court wishes a copy.

APPENDIX B

U.S. NEWS & WORLD REPORT, APRIL 15, 1996

Page 30 Wanda Kaczynski didn't even ask the FBI agents to get a warrant, so on a brisk day in the middle of March, the agents conducted what is known as a consensual search of the residence. "That was really a treasure-trove," the senior Justice Department official told U.S. News. "We started analyzing the notes and letters. [Many] looked like the [Unabomber's 35,000-word] manifesto. He wrote about all of the same things in, really, some of the same phrases."

Page 31 ...and after some hurried checking, a confidential memorandum was forwarded to Attorney General Janet Reno saying, in the words of one key official, "this could be the guy."

The evidence was enough for the Unabom task force to authorize the search of Wanda Kaczynski's home. The search, investigators say, iced Kaczynski's identification as the Unabomber. Now all they had to do was arrest him.

Page 32 There was copper pipe of the type the Unabomber had used in his last four explosive devices. There was electrical wiring, C-cell batteries and a box the FBI team was afraid to open; an X-ray machine quickly identified the contents as a partially constructed pipe bomb. U.S. News has learned that a subsequent search of the cabin uncovered a completed bomb, described in a private Justice Department communication as a "fully functional device which is yet to be rendered harmless but which appears to have Unabom characteristics."

Such bomb-making materials alone could not identify Kaczynski as the Unabomber, but other items recovered from the cabin made the identification appear to be more airtight. Ten three-ring binders containing detailed handwritten notes in Spanish and English closely track the evolution of the Unabomber's explosive devices, according to a senior official

TIME, APRIL 15, 1996

Page 40 But when they finally, carefully entered the cabin, fearing booby traps, they found a whole bomb factory, including a partially built pipe bomb, chemicals, wire, books on bombmaking and hand-drawn diagrams. The cache even included components bearing, a source told Time, the unique signature of the Unabomber.

THE INDEPENDENT RECORD, April 13, 1996

Page 1

Manifesto Found
Unabomber's original treatise uncovered in cabin
(Headline)

Page 1 What appears to be the typed original of the Unabomber's 35,000-word manifesto has been found in the cabin of suspect Theodore Kaczynski, a law enforcement source said Friday. "We have not yet confirmed it, but it appears to be the original," the source told The Associated Press, speaking on condition of anonymity.

U.S. News and World Report said agents told the magazine the manuscript was indeed the original copy and was prepared on one of three typewriters removed from the cabin.

Page 7A A senior federal official in Washington disclosed earlier this week that all the Unabomber's communications, including the manifesto, had been typed on the same typewriter. Investigators believe he did that deliberately so authorities could authenticate the letters and rule out copy-cats.

NEWSWEEK, APRIL 15, 1996

Page 37 Last week, the investigators were forced to move quickly. From a leak, CBS News had learned about the stakeout and was threatening to break the story.

What they found inside, reportedly after a brief scuffle with the reclusive owner, was a do-it-yourself bomb lab. There were scientific volumes and 10 three-ring binders full of meticulously drawn bomb diagrams; jars full of chemicals useful for making explosives; metal ingots that could be used in explosives; batteries and electrical wiring for detonators. The agents also found a pair of old manual typewriters, one of which the Feds believe matches the typing on the 35,000-word anti-technology screed the Unabomber mailed to The New York Times and The Washington Post last June. G-men also discovered and defused a finished bomb that was all ready to be mailed.

Though Kaczynski has not yet been formally charged in any of the Unabombings, federal officials are confident they have the right guy. At last: federal agents had spent more than $50 million as well as a million work hours trying to catch the killer.

Page 42 At the Unabom project headquarters in San Francisco last week, the FBI and ATF agents traded high-fives. One ATF agent who's been on the case for three years decided to step out and walk the San Francisco streets by himself. He had seen the shattered office of the forestry-association official, splattered with body parts, and he had talked to more fortunate victims who had merely been injured. Now, as he walked along, he felt "a huge sense of relief. I thought to myself," he told Newsweek, "this guy will never kill anyone again."

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

****

UNITED STATES,

Plaintiff,

-v-

THEODORE JOHN KACZYNSKI,

Defendant.

MCR 96-6-H-CCL

ORDER

****

Before the court is Defendant's motion for return of property, to dismiss complaint, to stay grand jury proceedings, and to prohibit further prosecution. Defendant has requested an expedited ruling. The court is of the opinion that the issue of Defendant's entitlement to an evidentiary hearing should be briefed and heard in expedited fashion.

Accordingly.

IT IS HEREBY ORDERED that the government shall respond to Defendant's motion by filing a memorandum of authorities on or before Thursday, April 18, 1996 at 4:00 p.m. Defendant shall file any reply brief by Friday, April 19, 1996, at 12:00 noon.

IT IS FURTHER ORDERED that the matter is set down for

hearing and oral argument, on the narrow issue of whether the Defendant is entitled to an evidentiary hearing, on Friday, April 19, 1996, at 3:30 p.m., in the United States Courthouse, Helena, Montana.

The Clerk is directed forthwith to notify the parties of entry of this order.

Done and dated this 16th day of April, 1996.

CHARLES C. LOVELL
United States District Judge

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ALEX C. SIMMONS, JR. CLERK
BY DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

HELENA DIVISION

****

UNITED STATES,

Plaintiff,

-v-

THEODORE JOHN KACZYNSKI,

Defendant.

MCR 96-6-H-CCL

OPINION AND ORDER

****

This opinion and order confirm the court's April 19, 1996, bench ruling on Defendant's motion for return of property, to dismiss complaint, to stay grand jury proceedings, and to prohibit further prosecution. The government opposed the motion. The court considered the briefs and entertained argument on the question of an evidentiary hearing on April 19, 1996. The court denied the motion for return of property, to dismiss complaint, to stay grand jury proceedings, and to prohibit further prosecution for the reasons stated on April 19, 1996, and for the reasons outlined below.

Defendant asserts that the government has deliberately leaked information regarding its investigation of the Defendant,

and in so doing the government has violated Defendant's Fourth, Fifth, and Sixth Amendment rights. The primary relief Defendant seeks is a dismissal of the complaint and a permanent injunction prohibiting the United States from indicting the Defendant in any federal district for any crime connected to the Unabomber investigation. Defendant contends that: (1) Defendant has a right to an unbiased grand jury, U.S. Const. amend. V, a right to a fair trial, U.S. Const. amend. VI, and a right to be free from unreasonable search and seizure, U.S. Const. amend. IV; (2) these rights have been irreversibly abridged by the government's deliberate disclosure of evidence seized and information obtain as a result of the search of Defendant's residence; and (3) the government should be held accountable for its misdeeds by the imposition of sanctions (return of property, dismissal of complaint, and permanent restraint against prosecution).

Defendant cites Beck v. Washington, 369 U.S. 541, 546 (1962), for the proposition that Defendant has a right to be indicted by an unbiased grand jury. See also Costello v. United States, 350 U.S. 359, 363 (1956). Defendant also asserts that government leaks to the media regarding the search made the search "unreasonable," within the meaning of the Fourth Amendment. Defendant ultimately asserts that these deliberate

disclosures "poisoned the entire population of grand jurors within the United States against Mr. Kaczynski."

Defendant concedes, citing United States v. Handy, 351 U.S. 454, 462 (1956), that he bears the burden of showing any unfairness claimed by him. Defendant argues that he should be granted an evidentiary hearing to prove that the government is in fact responsible for the "media blitz" that followed the execution of the search warrant.

However, Defendant may be required to show actual prejudice from the pre-indictment publicity. Estes v. United States, 335 F.2d 609, 613 (5th Cir. 1964) ("There was no specific showing of bias and prejudice by appellant resulting from the widespread publicity, and the fact alone of such publicity did not in itself constitute a sufficient showing of bias and prejudice."). See also United States v. Hoffa, 205 F. Supp. 710, 718 (S.D. Fla. 1962) (holding that specific showing of prejudice necessary to vitiate indictment and mere demonstration of adverse publicity insufficient to establish prejudice). Thus, there is a requirement that Defendant show specific proof of prejudice of the grand jury that returns an indictment against him.

Without acknowledging any requirement that he show actual prejudice, however, Defendant asserts that this court should

relieve him of that obligation. Instead, Defendant asks this court to find that any grand jury would be so compromised by the government's alleged misconduct that the court should make a presumption of prejudice and, further, that the court should punish the government by prohibiting any prosecution of the Defendant. Defendant relies on cases making a presumption of prejudice when the grand jury is selected in a racially discriminatory fashion, see e.g., Vasquez v. Hillery, 474 U.S. 254 (1986), or when women are excluded from the grand jury, see Ballard v. United States, 329 U.S. 187 (1946). Defendant also relies on dicta in United States v. Russell, 411 U.S. 423, 431-32 (1973), which is an entrapment case, in which Justice Rehnquist observed that one day a case might arise in which "the conduct of law enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial process to obtain a conviction." However, in United States v. Stanford, 589 F.2d 285, 299 (7th Cir. 1978), cert. denied, 440 U.S. 983 (1979), the Seventh Circuit has specifically rejected the presumption of prejudice based upon pre-indictment publicity. See also United States v. Civella, 648 F.2d 1167, 1173-74 (8th Cir.), cert. denied, 454 U.S. 867 (1981) (effect of publicity determinative, rather than its source). Further, it is

agreed that "the grand jury need not deliberate in a sterile chamber" in order to remain unbiased. United States v. Burke, 700 F.2d 70, 82 (2nd Cir. 1982). Even if the government engaged in intentional misconduct, the correct response would not be a dismissal of the indictment but instead to secure a fair trial for the accused. Stanford, 589 F.2d at 299 (dismissal of charges improper, constituting "punishment of society for misdeeds of prosecutor").

Defendant makes no attempt to show actual prejudice to him resulting from adverse pre-indictment publicity. Even if he were to show prejudice, however, it is doubtful whether the proper course would be to dismiss the indictment. A Ninth Circuit panel that addressed this question has remarked that "[i]f a grand jury is prejudiced by outside sources when in fact there is insufficient evidence to indict, the greatest safeguard to the liberty of the accused is the petit jury and the rules governing its determination of a defendant's guilt or innocence." Silverthorne v. United States, 400 F.2d 627, 634 (9th Cir. 1968). See also United States v. Polizzi, 500 F.2d 856, 888 (9th Cir. 1974), cert. denied, 419 U.S. 1120 (1975). Similarly, in the Hoffa case, the district court stated that

> [t]o accept the contention urged by the defendants as a

> rule of law certainly would produce absurd results since no one who is prominent and well-known could be charged with the commission of any crime because the charge against such a person would cause very large and widespread publicity, precluding an indictment.

Hoffa, 205 F. Supp. at 717.

Defendant bears a heavy burden of showing actual bias and prejudice in order to obtain dismissal of an indictment for pre-indictment publicity. See United States v. Civella, 648 F.2d 1167, 1173 (8th Cir.), See also Bank of Nova Scotia v. United States, 487 U.S. 250, 254 (1988) ("a District Court may not dismiss an indictment for errors in grand jury proceedings unless such errors prejudiced the defendants"). This court has found no case, and none are cited by Defendant, which dismissed an indictment for pre-indictment publicity. See 8 Moore's Federal Practice, §6.04[9] (2d. ed. 1993) ("It appears, however, that no indictment has been dismissed for prejudicial preindictment publicity regardless of whether the publicity occurred through normal channels (citation omitted), or by unauthorized disclosure of grand jury material to the news media by the government (citation omitted)).

As for Defendant's Fourth Amendment argument, that the allegedly deliberate nature of the government's preindictment leaks to the press makes the search of Defendant's cabin

"unreasonable," the court finds the Defendant's argument to be without merit. The cases cited by Defendant are easily distinguished because the policies and regulations violated in those cases pertained directly to a search and seizure. In this case, the policies allegedly violated are at best only marginally related to the search and seizure. The court agrees with the government that the leaks have no bearing on the validity of the search warrant and do not pertain to either the scope of the search or the manner in which the government executed the warrant.

CONCLUSION

There has been an insufficient showing to warrant a hearing. The court seriously doubts that a hearing would produce any results for the Defendant.

The court does not treat this motion lightly. It is a substantial motion. Having said that, however, it is significant that there is insufficient evidence to give rise to an inference that any of the leaks complained of were deliberately contrived by the government to prejudice the Defendant. To the contrary, the Attorney General and the Director of the Federal Bureau of Investigation have each taken tough and vocal stances designed to present such leaks. Judge Freeh has ordered an investigation,

and he has promised dismissals and prosecution for any government officials releasing confidential information.

This is a case with intense public interest. There is bound to be extensive publicity. A vigorous press will almost certainly secure some news somehow in high profile cases such as this. While the government might prefer otherwise, however, leaks can and do occur and may be part of the price that we pay for the freedoms we enjoy in this country.

When there is a collision between the rights of the Defendant and the right of the public to know (particularly, as interpreted by the press) it is important to analyze the extent of these respective rights and to reach some balance between these important interests. Doing so, it is clear that Defendant has no constitutional right to perfection in the preindictment stage of this case, or for that matter, if he is indicted, in the trial stage. A defendant is entitled to fair treatment and to a fair trial if indicted.

If the Defendant is not indicted, the question is moot. If he is indicted then his entitlement to a fair trial before a jury of his peers properly selected, and properly instructed by the court, is his best remedy under all the circumstances present here.

Should news leaks continue and the government seem unable to prevent them, the court may revisit this issue.

The Clerk is directed forthwith to notify the parties of entry of this order.

Done and dated this 22nd day of April, 1996.

CHARLES C. LOVELL
United States District Judge

RECEIVED
APR 23 1996
U.S. ATTORNEY
Helena, Montana

IN THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

C.A. No._____

D.Ct. No. MCR 96-06-H-CCL

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-vs-

THEODORE JOHN KACZYNSKI,

Defendant-Appellant.

EMERGENCY MOTION UNDER CIRCUIT RULE 27-3 TO TEMPORARILY PROHIBIT THE UNITED STATES FROM INDICTING APPELLANT IN ANY DISTRICT FOR ANY ALLEGED "UNABOMBER" CRIME DURING THE PENDENCY OF THIS APPEAL

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

THE HONORABLE CHARLES C. LOVELL
UNITED STATES DISTRICT JUDGE, PRESIDING

**MICHAEL DONAHOE
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SUBMITTED: April 23, 1996

IN THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

C.A. No. _____

D.Ct. No. MCR 96-06-H-CCL

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-vs-

THEODORE JOHN KACZYNSKI,

Defendant-Appellant.

CIRCUIT RULE 27-3 CERTIFICATE

In satisfaction of the requirements contained in Circuit Rule 27-3, counsel states:

(i) ***The telephone numbers and office addresses of the attorneys for the parties are:***

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(ii) ***Facts showing the existence and nature of the emergency.***

The overarching objective of this appeal is to extinguish permanently the government's right to obtain an indictment against Theodore Kaczynski (Kaczynski) for crimes committed by the alleged "unabomber," which we believe is imminent. Meanwhile through this emergency motion we seek a temporary order that would prohibit the government from using evidence it took from Kaczynski's cabin, before any grand jury in the United States.

As a basis for this temporary and permanent relief we assert that government agents, who conducted a warranted search of Kaczynski's cabin, and other Department of Justice officials, deliberately and unlawfully disclosed highly incriminating information to the media about the nature and quality of the evidence that was found during that search.

Because of the government's deplorable disclosures, the name Kaczynski and the word "unabomber," are interchangeable. Thus, we contend that the government should not be allowed to proceed against Kaczynski before various grand juries throughout the country, which have been permanently poisoned by this outrageous government conduct.

The district court denied the relief that we pray for herein. Accordingly, we bring this appeal and request this interim order

because Kaczynski's case will never be assessed by an unbiased grand jury. Therefore, the government should be denied the opportunity to continue its wrong by making evidentiary presentations to grand juries that it sullied by deliberate and unlawful disclosures. Furthermore, the government's outrageous conduct raises the more paramount question of whether or not Kaczynski now has the due process "right not to be tried" under Midland Asphalt Co. v. United States, 489 U.S. 794, 802, 109 S.Ct. 1494, 1499 (1989), which we contend must be resolved before indictment, or will be forever lost.

(iii) ***The notice furnished to counsel for the other party.***

Opposing counsel for the United States, Bernard F. Hubley, has been personally served with a copy of all the papers filed in this Court as part of this appeal.

(iv) ***Grounds advanced in the district court.***

The undersigned certifies that the relief sought in this motion was available in the district court, and that in asking this Court for the same relief, which the district court denied, appellant relies on the same grounds advanced in the district court.

(v) ***Appellant's bail status.***

In satisfaction of Circuit Rule 27-8, counsel advises that appellant is detained at the Lewis and Clark County Jail in Helena, Montana on the basis of a complaint filed against him in the United States District Court for the District of Montana, charging him with violation of 26 U.S.C. § 5861(d).

STATEMENT

The District Court Proceeding. On April 3, 1996, the government commenced a warranted search of Kaczynski's cabin at Lincoln, Montana. Almost immediately media reports started coming over the airwaves (radio and television) that Kaczynski had been apprehended just prior to the search and that he was thought to be the "unabomber." Thereafter, similar reports were issued containing more details. Not only did these later reports identify Kaczynski as the "unabomber," they also contained blow-by-blow accounts of the nature, quality and significance of the evidence being taken by the government agents from his cabin. Next the print media became involved and newspapers across the country began publishing similar type stories.

On April 4, 1996, the government filed a complaint against Kaczynski charging unlawful possession of bomb components. A copy

of that complaint is included in the separate appendix we filed along with this motion (*see* Appx. pp. 1-5). Kaczynski appeared in court on the complaint the same day. The undersigned was appointed to represent him at that time.

During Kaczynski's April 4th appearance, the district court inquired whether Kaczynski wanted a preliminary hearing and/or a detention hearing. Defense counsel indicated that he would need additional time to discuss those issues with Kaczynski. Accordingly, the district judge granted counsel until noon the following day to report back concerning the need for either type hearing.

On Friday, April 5th, defense counsel filed a timely notice indicating that neither hearing would be necessary (*see* Appx. pp. 6-7). In part, the strategy behind this waiver rested on Kaczynski's desire to have his case assessed by an impartial grand jury, an entitlement he enjoys under the 5th Amendment to the United States Constitution. However, as days passed and the search of Kaczynski's cabin continued, this expectation for an unbiased grand jury process became less and less likely. This is because the government agents who were conducting the search, and other Department of Justice officials, insisted on leaking information to the media concerning the nature and quality of the evidence being

taken from the cabin in order to prove to the public that the legendary "unabomber" case had been solved.

These events prompted defense counsel to prevail upon government counsel to put a stop to the leaks. These demands fell on deaf ears, however, and the leaks continued. Finally, defense counsel had no alternative but to file a motion under Rule 41(e) of the Federal Rules of Criminal Procedure, asking for a return of the property taken by the government from Kaczynski's cabin (*see* Appx. pp. 8-10). The motion was supported by a memorandum, which we have also included for the Court's review (*see* Appx. pp. 11-38).

The district judge who presided over Kaczynski's initial appearance on April 4, 1996, reacted quickly to these papers. He ordered an expedited response by the government, allowed opportunity for Kaczynski to reply, and scheduled a hearing to allow defense counsel to argue in support of Kaczynski's request for an evidentiary hearing on the motion (*see* Appx. pp. 39-40).

In conformity with the district court's order the government filed an expedited opposing brief, in which it admitted that the "deplorable" leaks had occurred (*see* Appx. pp. 41-72, at p. 44, lns. 3-12). In turn, counsel for Kaczynski filed a timely reply (*see* Appx. pp. 73-91). Hearing on the issue of the right to an evidentiary hearing occurred as scheduled on April 19th. After

giving each party an opportunity to argue, the district judge ruled from the bench and denied relief. A transcript of the April 19th hearing is included in the Appendix, (pp. 101-115), as well as a copy of the district court's written findings which were issued on April 22, 1996 (*see* Appx. pp. 92-100).

MEMORANDUM IN SUPPORT OF EMERGENCY MOTION

* * * * * *

QUESTIONS THIS APPEAL PRESENTS

(A) WHETHER KACZYNSKI HAS THE RIGHT TO AN INTERLOCUTORY APPEAL.

(B) WHETHER KACZYNSKI HAS THE "RIGHT NOT TO BE TRIED" DUE TO THE GOVERNMENT'S PRE-INDICTMENT DISCLOSURES CONCERNING THE NATURE AND QUALITY OF THE EVIDENCE TAKEN FROM KACZYNSKI'S CABIN DURING A WARRANTED SEARCH.

(C) WHETHER THE DISTRICT COURT SHOULD HAVE CONDUCTED AN EVIDENTIARY HEARING TO RESOLVE ISSUE (B).

REASONS FOR GRANTING THIS EMERGENCY MOTION

In the interest of brevity this discussion combines issues concerning the Court's jurisdiction to entertain this appeal and Kaczynski's entitlement to relief.

The gravamen of the argument that Kaczynski made in the district court was that it was "outrageous" in the due process sense for the government to deliberately and systematically inform

the media that he is the unabomber, knowing that it would attempt to indict him on such charges later. In making this assertion Kaczynski specifically relied, in part, on the following language contained in United States v. Russell, 411 U.S. 423, 432-433, 93 S.Ct. 1637, 1643 (1973):

> [W]e may someday be presented with a situation in which the conduct of [government] agents is so outrageous that due process principles ***would absolutely bar the government from invoking judicial process to obtain a conviction***. (Emphasis added) (*see* Appx. p. 23, lns. 17-20)

Moreover, in the reply brief that he filed in support of his motion, Kaczynski argued:

> Furthermore, this government assertion is simply not in stride with settled principles set forth in the pretrial and trial publicity cases.
>
> For example, in Rideau v. Louisiana, 373 U.S. 723, 83 S.Ct. 1417, 10 L.Ed.2d 663 (1963) the police obtained the defendant's confession on videotape. The videotape then made its way to a T.V. station, which decided to broadcast it on three different occasions. On certiorari after the defendant's conviction, the Supreme Court ruled:
>
> > In the view we take of this case, the question of who originally initiated the idea of the televised interview is, in any event, a basically irrelevant detail. For we hold that it was a denial of due process of law to refuse the request for a change of venue, after the people of Calcasieu Parish had been exposed repeatedly and in depth to the spectacle of Rideau personally confessing in detail to the crimes with which he was later

> to be charged. For anyone who has ever watched television the conclusion cannot be avoided that this spectacle, to the tens of thousands of people who saw and heard it, in a very real sense was Rideau's trial -- at which he pleaded guilty to murder. ***Any subsequent court proceedings in a community so pervasively exposed to such a spectacle could be but a hollow formality.*** (Emphasis added) Rideau, supra, 373 U.S. at 726, 83 S.Ct. at 1419. (See Appx. pp. 89-90).

Thus, under these cases, Kaczynski posits that the government's conduct entitles him to argue pre-indictment that he has the constitutional "right not to be tried." See, e.g., United States v. Sherlock, 887 F.2d 971 (9th Cir. 1989) and People of the Territory of Guam v. Cruz, 913 F.2d 748 (9th Cir. 1990). Moreover, a defendant who is denied this right by a lower court may seek interlocutory review of that decision. United States v. Sherlock, supra, 887 F.2d at 972 *citing* Midland Asphalt Corp. v. United States, 489 U.S. 794, 109 S.Ct. 1494 (1989).

Furthermore, in asking for relief below Kaczynski proceeded under the aegis of Rule 41(e) of the Federal Rules of Criminal Procedure for the return of the property taken from his cabin. Therefore, this Court has jurisdiction to entertain this appeal because such motions are treated as equitable civil proceedings even if docketed under a criminal case number and styled as being brought pursuant to Rule 41(e). See United States v. Martinson,

809 F.2d 1364, 1366-67 (9th Cir. 1987); *also see* Ramsden v. United States, 2 F.3d 322, 324-25 (9th Cir. 1993).[1]

Moreover, the Supreme Court and this Court have reviewed a small number of interlocutory orders based on the "pragmatic finality" doctrine first articulated in Gillespie v. United States Steel Corp., 379 U.S. 148, 85 S.Ct. 308, 13 L.Ed.2d 199 (1964). In Gillespie, the Supreme Court allowed an "obviously marginal" interlocutory appeal of a district court order striking portions of a wrongful death complaint that would have allowed the decedent's siblings to recover pursuant to the Jones Act. Justice Black, writing for the Court, stated:

> [O]ur cases long have recognized that whether a ruling is 'final' within the meaning of § 1291 is frequently so close a question that decision of that issue either way can be supported with equally forceful arguments, and that it is impossible to devise a formula to resolve all marginal cases coming within what might well be called the 'twilight zone' of finality. Because of this difficulty this Court has held that the requirement

---

[1] We expect the government will argue that Martinson and Ramsden are distinguishable from the instant case because in those cases no criminal proceeding were pending, whereas in this case a criminal complaint had been filed and is pending still. However, the current charges pending against Kaczynski have nothing to do with the so-called unabomber case and to date no such charges have been filed. Therefore, since, in part, the relief Kaczynski sought below was return of his property so that it could not be used against him in anticipated unabomber cases that have not yet come into being, the criterion of "no criminal charges pending" has been satisfied and this Court's jurisdiction is sound.

> of finality is to be given a "practical rather than a technical construction."
>
> Gillespie, 379 U.S. at 152, 85 S.Ct. 308.

The Gillespie court stated that, in deciding the question of finality, the most important considerations are the inconvenience and costs of piecemeal review on the one hand, and the danger of denying justice by delay on the other. The court then stated that, although review of the order under consideration could be called "piecemeal," "it does not appear that the inconvenience and cost of trying this case will be greater because the Court of Appeals decided the issues raised instead of compelling the parties to go to trial with them unanswered." Gillespie, supra, 379 U.S. at 152-53. The eventual cost would be less if the court ruled on the questions presented rather than sending the case back with the questions undecided. Moreover, the court noted that delay of a number of years "might work a great injustice" on the siblings, since their claims for recovery would be cut off as long as the district court's ruling stood. Id.

This Court has applied the "pragmatic finality" test of Gillespie, stating that the test is satisfied when the following four factors are met: (1) the case involves a marginally final order, (2) that order disposes of an unsettled issue of national

significance, (3) review would implement the same policy Congress sought to promote in 28 U.S.C.S. § 1292(b), and (4) the finality issue is not presented to the court until argument on the merits, thereby ensuring that policies of judicial economy will not be served by remanding the case with an important unresolved issue. Wabol v. Villacrusis, 958 F.2d 1450, 1454 (9th Cir. 1990).

The order appealed from in this case is more than "marginally final" in that it decisively disposes of Kaczynski's claim that he has the right not to be tried. Furthermore, the case involves a novel issue of national significance, *viz*, whether prejudicial pre-indictment publicity can serve as an absolute bar the government's invocation of the judicial process to obtain a conviction. Again *see* Russell v. United States, 411 U.S. 423, 431-32, 93 S.Ct. 1637, 1643 (1973). Or stated another way, can the law set forth in Rideau v. Louisiana, 373 U.S. 723, 83 S.Ct. 1417 (1963), which reversed the defendant's conviction based on prejudicial publicity without a showing of actual prejudice, be applied when the prejudicial media exposure reaches national proportions.

Also assumption of jurisdiction will promote the policies underlying 28 U.S.C. § 1292(b) because immediate review will contribute to further conduct of the case in a fundamental way. Affirmance will allow the government to proceed confidently with

the "unabomber" prosecution, knowing that an issue having the potential for compromising a later guilty verdict has been favorably resolved. And likewise, a reversal would alert the government early to a potentially devastating problem in the prosecution of a case in which it intends to invest millions of dollars. Therefore, this emerging issue of damning pre-indictment publicity should be dealt with now.

And, lastly, the substantive merit of Kaczynski's claim that he has a "right not to be tried" is essentially the other side of the same coin. In other words, a finding by this Court that Kaczynski does have a "right not to be tried" simultaneously works to justify this appeal procedurally. Thus, the finality issue will not be fully presented until the issues have been argued on the merits.

In the wake of the harmful disclosures made by the government during the search warrant process any grand jury assembled to assess the "unabomber" case would be but a hollow formality. And, in fact, allowing the government to proceed to grand jury indictment and trial would only "compound the deprivation" of rights that Kaczynski has already suffered. United States v. Hollywood Motor Car Co., Inc., 458 U.S. 263, 269, 102 S.Ct. 3081, 3085 (1982) (noting distinction between a right not to be tried and

a right whose remedy requires dismissal of charges). Also we urge that to "absolutely bar the government from invoking judicial processes to obtain a conviction," United States v. Russell, supra, 411 U.S. at 432-32, 93 S.Ct. at 1643, raises the equivalent of a double jeopardy concern, which is clearly a proper subject for an interlocutory appeal. See, e.g., Abney v. United States, 431 U.S. 651, 97 S.Ct. 2034 (1977).

Furthermore, we must consider that the grand jury has the power to charge a greater or a lesser offense; numerous counts or a single count; and perhaps most significant in the so-called "unabomber" case, a capital offense or a non-capital offense, all on the basis of the same facts. Therefore, even if a grand jury's finding of probable cause is confirmed by the hindsight of a conviction by a petit jury, that in no way warrants the conclusion that the government's outrageous conduct did not impermissibly infect the framing of the indictment and/or the nature or very existence of the proceedings to come.

Additionally, it merits emphasis that in assuming jurisdiction of analogous appeals, courts have "often pointed to the divisibility of the issue presented from the issues withheld." Wabol v. Villacrusis, supra, 958 F.2d at 1455. In this case such divisibility is present because claims of outrageous government

conduct, like the one under discussion here, involve questions of law that have nothing to do with trial of the general issue. United States v. Smith, 924 F.2d 889, 897 (9th Cir. 1991).

In rejecting our demand for a hearing the court below concluded, in part:

> There has been an insufficient showing to warrant a hearing. The court seriously doubts that a hearing would produce any results for the Defendant.
>
> The court does not treat this motion lightly. It is a substantial motion. Having said that, however, it is significant that there is insufficient evidence to give rise to an inference that any of the leaks complained of were deliberately contrived by the government to prejudice the Defendant.

See Appx. p. 98

This finding is erroneous and should be corrected in the context of this appeal. A hearing was necessary and, in fact, was required under the terms of Rule 41(e) which states in part "[t]he court ***shall*** receive evidence on any issue of fact necessary to the decision of the motion" (Emphasis added). To determine whether sanctions for the leaks were warranted the district court should have given Kaczynski a meaningful opportunity to prove that the leaks were deliberate. Thus, we argue that the phrase "shall receive evidence" in Rule 41(e) vests Kaczynski with a liberty interest protected by the 5th Amendment due process clause of the

United States Constitution. *See, e.g.*, Board of Pardons v. Allen, 482 U.S. 369, 107 S.Ct. 2415 (1987) (statute which provides that applicant "shall" be released under certain circumstances creates a liberty interest protected by the due process clause). Therefore, it was error for the district court to deny a hearing on the return of property motion.

CONCLUSION

WHEREFORE, Kaczynski prays that the Court will grant this emergency motion and prohibit the government from indicting him for any unabomber crime until the merits of this appeal have been determined.

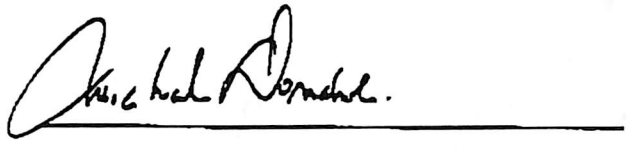
DATED April 23, 1996.

MICHAEL DONAHOE
Assistant Federal Defender
Federal Defenders of Montana, Inc.
P.O. Box 258
Helena, Montana 59624-0258
(406) 449-8381

CERTIFICATE OF SERVICE

I hereby certify that on April 23, 1996, a true and accurate copy of the above EMERGENCY MOTION UNDER CIRCUIT RULE 27-3 was duly served upon the following counsel of record by personally delivering same, together with a copy of the separate APPENDIX, at the following business address:

Bernard F. Hubley
Assistant U.S. Attorney
United States Attorney's Office
100 N. Park Ave., Suite 100
Helena, Montana 59601



IN THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

C.A. No._____

D.Ct. No. MCR 96-06-H-CCL

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-vs-

THEODORE JOHN KACZYNSKI,

Defendant-Appellant.

APPENDIX

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

HONORABLE CHARLES C. LOVELL
UNITED STATES DISTRICT JUDGE, PRESIDING

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SUBMITTED: April 23, 1996

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

HELENA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

THEODORE JOHN KACZYNSKI,

Defendant.

Criminal Docket
No. MCR-96-6-H-CCL

COPY

TRANSCRIPT OF PROCEEDINGS

Heard in Courtroom No. 551
United States Courthouse
301 South Park
Helena, Montana
April 19, 1996
3:30 p.m.

BEFORE THE HONORABLE CHARLES C. LOVELL

UNITED STATES DISTRICT JUDGE

TINA C. BRILZ, RPR
Official Court Reporter
United States District Court
301 South Park - Drawer 10122
Helena, Montana 59626

Proceedings recorded by mechanical stenography, transcript produced by computer.

A P P E A R A N C E S :

PRESENT ON BEHALF OF THE PLAINTIFF, THE UNITED STATES OF AMERICA:

MR. BERNARD F. HUBLEY
Assistant U.S. Attorney
100 North Park - First Floor
Helena, Montana 59601

and

MR. ROBERT J. CLEARY
Assistant U.S. Attorney
970 Broad Street, Room 502
Federal Building
Newark, New Jersey 07102

and

MS. SHERRY MATTEUCCI
U.S. Attorney
P.O. Box 1478
Billings, Montana 59103

PRESENT ON BEHALF OF THE DEFENDANT, THEODORE JOHN KACZYNSKI:

MR. MICHAEL DONAHOE
Assistant Federal Defender and
MR. ANTHONY GALLAGHER
Federal Defender
The New York Block - Second Floor
46 North Last Chance Gulch
Helena, Montana 59601

The following proceedings were had:

THE COURT: Be seated, please. In Criminal Cause 96-6 a Helena Division case, United States of America against Theodore John Kaczynski. This is the time set down for hearing defendant's pending motions.

The defendant is here. With him are his counsel, Mr. Donahoe and Mr. Gallagher. Government is here by the United States Attorney, Ms. Matteucci, also by Mr. Hubley.

MS. MATTEUCCI: Your Honor.

THE COURT: And you have other counsel there.

MS. MATTEUCCI: Your Honor, may I introduce to you Robert Cleary, a colleague of ours who will be working with us on this case.

MR. CLEARY: Good afternoon, Your Honor.

THE COURT: Good afternoon.

Now, this is the time set down for the defendant's motion. And Mr. Donahoe, Mr. Gallagher, you may proceed.

MR. DONAHOE: Thank you, Your Honor.

If it please the court, in preparing these remarks for this afternoon, I am guided by the court's written order to address my comments as I understand it solely to the issue of whether or not we can justify our petition for an evidentiary hearing. And I take that admonition seriously and will so limit my comments.

In that connection, Your Honor, I've had occasion in my career to understand that there's always the argument you want to make, the argument you think you made, and then the argument that you made. I hope that those three things turn out to be related by the time I conclude my remarks here, which will be brief.

Judge, we bring before the court what we consider to be very substantial and serious issues concerning this prosecution. It involves the government's right to prosecute and the defendant's right to a fair trial. Those rights have collided here in a very substantial and significant way due to systematic leaks that the government has engaged in concerning the nature, extent, and scope of the evidence against Mr. Kaczynski.

In filing the papers, we ask the court to take the time to hear and understand what the facts are so that the court would be enabled to draw the necessary conclusions of law that it would have to draw in order to make an appropriate ruling.

The United States befuddles us in this regard with its answer papers. In the first instance, they seem to indicate that we are correct in our assertions that the leaks occurred; that they are deplorable in the government's words, and that in some way somebody has been damaged.

But what befuddles us is that that person doesn't seem

to be Mr. Kaczynski, in the government's view. So apparently, the United States takes the tact that these things occurred, we're sorry, let's move on with the prosecution.

We urge the court not to do that, to hold the hearing to determine the facts that have nothing to do with trial of the general issue.

In that regard, Your Honor, and I know that the court is familiar with the standard, this motion resembles a motion that one would bring pretrial under Rule 12. If we examined Rule 12, certainly the court would have discretion in any case to hold in abeyance a factual determination even until after the trial were completed. But on this particular issue, the facts under discussion here and the assertions that we make in our papers would never come before a trier of fact; would never come before a petit jury. Given that circumstance, there's no reason to delay.

The factual determinations should be made now.

They're pretty basic arguments, Judge, but there are some other things that I'd like to bring to this court's attention.

I've had the privilege of working before this court for almost 11 years, and I know how things work here in this district. I'm familiar with the law enforcement personnel, I'm quite familiar with the United States Attorney's Office

in this district, and I'm familiar with this court.

The things that have happened in this case don't usually happen in this district. And I'd like to focus on that and urge upon the court in an argumentative fashion why this court has an interest in determining the facts or the assertions that we make in our papers.

First, the warrant was applied for in this district. In fact, the United States applied to this court for it. Apparently, upon considered review by Your Honor, the request that they made was granted and they went to carry out their search warrant process. But they abused that authority. Authority that this court gave them, not any other court. Not courts in other venues or other districts, this court. And this court we believe respectfully should have an interest in seeing that if that authority that Your Honor bestowed upon the United States to carry out a lawful process was abused, this court should have something to say about that.

Second, and it's self-evident, the search was executed here. On this point, we would argue to the court that the geography may turn out to be important in terms of the facts that need to be found. Maybe site visits would be necessary, things like that. In the papers that we filed this afternoon at noontime, we indicated to the court that our preliminary investigation shows that when the search was

conducted, a perimeter was set up around the site. And from what we know now, at least, I'll make this proffer, the media were held at a distance of almost a mile from the search site, so that would mean inferentially we could conclude that the leaks that are pervasive throughout all the media in these United States are intentional, because the people that were conducting the search, of necessity, would have to move a substantial distance to take the evidence and comment on it to the media.

And in fact, we had comments from as far away as Washington, D.C., which means that there were comments rendered from this site, this venue, to personnel of the Justice Department in Washington, and then they were forwarded on to the media in cavalier fashion.

Third, and it really just does relate to what I said previously, Judge, if any sanction is to be imposed, this court should be the court that determines the extent, nature, and severity of the sanction.

For those reasons, Your Honor, we urge that the court should hold the evidentiary hearing, give us adequate time to prepare for it. And that is our prayer and that is my conclusion.

Thank you, Judge.

THE COURT: Thank you, Mr. Donahoe.

Mr. Hubley.

MR. HUBLEY: Thank you, Your Honor.

And may it please the court.

In the words of defendant's counsel, a hearing would uncover facts that have nothing to do with the trial of the general issue. The reality of the matter here is, there is no fact in dispute. Therefore, there is no need for further hearing.

The news media has carried reports about the evidence. That's a fact. Attribution has been to federal employees, past and present, and third parties touched in some way by this investigation.

While we acknowledge the existence of some of the disclosures by federal employees, we certainly do not condone them, and we call for an end to such disclosures which are unauthorized, inappropriate, and distressing.

While the media reports spawned by premature release has given rise to concern, given rise to concern, they certainly have not risen to the level of prejudice as claimed by the defendant.

Consequently, the remedies sought by the defendant in this case are not appropriate.

I believe it is appropriate here to address the argument claimed by the defendant in the context of his request for further hearing.

First let me address the Fourth Amendment claim.

Simply stated, there is no Fourth Amendment claim. Contrary to what defendant asserts, disclosures have no bearing and had no bearing on the issuance of the warrant. They have no bearing and had no bearing and did not affect the scope of the search.

Disclosures are required under Rule 41, and disclosures were properly made. Disclosures, regardless of how they were made, cannot violate the Fourth Amendment.

A call for suppression under the Fourth Amendment cannot be achieved by using or relying on a deviation from policy concerning media relations, and that is the defendant's claim, and that claim should be rejected.

Your Honor, let me next address the issue of the defendant's claim that he has been prejudiced before a grand jury meeting. Defendant claims that he has been prejudiced in advance of any meeting of a federal grand jury. This argument is without both factual and legal basis, for accurate factual information regarding the fruits of any search is evidence that the grand jury is entitled to hear.

Relying on pre-indictment disclosures, the defendant is asking this court to forever bar presentation of the facts of this case to a federal grand jury or a trial jury at any time or any place. There is no support in the law whatsoever for such a proposition. And more important, it is contrary to the interest of the public to have those who

engaged in criminal activity pursued to indictment and through trial. It will be the function of a federal grand jury to evaluate the evidence that is presented to it and make an informed decision as to whether there is probable cause to believe the defendant committed a particular crime. And Your Honor, there are adequate remedial measures which may be considered to address any potential problem the defense has raised.

First, grand jurors can be instructed as to their duty to be impartial and consider only the evidence presented to them.

They can be admonished to disregard news reports.

They can be questioned regarding their impartiality, and the court can enforce the secrecy provision of the grand jury through its contempt power.

Finally, Your Honor, in this case as in any case, a defendant is entitled to trial by jury. And that jury will be properly questioned regarding its impartiality. It will be instructed to consider only evidence that is put before it. And it will be shielded and prevented from hearing that which is inadmissible.

The defendant calls for the return of his property, dismissal and a permanent bar from prosecution. It is simply not appropriate. There are no facts in dispute. No hearing is necessary. And defendant's claim and motion

should be denied.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Hubley.

Rebuttal.

MR. DONAHOE: Thank you, Judge.

Your Honor, we addressed this in the papers and I won't labor over it, but I did want to touch on the point that disclosures were properly made. This turns out to be a rather schizophrenic approach by the United States. We're not understanding what they're saying. Apparently, they're saying that yes, inappropriate disclosures were made, but we would have made them nonetheless at a later time, so there really is no problem.

I'd like to invite the court's attention to the fact that we're making a qualitative distinction between the disclosures. We don't quarrel with the United States' right and duty, in fact, to file the inventory, put it in the record, have it available for public view, but the editorializing that the agents did during the conduct of the search in relation to the items that were taken is what we're driving at.

With regard to Mr. Hubley's comment that this would be contrary to the interest of the public, frankly, and meaning no disrespect, Judge, the United States should have thought about that before they engaged in the process that they

engaged in. There was just no reason for them to carry out the process in the manner in which they did. And in fact, that, that in and of itself is contrary to the public interest. And that's the principle that needs to be vindicated here.

Insofar as the argument concerning the petit jury, that argument we raised in anticipation in our opening papers. We knew that that would be what the United States would say. That's a self-fulfilling prophecy that gives the government the license to commit these egregious sorts of violations, and then claim, well, they'll be later cured during the trial process. That just doesn't make any logical sense, Judge, and it doesn't give any dignity to the grand jury process which is an entitlement under the Fifth Amendment to the United States Constitution that Mr. Kaczynski is like any other citizen that might have been charged with a crime is entitled to as a matter of due process and equal protection.

Also, the government's claim that the grand jury can be cured by instruction and so on. The grand jury's already been instructed. They've been instructed by the media leaks, the leaks that the United States is responsible for. And that fact should be taken into account and it should be dealt with, and a significant and substantial sanction should be levied on the United States.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Donahoe.

The matter is submitted then.

I do not take this motion lightly, Mr. Donahoe.

MR. DONAHOE: Yes, Your Honor.

THE COURT: I think it's a substantial motion, and the court has considered it carefully. I think it's entirely regrettable that these news leaks did occur. And so I do have some sympathy with your position.

But having said that, I'm also impressed with the manner in which General Reno and Judge Freeh have acted to do everything within their power to prevent leaks, and particularly with Judge Freeh having taken the position that there will be an investigation and that FBI personnel who leaked materials to the press will be discharged. He didn't say may be discharged, he said will be discharged.

I don't think there is an inference here which would permit the court to draw a conclusion that the United States government has deliberately and calculatedly released news with the intention to prejudice the defendant.

I did take issue when the government moved last for the court to continue the seal on the file. I took issue with the government requesting continuation of the seal while these apparent leaks were going on.

But I do think that there is insufficient showing under

all the circumstances to warrant an evidentiary hearing. The sanction of dismissal is far too extreme. I don't think an evidentiary hearing would produce any evidence of any quality or capacity to enable the court to in any way further protect the rights of the defendant.

The defendant is not entitled to perfect treatment. This is not a perfect world. He is entitled to fair treatment. And I think he has received fair treatment, and he will continue to receive fair treatment.

If he is indicted, he's not entitled to a perfect trial, but he is entitled to a fair trial, and that trial I think is his remedy. Trial by a jury of his peers properly selected and under good constitutional instructions, proper instructions, I think, is his remedy at this point.

I would recommend to the court impaneling a grand jury or grand juries if this comes about to take caution in impaneling the jury to make certain that this issue is discussed. But with that and beyond that, it seems to me that your motion should be denied, and it is hereby denied.

And the court's finding particularly with respect to the evidentiary motion is adverse and is denied.

Court's adjourned.

(The proceedings in this matter were adjourned at 3:54 p.m.)

CERTIFICATE

STATE OF MONTANA)
: SS
County of Lewis and Clark)

I, TINA C. BRILZ, RPR, Official Court Reporter and Notary Public of the State of Montana residing at Helena, Montana, do hereby certify as follows:

That the foregoing hearing was reported by me on April 19, 1996, at 3:30 p.m. in Courtroom No. 551 in the United States Courthouse in Helena, Montana.

That the foregoing fourteen (14) pages of typewritten material constitute a true and accurate transcription of my stenographic notes which were reduced to writing by means of computer-aided transcription.

I further certify that I am not an attorney nor counsel of any of the parties nor a relative or employee of any attorney or counsel connected with this action or otherwise interested in the event thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal on this 23rd day of April, 1996.

Tina C. Brilz

REGISTERED PROFESSIONAL REPORTER
NOTARY PUBLIC for the State of Montana residing at Helena, Montana. My commission expires November 26, 1999.

Helena Division District of MONTANA

FILED

NOTICE OF APPEAL

'96 APR 23 PM 4 52

LOU ALEKSICH, JR. CLERK

DEPUTY CLERK

United States of America,
Plaintiff,

-vs-

THEODORE JOHN KACZYNSKI
Defendant.

D.C. Docket Number MCR 96-06-H-CCL

Charles C. Lovell
(District Court Judge)

Notice is hereby given that Theodore John Kaczynski appeals to the United States Court of Appeals for the Ninth Circuit from the

( ) conviction only (Fed. R. Crim. P. 32(b))

( ) conviction and sentence

( ) sentence only (18 U.S.C. § 3742)

(XX) order (specify) Denial of Motion to Return Property, Stay Grand Jury Proceedings and Prohibit Further Prosecution entered in this action on April 19, 1996 (date).

Sentence imposed: N/A

Bail status: Detained

(Counsel for Appellant)

Date: 4/23/96

Address: MICHAEL DONAHOE
Assistant Federal Defender
~~ANTHONY R. GALLAGHER~~
Chief Federal Defender
~~P.O. Box 258~~
Helena, MT 59624-0258

Phone Number: (406) 449-8381

Name of Court Reporter: Tina Brilz

Transcript Required: X Yes ____ No
If yes, date ordered or to be ordered 4/22/96 (including arrangements for payment with court reporter.)

[If transcript required, complete Transcript Order Form CA9-036; contact court reporter immediately to make arrangements for transcription.]

[CA9-38-1NOA]

U.S. District Court
U.S. District Court of Montana (Helena)

CRIMINAL DOCKET FOR CASE #: 96-M -6-ALL

USA v. Kaczynski, et al
Dkt# in other court: None

Filed: 04/03/96

Case Assigned to: Judge Charles C. Lovell

THEODORE JOHN KACZYNSKI (1)
defendant

Michael Donahoe
[COR LD NTC]
FEDERAL DEFENDERS OF MONTANA -
HELENA BRANCH
Box 258
Helena, MT 59624-0258
406-449-8381

Pending Counts:

NONE

Terminated Counts:

NONE

Complaints	Disposition
Possess firearm - specifically components from which destructive device such as a bomb can be readily assembled, which is not registered to him in Nat'l Firearms Registration and Transfer Record.	

Proceedings include all events.
6:96m 6-ALL USA v. Kaczynski, et al

Case Assigned to: Judge Charles C. Lovell

NATIONAL BROADCASTING COMPANY, INC. (NBC) (2) petitioner	John M. Morrison [COR LD NTC ret] MELOY & MORRISON Box 1241 80 S Warren, The Bluestone Helena, MT 59624-1241 406-442-8670

Pending Counts:

NONE

Terminated Counts:

NONE

Complaints:

NONE

Proceedings include all events.
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Case Assigned to: Judge Charles C. Lovell

THE NEW YORK TIMES COMPANY (3)
petitioner

John M. Morrison
[COR LD NTC ret]
MELOY & MORRISON
Box 1241
80 S Warren, The Bluestone
Helena, MT 59624-1241
406-442-8670

Pending Counts:

NONE

Terminated Counts:

NONE

Complaints:

NONE

Proceedings include all events.
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Case Assigned to: Judge Charles C. Lovell

THE DENVER POST CORPORATION
(4)
petitioner

John M. Morrison
[COR LD NTC ret]
MELOY & MORRISON
Box 1241
80 S Warren, The Bluestone
Helena, MT 59624-1241
406-442-8670

Pending Counts:

NONE

Terminated Counts:

NONE

Complaints:

NONE

U. S. Attorneys:

Bernard F. Hubley
[COR LD NTC pda]
OFFICE OF THE U.S. ATTORNEY
100 N Park Avenue
Suite 100
Helena, MT 59601
406-449-5370

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6:96m 6-ALL USA v. Kaczynski, et al

U.S. District Court
U.S. District Court of Montana (Helena)

CRIMINAL DOCKET FOR CASE #: 96-M -6-ALL

USA v. Kaczynski, et al Filed: 04/03/96
Dkt# in other court: None

4/3/96	1	SEALED document (baf) [Entry date 04/08/96]
4/3/96	2	SEALED document (baf) [Entry date 04/08/96]
4/3/96	3	SEALED document (baf) [Entry date 04/08/96]
4/4/96	4	COMPLAINT by USA signed by Judge Charles C. Lovell (baf) [Entry date 04/08/96]
4/4/96	5	AFFIDAVIT of Donald J. Sachtleben, by USA (baf) [Entry date 04/08/96]
4/4/96	--	ARREST Warrant issued for Theodore John Kaczynski by Judge Charles C. Lovell dlv orig and 1 w/cert copy of cmplnt to USM in Helena, MT for service (cc:USA, USM, PROB) (baf) [Entry date 04/08/96]
4/4/96	6	MINUTES: before Judge Charles C. Lovell initial appearance of Theodore John Kaczynski Attorney present; C/R: Tina Brilz. Dft pr (cust) w/cnsl Donahoe. AUSA Hubley pr. Jolene Whitten USPO pr. Crt has assigned Mr. Donahoe as cnsl for today's procdg. Dft ATN. Dft reads chrgs and doesn't wish Complaint to be read. Crt reviews penalties. Crt pr rt to have cnsl. Crt appts cnsl Donahoe to rep dur procdg. Crt could appt more cnsl later if deemed nec. Crt pr rt to prelim hrg. Cnsl rqsts add'l time to determine whether or not to have prelim hrg. Crt grants til noon tomorrow. Crt pr rights. Cr grants til noon tomorrow to decide if dft wants detention hrg. Donahoe to notify crt by noon tomorrow re both prelim and detn hrgs. Crt advises dft if he waives prelim hrg and detentn hrg, that he would be detained. Dft remanded to custody pending further procdgs. (baf) [Entry date 04/08/96]
4/5/96	7	STATUS REPORT by Theodore John Kaczynski, as govt intends to proceed to Gr. Jry, dft sees no purpose in demanding prelim hrg or detention hrg. w/c/s (baf) [Entry date 04/08/96]
4/5/96	8	TRANSCRIPT of proceedings for the following date(s): 4/4/96 held in Helena, MT on Initial aprnc (Re:) (baf) [Entry date 04/08/96]
4/8/96	9	MOTION to enjoin solicitations by lawyers by Theodore John Kaczynski w/c/s (baf) [Entry date 04/08/96] [Edit date 04/08/96]

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4/8/96	10	MOTION for leave to allow filing of notc of appearance of Anthony R. Gallagher as co-cnsl - by Theodore John Kaczynski w/c/s (baf) [Entry date 04/09/96] [Edit date 04/09/96]
4/8/96	--	LODGED NOTICE of appearance of Anthony Gallagher (baf) [Entry date 04/09/96]
4/9/96	11	SEALED document (baf) [Entry date 04/09/96]
4/9/96	12	SEALED document (baf) [Entry date 04/09/96]
4/9/96	13	MOTION by Nat'l Broadcasting, New York Times Co., Denver Post Corp. to Unseal and permit access to search warrant, search warrant affidavits and related documts. (baf) [Entry date 04/09/96] [Edit date 04/10/96]
4/9/96	15	MOTION by Nat'l Broadcasting, New York Times Co., Denver Post Corp. for expedited hearing and ruling on Petn to unseal. (baf) [Entry date 04/09/96] [Edit date 04/10/96]
4/9/96	16	ORDER by Judge Charles C. Lovell ; in-court hearing set for 2:30 4/10/96 for Theodore John Kaczynski on Petition to unseal docs. FURTHER ORD. that govt to file written response to Petition by 10:00 a.m. Wednesday, April 10, 1996. (cc: Morrison, Donahoe, Hubley, CCL,CLK,USM,PO,RPR Cnsl & USM called.) (baf) [Entry date 04/09/96] [Edit date 04/10/96]
4/9/96	14	MOTION to produce Search Warrant Inventory & brf by Theodore John Kaczynski w/c/s (baf) [Entry date 04/10/96]
4/10/96	17	OPPOSITION OF GOVT TO PETITION TO UNSEAL AND PERMIT ACCESS TO SEARCH WARRANT, SEARCH WARR, SEARCH WARR AFFIDAVITS AND RELATED DOCUMENTS. w/c/s (baf) [Entry date 04/10/96] [Edit date 04/10/96]
4/10/96	18	MINUTES: before Judge Charles C. Lovell C/R: Tina Brilz HEARING ON PETITIONER'S MOTN TO UNSEAL. Crt reviewed case up to this point indicating that the execution of the search warrant has been continued til 4/15/96. John Morrison, cnsl for Petitioner, hrd. States that the LA Times will move to join petitioners. Mr. Hubley hrd. Cnsl Morrison rebuts. Matter deemed admitted and under adv. Crt hopes to get order out today. (baf) [Entry date 04/10/96] [Edit date 04/10/96]
4/10/96	19	Certificate of Service showing that cpy of the Petition to Unseal and Permit Access to Search Warrant, Srch Warr., Afdvts and Related Docs; Motn for Expedited hrg and Ruling and proposed order were sent to cnsl Donahoe. (baf) [Entry date 04/10/96] [Edit date 04/10/96]

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4/10/96 20 ORDER by Judge Charles C. Lovell denying motion to produce Search Warrant Inventory & brf as being prematurely filed. [14-1] (cc: Hubley, Donahoe, Morrison) (baf) [Entry date 04/10/96] [Edit date 04/10/96]

4/10/96 21 ORDER by Judge Charles C. Lovell the Petitioners' Petition to Unseal the Search Warrant and Related Documents is Denied. Crt will consider ordering that the docs be unsealed at either the conclusion of the search or the return of a gr jury indct, whichever comes first. (baf) [Entry date 04/11/96]

4/10/96 22 STENO NOTES of proceedings before Judge Charles C. Lovell (Court Reporter: Tina Brilz) Hearing date: 4/10/96 minutes Hrg on Petitioner's Motn to Unseal Search Warrant material [18-2] (baf) [Entry date 04/11/96]

4/11/96 23 MOTION for order directing that the cabin of T.Kaczynski in Lewis & Clark Cnty be ssecured by FBI to prevent entry by anyone w/o express approval of FBI and under supervision of FBI, for 30 days from the date of this order. by USA as to Theodore John Kaczynski. Supported by Affidavit of Terry D. Turchie. (baf) [Entry date 04/11/96]

4/11/96 24 ORDER by Judge Charles C. Lovell granting motion [23-1]. Ordered, purs to 28:1651 that FBI maintain custody and control of the cabin of Theodore Kaczynski and that all persons are prohibited frm entering thereon w/o the express approval and under the supervision of the FBI for a period of 30 days from the date of this order or til further order of this court. FURTHER ORDERED that cpies of this order be posted on said property and its perimeter in conspicuous places clearly visible to all persons. (cc: Donahoe, Hubley, Morrison, CCL) (baf) [Entry date 04/11/96]

4/11/96 25 ARREST Warrant returned executed as to defendant Theodore John Kaczynski ; defendant arrested on 4/4/96 (baf) [Entry date 04/11/96]

4/11/96 26 EX PARTE MOTION SEALED (baf) [Entry date 04/11/96]

4/11/96 27 ORDER -SEALED re [26-1] (baf) [Entry date 04/11/96]

4/12/96 28 ORDER by Judge Charles C. Lovell, pursuant to motion of dft to prohibit lawyers from soliciting employment as cnsl in this case, the dft shall file memo of authorities in support of motion w/in 5 days. If authorities are not timely received the motion will be deemed abandoned. cc: Donahoe, USM, AUSA, CCL (gar) [Entry date 04/15/96]

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4/12/96	29	ORDER by Judge Charles C. Lovell granting motion for leave to allow filing of notc of appearance of Anthony R. Gallagher as co-cnsl - [10-1]. Anthony Gallagher or Michael Donahoe, or both, may appear on Dft's behalf. Court may make further appointments of cnsl from time to tune as circumstances might warrant. cc: Donahoe, USM, AUSA, CCL gar for dmz (gar) [Entry date 04/15/96]
4/15/96	30	SEARCH warrant returned 4/3/96 w/ attachments (gar) [Entry date 04/16/96]
4/15/96	31	ORDER by Judge Charles C. Lovell, gov't shall forthwith serve Dft's cnsl with a copy of search warrant and return. The search warrant and return shall be filed in open file. The application for search warrant and affdt in support thereof shall remain sealed until further order of the court. Copies delivered to Hubley for himself and Donahoe by TC. (gar) [Entry date 04/16/96]
4/15/96	32	APPLICATION to allow limited inspection through visual observation by USA as to Theodore John Kaczynski (gar) [Entry date 04/16/96]
4/15/96	33	ORDER by Judge Charles C. Lovell granting motion to allow limited inspection through visual observation [32-1]. Within 10 days cnsl for dft Michael Donahoe and Anthony Gallagher are permitted to walk through the premises and inspect and observe through visual ovservation, the premises, residence, and outbuildings of the Dft in the compnay of prosecuting officials of the US Department of Justice, at a time mutually convenient, and under supervision of representative of FBI who have been ordered to secure premises for 30 days beginning 4/11/96 or until further order of this Court. Further Ordered that within 10 days, representatives of FBI, Spl Projects Unit are allowed to conduct a walk through and visual inspection and observation of the premises, residence, and outbuildings, and take such measurements as are necessary to construct a replica of Dft's premises, structures and surrounding area for future courtroom proceedings. Hubley, Donahoe (gar) [Entry date 04/16/96]
4/15/96	34	MOTION for return of property, to dismiss (1) count complaint, Stay Grand Jury Proceedings, and prolhibit further prosecution by Theodore John Kaczynski w/c/s (gar) [Entry date 04/16/96]
4/15/96	35	MEMORANDUM by defendant Theodore John Kaczynski in support of Motion to Return Property, Dismiss Complaint and to Prohibit Further Prosecution [34-1], [34-2], [34-3], [34-4] W/C/S (gar) [Entry date 04/16/96]

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6:96m 6-ALL USA v. Kaczynski, et al

4/16/96	36	ORDER by Judge Charles C. Lovell, Gov't shall respond to Dft's motion by filing a memo of authorities onor before 4/18/96 at 4pm. Dft shall file any reply brief by 4/19/96 at 12:00 noon. Further Ordered that ; matter is set for hearing and oral argument on narrow issue of whether dft is entitled to evidentiary hrg for 3:30 4/19/96 for Theodore John Kaczynski at Helena. CCL, Clk, USM, Prob, Crt Rpr, Hubley, Donahoe, cnsl called. (gar) [Entry date 04/16/96] [Edit date 04/17/96]
4/18/96	37	MOTION to withdraw mtn to enjoin soliciations by lawyers for employment by Theodore John Kaczynski (dmz) [Entry date 04/18/96]
4/18/96	38	OPPOSITION by plaintiff USA to motion for return of property [34-1], motion to dismiss (1) count complaint [34-2], motion Stay Grand Jury Proceedings [34-3], motion further prosecution [34-4] w/c/s & attachments (gar) [Entry date 04/19/96]

INTERNAL USE ONLY: Events between 4/19/96 and 12/31/99.
6:96m 6-ALL USA v. Kaczynski, et al

U.S. District Court
U.S. District Court of Montana (Helena)

CRIMINAL DOCKET FOR CASE #: 96-M -6-ALL

USA v. Kaczynski, et al Filed: 04/03/96
Dkt# in other court: None

4/19/96	39	REPLY by defendant Theodore John Kaczynski to response to motion for return of property [34-1], motion to dismiss (1) count complaint [34-2], motion Stay Grand Jury Proceedings [34-3], motion prolhibit further prosecution [34-4] file delivered to law clerk as to defendant Theodore John Kaczynski w/c/s (gar) [Entry date 04/19/96]

FILED

APR 24 1996

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff/Appellee, vs. THEODORE JOHN KACZYNSKI, Defendant/Appellant.	No. 96-30134 DC# CR-96-6-CCL Montana (Helena) ORDER

Before: HALL, THOMPSON and RYMER, Circuit Judges

"The denial of a preindictment motion or comparable relief [pursuant to Fed. R. Crim. P. 41(e)] is an interlocutory, nonappealable order unless 'the motion is solely for the return of property and is in no way tied to a criminal prosecution in esse against the movant.'" Meier v. Keller, 521 F.2d 548, 554 (9th Cir. 1975), cert. denied 424 U.S. 943 (1975) (quoting DiBella v. United States, 369 U.S. 121, 131-32 (1962)). Appellant meets neither of these criteria. No other basis of the appeal meets the criteria for an interlocutory appeal. See Midland Asphalt Corp. v. United States, 489 U.S. 794, 801 (1989) (exception to prohibition against interlocutory appeals in criminal cases must rest upon an explicit statutory or constitutional guarantee). Accordingly, the court sua sponte dismisses this appeal for lack of jurisdiction.

Appellant's emergency motion is denied as moot.

misc/4.96/96.30134(sc)

FILED
'96 MAY 1 PM 2 34
LOU ALEKSICH, JR. CLERK
BY
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

HELENA DIVISION

****

UNITED STATES,

Plaintiff,

-v-

THEODORE JOHN KACZYNSKI,

Defendant.

MCR 96-6-H-CCL

ORDER

****

Before the court is the government's motion for order excluding seven days from the court's speedy trial calculation. See 18 U.S.C. § 3161. Defendant does not oppose the motion. The court agrees that the time periods April 15 through April 19, 1996, and April 23 through April 24, 1996, are excludable for purposes of calculations pursuant to the Speedy Trial Act. Because an interlocutory appeal is still pending, additional time may be also excludable. However, because this case is on appeal the court declines to enter the requested order.

Accordingly,

IT IS HEREBY ORDERED that the government's motion for order excluding seven days from speedy trial calculation is DENIED with

leave to refile.

The Clerk is directed forthwith to notify the parties of entry of this order.

Done and dated this 1st day of May, 1996.

CHARLES C. LOVELL
United States District Judge

BERNARD F. HUBLEY
Assistant U.S. Attorney
100 North Park Ave., Suite 100
Helena, Montana 59601
Telephone: 406/449-5370

ATTORNEY FOR THE UNITED STATES

FILED
'96 MAY 24 AM 10 39
LOU ALEKSICH, CLERK
BY _____ DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

HELENA DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. THEODORE JOHN KACZYNSKI, Defendant.	MCR 96-6-H-CCL **ORDER**

Upon Application of government counsel for order excluding periods of delay under the speedy trial act, and upon agreement of counsel for the Defendant, and good reason appearing therefor,

IT IS HEREBY ORDERED that the five-day period from April 15 to April 19 constitutes excludable delay under 18 U.S.C. § 3161(h)(1)(F) because of the pendency of Defendant's Motion to Return Property, Dismiss Complaint, Stay Grand Jury Proceedings, and Prohibit Further Prosecution.

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IT IS FURTHER ORDERED that the 30-day period in which an indictment must be returned was suspended on April 23, 1996, when Defendant filed a notice of appeal from this Court's April 19, Order denying that Motion, and will remain suspended until the Supreme Court finally disposes of Defendant's Petition for Writ of *Certiorari*.

IT IS ORDERED that absent other events resulting in excludable delay, the United States has 16 days after proceedings conclude in the United States Supreme Court to obtain an indictment against Defendant.

DONE and DATED this 24th day of May, 1996.

CHARLES C. LOVELL

Charles C. Lovell
United States District Court Judge

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SHERRY S. MATTEUCCI
UNITED STATES ATTORNEY

BERNARD F. HUBLEY
ASSISTANT UNITED STATES ATTORNEY
DISTRICT OF MONTANA
100 NORTH PARK AVENUE
HELENA, MONTANA 59601
406-449-5370

Attorneys for the United States

FILED
'96 MAY 24 AM 10 39
LOU ALEKSICH, JR. CLERK
BY _____ DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

UNITED STATES OF AMERICA, Plaintiff v. THEODORE JOHN KACZYNSKI, Defendant	NO. MCR 96-6-H-CCL APPLICATION FOR ORDER EXCLUDING PERIODS OF DELAY UNDER THE SPEEDY TRIAL ACT

COMES NOW the United States of America, through the United States Attorney for the District of Montana and Bernard F. Hubley, Assistant United States Attorney, and asks this Court to enter an order excluding periods of delay under the Speedy Trial Act. In support of this application, the United States represents as follows:

BACKGROUND

1. Defendant Theodore John Kaczynski was arrested on April 3, 1996, in the State and District of Montana. On April 4, 1996, he was charged by complaint with one count of possession of an unregistered firearm, in violation of 26 U.S.C. § 5861(d).

2. On April 15, 1996, the defendant filed a "Motion to Return Property, Dismiss Complaint, Stay Grand Jury Proceedings, and Prohibit Further Prosecution."

3. On April 19, 1996, after a hearing, this Court denied defendant's motion.

4. On April 23, 1996, defendant filed a notice of appeal from this Court's order denying his "Motion to Return Property, Dismiss Complaint, Stay Grand Jury Proceedings, and Prohibit Further Prosecution."

5. On April 24, 1996, the United States Court of Appeals for the Ninth Circuit dismissed the defendant's appeal for lack of jurisdiction. The Ninth Circuit's mandate issued on May 16, 1996.

6. On April 30, 1996, defendant filed a petition for a writ of certiorari in the United States Supreme Court seeking review of the Ninth Circuit's April 24, 1996, order. On the same date, defendant filed a motion for expedited consideration of his petition for certiorari. On May 13, 1996, the Court denied defendant's motion for expedited consideration. The Court has not yet acted on the certiorari petition.

SPEEDY TRIAL CALCULATION

1. Pursuant to 18 U.S.C. § 3161(b), an indictment charging defendant Kaczynski must be returned within 30 days of the date of his arrest. That period is automatically suspended during "[a]ny period of delay resulting from other proceedings concerning the defendant, including, but not limited to, * * * delay resulting from any interlocutory appeal" and "delay resulting from any pretrial motion, from the filing of the motion through the

conclusion of the hearing on, or other prompt disposition of, such motion." 18 U.S.C. § 3161(h)(1)(E) & (F). Periods of excludable delay under Section 3161(h) include both the day on which the event triggering the period of excludable delay occurred and the day on which the event ending the period of delay occurred. See United States v. Lattany, 982 F.2d 866, 873 (3d Cir. 1992), cert. denied, 114 S. Ct. 92 (1993); United States v. Simmons, 763 F.2d 529, 530 n.1 (2d Cir. 1985); United States v. Yunis, 723 F.2d 795, 797 (11th Cir. 1984).

2. Under Section 3161(h)(1)(F), defendant's "Motion to Return Property, Dismiss Complaint, Stay Grand Jury Proceedings, and Prohibit Further Prosecution" resulted in the exclusion of five days from the speedy trial calculation, from April 15 to April 19, 1996.

3. Under Section 3161(h)(1)(E), defendant's interlocutory appeal suspended the speedy trial calculation from April 23 until May 16, 1996, when the Ninth Circuit issued its mandate. See United States v. Crooks, 826 F.2d 4, 5 (9th Cir. 1987).

4. Defendant's petition for certiorari is a continuation of his interlocutory appeal, and constitutes another "proceeding concerning the defendant." That petition therefore will suspend the 30-day period in which an indictment must be returned until the Supreme Court denies certiorari or finally disposes of the petition. See United States v. Black, 733 F.2d 349, 351 (4th Cir. 1984) (untimely government petition for rehearing en banc is a "proceeding concerning the defendant" that suspends the speedy trial clock); United States v. Dunn, 706 F.2d 153, 154-55 (5ht Cir.

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1983) (government certiorari petition filed after issuance of court of appeals mandate suspends the time for retrying the defendant); United States v. Lyon, 588 F.2d 581, 582 (8th Cir. 1978) (time for retrying defendant after successful appeal suspended during pendency of certiorari petition in related case), cert. denied, 441 U.S. 910 (1979); see also United States v. Loud Hawk, 474 U.S. 302, 304 n.1 (1986) (stating that defendants whose claim of a constitutional speedy trial violation rested in part on time incurred by the filing of certiorari petitions had no recourse under the Speedy Trial Act).

5. On April 23, the date that defendant filed his interlocutory appeal, 14 non-excludable days had elapsed since defendant's arrest (April 4 to April 14 and April 20 to April 22). Thus, absent other events resulting in excludable delay, the United States will have 16 days after proceedings conclude in the Supreme Court to obtain an indictment against defendant.

6. Counsel for defendant, Michael Donahoe, has informed undersigned counsel for the United States that he agrees with the foregoing calculation under the Speedy Trial Act.

RELIEF

The United States asks that the Court enter an order (1) finding that the five-day period from April 15 to April 19 constitutes excludable delay under 18 U.S.C. § 3161(h)(1)(F) because of the pendency of defendant's Motion to Return Property, Dismiss Complaint, Stay Grand Jury Proceedings, and Prohibit Further Prosecution; (2) finding that the 30-day period in which an indictment must be returned was suspended on April 23, 1996, when

defendant filed a notice of appeal from this Court's April 19 order denying that motion, and will remain suspended until the Supreme Court finally disposes of defendant's petition for a writ of certiorari filed April 30, 1996; and (3) finding that absent other events resulting in excludable delay, the United States will have 16 days after proceedings conclude in the Supreme Court to obtain an indictment against defendant.[1]

Respectfully submitted,

SHERRY SCHEEL MATTEUCCI
United States Attorney

BERNARD F. HUBLEY
Assistant U.S. Attorney

[1] Because the Ninth Circuit found that it did not have jurisdiction over Kaczynski's appeal, that appeal did not deprive this Court of jurisdiction to proceed. See United States v. Ray, 731 F.2d 1361, 1369 (9th Cir. 1984); see also United States v. LaMere, 951 F.2d 1106, 1108-09 (9th Cir. 1991). In any event, the Ninth Circuit's mandate has now issued, so there is no question that this Court has authority to issue the order requested by the United States.

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CERTIFICATE OF SERVICE

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

That on May 24, 1996, she served a copy of the attached "Application for Order Excluding Periods of Delay Under the Speedy Trial Act" 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 Helena, Montana.

Addressee(s):

Mr. Michael Donahoe
Federal Public Defenders Office
P.O. Box 258
Helena, MT 59624-0258

Mr. Anthony Gallagher
Federal Defenders-Montana
Post Office Box 3547
Great Falls, MT 59403-3547

Glenda Pennington

Glenda Pennington, Paralegal Assistant

FILED

JUN 13 1996

LOU ALEKSICH, JR., Clerk
By_____
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

HELENA DIVISION

****

IN RE DOCUMENTS 1, 2, AND 3 THE SEARCH WARRANT AND SUPPORTING AFFIDAVITS RELATING TO THEODORE JOHN KACZYNSKI

UNITED STATES,

Plaintiff,

-v-

THEODORE JOHN KACZYNSKI,

Defendant.

MCR 96-6-H-CCL

ORDER

****

In an order filed April 10, 1996, this court stated that it would unseal the search warrant documents in the above-captioned matter at the earlier of the conclusion of the search or the return of a grand jury indictment. The return of the search warrant having been filed and the investigation apparently having been completed, the court finds that there no longer exists a sound reason to prevent the public from inspecting these documents. Therefore, the court has determined that now is the time to unseal a redacted copy of the affidavit supporting the search warrant. To protect the identity of witnesses, however,

the court will release the redacted affidavit only.

Therefore, upon reconsideration,

IT IS HEREBY ORDERED that the joint petition filed by Petitioners National Broadcasting Company, Inc., The New York Times Company, Denver Post Corporation and Los Angeles Times for the unsealing of the search warrant documents is GRANTED. The Clerk shall forthwith redact a copy of the affidavit in support of the search warrant application filed on April 3, 1996, by deleting witness names and addresses from the materials, and shall unseal the redacted copy of the affidavit for public inspection. The original affidavit containing witness names and addresses shall remain under seal pending further order of the court. The warrant file, excluding the sealed affidavit, will then be made available to the public.

The Clerk is directed forthwith to notify the parties of entry of this order.

Done and dated this 13 day of June, 1996.

CHARLES C LOVELL
United States District Judge

Unsigned pleading

CHARLES J. STEVENS
United States Attorney
ROBERT J. CLEARY
STEPHEN P. FRECCERO
BERNARD F. HUBLEY
R. STEVEN LAPHAM
Special Attorneys to the
United States Attorney General
650 Capitol Mall
Sacramento, California 95814
Telephone: (916) 554-2700

FILED
JUN 18 1996
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. THEODORE JOHN KACZYNSKI, aka "FC" Defendant.	CR. NO. S- CR-S- 96- 259 GEB VIOLATIONS: 18 U.S.C. § 844(d) - Transportation of an Explosive With Intent To Kill or Injure (4 Counts); 18 U.S.C. § 1716 - Mailing an Explosive Device With Intent to Kill or Injure (3 Counts); 18 U.S.C. § 924(c)(1) - Use of a Destructive Device In Relation to a Crime of Violence (3 Counts)

I N D I C T M E N T

I.

THE BOMB THAT KILLED HUGH SCRUTTON (Count 1)

COUNT ONE: [18 U.S.C. §§ 844(d) and 2(b) - Transportation of an Explosive With Intent to Kill or Injure]

The Grand Jury charges:

THEODORE JOHN KACZYNSKI

defendant herein, as follows:

1. In or about the fall of 1985, but not later than December 11, 1985, the defendant transported a bomb and bomb components from Montana to Sacramento, California. The defendant

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placed the bomb in the parking lot behind the rear entrance to Rentech, a computer store in Sacramento, California.

2. On or about December 11, 1985, Hugh Scrutton, the owner of Rentech, moved the bomb. This action caused the bomb to explode, killing Mr. Scrutton.

3. In or about the fall of 1985, but not later than December 11, 1985, in the State and Eastern District of California, and elsewhere, the defendant knowingly did transport and attempt to transport, and willfully did cause to be transported, in interstate commerce an explosive with the knowledge and intent that it would be used to kill, injure and intimidate an individual, and unlawfully to damage and destroy real and personal property, which did result in the death of Hugh Scrutton, in violation of Title 18, United States Code, Sections 844(d) and 2(b).

II.

THE BOMB THAT INJURED DR. CHARLES EPSTEIN (Counts 2-4)

COUNT TWO: [18 U.S.C. §§ 844(d) and 2(b) - Transportation of an Explosive With Intent to Kill or Injure]

The Grand Jury further charges:

THEODORE JOHN KACZYNSKI

defendant herein, as follows:

4. From on or about June 16, 1993, to on or about June 18, 1993, the defendant transported a bomb and bomb components from Montana to Sacramento, California.

5. On or about June 18, 1993, the defendant mailed the bomb from Sacramento, California to Dr. Charles Epstein in Tiburon, California. The bomb was contained in a wooden box, placed in a

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padded mailing envelope. The package containing the bomb was delivered to Dr. Epstein's home.

6. On or about June 22, 1993, while in his home, Dr. Epstein opened the package referred to in paragraph 5, causing it to explode and to injure him.

7. From on or about June 16, 1993, to on or about June 22, 1993, in the State and Eastern District of California, and elsewhere, the defendant knowingly did transport and attempt to transport, and willfully did cause to be transported, in interstate commerce an explosive with the knowledge and intent that it would be used to kill, injure and intimidate an individual, and unlawfully to damage and destroy real and personal property, which did result in personal injury to Dr. Charles Epstein, in violation of Title 18, United States Code, Sections 844(d) and 2(b).

COUNT THREE: [18 U.S.C. § 1716 - Mailing an Explosive Device With Intent to Kill or Injure]

The Grand Jury further charges:

THEODORE JOHN KACZYNSKI

defendant herein, as follows:

8. Paragraphs 4 through 6 are repeated and realleged as though set forth in full.

9. On or about June 18, 1993, in the State and Eastern District of California, and elsewhere, the defendant knowingly did deposit for mailing and delivery and knowingly did cause to be delivered by mail, according to the direction thereon, nonmailable matter, to wit: a device and composition which could ignite and explode, with the intent to kill and injure another, in violation of

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Title 18, United States Code, Section 1716.

COUNT FOUR: [18 U.S.C. § 924(c)(1) - Use of a Destructive Device in Relation to a Crime of Violence]

The Grand Jury further charges:

THEODORE JOHN KACZYNSKI

defendant herein, as follows:

10. Paragraphs 4 through 6 are repeated and realleged as though set forth in full.

11. From on or about June 16, 1993, to on or about June 22, 1993, in the State and Eastern District of California, and elsewhere, during and in relation to a crime of violence for which he may be prosecuted in a court of the United States, to wit: transportation of an explosive with intent to kill and injure and mailing an explosive device with intent to kill and injure, as charged in Counts Two and Three, the defendant knowingly did use and carry a firearm, that is, a destructive device, in violation of Title 18, United States Code, Section 924(c)(1).

III.

THE BOMB MAILED THAT INJURED DR. DAVID GELERNTER (Counts 5-7)

COUNT FIVE: [18 U.S.C. §§ 844(d) and 2(b) - Transportation of an Explosive With Intent to Kill or Injure]

The Grand Jury further charges:

THEODORE JOHN KACZYNSKI

defendant herein, as follows:

12. From on or about June 16, 1993, to on or about June 18, 1993, the defendant transported a bomb and bomb components from Montana to Sacramento, California.

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13. On or about June 18, 1993, the defendant mailed the bomb from Sacramento, California to Dr. David Gelernter in New Haven, Connecticut. The bomb was contained in a wooden box, placed in a padded mailing envelope. The package containing the bomb was delivered to Dr. Gelernter's office.

14. On or about June 24, 1993, Dr. Gelernter opened the package referred to in paragraph 13, causing it to explode and to injure him.

15. From on or about June 16, 1993, to on or about June 24, 1993, in the State and Eastern District of California, and elsewhere, the defendant knowingly did transport and attempt to transport, and willfully did cause to be transported, in interstate commerce an explosive with the knowledge and intent that it would be used to kill, injure and intimidate an individual, and unlawfully to damage and destroy real and personal property, which did result in personal injury to Dr. David Gelernter, in violation of Title 18, United States Code, Sections 844(d) and 2(b).

COUNT SIX: [18 U.S.C. § 1716 - Mailing an Explosive Device With Intent to Kill or Injure]

The Grand Jury further charges:

THEODORE JOHN KACZYNSKI

defendant herein, as follows:

16. Paragraphs 12 through 14 are repeated and realleged as though set forth in full.

17. On or about June 18, 1993, in the State and Eastern District of California, and elsewhere, the defendant knowingly did deposit for mailing and delivery and knowingly did cause to be

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delivered by mail, according to the direction thereon, nonmailable matter, to wit: a device and composition which could ignite and explode, with the intent to kill and injure another, in violation of Title 18, United States Code, Section 1716.

COUNT SEVEN: [18 U.S.C. § 924(c)(1) - Use of a Destructive Device in Relation to a Crime of Violence]

The Grand Jury further charges:

THEODORE JOHN KACZYNSKI

defendant herein, as follows:

18. Paragraphs 12 through 14 are repeated and realleged as though set forth in full.

19. From on or about June 16, 1993, to on or about June 24, 1993, in the State and Eastern District of California, and elsewhere, during and in relation to a crime of violence for which he may be prosecuted in a court of the United States, to wit: transportation of an explosive with intent to kill and injure and mailing an explosive device with intent to kill and injure, as charged in Counts Five and Six, the defendant knowingly did use and carry a firearm, that is, a destructive device, in violation of Title 18, United States Code, Section 924(c)(1).

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IV.

THE BOMB THAT KILLED GILBERT B. MURRAY (Counts 8-10)

COUNT EIGHT: [18 U.S.C. §§ 844(d) and 2(b) - Transportation of an Explosive With Intent to Kill or Injure]

The Grand Jury further charges:

THEODORE JOHN KACZYNSKI

defendant herein, as follows:

20. From on or about March 13, 1995, to on or about April 20, 1995, the defendant transported a bomb and bomb components from Montana to Oakland, California.

21. On or about April 20, 1995, the defendant mailed the bomb from the Oakland, California area to William Dennison, at the address of the California Forestry Association, Sacramento, California. The bomb was contained in a wooden box wrapped with brown paper. The package containing the bomb was delivered to the California Forestry Association on or about April 24, 1995.

22. On or about April 24, 1995, Gilbert B. Murray, Mr. Dennison's successor as the President of the California Forestry Association, opened the package referred to in paragraph 21, causing it to explode, killing Mr. Murray.

23. From on or about March 13, 1995, to on or about April 24, 1995, in the State and Eastern District of California, and elsewhere, the defendant knowingly did transport and attempt to transport, and willfully did cause to be transported, in interstate commerce an explosive with the knowledge and intent that it would be used to kill, injure and intimidate an individual, and unlawfully to damage and destroy real and personal property, which did result in the death of Gilbert B. Murray, in violation of Title 18, United

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States Code, Sections 844(d) and 2(b).

COUNT NINE: [18 U.S.C. § 1716 - Mailing an Explosive Device With Intent to Kill or Injure]

The Grand Jury further charges:

THEODORE JOHN KACZYNSKI

defendant herein, as follows:

24. Paragraphs 20 through 22 are repeated and realleged as though set forth in full.

25. On or about April 20, 1995, the defendant knowingly did deposit for mailing and delivery and knowingly did cause to be delivered by mail in the State and Eastern District of California, and elsewhere, according to the direction thereon, nonmailable matter, to wit: a device and composition which could ignite and explode, with the intent to kill and injure another, and which did result in the death of Gilbert B. Murray, in violation of Title 18, United States Code, Section 1716.

COUNT TEN: [18 U.S.C. § 924(c)(1) - Use of a Destructive Device in Relation to a Crime of Violence]

The Grand Jury further charges:

THEODORE JOHN KACZYNSKI

defendant herein, as follows:

26. Paragraphs 20 through 22 are repeated and realleged as though set forth in full.

27. From on or about March 13, 1995, to on or about April 24, 1995, in the State and Eastern District of California, and elsewhere, during and in relation to a crime of violence for which

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he may be prosecuted in a court of the United States, to wit: transportation of an explosive with intent to kill and injure and mailing an explosive device with intent to kill and injure, as charged in Counts Eight and Nine, the defendant knowingly did use and carry a firearm, that is, a destructive device, in violation of Title 18, United States Code, Section 924(c)(1).

A TRUE BILL.

Steve Brooks

FOREPERSON

Charles J. Stevens

CHARLES J. STEVENS
United States Attorney

I hereby attest that the annexed instrument is a true and correct copy of the original on file in my office.

ATTEST: JUN 18 1996

Clerk, U.S. District Court

By: [illegible] Deputy Clerk

07/19/96 FRI 14:25 FAX 916 554 2100 US ATTORNEY 015

No. CR-S-96-259 GEB

UNITED STATES DISTRICT COURT

Eastern District of California

Criminal Division

THE UNITED STATES OF AMERICA

vs.

THEODORE JOHN KACZYNSKI
aka "FC"

INDICTMENT

VIOLATION(S): 18 U.S.C. § 844(d) and 2(b) - Transportation of an Explosive with Intent to Kill or Injure (4 Counts); 18 U.S.C. § 1716 - Mailing an Explosive Device With Intent to Kill or Injure (3 Counts); 18 U.S.C. § 924(c)(1) - Use of a Destructive Device in Relation to a Crime of Violence (3 Counts)

A true bill,

Steve Burrell

Foreman.

Filed in open court this _____ *day*

of _____ *, A.D. 19* _____

Clerk.

Bail, $ Bench warrant no bail

John F. Moffatt

GPO 863 525

I hereby certify that the foregoing instrument is a true copy of the original on file in my office.
ATTEST: CLERK, U.S. DISTRICT COURT
Eastern District of California
By L G Holmes Deputy Clerk
Dated JUN 18 1996

CHARLES J. STEVENS
United States Attorney
ROBERT J. CLEARY
STEPHEN P. FRECCERO
BERNARD F. HUBLEY
R. STEVEN LAPHAM
Special Attorneys to the
United States Attorney General
650 Capitol Mall
Sacramento, California 95814
Telephone: (916) 554-2700

ORIGINAL
FILED

JUN 18 1996

CLERK, U. S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. THEODORE JOHN KACZYNSKI, aka "FC" Defendant.	CR. NO. S-CR-S-96-259 GEB VIOLATIONS: 18 U.S.C. § 844(d) - Transportation of an Explosive With Intent To Kill or Injure (4 Counts); 18 U.S.C. § 1716 - Mailing an Explosive Device With Intent to Kill or Injure (3 Counts); 18 U.S.C. § 924(c)(1) - Use of a Destructive Device In Relation to a Crime of Violence (3 Counts)

I N D I C T M E N T

I.

THE BOMB THAT KILLED HUGH SCRUTTON (Count 1)

COUNT ONE: [18 U.S.C. §§ 844(d) and 2(b) - Transportation of an Explosive With Intent to Kill or Injure]

The Grand Jury charges:

THEODORE JOHN KACZYNSKI

defendant herein, as follows:

1. In or about the fall of 1985, but not later than December 11, 1985, the defendant transported a bomb and bomb components from Montana to Sacramento, California. The defendant

placed the bomb in the parking lot behind the rear entrance to Rentech, a computer store in Sacramento, California.

2. On or about December 11, 1985, Hugh Scrutton, the owner of Rentech, moved the bomb. This action caused the bomb to explode, killing Mr. Scrutton.

3. In or about the fall of 1985, but not later than December 11, 1985, in the State and Eastern District of California, and elsewhere, the defendant knowingly did transport and attempt to transport, and willfully did cause to be transported, in interstate commerce an explosive with the knowledge and intent that it would be used to kill, injure and intimidate an individual, and unlawfully to damage and destroy real and personal property, which did result in the death of Hugh Scrutton, in violation of Title 18, United States Code, Sections 844(d) and 2(b).

II.

THE BOMB THAT INJURED DR. CHARLES EPSTEIN (Counts 2-4)

COUNT TWO: [18 U.S.C. §§ 844(d) and 2(b) - Transportation of an Explosive With Intent to Kill or Injure]

The Grand Jury further charges:

THEODORE JOHN KACZYNSKI

defendant herein, as follows:

4. From on or about June 16, 1993, to on or about June 18, 1993, the defendant transported a bomb and bomb components from Montana to Sacramento, California.

5. On or about June 18, 1993, the defendant mailed the bomb from Sacramento, California to Dr. Charles Epstein in Tiburon, California. The bomb was contained in a wooden box, placed in a

padded mailing envelope. The package containing the bomb was delivered to Dr. Epstein's home.

6. On or about June 22, 1993, while in his home, Dr. Epstein opened the package referred to in paragraph 5, causing it to explode and to injure him.

7. From on or about June 16, 1993, to on or about June 22, 1993, in the State and Eastern District of California, and elsewhere, the defendant knowingly did transport and attempt to transport, and willfully did cause to be transported, in interstate commerce an explosive with the knowledge and intent that it would be used to kill, injure and intimidate an individual, and unlawfully to damage and destroy real and personal property, which did result in personal injury to Dr. Charles Epstein, in violation of Title 18, United States Code, Sections 844(d) and 2(b).

COUNT THREE: [18 U.S.C. § 1716 - Mailing an Explosive Device With Intent to Kill or Injure]

The Grand Jury further charges:

THEODORE JOHN KACZYNSKI

defendant herein, as follows:

8. Paragraphs 4 through 6 are repeated and realleged as though set forth in full.

9. On or about June 18, 1993, in the State and Eastern District of California, and elsewhere, the defendant knowingly did deposit for mailing and delivery and knowingly did cause to be delivered by mail, according to the direction thereon, nonmailable matter, to wit: a device and composition which could ignite and explode, with the intent to kill and injure another, in violation of

Title 18, United States Code, Section 1716.

COUNT FOUR: [18 U.S.C. § 924(c)(1) - Use of a Destructive Device in Relation to a Crime of Violence]

The Grand Jury further charges:

THEODORE JOHN KACZYNSKI

defendant herein, as follows:

10. Paragraphs 4 through 6 are repeated and realleged as though set forth in full.

11. From on or about June 16, 1993, to on or about June 22, 1993, in the State and Eastern District of California, and elsewhere, during and in relation to a crime of violence for which he may be prosecuted in a court of the United States, to wit: transportation of an explosive with intent to kill and injure and mailing an explosive device with intent to kill and injure, as charged in Counts Two and Three, the defendant knowingly did use and carry a firearm, that is, a destructive device, in violation of Title 18, United States Code, Section 924(c)(1).

III.

THE BOMB MAILED THAT INJURED DR. DAVID GELERNTER (Counts 5-7)

COUNT FIVE: [18 U.S.C. §§ 844(d) and 2(b) - Transportation of an Explosive With Intent to Kill or Injure]

The Grand Jury further charges:

THEODORE JOHN KACZYNSKI

defendant herein, as follows:

12. From on or about June 16, 1993, to on or about June 18, 1993, the defendant transported a bomb and bomb components from Montana to Sacramento, California.

13. On or about June 18, 1993, the defendant mailed the bomb from Sacramento, California to Dr. David Gelernter in New Haven, Connecticut. The bomb was contained in a wooden box, placed in a padded mailing envelope. The package containing the bomb was delivered to Dr. Gelernter's office.

14. On or about June 24, 1993, Dr. Gelernter opened the package referred to in paragraph 13, causing it to explode and to injure him.

15. From on or about June 16, 1993, to on or about June 24, 1993, in the State and Eastern District of California, and elsewhere, the defendant knowingly did transport and attempt to transport, and willfully did cause to be transported, in interstate commerce an explosive with the knowledge and intent that it would be used to kill, injure and intimidate an individual, and unlawfully to damage and destroy real and personal property, which did result in personal injury to Dr. David Gelernter, in violation of Title 18, United States Code, Sections 844(d) and 2(b).

COUNT SIX: [18 U.S.C. § 1716 - Mailing an Explosive Device With Intent to Kill or Injure]

The Grand Jury further charges:

THEODORE JOHN KACZYNSKI

defendant herein, as follows:

16. Paragraphs 12 through 14 are repeated and realleged as though set forth in full.

17. On or about June 18, 1993, in the State and Eastern District of California, and elsewhere, the defendant knowingly did deposit for mailing and delivery and knowingly did cause to be

delivered by mail, according to the direction thereon, nonmailable matter, to wit: a device and composition which could ignite and explode, with the intent to kill and injure another, in violation of Title 18, United States Code, Section 1716.

COUNT SEVEN: [18 U.S.C. § 924(c)(1) - Use of a Destructive Device in Relation to a Crime of Violence]

The Grand Jury further charges:

THEODORE JOHN KACZYNSKI

defendant herein, as follows:

18. Paragraphs 12 through 14 are repeated and realleged as though set forth in full.

19. From on or about June 16, 1993, to on or about June 24, 1993, in the State and Eastern District of California, and elsewhere, during and in relation to a crime of violence for which he may be prosecuted in a court of the United States, to wit: transportation of an explosive with intent to kill and injure and mailing an explosive device with intent to kill and injure, as charged in Counts Five and Six, the defendant knowingly did use and carry a firearm, that is, a destructive device, in violation of Title 18, United States Code, Section 924(c)(1).

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IV.

THE BOMB THAT KILLED GILBERT B. MURRAY (Counts 8-10)

COUNT EIGHT: [18 U.S.C. §§ 844(d) and 2(b) - Transportation of an Explosive With Intent to Kill or Injure]

The Grand Jury further charges:

THEODORE JOHN KACZYNSKI

defendant herein, as follows:

20. From on or about March 13, 1995, to on or about April 20, 1995, the defendant transported a bomb and bomb components from Montana to Oakland, California.

21. On or about April 20, 1995, the defendant mailed the bomb from the Oakland, California area to William Dennison, at the address of the California Forestry Association, Sacramento, California. The bomb was contained in a wooden box wrapped with brown paper. The package containing the bomb was delivered to the California Forestry Association on or about April 24, 1995.

22. On or about April 24, 1995, Gilbert B. Murray, Mr. Dennison's successor as the President of the California Forestry Association, opened the package referred to in paragraph 21, causing it to explode, killing Mr. Murray.

23. From on or about March 13, 1995, to on or about April 24, 1995, in the State and Eastern District of California, and elsewhere, the defendant knowingly did transport and attempt to transport, and willfully did cause to be transported, in interstate commerce an explosive with the knowledge and intent that it would be used to kill, injure and intimidate an individual, and unlawfully to damage and destroy real and personal property, which did result in the death of Gilbert B. Murray, in violation of Title 18, United

States Code, Sections 844(d) and 2(b).

COUNT NINE: [18 U.S.C. § 1716 - Mailing an Explosive Device With Intent to Kill or Injure]

The Grand Jury further charges:

THEODORE JOHN KACZYNSKI

defendant herein, as follows:

24. Paragraphs 20 through 22 are repeated and realleged as though set forth in full.

25. On or about April 20, 1995, the defendant knowingly did deposit for mailing and delivery and knowingly did cause to be delivered by mail in the State and Eastern District of California, and elsewhere, according to the direction thereon, nonmailable matter, to wit: a device and composition which could ignite and explode, with the intent to kill and injure another, and which did result in the death of Gilbert B. Murray, in violation of Title 18, United States Code, Section 1716.

COUNT TEN: [18 U.S.C. § 924(c)(1) - Use of a Destructive Device in Relation to a Crime of Violence]

The Grand Jury further charges:

THEODORE JOHN KACZYNSKI

defendant herein, as follows:

26. Paragraphs 20 through 22 are repeated and realleged as though set forth in full.

27. From on or about March 13, 1995, to on or about April 24, 1995, in the State and Eastern District of California, and elsewhere, during and in relation to a crime of violence for which

he may be prosecuted in a court of the United States, to wit: transportation of an explosive with intent to kill and injure and mailing an explosive device with intent to kill and injure, as charged in Counts Eight and Nine, the defendant knowingly did use and carry a firearm, that is, a destructive device, in violation of Title 18, United States Code, Section 924(c)(1).

A TRUE BILL.

FOREPERSON

CHARLES J. STEVENS
United States Attorney

FILED
JUN 19 1996
LOU ALEKSICH, JR., Clerk
By.....
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

HELENA DIVISION

****

UNITED STATES,

Plaintiff,

-v-

THEODORE JOHN KACZYNSKI,

Defendant.

MCR 96-6-H-CCL

ORDER

****

A warrant for the Defendant's arrest having been issued by a judicial officer of the Eastern District of California,

IT IS HEREBY ORDERED that a hearing on removal is set down for Friday, June 21, 1996, at 2:00 p.m., at the United States District Courthouse, Helena, Montana.

The Clerk is directed forthwith to notify the parties of entry of this order.

Done and dated this 19th day of June, 1996.

CHARLES C. LOVELL
United States District Judge

FILED
JUN 19 1996
LOU ALEKSICH, JR., Clerk
By.....
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

HELENA DIVISION

****

UNITED STATES,

Plaintiff,

-v-

THEODORE JOHN KACZYNSKI,

Defendant.

MCR 96-6-H-CCL

ORDER

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The Clerk is directed forthwith to notify the parties of entry of this order.

Done and dated this 19th day of June, 1996.

Charles C. Lovell

CHARLES C. LOVELL
United States District Judge

UNABOM/plea dgs

FILED

JUL 1 8 1996

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY CLERK

CHARLES J. STEVENS
United States Attorney
ROBERT J. CLEARY
STEPHEN P. FRECCERO
BERNARD F. HUBLEY
R. STEVEN LAPHAM
Special Attorneys to the
United States Attorney General
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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, a/k/a "FC" Defendant.	CR. NO. S-96-0259 GEB GOVERNMENT'S STATUS REPORT AND APPLICATION FOR EXCLUSION OF TIME

Preliminary Statement

The Court had scheduled a status conference for July 19, 1996, at which time the Government anticipated that a motions schedule would be set. Defense counsel apprised the Government of its desire to defer for approximately 60 days the status conference and the ordering of a motions schedule. Owing to the large amount of discovery and the complexity of the case, the Government informed defense counsel that it would not object to a defense request for additional time.

Set forth below is certain information, in the nature of a status report, that may helpful to the Court. We have included an

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application for exclusion of time for speedy trial purposes and a proposed order excluding time.

1. Appointment of Ms. Clark

The Government has no objection to a discretionary appointment of second counsel at this time and takes no position with respect to which attorney should be so appointed. The Government does not know what sort of arrangements Ms. Clark is seeking for reimbursement of expenses and, hence, is unable to predict what her travel and per diem expenses will be.

Although the Government has no objection to appointment of counsel, it appears that appointment of second counsel under the Criminal Justice Act, 18 U.S.C. §§3005 et seq., is not mandatory, for the reasons that follow. The Department of Justice has in place a detailed protocol to be followed in all federal prosecutions, such as this, in which the death penalty may be sought. The death penalty protocol provides the defense with an opportunity to present all mitigating factors to the United States Attorney. The United States Attorney must submit a sentencing recommendation, along with the defense arguments in mitigation, to a Committee appointed by the Attorney General, including the Deputy Attorney General and the Assistant Attorney General of the Criminal Division. Defense counsel will be afforded the opportunity to personally present their mitigation arguments to the Committee. The Committee must then give its sentencing recommendation to the Attorney General. The Attorney General will then make the final decision whether the Government should file a notice of Intention to Seek the Death Penalty. No U.S. Attorney may seek the death penalty without the prior written

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authorization of the Attorney General. See United States Attorney's Manual, §9-10.000.

The defense has not yet formally presented its arguments in mitigation to the United States Attorney as the initial step set forth in the death penalty protocol. Accordingly, the Attorney General has not yet determined whether the Government will seek the death penalty in this case, and appointment of second counsel under the Criminal Justice Act is not required.

2. Scheduling

As set forth in detail below (see item 3), the Government has produced a considerable amount of evidence to the defense, commencing prior to the date of indictment. Included in this production is approximately 22,000 pages of documents. Defense counsel has advised the Government that they need more time to evaluate this information in order to formulate defense strategy, to decide which motions to file, and to determine how long it will take to prepare the motions. Accordingly, the Government does not object to the defense request to continue the July 19 status conference to September 20, 1996. The Government requests that at that time, the Court set a motions schedule, including a date for any change of venue motion the defense may wish to file.

3. Discovery

In broad terms, the Government has produced discovery on a very expeditious basis, with the bulk of the Rule 16 materials being provided to the defense on the day of indictment. Within the next few days, the Government will have made available to the defense the

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overwhelming majority of the Rule 16 discovery. Jencks material will be provided sufficiently in advance of trial so as not to delay the trial proceedings. Potential impeachment material, if any, will be provided at the same time. The Government is aware of its obligations under Brady v. Maryland, 373 U.S. 83 (1963) and will provide timely disclosure if any exculpatory material comes to light.

More specifically, since prior to indictment the Government has been providing the defense with a substantial amount of materials, consisting generally of: (a) all of the photographs of the evidence that was seized by the Government during the execution of a search warrant on the defendant's cabin in Montana, (b) all of the photographs of physical evidence from the sixteen so-called "Unabom" bombs, (c) all of the various "Unabom documents," i.e., correspondence written by the then-unidentified "Unabomber" and sent to several different individuals and publications, and (d) all of the nearly 200 letters written primarily between the defendant and his family. Further details concerning the discovery provided thus far, and discovery issues generally, are set forth in June 19, 1996, and June 24, 1996, letters to counsel, attached hereto as Exhibits A and B, respectively.

Within the next few days, we expect to provide the defense with numerous laboratory reports. Over the next several months, as the Government progresses with its forensic examinations of the voluminous physical evidence obtained from the defendant's cabin, it will continue to generate and produce to the defense, laboratory reports relating to those examinations.

Also within the next few days, in order to facilitate the

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defense's review of the discovery, the Government will designate a number of documents that it deems especially relevant to the crimes charged in the indictment and to the other Unabom bombings.

The Government continues to work with the defense to ensure that they have access to all discovery in the most efficient and meaningful manner. We do not anticipate any problems requiring the Court's intervention in the discovery process.

4. Exclusion of Time

Section 3161(h)(8) excludes from the Speedy Trial calculation "[a]ny period of delay resulting from a continuance granted by any judge ... if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." In determining whether to grant such a continuance, a court may consider, among other factors, "[w]hether the case is so unusual or so complex ... that it is unreasonable to expect adequate preparation for pretrial proceedings ... within the time limits established by this section"; and "[w]hether the failure to grant such a continuance in a case which, taken as a whole, is not so unusual or so complex ... would deny counsel for the defendant ... the reasonable time necessary for effective preparation, taking into account the exercise of due diligence." 18 U.S.C. §3161(h)(8)(B).

The following factors support issuance of an "ends of justice" continuance under Section 3161(h)(8):

(A) During the search of the defendant's cabin between April 3 and April 14, 1996, the Government seized an enormous quantity of physical and documentary evidence. Indeed, the documents from the search amount to approximately 22,000 pages.

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(B) The investigation in this case concerns a series of 17 bombs covering a 17-year time span. The Government has amassed a considerable amount of physical evidence obtained from those crime scenes. Although this has been made available for the defense's review in Washington, D.C., since the date of indictment, the defense has not yet had a chance to examine that physical evidence.[1]

(C) During the course of this lengthy investigation, the Government has obtained literally millions of pieces of information relating to other potential suspects and having no direct bearing on the defendant. For example, the Government's investigative files include drivers license information from several states and student records from various academic institutions. See Exhibit A, p. 7. Nonetheless, the Government has offered to make that information available to the defense, and the defense has accepted the offer. The bulk of that evidence is stored on computer and we have just begun discussing with defense counsel a format for producing that information. The defense has not yet reviewed that data.

(D) The defense has advised that it needs additional time to further develop its legal strategy and to evaluate potential motions.

On the basis of these factors, the Government submits, with the defendant's concurrence, that this is a "complex" case within the meaning of Section 3161(h)(8)(B)(ii) in that it is unreasonable to expect the defense to adequately prepare for pretrial proceedings or for trial within the time limits established by the Speedy Trial Act. In the alternative, the case qualifies under Section 3161(h)(8)(B)(iv) as one in which the failure to grant a continuance would deny the defendant "the reasonable time necessary for effective presentation, taking into account the exercise of due diligence." Under either alternative, for the reasons discussed, the ends of justice outweigh the best interest of the public and the defendant in a speedy trial. A proposed order excluding time from the speedy trial calculation is attached.

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[1] Photographs of most of this evidence has been provided to the defense. See Exhibit A, pp. 3-5.

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5. Trial Date

The Government is prepared to commence trial shortly after the resolution of all pretrial motions. With the exception of the Government's contemplated motion to admit certain evidence pursuant to Fed. R. Evid. 404(b), the scheduling and resolution of pretrial motions will depend largely on what notices and motions, if any, are filed by the defense. For example, Fed. R. Crim. P. 12.2(a) & (b) requires the defense to provide the Government with written notice if they intend to rely on the defense of insanity or if they intend to introduce expert testimony relating to a mental disease, defect, or other condition bearing upon the issue of whether the defendant had the mental state required for the offenses charged. If the defense were to serve such notice, we would anticipate a resultant delay as both sides prepare for psychiatric evaluations of the defendant and related evidentiary hearings.

The Government suggests that both parties be prepared to advise the Court at the next status conference what motions, if any, they intend to file so that a briefing schedule may be set. The Government expects that pretrial motions can be fully submitted by the end of this calendar year and requests that trial commence shortly after those motions are decided.

6. Other Matters -- Computerization

Given the volume of evidence in this case, we have been evaluating ways to present the trial evidence in the most efficient manner that also is meaningful to the jury. To that end, and with the Court's permission, we would like to use a computer system in court for trial presentation. In particular, we would like to

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present photographic evidence through a system which incorporates compact discs and television monitors. In addition, we are contemplating using an imaging system to store and retrieve the voluminous documentary evidence in the case.

We expect to work out the details of this mode of presentation in consultation with defense counsel and will apprise the Court of our progress in this regard.

Dated: July 18, 1996

Respectfully submitted,

CHARLES J. STEVENS
United states Attorney

By: _____
ROBERT J. CLEARY
Special Attorney to the
U.S. Attorney General
(201) 645-2762
(415) 553-7493

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EXHIBIT A

U.S. Department of Justice

D
J

United States Attorney
Northern District of California

11th Floor, Federal Building *(415) 436-7200*
450 Golden Gate Avenue, Box 36055
San Francisco, California 94102 *FAX: (415) 436-7234*

June 19, 1996

BY OVERNIGHT COURIER
Michael Donahoe
Assistant Public Defender
Public Defenders of Montana, Inc.
2nd Floor
New York Block
46 No. Last Chance Gulch
Helena, Montana 59601

Re: United States v. Theodore J. Kaczynski
MCR 96-6-H-CCL (D. Mont.)
CR S 96-259-GEB (E.D. Cal.)

Dear Mr. Donahoe:

This letter provides discovery pursuant to Rule 16(a) of the Federal Rules of Criminal Procedure and seeks reciprocal discovery.

I. Disclosure By the Government Generally

The Government will provide discovery relating to, among other things, 17 separate bombing incidents, as set forth in the following table.

BOMB NUMBER	DATE OF EXPLOSION OR DETONATION	LOCATION OF EXPLOSION OR DETONATION	IDENTITY OF INTENDED OR ACTUAL VICTIM(S)
1	5/26/78	University of Illinois, Chicago Circle Campus	Prof. E.J. Smith (Professor of Dynamic Engineering, Rensselaer Polytechnic Institute)

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BOMB NUMBER	DATE OF EXPLOSION OR DETONATION	LOCATION OF EXPLOSION OR DETONATION	IDENTITY OF INTENDED OR ACTUAL VICTIM(S)
2	5/9/79	Northwestern University, Evanston, IL	John Harris (student at NWU)
3	11/15/79	American Airlines flight #444, en route from Chicago to Washington D.C.	72 passengers and 7 crew members aboard flight #444
4	6/10/80	Residence of Percy Addison Wood Lake Forest, IL	Percy Addison Wood (President of United Airlines)
5	10/8/81	Business Classroom Building University of Utah Salt Lake City, Utah	Unspecified
6	5/5/82	Vanderbilt University Nashville, TN	Prof. Patrick C. Fischer (Professor of Computer Science) Janet Smith (secretary to Prof. Fischer)
7	7/2/82	Cory Hall University of California at Berkeley	Prof. Diogenes Angelakos (Director of the Electronics Research Laboratory)
8	5/15/85	Cory Hall University of California at Berkeley	John E. Hauser (graduate student in electrical engineering)
9	6/13/85	Boeing Co. Fabrication Division Auburn, Washington	Employees of the Boeing Co.
10	11/15/85	Residence of Dr. James V. McConnell Ann Arbor, Michigan	Dr. James V. McConnell (Professor of Psychology) Nick Suino (Prof. McConnell's teaching assistant)

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BOMB NUMBER	DATE OF EXPLOS-ION OR DETONA-TION	LOCATION OF EXPLOSION OR DETONATION	IDENTITY OF INTENDED OR ACTUAL VICTIM(S)
11	12/11/85	Rentech Computer Co. Sacramento, CA	Hugh Scrutton (owner of Rentech)
12	2/20/87	CAAMS, Inc. Salt Lake City, Utah	Gary Wright (employee of CAAMS, a computer store)
13	6/22/93	Residence of Charles J. Epstein Tiburon, CA	Dr. Charles J. Epstein (a geneticist at the University of California Medical Facility in San Francisco)
14	6/24/93	Yale University New Haven, CT	Prof. David Gelernter (Professor of Computer Science)
15	12/10/94	Residence of Thomas J. Mosser No. Caldwell, NJ	Thomas J. Mosser (advertising executive with Burson-Marsteller)
16	4/24/95	California Forestry Association Sacramento, CA	Gilbert B. Murray (president of the association)
17	4/7/96	Near the cabin of the defendant	Unspecified

II. Discovery Ready To Be Picked Up

1. Photographs of Bombs and Non-Documentary Evidence: The following items presently are available for you to pick up at the U.S. Attorney's Office in Helena, Montana:

(A) six soft-cover binders which contain photographs of predominantly non-documentary evidence (including X-rays of a bomb) that we seized during the search of your client's cabin. The only such evidence that was not photographed

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were items K1683 through K1686[1] (vacuum sweepings and debris);

(B) one hard-cover 3-ring binder which contains photographs of predominantly non-documentary evidence relating to bomb 16. The only such evidence that was not photographed were the following items: Q178-180 (paneling), Q186-188 (swabs), Q203 (3 envelopes), Q232 (suit coat), Q238 (debris, destroyed as a biohazard), Q239 (swabs), Q242 (ceiling tile, destroyed as a biohazard), Q243 (counter top), Q245 (notebooks), Q257-259 (vacuum sweepings), Q262 (table paper), Q271-272 (swabs), Q295 (paper), Q296 (ceiling tile), Q297 (debris, destroyed as a biohazard), Q300 (debris), Q302 (debris), Q308 (debris, destroyed as a biohazard), Q312 (glass fragments), and Q313 (debris);

(C) one hard-cover 3-ring binder which contains photographs of predominantly non-documentary evidence relating to bomb 15. The only such evidence that was not photographed were the following items: Q24 (2 microcassette tapes), Q45 (wood pieces, counter top), Q108 (miscellaneous debris), Q109 (leaf), Q110 (screw), Q112 (2 microcassette tapes), Q121 (bed sheets), Q130-132 (swabs), and Q133 (pack of cigarettes);

(D) one hard-cover 3-ring binder which contains photographs of predominantly non-documentary evidence relating to bombs 13 and 14. The only such evidence that was not photographed were the following items from bomb 14: Q160 (fragments of paper), Q183 (fragments of paper), Q184 (fragments of metal and plastic), Q187-188 (white sheets), Q193 (hospital gown), Q194-195 (sheets), and Q196 (medical waste). This binder also contains a series of photographs which compare various aspects of bombs 13 and 14;

(E) one hard-cover 3-ring binder which contains photographs of predominantly non-documentary evidence relating to bombs 11 and 12. The only such evidence that was not photographed were items Q103, Q106 and Q108 (all of which are debris from bomb 11);

(F) one hard-cover 3-ring binder which contains photographs of predominantly non-documentary evidence relating to bombs 7, 8, 9 and 10;

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[1] "K___" and "Q___" are the designations used by the FBI Laboratory to identify evidence submitted to it. Complete listings of all of these designations and the evidence to which they refer are contained in the Lab reports which will be provided at a later date.

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(G) one hard-cover 3-ring binder which contains photographs of predominantly non-documentary evidence relating to bombs 1, 2, 3, 4, 5 and 6;

(H) one hard-cover 3-ring binder which contains various comparison photographs of some of the components from some of the bombs listed above; and

(I) one hard-cover 3-ring binder labeled "Unabom Photographs for Defense" which contains photographs of documentary and non-documentary evidence such a typewriter, maps, and carbon paper.

2. Photographs of Documentary Evidence: The following items presently are available for you to pick up at the U.S. Attorney's Office in Helena, Montana:

(A) one hard-cover 3-ring binder which contains photographs of the packages, cover letters, and copies of the "Unabom Manifesto" (a 56-page document, plus notes, entitled: "Industrial Society and Its Future") that were sent to the New York Times, the Washington Post, Penthouse Magazine, and Professor Tom Tyler. This binder also contains a photograph of a 2-page letter sent to Scientific American magazine.

(B) one hard-cover 3-ring binder labeled "Documents," which contains photographs of miscellaneous letters, labels and stamps relating to some of the bombs listed above;

(C) four wooden crates containing photographs of the documents the Government seized during the search of your client's cabin. We shot 33 rolls of negatives in photographing all of this documentary evidence. Those rolls of negatives are numbered 1-29, 30A, 30B, 31A, and 31B. Each roll of negatives resulted in one or more rolls of prints. These are the prints that are provided to you in the four wooden crates. Each roll of prints is labeled with the negative roll from which it was developed. In those instances in which a single roll of negatives resulted in multiple rolls of prints, the latter are labeled with a negative roll number and a "Part" number. For example, if negative roll 7 created three rolls of prints, those rolls of prints would be labeled "Roll 7, Part 1," "Roll 7, Part 2," and "Roll 7, Part 3."

3. Lists: In order to facilitate your review of the evidence that the Government seized from your client's cabin, the following lists presently are available for you to pick up at the U.S. Attorney's Office in Helena, Montana:

07/22/96 MON 09:08 FAX 916 554 2100 US ATTORNEY 015

(A) an eight-page list entitled "Items Photographed." This list provides the FBI's Laboratory "Specimen Number" (see footnote 1, above) for all documentary evidence seized from the cabin and tells you which roll of negatives contains the photograph of that document. This list also contains a column headed "FO#." This is the designation ascribed to the evidence by the Evidence Response Team that searched the cabin (hereinafter "ERT Number"). This information is provided to you because you will see references to this alpha-numeric designation in the FBI Lab Reports;

(B) an eight-page list entitled "Items Not Photographed." This list provides the Specimen Number, the ERT Number, and a description of all evidence which was seized from the cabin but not photographed; and

(C) a ten-page list entitled "Books." Included in this list are all books, papers, and maps that were seized. No books or educational papers were photographed, although loose papers that were contained in books were photographed and presently are available to you (see section II2(C), above). Generally, only the front cover of maps were photographed.[2] However, if a particular section of a map had some writing on it, such as a circle around a particular location, that portion of the map was photographed and presently is available to you (see section II2(C), above).

III. Discovery Provided Herein

Included in this package are the following documents:

(A) 816 pages of material consisting of photocopies and photocopies of photographs, of 122 letters written by your client predominantly to members of his family, some of which are undated and the rest of which are dated from September 16, 1968 to November 30, 1995, and newsclippings and essays (T 1-122); photocopies of additional letters and other materials (T 122 - 178) will be forwarded to you within the next week. Along with these materials we are including, for your convenience, 2 indices which correlate the documents based on their "T" number designation (an internal numbering designation) with the corresponding "K" laboratory designation.

(B) a binder labeled "Letters/Labels/Stamps" which contains

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[2]There is one exception to this general rule: one map which was in tatters was not photographed at all. However, it is included in the listing of maps referred to above and is presently available for your inspection (see section IV1).

07/22/96 MON 09:08 FAX 916 554 2100 US ATTORNEY 016

photographs of those various items, including 13 documents written by the then-unidentified "Unabom" subject, dated from June 3, 1980 to June 24, 1995.

IV. Miscellaneous Discovery

1. Physical Evidence Available for Inspection: Some pieces of physical evidence have not been photographed, e.g., items that were not germane to the Lab Reports (see section III(A) through (E), above). In addition some of the documentary evidence seized from your client's cabin was not photographed, e.g., books, educational papers, and maps (see section II3(C), above). As noted above, a complete listing of the cabin evidence that we did not photograph is available to you at the U.S. Attorney's Office in Helena, Montana (see section II3(B), above). In any event, all physical and documentary evidence that was not photographed -- as well as that which was photographed -- is available for your inspection at the FBI Laboratory in Washington, D.C. Please let me know if you wish to inspect these items, and I will make the necessary arrangements.

2. Computer and Other Evidence Unrelated to Mr. Kaczynski: As you can tell from the table on pages 1-3, above, this investigation has been on-going, in different forms, for many years. During that time, evidence was developed relating to other, potential suspects. In addition, voluminous records and other information was obtained that was not suspect-specific, e.g., drivers license information from various states and student records from different academic institutions. Much of this evidence has been stored on a large main-frame computer. Except for the fact that your client's name was included among certain records that we obtained from Harvard University and the State of Illinois, none of this evidence relates to your client. Enumerated below are some of the categories of information that we have stored on the mainframe computer:

(A) employment records

(B) business customer lists

(C) airline flight records

(D) business phone directories

(E) records from the California Department of Corrections.

In addition, we have numerous Lab Reports which exculpate some of the prior suspects in the investigation and which are completely unrelated to your client. We do not intend to use those reports as evidence in chief at trial. Further, we do not believe them to be in any way relevant, let alone

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material, to the preparation of the defense. See Fed. R. Crim. P. 16(a)(1)(D).

We would be happy to make the information listed in this subsection available to you, subject to certain protective orders, if you want to review it. Please let us know if you do wish to inspect this data and, if so, in what format.

3. Brady disclosures: Pursuant to our obligations under Brady v. Maryland, 373 U.S. 83 (1963), and its progeny, we are informing you of the following facts: (1) bank records from the Western Federal Savings Bank in Helena, Montana, reveal that a check was deposited to your client's account on December 11, 1985 (the deposit slip was dated December 9, 1985; (2) in 1981 the laboratory of the Bureau of Alcohol, Tobacco & Firearms concluded that bomb # 5 was a hoax and not designed to detonate; (3) we have uncovered in excess of 20 latent fingerprints and/or palmprints from crime scene debris or correspondence associated with Unabom events, some of which were identified and some were not identified, and none of which are the fingerprints of your client; (4) you may wish to speak to Professor Noel Reynolds of the Political Science Department at Brigham Young University, Provo, Utah, concerning word print analysis of the Unabom subject. We direct you to this information in an abundance of caution and without conceding that the information is, in fact, exculpatory. The Government will provide potential impeachment material, if any, at the time it provides prior statements of witnesses pursuant to Title 18, United States Code, Section 3500.

4. Summaries of Expert Witness Testimony: Written summaries of testimony the Government intends to offer under Fed. R. Evid. 702, 703 and 705 as evidence at trial will be provided at a later date.

V. Disclosure By the Defendant

The Government hereby requests reciprocal discovery under Fed. R. Crim. P. 16(b). Specifically, we request that you allow inspection and copying of: (1) any books, papers, documents, photographs, and tangible objects, or copies or portions thereof, which are in the defendant's possession, custody or control, and which the defendant intends to introduce as evidence or otherwise rely on at trial; and (2) any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this case, or copies thereof, which are in the defendant's possession or control, and which the defendant intends to introduce as evidence or otherwise rely on at trial or which were prepared by a witness whom the defendant intends to call at trial. We further request that you disclose a written summary of testimony you intend to use under Fed. R. Evid. 702, 703 and 705 as evidence at trial. This

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summary should describe the opinions of the witness, the bases and reasons therefore, and the witness's qualifications.

Pursuant to Fed. R. Crim. P. 26.2, the Government also requests that the defendant disclose prior statements of witnesses the defendant will call to testify. We request that such material be provided on the same basis upon which we agree to supply the defendant with Section 3500 material relating to Government witnesses.

We wish to remind you that Fed. R. Crim. P. 12.2(a) & (b) requires you to provide the Government with written notice if the defendant intends to rely on the defense of insanity at the time of the alleged crime or intends to introduce expert testimony relating to a mental disease, defect, or other condition bearing upon the issue of whether he had the mental state required for the offenses charged.

The Government requests a response to its Rule 12.2 demand within the time period allowed by the Court for the filing of pre-trial motions.

* * * * * *

Please contact me at your earliest convenience concerning any further discovery which you may request.

Very truly yours,

ROBERT J. CLEARY
Special Attorney to the
U.S. Attorney General

by: STEPHEN P. FRECCERO
Special Attorney to the
U.S. Attorney General

07/22/96 MON 09:09 FAX 916 554 2100 US ATTORNEY 019

EXHIBIT B

D
J

U.S. Department of Justice

United States Attorney
Northern District of California

11th Floor, Federal Building *(415) 436-7200*
450 Golden Gate Avenue, Box 36055
San Francisco, California 94102 *FAX: (415) 436-7234*

June 24, 1996

HAND DELIVERY
Quin Denvir
Federal Defender
Eastern District of California
801 K St., 10th Floor
Sacramento, CA 95814

Re: United States v. Theodore J. Kaczynski
CR S 96-259-GEB (E.D. Cal.)

Dear Mr. Denvir:

This letter supplements a letter dated June 19, 1996 which was sent to Michael Donohoe, Esq. by overnight courier. A copy of that letter was provided to you on June 21, 1996 in Sacramento, California.

Included along with this letter are additional documents which had been previously referred to in Section III(A) of the June 19, 1996 letter, specifically photocopies and photocopies of photographs, of 56 letters written by your client predominantly to members of his family, some of which are undated and the rest of which are dated from August 10, 1968 to November 30, 1995, and newsclippings and essays (T 122 - 178). Along with these materials we are including, for your convenience, 2 indices which correlate the documents based on their "T" number designation (an internal numbering designation) with the corresponding "K" laboratory designation. These indices are updated versions of the indices previously provided and encompass the additional materials which are being provided along with this letter.

Pursuant to our obligations under Brady v. Maryland, 373 U.S. 83 (1963), and its progeny, we are providing you with a copy of a letter dated April 19, 1996 purportedly sent by the "Freedom Club" and addressed to Louis Freeh, Director of the FBI. We direct this material to you in an abundance of caution and without conceding that the information is, in fact, exculpatory.

07/22/96 MON 09:11 FAX 916 554 2100 US ATTORNEY 021

Please contact me at your earliest convenience concerning any further discovery which you may request.

Very truly yours,

ROBERT J. CLEARY
Special Attorney to the
U.S. Attorney General

by: STEPHEN P. FRECCERO
Special Attorney to the
U.S. Attorney General

07/22/96 MON 09:12 FAX 916 554 2100 US ATTORNEY 022

FILED
JUL 18 1996
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. THEODORE JOHN KACZYNSKI, aka "FC", Defendant.	CR S-96-259 GEB ORDER

FOR GOOD CAUSE SHOWN, Judy Clarke, Executive Director of Federal Defenders of Eastern Washington and Idaho, is appointed as counsel for defendant Theodore Kaczynski pursuant to 18 U.S.C. § 3005.

IT IS SO ORDERED.

DATED: July 18, 1996

GARLAND E. BURRELL, JR.
United States District Judge

07/19/96 FRI 14:22 FAX 916 554 2100 US ATTORNEY 005

Unobjection pleading

FILED

JUL 1 8 1996

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. THEODORE JOHN KACZYNSKI, aka "FC", Defendant.	CR S-96-259 GEB ORDER

The status conference scheduled in this case for hearing on July 19, 1996, is continued to September 20, 1996, at 9:00 a.m. The need for the July 19 hearing has been obviated by the individual status conference reports submitted by the parties on July 18, 1996.

SPEEDY TRIAL ACT

The following representations of counsel justify the findings made below:

1. During the search of the defendant's cabin between April 3 and April 14, 1996, the Government seized a large quantity of physical and documentary evidence;

2. The investigation in this case concerns a series of 17 bombs covering a 17-year time span. The Government has amassed a considerable amount of physical evidence obtained from those crime

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07/19/96 FRI 14:21 FAX 916 554 2100 US ATTORNEY 002

scenes. The defense has not yet had a chance to examine that physical evidence;

3. During the course of its investigation, the Government obtained millions of pieces of information relating to other potential suspects and having no direct bearing on the defendant. The bulk of that evidence is stored on computer and the Government has just begun discussing with defense counsel a format for producing that information. The defense has not yet reviewed that data;

4. Given the considerable amount of discovery in this case and the complexity of the issues, the defense needs additional time to further develop its legal strategy and to evaluate potential motions;

5. This is an "unusual" and "complex" case within the meaning of Section 3161(h)(8)(B)(ii) in that it is unreasonable to expect the defense to adequately prepare for pretrial proceedings or for trial within the time limits established by the Speedy Trial Act;

6. This case qualifies under Section 3161(h)(8)(B)(iv) as one in which the failure to grant a continuance would deny the defendant "the reasonable time necessary for effective preparation, taking into account the exercise of due diligence;" and

7. For the reasons set forth above, the ends of justice outweigh the best interest of the public and the defendant in a speedy trial. Accordingly,

Pursuant to 18 U.S.C. §3161(h)(8)(B)(ii) and (iv), the period from July 19, 1996, through September 20, 1996, inclusive, is excluded from the time computations required by the Speedy Trial Act.

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At the status conference now scheduled for September 20, 1996, at 9:00 a.m., the parties shall be prepared to advise the Court as to scheduling of pretrial motions. The parties shall file and serve joint or individual status conference reports no later than September 13, 1996.

IT IS SO ORDERED.

DATED: July 18, 1996

GARLAND E. BURRELL, JR.
United States District Judge

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UNABOM / pleadings

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SEP 19 1996
CLERK U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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United States Attorney
ROBERT J. CLEARY
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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, a/k/a "FC" Defendant.	CR. NO. S-96-0259 GEB GOVERNMENT'S SECOND STATUS REPORT Date: September 20, 1996 Time: 9:00 a.m. Judge: Hon. Garland E. Burrell

I.

PRELIMINARY STATEMENT

On July 18, 1996 this Court ordered that the status conference originally set for July 19, 1996 be continued until September 20, 1996. The Court excluded the time between the two conferences from the time computations required by the Speedy Trial Act pursuant to 18 U.S.C. §3161(h)(8)(B)(ii) and (iv). The Court directed the parties to file status conference reports no later than September 13, 1996.

The government hereby submits its status conference report.

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II.

STATUS OF DISCOVERY

The government has provided extensive discovery in this case in a timely manner. Because of our view that additional uncharged conduct is relevant to the crimes charged in the indictment, we have provided the defense broad discovery of not only the four charged bombing incidents but also of a series of 13 additional related bombing events as well as other uncharged acts. We have also conferred with the defense on several occasions and have responded to specific requests and attempted to expeditiously resolve any discovery issues. We will continue to work with the defense to ensure that they have meaningful access to discovery.

The following is a summary of discovery provided to date.

A. Rule 16 Discovery

1. Statements of the Defendant: The government has provided defense counsel with photographic copies of all written statements of the defendant as well as all summaries of oral statements.

2. Physical Evidence: All physical evidence pertaining to the 16 bombing incidents and all evidence found in the defendant's cabin, including a fully functional bomb, is located at the FBI Laboratory in Washington, D.C. By letter dated June 19, 1996, the government advised defense counsel that this evidence is available for their inspection.

In addition to making all physical evidence available for inspection, the government has attempted to facilitate the review of the physical evidence by providing the defense with photographs of virtually all the physical evidence. Along with our June 19, 1996

discovery letter we transmitted to the defense numerous binders containing photographs of the above-described physical evidence organized chronologically by the different bombing incidents. In addition, we provided various indices to the evidence seized during the search.

3. Documentary Evidence: In addition to the defendant's writings, the government has provided defense counsel with photographic copies of all documentary evidence that the government currently anticipates introducing at trial in its case in chief or that is material to the preparation of the defendant's defense. The government has also provided the defense with indices to these documents so that the defense will be able to cross-reference document numbers with their corresponding laboratory specimen numbers.

In addition, in an attempt to assist the defense in its review of the documentary evidence, the government has identified those documents which it considers to be of particular significance to this case and has made a separate set of these documents for the defense. This set of documents, with specific notations as to which portions are considered particularly relevant by the prosecution, was provided to the defense by letter dated July 29, 1996.

4. Laboratory Reports: The government has provided the defense with a complete set of all laboratory reports which have been compiled during the course of this lengthy investigation to date. Many of these reports have no relevance to this proceeding, having to do with examinations which eliminated potential suspects or which indicated no physical correlation between sample items and crime scene debris, and the government does not intend to use such

reports at trial. We have nonetheless provided them to the defense in an abundance of caution and to provide the defense with a complete set of the reports pertaining to laboratory analysis.[1]

Because of concern for the privacy rights of individuals named in the reports and based upon its conclusion that these individuals are in no way involved with any of the bombing incidents, the government produced these documents upon the representation of the defense that the reports would be restricted to members of the defense team and would not be disseminated to any third parties.

All the laboratory reports have been produced to the defense in binders, organized in chronological order and identified by the respective laboratory issuing the report. The discovery letter accompanying the reports contained an appendix cataloguing the documents for the defense.

B. Discovery Under the Jencks Act

As the Court is aware, the Jencks Act, 18 United States Code, §3500 et seq. requires the government to disclose the relevant statements of witnesses that it intends to call at trial and to make such disclosure prior to the commencement of cross-examination of that individual at trial. As is the typical practice in this district the government intends to provide witness statements to the defense well in advance of our obligation to do so.

The government is not currently in a position to produce all witness statements for a number of reasons. The investigation into

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[1] Because laboratory work is still being performed, the government expects to provide the defense with additional reports as they become available.

the 17 related bombing incidents at issue in this case has been ongoing and in different forms since 1978. Literally thousands of individuals have been interviewed over the course of the investigation. Much of the information they provided is irrelevant to this proceeding and most of these individuals will never be called to testify. Identifying which of the numerous persons interviewed in this investigation will testify will depend on a number of factors, including stipulations by the parties and the Court's resolution of any pretrial motions. Thus, at this point in the proceeding, the government is not in a position to identify those witnesses it intends to call at trial.

The disclosure of all statements by persons interviewed in this investigation also raises legitimate privacy concerns. Many of the persons interviewed over the years requested confidentiality and the government intends to honor those requests except to the extent that federal law compels disclosure. Furthermore, some individuals, including victims and their relatives or close associates, have at times provided highly sensitive personal information in an attempt to aid the investigation. Disclosure of such information would be an unwarranted and unnecessary intrusion upon the privacy of these individuals. Accordingly, after the issues to be tried are more precisely defined and the government knows who its trial witnesses will be, the government will produce the relevant statements of those witnesses, pursuant to 18 U.S.C. §3500.

The government is committed to an orderly and expeditious preparation of this matter for trial and will work with the defense to ensure that the defense has sufficient time to review any prior statements of government trial witnesses.

C. Other Discovery Areas

1. Databases: By letter dated June 19, 1996, the government advised defense counsel that it is in possession of voluminous records and other information which had been gathered and stored electronically over the course of this lengthy investigation. These databases were used during the investigation in an attempt to ascertain commonalities between different bombing events. The databases contain such things as DMV records from states where Unabom events had occurred, records from academic institutions where Unabom events had occurred, employee lists from various airlines, class lists from various academic courses and customer lists from companies in locations near Unabom events.

In the government's view, while useful as an investigative tool, none of these databases is relevant to the defense or prosecution of this case. Nevertheless, by letter dated July 29, 1996, the government provided defense counsel with a list of the databases it would make available to them upon specific request.

2. Information Pertaining to Individuals Not Not Involved in This Case

During the course of a 17 year investigation into the related bombings at issue in this case, the government attempted to pursue virtually every credible lead that came to its attention. Many of these leads were the result of anonymous or confidential calls from well-intentioned citizens who thought a particular individual looked like a composite drawing of the unidentified Unabom subject or had personal characteristics which the caller believed fit those of a bomber. Other leads were developed by cross-referencing databases to identify individuals who had lived in

states or attended academic institutions where Unabom events occurred. In some cases, information was obtained concerning individuals who had been in the vicinity of a particular incident, students at a targeted university, or customers of a victim, in order to determine if they had any involvement in the crimes under investigation.

The Unabom Task Force attempted to investigate in some manner nearly every lead that came to its attention no matter how vague or non-specific was the information provided. Inquiries were made in confidence in an effort to protect the privacy and reputation of any individual brought to the Task Force's attention. The information obtained was strictly controlled and segregated by the federal Task Force and was not disseminated to the general public or the general law enforcement community. Many such allegations were resolved without the subject ever knowing that such allegations had been made.

In order to document information received or steps taken to substantiate leads, the Unabom Task Force opened in excess of two thousand files, assigning them to specific individuals (or in some cases simply to first or last names). In the government's view, none of the information contained in these files is relevant to the defense or prosecution of this case; nor does any of the information constitute Brady information which the government would be required to turn over to the defense.

Nevertheless, the government has agreed to provide defense counsel with portions of each of these files which should be sufficient to explain one or more of the following questions: (1) the identity of the individual assigned to the file, (2) how or why

the individual came to the attention of the Unabom Task Force, or (3) the reason the individual was eliminated as a potential suspect or was not investigated further. The government has also agreed to make additional information available to the defense upon specific request demonstrating good cause warranting further disclosure.

Mindful of the fact that many individuals who provided information to the Task Force requested confidentiality, the government has redacted the names of these individuals from documents provided to the defense. The government is also committed to the legitimate privacy interests of those who were subjected to various degrees of scrutiny as a result of what in most cases was very slight information, and therefore will provide the information to the defense under the following conditions:

(1) access to the information will only be provided to those individuals directly involved in the defense of this federal prosecution;

(2) the information will only be used in the preparation of the defense of this case;

(3) to the extent that the files, subjects, or sources need to be referred to in open Court, they shall be identified solely by the file number;

(4) if there is a perceived need to identify by name any of the individuals referenced in these files, the defense will make an in camera application to the Court upon notice to the government; and

(5) the defense shall not inform any of the individuals referenced in these files that allegations had been made about them or that they had been the subject of one of the government's files.

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3. Other Documents and Materials: The government has provided liberal discovery in this prosecution, limited only by its concern for the confidentiality of its investigative techniques[2] and the privacy of individuals not directly involved in this case. Thus, the government has provided discovery of many materials beyond the requirements of Rule 16, 18 U.S.C. §3500, and the Brady doctrine, including documents specifically earmarked by the prosecution as particularly relevant to the government's case. Aside from the considerable discovery relating to other individuals outlined above, the government has attempted to provide the defense with copies of all records and documents pertaining to the defendant within its possession without reference to their relevance.[3] Such records include, for example, all academic records obtained which pertain to the defendant as well as any and all correspondence associated with him. In addition, telephone records which were obtained in an attempt to investigate connections between the

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[2] The government retains legitimate concerns about revealing the investigative techniques and strategies it uses to investigate and apprehend serial killers and bombers.

[3] The defense has requested that we provide all FBI 302s and other investigative reports in this case. While we are of course willing to review the appropriateness of specific requests for certain investigative reports on a case by case basis (and have provided some reports when the defense has made such a specific request) we have not acceded to a blanket request for all reports generated over the course of this 17 year investigation. Rule 16(a)(2) specifically exempts from discovery "memoranda, or other internal government documents made by the attorney for the government or other government agents in connection with the investigation or prosecution of the case." Because of the government's concerns for the privacy interests of third parties, as well as our investigative techniques, we have declined to simply open up all government files for inspection.

defendant and certain locations have been disclosed even though the government has to date been unable to identify any significance to the records.

D. Cooperation with Defense Counsel

The government has advised defense counsel of its willingness to meet and confer with respect to any questions or disputes regarding discovery.

III.

BRADY DISCLOSURES

The government will produce any material, exculpatory evidence, if any exists, in a timely manner in accordance with Brady v. Maryland, 373 U.S. 83 (1963). The government will provide potential impeachment evidence, if any exists, at the time it provides prior statements of witnesses pursuant to Title 18, United States Code, §3500.

IV.

ANTICIPATED MOTIONS

A. Motions to Compel Handwriting Exemplars And Blood and Hair Samples

By letter dated July 16, 1996, the government requested that the defendant voluntarily provide handwriting, hair and blood samples. These samples are necessary to complete the forensic review of certain physical and documentary evidence. The government and the defense have continued to discuss whether voluntary compliance is appropriate or, in the alternative, whether the need for such samples can be resolved by way of stipulation. In the event that no agreement between the parties can be reached, the government anticipates filing a motion to compel compliance.

B. Motion to Admit Certain Evidence Pursuant to Rule 404(b)

By letter dated August 21, 1996, the government notified defense counsel of its intention to rely on evidence of other acts pursuant to Fed. R. Evid. 404(b). These acts essentially consist of actual or planned bombing incidents other than those charged in the indictment, as well as other acts of actual or planned violence and vandalism. The government thereafter supplied the defense with discovery in support of its notice. The government intends to file a motion seeking a pre-trial ruling as to the admissibility of such evidence and will do so as the Court directs.

V.

SCHEDULING

As indicated in its earlier status report, with the exception of the government's contemplated motion to admit certain evidence pursuant to Rule 404(b), the scheduling and resolution of pretrial motions will depend largely on what notices and motions, if any, are filed by the defense. It is especially important that any defense contentions concerning the defendant's competency or sanity be raised early enough to avoid trial delay occasioned by psychiatric evaluations and related hearings. The government requests that this Court set dates for the filing of motions and responsive pleadings -- including motions and notices pursuant to 18 U.S.C. §4241 and Fed. R. Crim. P. 12.2(a) & (b) -- at the September 20, 1996 conference. To that end, we propose the following schedule:

1. November 20, 1996: all motions and notices filed;
2. January 10, 1997: all responsive pleadings filed; and
3. January 24, 1997: all reply briefs, if any, filed.

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Based on this proposed schedule, and assuming there are no evidentiary hearings, the government requests that trial commence on March 31, 1997. We also request that the Court schedule a trial confirmation hearing or status conference one month before trial.

An order setting the above schedule would require a finding of excludable time by this Court. Such a finding could be based upon a showing by the defendant that (i) this is an "unusual" and "complex" case, requiring additional preparation time, or (ii) the failure to grant a continuance would deny the defendant "the reasonable time necessary for effective preparation, taking into account the exercise of due diligence," 18 U.S.C. §3161(h)(8)(B)(ii) & (iv), and that, based on these reasons, the ends of justice outweigh the best interest of the public and the defendant in a speedy trial.

Dated: September 13, 1996

Respectfully submitted,

CHARLES J. STEVENS
United States Attorney

By: Douglas F. Hendricks for
STEPHEN P. FRECCERO
Special Attorney to the
U.S. Attorney General

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. THEODORE JOHN KACZYNSKI, a/k/a "FC" Defendant.	CR. NO. S-96-0259 GEB GOVERNMENT'S SECOND STATUS REPORT Date: September 20, 1996 Time: 9:00 a.m. Judge: Hon. Garland E. Burrell

CERTIFICATE OF SERVICE BY MAIL

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 September 13, 1996, she served a copy of the attached GOVERNMENT'S SECOND STATUS REPORT 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.

Addressee(s):

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

PATTI M. ANDREWS

FILED

SEP 20 1996

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. THEODORE JOHN KACZYNSKI, aka "FC", Defendant.	CR S-96-259 GEB ORDER RE STATUS CONFERENCE

The status conference hearing in this case held September 20, 1996, centered on the parties' disagreement over when notice and motion deadlines and a trial date should be set. The government argued that these dates should be set immediately, including scheduling trial for March 31, 1997. Defendant's counsel countered that this is an extremely complex case and that deadlines should not be set at this time since they are still in the process of analyzing and discovering numerous documents that may be pertinent to their client's defense.

Guidance for resolution of this dispute is provided in 18 U.S.C. § 3161(a) of the Speedy Trial Act, which provides in pertinent part:

09/20/96 FRI 16:00 FAX 916 554 2100 US ATTORNEY 002

> In any case involving a defendant charged with an offense, the appropriate judicial officer, at the earliest practicable time, shall, after consultation with the counsel for the defendant and the attorney for the Government, set the case for trial on a day certain. . . .

(Emphasis added.)

Thus, this section requires that "at the earliest practicable time" the case be set for trial on a day certain. This provision of the Speedy Trial Act, however, "is hortatory only." United States v. Tedeschi, 774 F.2d 511, 515 (1st Cir. 1985). Moreover, it must be considered in the context of other provisions of the Speedy Trial Act, including those provisions allowing for periods of delay due to complexity and time necessary for the parties' effective preparation of the case. See 18 U.S.C. §§ 3161(h)(8)(B)(ii), (iv).

Defendant's counsel vigorously argue that no deadlines be set in this case until November 22, 1996, at which time they anticipate having a better understanding of facts involved in their client's defense and the legal basis on which his defense will be based. They argue that the requested pretrial delay is justified on the basis of the case being declared complex and their need for additional time to prepare their defense under 18 U.S.C. §§ 3161(h)(8)(B)(ii) and (iv). In opposition, the government argues its case is straightforward and defendant's need for additional discovery is overstated.

Despite the government's ululation that defendant should be in a position to fully schedule the case, the arguments of counsel and the status reports filed in this action reveal that it is premature to

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schedule the case at this time. Therefore, defendant's request that the scheduling of pretrial motions and a trial date be postponed until November 22, 1996, is granted.

The parties stipulate that the bases for excluding the period of September 20, 1996, to and including November 22, 1996, from the time computation under the Speedy Trial Act are §§ 3161(h)(8)(B)(ii) and (iv).

1. This is an "unusual" and "complex" case within the meaning of § 3161(h)(8)(B)(ii) in that it is unreasonable to expect the defense to adequately prepare for pretrial proceedings or for trial within the time limits established by the Speedy Trial Act.

2. This case qualifies under § 3161(h)(8)(B)(iv) as one in which the failure to grant a continuance would deny the defendant "the reasonable time necessary for effective preparation, taking into account the exercise of due diligence."

Further, based on the argument at the conference and record in this case, including the findings in the Order of July 18, 1996, the court finds that the defense needs additional time to discover and analyze the facts, develop legal strategy, and to evaluate potential motions.

For the reasons set forth above, the ends of justice "outweigh the best interests of the public and the defendant in a speedy trial." 18 U.S.C. § 3161(8)(A). Accordingly,

Pursuant to 18 U.S.C. §§ 3161(h)(8)(B)(ii) and (iv), the period from September 20, 1996, through November 22, 1996, inclusive, is excluded from the time computations required by the Speedy Trial Act.

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At the status conference now scheduled for November 22, 1996, at 9:00 a.m., the parties shall be prepared to advise the court as to notice, motion and trial dates. The parties shall file and serve joint or individual status conference reports no later than November 15, 1996. The reports shall briefly set forth the views of each party on the following matters: anticipated motions with suggested briefing schedules and hearing dates and the scheduling of future procedures. The parties should strive to avoid placing in the reports and discussing at the hearing information that could undermine the defendant's right to an impartial jury.

IT IS SO ORDERED.

DATED: September 20, 1996

GARLAND E. BURRELL, JR.
United States District Judge

09/20/96 FRI 16:01 FAX 916 554 2100 US ATTORNEY 006

COPY

UNABOM/pleadings

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THEODORE J. KACZYNSKI

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, vs. THEODORE J. KACZYNSKI, Defendant.	CR-S-96-259 GEB MOTION TO COMPEL PRODUCTION OF DISCOVERY RELEVANT TO CHALLENGING THE CABIN SEARCH DATE: November 18, 1996 TIME: 10:00 a.m. DEPT.: JFM

TO: CHARLES STEVENS, UNITED STATES ATTORNEY
ROBERT CLEARY, STEVEN FRECERRO, STEVEN LAPHAM AND BERNARD HUBLEY, SPECIAL ASSISTANTS TO THE U.S. ATTORNEY GENERAL:

Please take notice that on Monday, November 18, 1996 at 10:00 a.m., or as soon thereafter as counsel may be heard, the defendant, Theodore John Kaczynski, by counsel, Judy Clarke and

Quin Denvir, will seek an order compelling the production of discovery relevant to bringing a challenge to the search of Mr. Kaczynski's cabin.

This motion is based upon the instant motion, the accompanying memorandum of points and authorities, the files and records in the above-captioned cause, and any and all matters that may be brought to the Court's attention prior to or during the hearing on this motion.

Dated: October 31, 1996

Respectfully Submitted,

Judy Clarke/28

JUDY CLARKE

Quin Denvir

QUIN DENVIR

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THEODORE J. KACZYNSKI

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. THEODORE J. KACZYNSKI, Defendant.	CR-S-96-259 GEB MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO COMPEL PRODUCTION OF DISCOVERY RELEVANT TO CHALLENGING THE CABIN SEARCH DATE: November 18, 1996 TIME: 10:00 a.m. DEPT.: JFM

INTRODUCTION

It has been the hope of both the government and the defense that any differences regarding discovery in this case could be resolved without involving the Court. (E.g., Government

Status Conference Report, filed July 18, 1996, page 5, lines 4-7.) Accordingly, the parties have met and conferred a number of times regarding discovery matters and have been able to resolve most differences. This motion involves an exception, i.e., discovery of investigative reports which the defense believes are necessary in order to file its suppression motion. We remain hopeful that other discovery differences can be resolved without intervention by the Court.

I.

FACTUAL BACKGROUND

On April 3, 1996, U.S. District Judge Charles Lovell authorized a search warrant for Mr. Kaczynski's cabin located in the area of Stemple Pass Road, Lincoln, Montana. The affidavit in support of the search warrant is 104 pages (230 numbered paragraphs) long, and is supported by multiple attachments. In sum, the affiant concludes (1) the 16 bombs are all connected, (2) writings attributed to Mr. Kaczynski are similar in content and style to the "Manifesto," and (3) with the exception of a problematic December 11, 1985 bank deposit, the known whereabouts of Mr. Kaczynski do not exclude him from being the "Unabomber."

At various places in the warrant affidavit there are references to persons "known" to the task force or persons who were interviewed and whose interviews were reviewed by the

affiant. For example:

(1) paragraph 123 references "various interviews of individuals who, for a variety of reasons, have suggested that the UNABOM manuscript was written by a friend, co-worker or relative";

(2) paragraph 125 states that the affiant "reviewed the opinions expressed by a number of scholars and professional educators regarding their own evaluations of the UNABOM manuscript and associated UNABOM correspondence";

(3) paragraph 126 refers to "another individual, who is a doctor and a holder of a Ph.D. (whose identity is known to the UTF)";

(4) paragraph 205 refers to "experts" with opinions about the identity of the Unabom subject.

The government has not provided any reports of interviews of the above individuals. [1]

In addition, various paragraphs reference interviews and documents. The government has provided the bulk of the documents referred to in the affidavit, but, with the exception of interviews regarding the December 11, 1985 bank deposit, has not provided any reports of the interviews referenced in the

---

1. The government has provided a lengthy list of names, but to date has not identified which individuals are referenced in which paragraph.

affidavit. [2] The reports of interviews at issue are:

(1) interviews and documents from Dr. Goren (paragraph 164);

(2) interviews and documents from the Park Hotel in Helena (paragraph 165);

(3) interviews and documents from Western Federal Savings in Missoula (paragraph 166); [3]

(4) interviews with bus drivers Mark Lloyd Campbell, interviewed on March 15, 1996 (paragraph 170); Larry D. Peterson, interviewed on March 16, 1996 (paragraph 171); and Thomas L. Stell was interviewed on April 1, 1996 (paragraph 172);

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2. To the extent documents are referenced in the search warrant affidavit and have not been provided, they are hereby requested. For example, in addition to those listed below, paragraph 167 references 86 letters and paragraph 184 references over 100 letters which were reviewed; paragraphs 187 and 188 reference items provided by Wanda Kaczynski to the agents; paragraph 191 references copies of letters sent to the Helena Public Library by Mr. Kaczynski.

3. As noted, the government has provided 4 reports of interviews regarding the December 11, 1985 deposit (investigation on 3/29/96, 4/1/96 and 4/8/96 of a bank employee, and on 4/2/96 of another employee). In addition, the 4/8/96 investigation report indicates that the employee located mail deposit envelopes that can be compared to the coding on the back of Mr. Kaczynski's deposit slips. We have requested, and do so again herein, copies of these deposit envelopes and deposit slips for purpose of making these comparisons. If any law enforcement officer or bank personnel has already made these comparisons, we request the results of such comparisons.

(5) interview of Dick Lundberg on March 8, 1996 (paragraph 151);

(6) interview of Sherri Wood on April 2, 1996 (paragraph 173); [4]

(7) statements of Butch Gehring about Mr. Kaczynski's lifestyle (paragraph 116);

(8) "findings" of SSA James R. Fitzgerald who directed the comparative analysis of all of Mr. Kaczynski's correspondence (paragraph 110)(SSA Fitzgerald's findings are set forth in paragraphs 111-117 and possibly paragraphs 118-122);

(9) interview of Tammara Fluehe, who described the individual who placed a device outside the CAAMS Computer Store on February 20, 1987 (paragraph 154).

The government has not provided any reports of interviews of the above individuals.

In addition to the above, there is substantial information in the search warrant affidavit that is attributed to David Kaczynski (paragraphs 95, 101, 102, 105, 106, 107, 108, 109, 120, 124, 132, 134, 135, 136-137 (maybe information from Wanda Kaczynski), 138, 140, 141 (maybe information from Wanda Kaczynski), 142-145, 152, 153, 156, 157, 158, 159, 162.) It is

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4. It is also our understanding that Mrs. Wood was interviewed after April 2 about her April 2 statements. We request the report(s) of that interview(s).

believed that David Kaczynski was interviewed by law enforcement ("UTF") agents on at least 4 occasions -- the weekend of February 17-18, 1996; during a trip to Texas on or about February 24-25, 1996; in New York around March 2-3, 1996; and in Chicago during the week of March 11, 1996. On these occasions, information contained in the search warrant affidavit, as well as information that may have been omitted from the affidavit, was obtained. The government has not provided any reports of interviews of David Kaczynski.

The search warrant affidavit references information from Wanda Kaczynski in paragraphs 109, 121, 136-137 (maybe information from David Kaczynski), 139, 141 (maybe information from David Kaczynski), 142, 145, 159. It is also believed that Wanda Kaczynski was interviewed on March 23-24, 1996. The government has not provided any reports of interviews of Wanda Kaczynski.

Finally, on October 11, 1996, the government provided a report by Agents Tang-Wilcox, Maxwell and Doyle that references administrative logs, photography logs, and evidence recovery logs reflecting the contemporaneous collection (and photographing) of evidence as well as the individuals who accessed the cabin at various times. Copies of these contemporaneous logs have been requested but not provided.

II.

AN ORDER COMPELLING PRODUCTION OF REPORTS RELEVANT TO THE SEARCH WARRANT IS REQUESTED

To date the government has provided a substantial amount of discovery, including all documents seized from Mr. Kaczynski's cabin, photographs of all of the devices the government attributes to Mr. Kaczynski, "crime scene" photographs of the 16 devices that the government attributes to Mr. Kaczynski, local police reports of the various incidents involving the bombs attributed to Mr. Kaczynski, various educational, medical, banking, and hotel records, and various lab reports. The major unresolved area of dispute over discovery so far seems to be the defense request for investigative reports regarding Mr. Kaczynski, the search warrant affidavit, and other FBI reports. At issue in this request are the investigative reports obtained regarding Mr. Kaczynski prior to the issuance of the search warrant.

The U.S. Supreme Court has recognized that, where a defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included in a warrant affidavit, and the statement is necessary to a finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request. Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 2675

(1978). If the allegation of perjury or reckless disregard is established by a preponderance of the evidence, and the remainder of the affidavit is insufficient to establish probable cause, the search warrant is invalid. Id. The court must then determine whether the search can be saved by the good faith reliance of the officers on the warrant. United States v. Leon, 468 U.S. 897, 104 S.Ct. 3405 (1984). Thus, a defendant challenging a search warrant must meet high standards.

The Supreme Court has also set a high standard for the government in imposing on it an obligation to disclose evidence favorable to an accused. Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963). Indeed, the individual prosecutor in a case has an obligation to learn of any favorable evidence known to others acting on behalf of the government. Kyles v. Whitley, __ U.S.__, 115 S.Ct. 1555 (1995). Impeachment evidence falls within the Brady rule. United States v. Bagley, 473 U.S. 667, 676, 105 S.Ct. 3375, 3380 (1985).

The Ninth Circuit has held that the due process principles announced in Brady and its progeny are applicable to a suppression hearing involving a challenge to the truthfulness of allegations in an affidavit for a search warrant. United States v. Barton, 995 F.2d 931, 934 (9th Cir.), cert. denied, 114 S.Ct. 413 (1993). At issue in Barton was the destruction of bags of

marijuana such that the defendant could not challenge the smell evidence set forth in a search warrant affidavit. The court found that the bags were not destroyed in bad faith and that the negligent destruction of the plants did not violate due process.

Here, Mr. Kaczynski seeks reports of interviews of the various individuals who are referenced in the search warrant affidavit as well as reports that might contradict the information in the affidavit. For the government to respond that the defense can read the information in the affidavit and interview the witnesses does not answer the government's obligation, under the Due Process Clause, to provide information favorable to the defendant. 5/

To the extent that the witness statements contain exculpatory or impeachment material, the principles underlying Brady v. Maryland override the Jencks Act. See United States v. Cuevas-Alvarez, 86 F.3d 901, 904 n. 2 (9th Cir. 1996)(stating that, although an agent's rough notes need not be disclosed as witness statements under the Jencks Act, they must be disclosed pursuant to Brady where they contain exculpatory information). See also United States v. Starusko, 729 F.2d 256, 263 (3d Cir. 1984)(finding that compliance with the statutory requirements of

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5. Indeed it is common practice in this jurisdiction to provide FBI 302's and other investigative reports to the defense early in the case.

the Jencks Act does not necessarily satisfy the due process concerns of Brady). To the extent that a prosecutor is uncertain about the materiality of a piece of evidence, "the prudent prosecutor will resolve doubtful questions in favor of disclosure." Kyles, __ U.S. __, 115 S.Ct. at 1568 (quoting United States v. Agurs, 427 U.S. 97, 108 (1976). See also Agurs, 427 U.S. at 108 (disclosure is appropriate because the prosecutor is the "representative . . . of a sovereignty . . . whose interest . . . in a criminal prosecution is not that it shall win a case, but that justice shall be done.")(quoting Berger v. United States, 295 U.S. 78, 88 (1935)).

Moreover, Rule 16(a)(1)(C) of the Federal Rules of Criminal Procedure provides that, upon defense request, the government must disclose "documents and tangible objects" that are "material to the preparation of the defendant's defense or are intended for use by the government in its case in chief at the trial, or were obtained from or belong to the defendant." The documents requested here are "material" to the preparation of defendant's defense as they are necessary to the preparation of a motion to suppress evidence. In addition, many of the reports requested, such as the "findings" of SSA James R. Fitzgerald, see para. 8, 5 supra, the bank records requested at n. 3, para. 4, supra, and the copies of contemporaneous logs requested at 6,

supra, are material to the preparation of defendant's defense at trial. For these reasons, a discovery order is appropriate.

On the general issue of witness statements, the government has opposed production of such statements on two grounds, first, the sheer number of such statements, and, second, concerns regarding the privacy of the witnesses. See Government Status Report, filed September 13, 1996, at pp. 4-5. Neither ground is applicable to the present request for reports regarding the information in the search warrant affidavit. First, as set forth above, only a very limited number of witnesses and of reports is involved in the present request. Second, the government has already disclosed the names of many of the witnesses in the search warrant affidavit, and any privacy concerns of those or other witnesses can be protected by agreements as to the use of the reports, such as those already agreed to by the government and the defense regarding other discovery in this case. E.g., Government Status Report, filed September 13, 1996, page 8.

The government has generally agreed to make witness statements available to the defense sufficiently in advance of trial. Government Status Report, filed September 13, 1996, page 4. While that agreement may be generally adequate as to witnesses only relevant to trial, it does not suffice as to

witnesses whose relevance extends to the search warrant affidavit. In other words, the dispute between the parties is not as to whether discovery will be provided, but rather as to the timing thereof. The defense must have the reports prior to the preparation and filing of the suppression motion, and delaying disclosure to some later date may only compel the defense to seek to reopen the suppression motion proceedings, with the resultant delay and added expense.

The case law is clear that discovery must be made "at a time when [the] disclosure would be of value to the accused." United States v. Davenport, 753 F.2d 1460, 1462 (9th Cir. 1985) See also United States v. Aichele, 941 F.2d 761, 764 (9th Cir. 1991). To be of value to the defense, production of witnesses statements relevant to the search warrant affidavit must be made prior to Mr. Kaczynski's filing his motion challenging the warrant.

Based on the government's agreement to make witness statements available to the defense sufficiently in advance of trial, the general rationale that dictates against early disclosure of such statements does not apply here. The only competing consideration to liberal discovery in a federal criminal case is the protection of "government witnesses from threats, bribery, and perjury". See United States v. Isgro, 974

F.2d 1091, 1095 (9th Cir. 1992), cert. denied, 113 S.Ct. 1581 (1993) (discussing the policy concerns behind the passage of the Jencks Act, 18 U.S.C. sec. 3500). As none of these concerns are implicated here, the balance in this case clearly tips in favor of discovery so as to provide the defense with meaningful use of the statements. See generally, Brennan, The Criminal Prosecution: Sporting Event or Quest for Truth?, 1963 Wash. U.L.Q. 279; Goldstein, The State and the Accused: Balance of Advantage in Criminal Procedure, 69 Yale Law J. 1149 (1960). In short, there is no countervailing government interest to weigh against defendant's manifest need for the relevant witness statements in order to prepare his motion challenging the validity of the search warrant.

III.

CONCLUSION

For the foregoing reasons, and for reasons of fairness,

the defendant, Theodore J. Kaczynski, requests that the court compel production of the items requested in this motion.

Dated: October 31, 1996

Respectfully Submitted,

Judy Clarke/QS

JUDY CLARKE

Quin Denvir

QUIN DENVIR

Attorneys for Defendant
Theodore J. Kaczynski

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,	:	CRIMINAL NO. 96-607
	:	
v.	:	NOTICE OF MOTION
	:	
THEODORE JOHN KACZYNSKI	:	
	:	

TO: ROBERT CLEARY, ESQ.
Special Attorney to the United States
Attorney General
450 Golden Gate Avenue
Federal Building, 16th Floor
San Francisco, California 94102

FAITH S. HOCHBERG, ESQ.
United States Attorney for the
District of New Jersey
c/o United States Attorney's Office
970 Broad Street
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PLEASE TAKE NOTICE that John F. McMahon, Federal Public Defender for the District of New Jersey, attorney for the accused Theodore John Kaczynski will move before the Honorable Dickinson R. Debevoise, United States District Court Judge, in Newark, New Jersey on the 10th day of December, 1996 for the following relief:

1. For an Order purusant to Federal Rule of Criminal Procedure 21(b) granting the change of venue in the instant prosecution to the Eastern District of California.

For the purposes of the instant motion, the defense will rely on the attached memorandum of law.

Respectfully submitted,

JOHN F. McMAHON, ESQ.
Federal Public Defender
for the District of New Jersey

QUIN DENVIR, ESQ.
Federal Public Defender
for the Eastern District of
California

JUDY CLARKE, ESQ.
Executive Director
Federal Defenders for
Eastern Washington

Attorneys for Defendant
Theodore John Kaczynski

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	CRIMINAL NO. 96-607
V.	:	ORDER
THEODORE JOHN KACZYNSKI	:	

This matter having been brought before the Court on the application of defendant, Theodore John Kaczynski, by his attorney, John F. McMahon, Esq., Federal Public Defender for the District of New Jersey for an Order granting the change of venue of the instant prosecution and Robert Cleary, Special Attorney for the United States Attorney General appearing, and oral argument having been heard and good cause shown,

IT IS ON this day of , 1996, hereby

ORDERED that the prosecution of the instant matter be transferred to the Eastern District of California for trial.

HONORABLE DICKINSON R. DEBEVOISE
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,	:	CRIMINAL NO. 96-607
v.	:	
THEODORE JOHN KACZYNSKI	:	

MEMORANDUM IN SUPPORT OF MOTION TO TRANSFER PROCEEDINGS TO UNITED STATES DISTRICT COURT IN SACRAMENTO, CALIFORNIA UNDER FEDERAL RULE OF CRIMINAL PROCEDURE 21(b)

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QUIN DENVIR, ESQ.
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JUDY CLARK, ESQ.
EXECUTIVE DIRECTOR
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ATTORNEYS FOR DEFENDANT
THEODORE JOHN KACZYNSKI

PRELIMINARY STATEMENT

Defendant Theodore John Kaczynski moves the Court to transfer further proceedings in this case to the United States District Court for the Eastern District of California in Sacramento, California, under Federal Rule of Criminal Procedure 21(b). In an indictment filed October 1, 1996, the government has charged Mr. Kaczynski in three counts with mailing a bomb in San Francisco, California, which killed Thomas Mosser in North Caldwell, New Jersey ("New Jersey case"). In a separate ten-count indictment filed in Sacramento, California, on June 18, 1996, the government has charged Mr. Kaczynski with four other bombings ("Sacramento case"). The New Jersey bombing and the four bombings charged in the Sacramento indictment are alleged to be part of a series of bombings committed by the so-called "Unabomber."

In the Sacramento case, a trial date has not yet been set, but trial is expected to begin sometime in 1997. The government estimates that its case at trial will last approximately three to four months, excluding the penalty phase should convictions be obtained and the death penalty sought. The government desires to delay the trial on the instant New Jersey charges until after proceedings have concluded in the Sacramento case. Both the Sacramento and New Jersey prosecutions are potentially punishable by death.

As part of its case-in-chief in the Sacramento trial, the government has advised the district court and defense counsel

that it intends to present evidence of other "Unabomber" bombings, including the bombing charged in the present indictment, to prove identity and for other purposes under Federal Rule of Evidence 404(b). Thus, the evidence concerning the New Jersey bombing will be presented in the trial in the Sacramento case.[1] For the convenience of all parties in avoiding a duplicative trial, and in the interest of justice, Mr. Kaczynski moves to transfer the New Jersey case to the United States District Court for the Eastern District of California for the purpose of consolidation with the pending Sacramento prosecution.[2] Because the government will present its evidence of the New Jersey bombing in the Sacramento case regardless of transfer, there are no countervailing interests against transfer of the New Jersey charges for a speedy resolution in Sacramento.

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[1] In the event Mr. Kaczynski is convicted of a capital offense in Sacramento and the government seeks the death penalty, the government also may present evidence of the New Jersey bombing in the penalty phase of the trial.

[2] If the Court grants the motion to transfer, Mr. Kaczynski will move in the Eastern District of California to consolidate the New Jersey charges for trial with the pending Sacramento prosecution under Federal Rule of Criminal Procedure 13.

LEGAL ARGUMENT

THE COURT SHOULD TRANSFER FURTHER PROCEEDINGS IN THIS CASE TO THE UNITED STATES DISTRICT COURT IN SACRAMENTO, CALIFORNIA, FOR THE CONVENIENCE OF ALL PARTIES AND WITNESSES AND IN THE INTEREST OF JUSTICE, PURSUANT TO FEDERAL RULE OF CRIMINAL PROCEDURE 21(b).

In general, a defendant has a right to be tried in the district where the offense was committed. U.S. Const. art. III, § 2, ¶ 3; U.S. Const. amend. VI; Fed. R. Crim. P. 18. Where the charged offense involves the use of the mails or transportation in interstate commerce, the offense is considered to be a "continuing" one and may be prosecuted "in any district from, through, or into which such commerce, mail matter, or imported object or person moves." 18 U.S.C. § 3237(a). In cases where the maximum potential penalty is death, venue is proper "in the county where the offense was committed, where that can be done without great inconvenience." 18 U.S.C. § 3235.[3] In this case, the government has chosen to prosecute the instant bombing in New Jersey, rather than in San Francisco or another district where venue would also be appropriate.[4]

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[3] 18 U.S.C. § 3235 states in full:

§ 3235. Venue in capital cases

The trial of offenses punishable with death shall be had in the county where the offense was committed, where that can be done without great inconvenience.

[4] Because offenses involving either the use of the mails or transportation in interstate commerce are considered to be "continuing" offenses under 18 U.S.C. § 3237(a), it appears that

The venue provisions in the federal constitution and statutes are intended as "important safeguards protecting an accused from unfairness and hardship in defending against prosecution by the federal government." United States v. Passodelis, 615 F.2d 975, 977 (3d Cir. 1980); see United States v. Cores, 356 U.S. 405, 407, 78 S. Ct. 875, 2 L. Ed.2d 873 (1958). "Venue statutes are to be liberally construed so as to minimize inconvenience to a defendant." Wright, Federal Practice and Procedure, Criminal 2d § 344, at 267 n.7 (1982) (citing United States v. Amador-Casanas, 233 F. Supp. 1001, 1003 (D. D.C. 1964)); United States v. Benjamin, 623 F. Supp. 1204, 1211 (D. D.C. 1985). The government does not possess a right to prosecution in a particular venue, rather venue is a right only of the defendant.

Because venue is a right designed to protect the defendant--not the prosecution--it is well established that a defendant may waive his right to proper venue. Singer v. United States, 380 U.S. 24, 35, 85 S. Ct. 783, 790, 13 L. Ed.2d 630 (1965) (dictum); United States v. Polin, 323 F.2d 549, 556-57 (3d Cir. 1963) ("it is quite clear that this [venue] right is considered a privilege that may be waived by failure to make a timely objection"); United States v. Wilson, 26 F.3d 142, 151 (D.C. Cir. 1994), cert. denied, 115 S. Ct. 1430 (1995). In capital cases, courts have

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venue may be proper in Sacramento as well as New Jersey. Presumably, the mailing of the New Jersey bomb in San Francisco would have moved through the Eastern District of California on its way across country to New Jersey. If so, part of the offense is deemed to have been committed in the Eastern District of California, and venue would be proper in that district as well.

also held that defendants may waive their right to trial in the county where the crime was committed under section 3235. See Bickford v. Looney, 219 F.2d 555, 556 (10th Cir. 1955) (holding in a capital case that "right of an accused to be tried in a particular venue is a personal privilege which may be waived"); Hayes v. United States, 296 F.2d 657, 667 (8th Cir. 1961) (same), cert. denied, 369 U.S. 367 (1962). "A motion by defendant for change of venue is deemed a waiver of his constitutional and statutory right under Fed. R. Crim. P. Rule 18 to be tried in the district in which the alleged offense was committed." United States v. Williams, 437 F. Supp. 1047, 1051 (W.D. N.Y. 1977) (citing 8A Moore's Federal Practice, ¶ 21.-04[1]); see also Fed. R. Crim. P. 21 advisory committee's note 3 (1944 adoption) ("By making a motion for change of venue, however, the defendant waives this constitutional right.").

A defendant's motion to transfer a federal prosecution is governed by Federal Rule of Criminal Procedure 21(b), which reads in full:

> **(b) Transfer in Other Cases.** For the convenience of parties and witnesses, and in the interest of justice, the court upon motion of the defendant may transfer the proceeding as to that defendant or any one or more of the counts thereof to another district.

Fed. R. Crim. P. 21(b).[5]

"The primary concern of Rule 21(b) is to 'minimize the inconvenience to the defense.'" United States v. McDonald, 740

[5] A defendant may also move for transfer on the ground of prejudice under Federal Rule of Criminal Procedure 21(a).

F. Supp. 757, 762 (D. Alaska 1990) (quoting 2 Wright, Federal Practice and Procedure, Criminal 2d § 343, at 260 (1982)). "Instead of applying a supposed general rule, the court should examine all the circumstances of the particular case and determine what place of trial will best serve convenience and the interest of justice in that case." 2 Wright, Federal Practice and Procedure § 344, at 267. "It is enough if, all relevant things considered, the case would be better off transferred to another district." In re Balsimo, 68 F.3d 185, 187 (7th Cir. 1995). Upon defendant's motion, Rule 21(b) permits the court to transfer a case for trial to any district, regardless whether the receiving district was one in which the crime was alleged to have been committed. Fed. R. Crim. P. 21 advisory committee's note to subdivision (b) (1966 amendment).[6]

Although not exhaustive, the Supreme Court has cited with approval the following list of factors a district court can consider in determining whether to transfer a case under Rule 21(b):

> (1) location of corporate defendant; (2) location of possible witnesses; (3) location

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[6] As discussed in the text (pages 3-5), by moving to transfer the New Jersey charges, Kaczynski is waiving his venue rights under federal law, including the right to trial in the county where the crime was committed under 18 U.S.C. § 3235. In any event, the case law interpreting the prior statutory version of section 3235 (formerly 28 U.S.C. § 101) clearly indicates that the district court retains the ultimate discretion as to venue under that statute. See United States v. Fries, 3 U.S. (3 Dall.) 515 (1799); Davis v. United States, 32 F.2d 860 (9thCir. 1929); Greenhill v. United States, 6 F.2d 134 (5th Cir. 1925); Brown v. United States, 257 F. 46 (5th Cir. 1919), rev'd on other grounds, 256 U.S. 335 (1921).

> of events likely to be in issue; (4) location of documents and records likely to be involved; (5) disruption of defendant's business unless the case is transferred; (6) expense to the parties; (7) location of counsel; (8) relative accessibility of place of trial; (9) docket condition of each district or division involved; and (10) any other special elements which might affect the transfer.

Platt v. Minnesota Mining & Mfg. Co., 376 U.S. 240, 243-44, 84 S. Ct. 769, 771, 11 L. Ed.2d 674 (1964). "[C]ourts decide Rule 21(b) motions with a view towards maximizing the efficiency of the court system even apart from an analysis grounded in the ten Platt factors." 8A Moore's Federal Practice ¶ 21.04[3][b], at 21-29 (2d ed. 1996). The question of transfer is "completely within the discretion of the trial court" and will be reversed only for an abuse of discretion. United States v. Smith, 918 F.2d 1551, 1556 (11th Cir. 1990); United States v. Espinoza, 641 F.2d 153, 162 (4th Cir.), cert. denied, 454 U.S. 841 (1981); see also In re Balsimo, 68 F.3d at 186 ("skepticism . . . that an order granting a motion to transfer could ever be overturned by mandamus given the breadth of the district judge's discretion, is well-founded") (dictum).

In this case, consideration of all relevant factors leads inescapably in favor of transfer to the Eastern District of California for the purpose of consolidation with the "Unabomber" prosecution pending in that court.

1. Transfer Would Avoid A Duplicative Trial.

The government has advised the district court and defense counsel that it intends to introduce evidence of the New Jersey bombing in the Sacramento "Unabomber" case under Federal Rule of Evidence 404(b). If the New Jersey charges are transferred and

consolidated, all the charges would be resolved in a single proceeding. If not, a Sacramento jury will hear testimony and evaluate evidence of the New Jersey bombing, and a New Jersey jury will have to hear the same or similar testimony and evidence in a subsequent New Jersey prosecution, which will take place many months later.

Avoiding an unnecessary, duplicative, and expensive second trial is a strong, if not overwhelming, factor in favor of transfer. Mr. Kaczynski's primary counsel and the government's main "Unabomber" prosecution team are headquartered in Sacramento, California. The trial on the Sacramento charges is expected to begin sometime in 1997. The government estimates its case-in-chief will last at least three or four months. With the addition of the defense case and the government's rebuttal, the trial will likely last more than six months, even without a penalty phase.

A second trial would likely be equally lengthy and would require enormous extra prosecution, defense, security, and court expenses. The same witnesses who testified with respect to the New Jersey bombing in the Sacramento case would be required to testify again on the same matters in a second trial in New Jersey.[7] Presumably the government would attempt to introduce

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[7] Because the government intends to present its evidence of the New Jersey bombing in the Sacramento case even if the New Jersey case is not transferred to Sacramento, many of the usual Platt factors have little relevance. For example, if witnesses, records, and events were predominately in New Jersey, these factors would typically weigh against transfer to Sacramento.

evidence of the other "Unabomber" bombings in the New Jersey case to attempt to prove that the defendant is the New Jersey culprit, which would require introduction of much of the same evidence that will be presented in the upcoming Sacramento trial. Another judge who is not familiar with the intricacies of the Sacramento trial would be required to grapple with many of the same or similar motions and evidentiary issues that arose in the first trial. Cf. United States v. Ashland Oil, Inc., 457 F. Supp. 661, 665 (W.D. Ky. 1978) ("this Court has spent considerable time in familiarizing itself with many of the facets of this case. A transfer to Minnesota would require a district judge new to the case to go over the three volumes of papers which have accumulated since its inception. This is not judicial economy.").

In United States v. Ray, 234 F. Supp. 371 (D. D.C. 1964), the district court granted the defendant's motion to transfer a criminal proceeding to another district where similar fraud charges and a civil suit against the defendant were pending.[8] After noting that there were "matters of convenience on both

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But here those same witnesses, records, and events will be part of the Sacramento case regardless whether the New Jersey case is transferred. In any event, most of the records, many of the witnesses, and part of the offense, are outside the state of New Jersey.

[8] A civil suit is also pending against Kaczynski in the U.S. District Court in Sacramento arising out of one of the bombings charged in the Sacramento case. See Murray v. Kaczynski, No. CIV-S-96-1574-GEB. The civil suit has been transferred to U.S. District Judge Garland E. Burrell, Jr., the same judge assigned to the criminal "Unabomber" action in Sacramento.

sides," the court granted defendant's motion to transfer to avoid the wasteful expense of two similar proceedings a long distance apart:

> It would seem that both proceedings ought to be tried in the same court and possibly there may be a question of consolidation, although the Court does not indicate any suggestion at this time. In any event, however, it seems to the Court to be wasteful and undesirable to have these two proceedings involving similar, although of course not the same charges, tried in two different districts possibly a thousand miles apart.

Id. at 372. The court's reasoning in Ray applies with full force here. Failing to grant transfer for consolidation will result in multiple, duplicative trials in separate jurisdictions thousands of miles apart.

Further, a second trial on related charges violates the spirit, if not the rule, against multiple prosecutions inherent in the Double Jeopardy Clause of the Fifth Amendment. See Guichard v. Smith, 471 F. Supp. 784, 788 (E.D. N.Y. 1979) ("While the [Double Jeopardy] clause thus prohibits successive trials as well as multiple convictions for the same offense, it does not preclude--on the contrary, favors--the consolidation in a single prosecution of multiple charges arising from the same transaction or conduct."). Although presumed innocent, Mr. Kaczynski is in pre-trial custody in the Sacramento county jail; unless the New Jersey charges are transferred to Sacramento for consolidation, he will face additional, lengthy detention in jail pending trial on the New Jersey charges--even if acquitted of all the Sacramento charges.

2. Transfer Would Promote A Speedy Resolution Of The New Jersey Charges.

The government desires to continue trial on the New Jersey charges until after completion of the Sacramento case. Trial in the Sacramento case has not been set, but is likely to begin sometime in 1997. If the New Jersey charges are transferred to Sacramento, consolidation with the pending Sacramento indictment should not significantly affect the date of that trial. Without a transfer to Sacramento, however, trial on the New Jersey charges will necessarily be continued until after the Sacramento trial and will result in a long delay in the New Jersey charges being resolved. Courts often view a lengthy delay in trial as a critical factor in determining the appropriateness of a Rule 21(b) transfer. See, e.g., United States v. Polizzi, 500 F.2d 856, 901 (9th Cir. 1974) ("improbability of a speedy trial in Las Vegas was a factor entitled to great weight"), cert. denied, 419 U.S. 1120 (1975); United States v. Posner, 549 F. Supp. 475, 479 (S.D. N.Y. 1982) ("We believe the most serious factor weighing against transfer is the state of the docket in Miami and the effect which the transfer might have in delaying the trial of this case . . . ."); United States v. Warring, 121 F. Supp. 546, 551 (D. Md. 1954) ("In considering the phrase of 'the interest of justice' [in Rule 21(b)] attention must also be given to the possibility of an early trial if desired."). The interests of the parties, the court, and the public in a timely resolution of the New Jersey charges--as well as Mr. Kaczynski's Sixth Amendment and statutory rights to a speedy trial--is best served

by transfer and a prompt trial on the New Jersey charges. See United States v. Gruberg, 493 F. Supp. 234, 242 (S.D. N.Y. 1979) (although finding that three week delay in trial was not significant factor against transfer, court noted that a lengthy delay could "infringe upon both the defendant's Sixth Amendment right to a speedy trial, . . . and on defendant's interest and the Government's and the Court's interest in providing a prompt trial under the Speedy Trial Act") (citations omitted).[9]

3. No Countervailing Interest Exists Against Transfer.

In weighing the factors to determine whether to transfer proceedings under Rule 21(b), the convenience of the government is generally given little weight. Gruberg, 493 F. Supp. at 243 (convenience of the government and its attorneys "given little weight when other considerations of convenience suggest transfer of a trial under Rule 21(b)"). Moreover, in this case, the government has a "Unabomber task force" prosecution team set up in Sacramento, California.

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[9] The Speedy Trial Act requires that a defendant be brought to trial within 70 days, not including certain periods of excludable time. 18 U.S.C. § 3161(c)(1). Although time under the Speedy Trial Act in the New Jersey case might be excludable for the entire period during which the Sacramento prosecution is pending under 18 U.S.C. § 3161(h)(1)(D), see, e.g., United States v. Montoya, 827 F.2d 143, 148-52 (7th Cir. 1987), at least one appellate court has indicated that time may be properly excludable under this section only for "the period when the defendant is actually on trial." See United States v. Oliver, 523 F.2d 253, 260-61 (2d Cir. 1975) (Lombard, J., concurring) (interpreting analogous provision in a local predecessor statute to Speedy Trial Act); see also United States v. Morales, 460 F. Supp. 668, 669 (E.D. N.Y. 1978) (following Oliver).

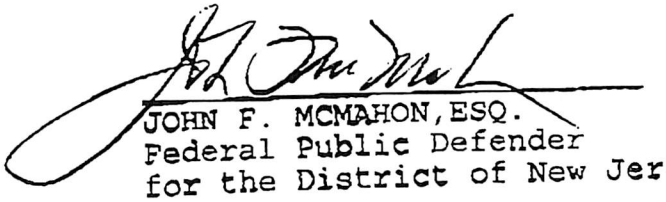
More importantly, in this case the government intends to introduce evidence of the New Jersey bombing in the Sacramento case anyway. Thus, any inconvenience to the government is minimal, and will in fact be reduced by avoiding the time and expense of duplicate litigation. A second trial in New Jersey requires that witnesses and the family of the victim be subject to two lengthy trials. Transfer for a single consolidated trial will provide a prompt, efficient resolution of the New Jersey charges for the benefit of all parties, as well as the public.

CONCLUSION

In the interest of convenience of all parties and the interest of justice, the Court should grant Theodore Kaczynski's motion to transfer the indictment under Federal Rule of Criminal Procedure 21(b) to the United States District Court in Sacramento, California, for the purpose of consolidation with the indictment pending in that district.

Dated: November 22, 1996

Respectfully submitted,



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Theodore John Kaczynski

FILED
DEC - 4 1996
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. THEODORE JOHN KACZYNSKI,* Defendant.	CR S-96-259 GEB ORDER

A status conference was held in this action on November 22, 1996. After consultation with the parties, the Court makes the following scheduling order.

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* On November 29, 1996, the Government submitted the declaration of R. Steven Lapham and a request that the declaration be filed under seal. To grant this request, the Court has to "base its decision on a compelling reason and articulate the factual basis for its ruling, without relying on hypothesis or conjecture." Hagestad v. Tragesser, 49 F.3d 1430, 1434 (9th Cir. 1995). The Government did not offer an adequate basis to support a sealing order. Therefore, the Clerk of Court is directed to return the declaration to the Government.

In light of the Government's willingness to modify the caption "in future pleadings for the sake of uniformity," at least until the disputed term needs to be litigated, it does not appear that the Government needs to resubmit the declaration. The Court recognizes that the declaration was submitted in response to the Court's inquiry about the use of a uniform caption. The Court seeks to avoid reference to allegations until they are placed at issue.

SUPPRESSION AND RULE 404(B) MOTIONS

Defendant's suppression motion and the Government's motion to admit evidence pursuant to Rule 404(b) shall be filed by March 3, 1997. Oppositions shall be filed by April 14, 1997. Reply briefs shall be filed by April 28, 1997. Argument on Defendant's suppression motion is scheduled for May 16, 1997, at 9:00 a.m. Argument on the Government's motion to admit evidence pursuant to Rule 404(b) will be scheduled at a later date.

The parties are directed to meet and confer in advance of the suppression hearing to determine whether an evidentiary hearing is required. If the parties agree that an evidentiary hearing is necessary, they shall propose a schedule for the evidentiary hearing by May 2, 1997. If the parties cannot agree on this matter, the parties shall file briefs by May 2, 1997, addressing the issue.

FED. R. CRIM. P. 12 NOTICES AND MOTIONS, WITH THE EXCEPTION OF DISCOVERY, CHANGE OF VENUE AND IN LIMINE MOTIONS

All other Rule 12 motions[1] and any notice required pursuant to Fed. R. Crim. P. 12.2 shall be filed by Defendant no later than June 2, 1997. The Government's opposition shall be filed by July 14, 1997. Defendant's reply shall be filed by July 28, 1997. Arguments for motions required to be filed by June 2, 1997, will be heard on August 22, 1997, at 9:00 a.m.

A trial confirmation hearing will be conducted at the conclusion of the parties' arguments. The parties are required to file trial confirmation statements no later than August 8, 1997, which should include proposed briefing schedules for filing in limine

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[1] This ruling excludes discovery, change of venue, and in limine motions.

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motions and proposed dates on which the following documents should be filed: proposed jury instructions; trial briefs; voir dire; and verdict forms including any applicable special findings. The parties shall also discuss in the statement their proposed approach for handling voir dire and any other matters conducive to ensuring an expeditious and fair trial. The parties also have leave to submit documents pertinent to these issues.

CHANGE OF VENUE MOTION

The parties were unable to agree on when Defendant should be required to file a change of venue motion. While the Government understandably desires an early resolution of this issue, Defendant counters by arguing this issue is not ripe. Defendant indicates he is uncertain whether he will file the motion and is without a present basis justifying its immediate filing. Defendant suggests that his decision whether to file the motion, and when it should be filed, depends on the nature of the future news coverage in this case and the proximity of that news coverage to the trial. Further, Defendant indicates that he may use an expert consultant to conduct opinion surveys of a representative sample of prospective jurors "as close to trial as possible, in order to provide a more reliable measure of potential bias among the prospective trial jurors." Apparently, the results of that survey will affect his decision on whether to move for a change of venue. Since the Government's status report suggests that the Rule 404(b) briefing has the potential for generating media

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coverage of this case, that briefing could ripen Defendant's decision on this issue.[2]

The parties are directed to meet and confer to determine whether they can agree on a procedure for handling the change of venue motion. If they can agree, that agreement should be filed together with a lodged order effectuating the agreement. If they cannot agree, the matter will be addressed at the hearing on May 16, 1997.

TRIAL

Trial will commence November 12, 1997, at 9:00 a.m.

SPEEDY TRIAL ACT

Based on the statements of counsel in their status reports dated July 18, 1996, September 13, 1996, and November 15, 1996, and in their statements at the September 20, 1996, and November 22, 1996, status conferences, and for the reasons set forth in the Court's orders dated July 18, 1996, and September 20, 1996, the Court finds:

1. The investigation in this case concerns a series of 17 bombs covering a 17-year time span. The Government has amassed and produced to the defense a considerable amount of evidence, including a room full of physical evidence, thousands of documents, thousands of photographs, hundreds of pages of investigative reports, and several hundred laboratory reports;

2. This is a potential capital case. The indictment contains ten charges spanning activities over a ten-year period;

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[2] During the hearing, defense counsel indicated that the parties would propose findings to justify sealing orders should counsel conclude that a clash exists between the public's right of access to any portion of the proceedings and Defendant's constitutional right to a fair trial. Such findings can be proposed jointly or by either party.

3. The defense needs additional time to further develop its legal strategy and to evaluate and prepare its pre-trial motions;

4. This is an "unusual" and "complex" case within the meaning of 18 U.S.C. § 3161(h)(8)(B)(ii) in that it is unreasonable to expect the defense to adequately prepare for pretrial proceedings or for trial within the time limits established by the Speedy Trial Act;

5. This case qualifies under 18 U.S.C. § 3161(h)(8)(B)(iv) as one in which the failure to grant a continuance would deny the defendant "the reasonable time necessary for effective presentation, taking into account the exercise of due diligence"; and

6. For the reasons set forth above, the ends of justice outweigh the best interest of the public and the defendant in a speedy trial.

Accordingly, pursuant to 18 U.S.C. §§ 3161(h)(8)(B)(ii) and (iv), the period from November 22, 1996, through March 3, 1997, inclusive, is excluded from the time computations required by the Speedy Trial Act.

IT IS SO ORDERED.

DATED: December 4, 1996

GARLAND E. BURRELL, JR.
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	CRIMINAL NO. 96-607
	:	
v.	:	
	:	
THEODORE JOHN KACZYNSKI aka "FC"	:	
	:	

MEMORANDUM OF THE UNITED STATES IN OPPOSITION TO DEFENDANT'S MOTION TO TRANSFER PROCEEDINGS TO UNITED STATES DISTRICT COURT IN SACRAMENTO, CALIFORNIA, UNDER FEDERAL RULE OF CRIMINAL PROCEDURE 21(b)

FAITH S. HOCHBERG
UNITED STATES ATTORNEY

ROBERT J. CLEARY
J. DOUGLAS WILSON
SPECIAL ATTORNEYS TO THE UNITED STATES ATTORNEY GENERAL

INTRODUCTION

The defendant Theodore Kaczynski is charged in this district with mailing a package containing a bomb from San Francisco in the Northern District of California to the home of Thomas J. Mosser in North Caldwell, Essex County, New Jersey. When Mosser opened the package, the bomb exploded and killed him. Although the indictment thus charges that the defendant intentionally sent a lethal device into this district and thereby caused the death of one of its residents, Kaczynski contends that the case should be tried in the Eastern District of California. Accordingly, he has moved pursuant to Federal Rule of Criminal Procedure 21(b) to transfer this case to that district so that it can be consolidated with an indictment charging Kaczynski with offenses rising out of four other bombs that were mailed or exploded in the Eastern District of California.

Kaczynski's motion should be denied. Rule 21(b) allows for the transfer of a criminal case only "[f]or the convenience of the parties and witnesses, and in the interest of justice." Kaczynski has failed to allege, much less to show, that trial of this case in this district will cause undue inconvenience to the parties or to any witness. More importantly, the charged offenses arise from the murder of a New Jersey resident, a factor that gives this district a unique and substantial interest in retaining this case. Nor is there any unfairness in requiring Kaczynski, who is alleged to be a serial bomber responsible for lethal bombings in both districts, to undergo separate trials on

the New Jersey and Sacramento indictments. Accordingly, the interests of justice overwhelmingly favor denial of his motion.

BACKGROUND

On June 18, 1996, a grand jury in the Eastern District of California returned a ten-count indictment against Kaczynski. Count One charged that Kaczynski transported a bomb into the Eastern District of California and planted it behind Rentech, a Sacramento computer store, where it exploded and killed Hugh Scrutton. Counts Two through Four charged Kaczynski with sending a bomb through the mail from Sacramento to Tiburon, California, where it exploded and injured Dr. Charles Epstein. Counts Five through Seven charged that Kaczynski mailed a bomb from Sacramento to New Haven, Connecticut, where it exploded and injured Dr. David Gelertner. Finally, Counts Eight through Ten charged that Kaczynski sent a bomb from Oakland to Sacramento, California, where it exploded and killed Gilbert B. Murray. Each of the counts thus arose out of a bomb that either exploded in or was sent from the Eastern District of California.

The indictment returned by a grand jury in this district alleges that Kaczynski sent a bomb from San Francisco, California, to North Caldwell, New Jersey. The bomb was addressed to Thomas J. Mosser, an executive with a public relations firm. When Mosser opened the package containing the bomb in the kitchen of his home, the bomb exploded and killed him. Based on this incident, the grand jury charged Kaczynski with one count of transporting an explosive with intent to kill

or injure, in violation of 18 U.S.C. § 844(d), one count of mailing an explosive device with intent to kill or injure, in violation of 18 U.S.C. § 1716, and one count of using or carrying a destructive device in relation to a crime of violence, in violation of 18 U.S.C. § 924(c)(1).

ARGUMENT

DEFENDANT HAS FAILED TO CARRY HIS BURDEN UNDER FED. R. CRIM. P. 21(b) TO SHOW THAT THIS CASE SHOULD BE TRANSFERRED TO THE EASTERN DISTRICT OF CALIFORNIA

A. Kaczynski Has Not Established that a Transfer Is Necessary Either for the Convenience of the Parties or Witnesses or the Interests of Justice.

Federal Rule of Criminal Procedure 21(b) provides as follows:

> For the convenience of the parties and witnesses, and in the interest of justice, the court upon motion of the defendant may transfer the proceeding as to that defendant or any one or more of the counts thereof to another district.

The Rule is intended to allow a defendant to obtain a transfer to another district when the government abuses its discretion to select a forum and institutes a prosecution in a district that is "remote or inhospitable" to the defendant.[1] 8A Moore's Federal Practice ¶ 21.04[1] at 21-17 (1996); see also 2 Charles A. Wright, Federal Practice and Procedure: Criminal § 343 at 259-60 (1982) (Rule allows transfer when the government brings a case

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[1] Originally, the Rule authorized a transfer only to a district where the case could have been brought originally. In 1966, the Rule was amended to allow a transfer to any district. The purpose of the amendment was to address situations in which venue is laid in a district inconvenient to the defendant because of a restrictive venue statute. See 2 Charles A. Wright, Federal Practice and Procedure: Criminal § 343 at 261-62 (1982).

"in a district inconvenient to the defendant, or in which the chance of conviction appears to be greater"). Thus, in evaluating a Rule 21(b) motion, "[t]he important question is whether the government has sought, or will gain, an unfair advantage by prosecuting this case in this district." United States v. Long, 697 F. Supp. 651, 656 (S.D.N.Y. 1988).

In Platt v. Minnesota Mining & Manufacturing Co., 376 U.S. 240 (1964), the Supreme Court listed ten factors that have been adopted by courts assessing Rule 21(b) motions:

> (1) location of * * * defendant; (2) location of witnesses; (3) location of events likely to be at issue; (4) location of documents likely to be involved; (5) disruption of defendant's business unless the case is transferred; (6) expense to the parties; (7) location of counsel; (8) relative accessibility of place of trial; (9) docket condition of each district or division involved; (10) any other special elements which might affect the transfer.

Id. at 243-44. The defendant bears the burden of showing that the Platt factors support a transfer. See United States v. Washington, 813 F. Supp. 269, 275 (D. Vt. 1993), aff'd, 48 F.3d 73 (2d Cir. 1994), cert. denied, 115 S. Ct. 2596 (1995); United States v. Aronoff, 463 F. Supp. 454, 461 (S.D.N.Y. 1978). Moreover, because "'[i]t will always be true that any trial will result in some inconvenience to both parties,'" the defendant must show "substantial inconvenience." United States v. Bloom, 78 F.R.D. 591, 608 (E.D. Pa. 1977) (quoting United States v. Green, 373 F. Supp. 149, 154 (E.D. Pa. 1974)); see United States v. Wecker, 620 F. Supp. 1002, 1004 (D. Del. 1985); United States v. United States Steel Corp., 233 F. Supp. 154, 157 (S.D.N.Y. 1964) (Weinfeld, J.). In short, the defendant must show that

"litigating his trial in the district from which he seeks a transfer * * * either burdens his defense or creates undue prejudice against him." 8A Moore's Federal Practice ¶ 21.04[1] at 21-17-18

Kaczynski has failed to carry his burden. Indeed, Kaczynski does not allege that he cannot effectively mount a defense in this district or that the government has acted arbitrarily in bringing a prosecution arising from a New Jersey murder in New Jersey. Moreover, in contrast to nearly every case in which a court has granted a Rule 21(b) transfer, the government has not brought this case far from the district where the wrongdoing occurred or unreasonably divided a single course of conduct into multiple prosecutions in multiple districts. For these reasons alone, Kaczynski's motion to consolidate two pending indictments is neither "for the convenience of the parties" nor in the "interest of justice" as Rule 21(b) uses those terms.

Kaczynski's motion also ignores the Platt factors that require rejection of his motion. First, he wholly fails to take into account the most crucial factor: the location of the events at issue. Congress has provided that "[t]he trial of offenses punishable by death shall be had in the county where the offense was committed, where that can be done without great inconvenience." See 18 U.S.C. § 3235. Here, each indictment charges a capital offense, and the government will not suffer inconvenience in trying the cases separately. See United States v. Parker, 103 F.2d 857, 861 (3d Cir.) ("Obviously, the

inconvenience referred to in the statute is that of the Government since the [defendants] could hardly complain of being tried at the place where their offense was committed."), cert. denied, 307 U.S. 642 (1939).

Moreover, Kaczynski has been indicted in both New Jersey and Sacramento because the government's evidence shows that he is a serial bomber who sent or planted bombs that resulted in deaths in each of those districts. Each of the offenses charged in the Sacramento indictment rests on a bomb that was either mailed from or placed in Sacramento. By contrast, the bomb that forms the basis for the indictment in this case was mailed from the Northern District of California and has no connection to Sacramento. Thus, though related, the crimes charged in the two indictments had different victims and inflicted harm in separate communities.[2]

Rule 21(b) is not designed to allow a defendant who has

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[2] This case is thus easily distinguishable from the only case that Kaczynski cites in which a court transferred a prosecution under Rule 21(b) to consolidate it with another pending prosecution. In United States v. Ray, 234 F. Supp. 371 (D.D.C. 1964), the government brought two separate prosecutions in the District of Columbia charging the defendant with defrauding the Small Business Administration on two different occasions. After one of the cases was moved to another district with the government's consent, the district court ruled that the second case should be moved to the same district. The court reasoned that the case before it should be consolidated with the case that had already been transferred. It also concluded that the case should be transferred because "different parts of the crime [were] committed in two or more districts," and the district to which the transfer was sought was the defendant's home and principal place of business. Id. at 372. By contrast, the two prosecutions that Kaczynski seeks to consolidate arise from two distinct crimes, against distinct victims, occurring in separate jurisdictions.

caused serious harm in two districts to consolidate two indictments and obtain a single trial. Instead, as already explained, it is intended to redress inconvenience or unfairness caused by the government's ability to choose among multiple venues. In addition, there is a substantial public interest in trying violent crimes in the communities where they occur. Cf. Taylor v. Louisiana, 419 U.S. 522, 530 (1975) (Sixth Amendment right to jury trial also allows "[c]ommunity participation in the administration of criminal law"). As one court has explained, "It is important in criminal cases for the community to be confident wrongdoing conducted in its state against its citizens is penalized." United States v. McDonald, 740 F. Supp. 757, 765 (D. Alaska 1990); see United States v. Russell, 582 F. Supp. 660, 664 (S.D.N.Y. 1984) (community that has "an active interest" in a case should be the site of trial). Murder is a uniquely serious crime that invariably has a substantial effect on the community where it occurs, a fact that no doubt influenced Congress's decision to require that capital offenses ordinarily should be tried in the county where the offense was committed. Kaczynski, who, the government alleges, intentionally sent the lethal bomb into this district, should not be able to rely on Rule 21(b) to remove this prosecution from the jurisdiction that has the greatest interest in it. See United States v. Maldonado-Rivera, 922 F.2d 934, 965 (2d Cir. 1990) (Rule 21(b) motion properly denied when location of "primary evil" was in district where case originally brought), cert. denied, 501 U.S. 1211 (1991); United

States v. Bittner, 728 F.2d 1038, 1041 (8th Cir. 1984) (fact that rape during kidnapping occurred in charging district supported retention of prosecution in that district); United States v. Wecker, 620 F. Supp. at 1005 (location of sole victim supports retention of prosecution in original district).

In short, when, as here, the government brings prosecutions in more than one district because the defendant's conduct has caused the deaths of victims in each district, Rule 21(b) should not provide a vehicle for second guessing that decision. As other courts have recognized in denying Rule 21(b) motions, "the situs of prosecution is generally a decision more properly within the province of the Attorney General." United States v. Persico, 621 F. Supp. 842, 858 (S.D.N.Y. 1985); see United States v. Long, 697 F. Supp. at 656 ("The United States has broad discretion in deciding whether and when to bring a criminal prosecution."). In this case the Attorney General, in compliance with the congressional directive in Section 3235, has reasonably determined that separate prosecutions should be brought in Sacramento and New Jersey. Thus, Kaczynski's motion should be denied.

Kaczynski also overlooks a second important factor, the location of the witnesses. Many of the government's witnesses in this case will be federal law enforcement officers and experts whose duties include testifying when called to do so; it is not inconvenient for these witnesses to testify anywhere in the United States. See United States v. Green, 983 F.2d 100, 103

(8th Cir. 1992); United States v. Polizzi, 500 F.2d 856, 901 (9th Cir. 1974) (location of government's witnesses not a factor favoring transfer when government is willing to transport them for trial), cert. denied, 419 U.S. 1120 (1975). In addition, however, the government intends to call New Jersey law enforcement officers and medical personnel, for whom it would be an inconvenience to travel to Sacramento. By contrast, Kaczynski has failed to allege that a single one of his witnesses would suffer inconvenience from having to appear at trial in New Jersey. See United States v. Fagan, 821 F.2d 1002, 1008 (5th Cir. 1987) (failure specifically to identify witnesses who would be inconvenienced weighs against transfer), cert. denied, 484 U.S. 1005 (1988); United States v. Testa, 548 F.2d 847, 857 (9th Cir. 1977) (same); United States v. Aronoff, 463 F. Supp. at 460 (same).

Most of the other Platt factors also militate against or fail to support Kaczynski's motion. First, Kaczynski has no connection to the Sacramento area; he is not a resident of that district, and thus he cannot argue that transferring this case there would bring him closer to family, friends, or other resources. Likewise, the defendant has no business, so it cannot be disrupted; in any event, he is in pretrial detention. Because Kaczynski is being represented at public expense, he cannot complain that the expense of representation at a second trial in New Jersey is inconvenient or unfair to him. See United States v. Maldonado-Rivera, 922 F.2d at 965. Although the government

seized a substantial quantity of documents and other evidence from Kaczynski's cabin in Montana, it has no objection to transporting the relevant documents to New Jersey and making them available to Kaczynski's New Jersey attorneys. In fact, the government is making preparations to begin providing discovery to Kaczynski's New Jersey attorneys immediately. Kaczynski has attorneys in both districts, and judging by the composition of his Sacramento defense team (which includes the Federal Public Defender for the Eastern District of Washington), he may be able to rely on his Sacramento attorneys in New Jersey. In fact, his Sacramento attorneys signed the Rule 21(b) motion that he filed in this district.

In short, it is simply not true that, as Kaczynski argues, there are no interests weighing in favor of retaining this case in this district. To the contrary, Kaczynski's motion runs counter to the very purpose of Rule 21(b) and finds no support in the majority of the factors that a court should assess in weighing his motion.

B. The Possibility of a Single Trial in Sacramento Does Not Outweigh the Factors Favoring Denial of Kaczynski's Motion.

Kaczynski claims, however, that this case should be transferred under Rule 21(b) because, in his view, it would be more convenient to consolidate the indictment in this case with the indictment pending against him in the Eastern District of California. Thus, he argues, considerations of judicial economy weigh in favor of the proposed transfer.

Although judicial economy is a relevant consideration under Rule 21(b), it has little force in a capital case subject to Section 3235. Nor should considerations of judicial economy be dispositive where, as here, the defendant's own conduct has created the need for two separate prosecutions, and the government has legitimate and substantial reasons for seeking indictments in two districts.

In any event, Kaczynski overstates the burden on the parties and the judicial system of having separate trials on the New Jersey and Sacramento indictments. A trial on the New Jersey indictment will be focused primarily on the single bombing that forms the basis for that indictment. See United States v. Russo, 646 F. Supp. 816, 818 (S.D.N.Y. 1986) (declining to transfer indictment to consolidate it with another pending indictment in part because pending case was "relatively simple and focused"). Moreover, during the first trial in California, the parties will have become familiar with the witnesses, evidence, and the legal issues and thus presentation of the case in this district is likely to be substantially streamlined.

Kaczynski asserts that the trial in this case will be "duplicative" because the government will seek to introduce proof of all the UNABOM bombings in the Sacramento trial as "other acts" evidence under Fed. R. Evid. 404(b). Kaczynski is correct that in the Sacramento prosecution, the government intends to introduce evidence of the 12 uncharged bombings to prove that all of the UNABOM bombs were committed by the same person and to

corroborate Kaczynski's written admissions. Presentation of some evidence concerning the Mosser bomb for those purposes in Sacramento will hardly render a trial on the charges in the New Jersey indictment "duplicative," however. It is also somewhat incongruous for Kaczynski to rely on this factor when he undoubtedly intends to oppose the government's use of evidence concerning the Mosser bombing as Rule 404(b) evidence in California.

Finally, it is worth noting that the government has sought to promote judicial economy by including in the Sacramento indictment every offense within the statute of limitations that had any connection to Sacramento.[3] The government believes, however, that the bombings that resulted in death should be prosecuted where the death occurred. The convenience to the defendant of facing a single trial, standing alone, should not outweigh this critical factor.

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[3] Counts 2-4 of the Sacramento indictment arise from a bomb that exploded in Tiburon in the Northern District of California, and Counts 5-7 of the Sacramento indictment rest on a bomb that exploded in New Haven, Connecticut. Venue is proper in the Eastern District of California for these offenses because the bombs were sent from Sacramento. See 18 U.S.C. § 3237. Kaczynski speculates that venue is proper in Sacramento for the counts charged in this indictment on the theory that a bomb sent from San Francisco to New Jersey must have passed over the Eastern District of California. Even if valid, Kaczynski's contention ignores the fact that the bombing charged in the indictment in this district had no connection to the Eastern District of California. In any event, it is far from clear that Count 3 of the indictment, which charges a violation of 18 U.S.C. § 924(c)(1), could have been brought in Sacramento. See United States v. Fagan, 821 F.2d at 1008 (fact that there is only one district in which all counts of indictment could be brought shows that "the government's selection of the forum was not arbitrary").

Kaczynski also contends that transfer of this case to Sacramento would promote a speedy resolution of the charges arising from the bombing that killed Mosser. He argues that "[w]ithout a transfer to Sacramento * * * trial on the New Jersey charges will necessarily be continued until after the Sacramento trial and will result in a long delay in trial." Initially, however, Kaczynski cannot reasonably claim that he is genuinely concerned about delay. Kaczynski sought and received two 60-day delays in the Sacramento proceedings. At a status conference on November 22, 1996, he sought a further delay until March 3, 1997, to file a motion to suppress the evidence seized from his cabin, an additional delay to file a motion for change of venue, and a substantial delay in setting a date for the Sacramento trial. In accordance with Kaczynski's wishes, the district court in Sacramento gave Kaczynski until March 3, 1997, to file a motion to suppress, and until June 2, 1997, to file his change of venue motion. The court then set trial for November 12, 1997. Because Kaczynski has sought to delay the resolution of the Sacramento charges, he can hardly complain that delay in the New Jersey trial is a factor favoring transfer of the case to Sacramento.

In any event, there is no need to delay trial in this case. As set forth in the letter filed with the Court today, because of unforeseen developments since the October 29 status conference in this case, the government has reconsidered its preference for the order of prosecution. These developments include the defense's disagreement with our conclusion that the Sacramento trial would

constitute "other proceedings concerning the defendant" for purposes of the application of the Speedy Trial Act to this case; the setting of a November 12, 1997, trial date in Sacramento; and the defense's argument that this case should be delayed until after the Sacramento trial. Accordingly, the government believes that the trial in this case can and should begin on June 30, 1997, and that it can be completed without interfering with the Sacramento trial date. In short, if delay is a concern of the Court, then the government urges the Court to set the case for trial.

Contrary to Kaczynski's claim, moreover, any delay in bringing the New Jersey trial does not implicate the Speedy Trial Act. Congress has specifically provided that "[a]ny period of delay resulting from other proceedings concerning the defendant," including "delay resulting from trial with respect to other charges against the defendant" is excluded from the time in which a defendant must be brought to trial under the Act. 18 U.S.C. §§ 3161(h)(1) & (h)(1)(D). See United States v. Anello, 765 F.2d 253, 256 (1st Cir.), cert. denied, 474 U.S. 996 (1985); United States v. Lopez-Espindola, 632 F.2d 107, 109-110 (9th Cir. 1980). Because Kaczynski will thus receive a trial in New Jersey within the limits set by Congress, the delay in bringing him to trial on the New Jersey indictment is not a factor favoring transfer. See United States v. Russell, 582 F. Supp. 660, 662 n.2 (S.D.N.Y. 1984) ("ever since the passage of the Speedy Trial Act * * * consideration of docket conditions has become largely

immaterial"); United States v. Oster, 580 F. Supp. 599, 603 (S.D. W. Va. 1984) (since the enactment of the Speedy Trial Act delay caused by docket conditions "is no longer an appropriate factor for consideration in a Rule 21(b) analysis"); United States v. Bein, 539 F. Supp. 72, 75 (N.D. Ill. 1982) (same).[4]

CONCLUSION

For the foregoing reasons, the defendant's motion to transfer proceedings to the United States District Court in Sacramento, California, should be denied.

Dated: December 5, 1996

Respectfully submitted,

FAITH S. HOCHBERG
UNITED STATES ATTORNEY
DISTRICT OF NEW JERSEY

By: _____
ROBERT J. CLEARY
J. DOUGLAS WILSON
SPECIAL ATTORNEYS TO THE
UNITED STATES ATTORNEY GENERAL

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[4] Kaczynski asserts (Memorandum at 10) that "a second trial on related charges violates the spirit, if not the rule, against multiple prosecutions inherent in the Double Jeopardy Clause of the Fifth Amendment." That assertion is flatly erroneous. The Double Jeopardy Clause bars multiple prosecutions for the "same offense." Plainly, the offenses arising out of the bombing charged in New Jersey are not the "same offenses" as those charged in the Sacramento indictment. See United States v. Felix, 503 U.S. 378, 385 (1992) (offenses are not the "same offense" for double jeopardy purposes when they involve "no common conduct"). Moreover, the Supreme Court has made clear that the Double Jeopardy Clause does not bar a prosecution on an offense that the government has previously introduced as "other crimes" evidence under Fed. R. Evid. 404(b). See Dowling v. United States, 493 U.S. 342, 347-50 (1990); see also United States v. Russo, 646 F. Supp. at 817-18 (rejecting analogous double jeopardy claim).

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U.S. Department of Justice

United States Attorney
District of New Jersey

Federal Building - Room 502
970 Broad Street
Newark, New Jersey 07102

201/645-2700

December 5, 1996

Clerk
United States District Court
Martin Luther King Courthouse
Newark, New Jersey 07102

Re: United States v. Theodore John Kaczynski
Criminal No. 96-607

Dear Sir:

Enclosed for filing is the original and one copy of the Memorandum of the United States In Opposition To Defendant's Motion To Transfer Proceedings To United States District Court In Sacramento, California, Under Federal Rule Of Criminal Procedure 21 (b).

Respectfully submitted

FAITH S. HOCHBERG
United States Attorney

Robert J. Cleary

By: Robert J. Cleary
First Assistant U.S. Attorney

Enclosure

cc: Hon. Dickenson R. Debevoise w/ encl.
Chester Keller, Esq. w/encl.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	CRIMINAL NO. 96-607
	:	
v.	:	
	:	
THEODORE JOHN KACZYNSKI aka "FC"	:	

MEMORANDUM OF THE UNITED STATES IN OPPOSITION TO DEFENDANT'S MOTION TO TRANSFER PROCEEDINGS TO UNITED STATES DISTRICT COURT IN SACRAMENTO, CALIFORNIA, UNDER FEDERAL RULE OF CRIMINAL PROCEDURE 21(b)

FAITH S. HOCHBERG
UNITED STATES ATTORNEY

ROBERT J. CLEARY
J. DOUGLAS WILSON
SPECIAL ATTORNEYS TO THE UNITED STATES ATTORNEY GENERAL

INTRODUCTION

The defendant Theodore Kaczynski is charged in this district with mailing a package containing a bomb from San Francisco in the Northern District of California to the home of Thomas J. Mosser in North Caldwell, Essex County, New Jersey. When Mosser opened the package, the bomb exploded and killed him. Although the indictment thus charges that the defendant intentionally sent a lethal device into this district and thereby caused the death of one of its residents, Kaczynski contends that the case should be tried in the Eastern District of California. Accordingly, he has moved pursuant to Federal Rule of Criminal Procedure 21(b) to transfer this case to that district so that it can be consolidated with an indictment charging Kaczynski with offenses rising out of four other bombs that were mailed or exploded in the Eastern District of California.

Kaczynski's motion should be denied. Rule 21(b) allows for the transfer of a criminal case only "[f]or the convenience of the parties and witnesses, and in the interest of justice." Kaczynski has failed to allege, much less to show, that trial of this case in this district will cause undue inconvenience to the parties or to any witness. More importantly, the charged offenses arise from the murder of a New Jersey resident, a factor that gives this district a unique and substantial interest in retaining this case. Nor is there any unfairness in requiring Kaczynski, who is alleged to be a serial bomber responsible for lethal bombings in both districts, to undergo separate trials on

the New Jersey and Sacramento indictments. Accordingly, the interests of justice overwhelmingly favor denial of his motion.

BACKGROUND

On June 18, 1996, a grand jury in the Eastern District of California returned a ten-count indictment against Kaczynski. Count One charged that Kaczynski transported a bomb into the Eastern District of California and planted it behind Rentech, a Sacramento computer store, where it exploded and killed Hugh Scrutton. Counts Two through Four charged Kaczynski with sending a bomb through the mail from Sacramento to Tiburon, California, where it exploded and injured Dr. Charles Epstein. Counts Five through Seven charged that Kaczynski mailed a bomb from Sacramento to New Haven, Connecticut, where it exploded and injured Dr. David Gelertner. Finally, Counts Eight through Ten charged that Kaczynski sent a bomb from Oakland to Sacramento, California, where it exploded and killed Gilbert B. Murray. Each of the counts thus arose out of a bomb that either exploded in or was sent from the Eastern District of California.

The indictment returned by a grand jury in this district alleges that Kaczynski sent a bomb from San Francisco, California, to North Caldwell, New Jersey. The bomb was addressed to Thomas J. Mosser, an executive with a public relations firm. When Mosser opened the package containing the bomb in the kitchen of his home, the bomb exploded and killed him. Based on this incident, the grand jury charged Kaczynski with one count of transporting an explosive with intent to kill

or injure, in violation of 18 U.S.C. § 844(d), one count of mailing an explosive device with intent to kill or injure, in violation of 18 U.S.C. § 1716, and one count of using or carrying a destructive device in relation to a crime of violence, in violation of 18 U.S.C. § 924(c)(1).

ARGUMENT

DEFENDANT HAS FAILED TO CARRY HIS BURDEN UNDER FED. R. CRIM. P. 21(b) TO SHOW THAT THIS CASE SHOULD BE TRANSFERRED TO THE EASTERN DISTRICT OF CALIFORNIA

A. Kaczynski Has Not Established that a Transfer Is Necessary Either for the Convenience of the Parties or Witnesses or the Interests of Justice.

Federal Rule of Criminal Procedure 21(b) provides as follows:

> For the convenience of the parties and witnesses, and in the interest of justice, the court upon motion of the defendant may transfer the proceeding as to that defendant or any one or more of the counts thereof to another district.

The Rule is intended to allow a defendant to obtain a transfer to another district when the government abuses its discretion to select a forum and institutes a prosecution in a district that is "remote or inhospitable" to the defendant.[1] 8A Moore's Federal Practice ¶ 21.04[1] at 21-17 (1996); see also 2 Charles A. Wright, Federal Practice and Procedure: Criminal § 343 at 259-60 (1982) (Rule allows transfer when the government brings a case

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[1] Originally, the Rule authorized a transfer only to a district where the case could have been brought originally. In 1966, the Rule was amended to allow a transfer to any district. The purpose of the amendment was to address situations in which venue is laid in a district inconvenient to the defendant because of a restrictive venue statute. See 2 Charles A. Wright, Federal Practice and Procedure: Criminal § 343 at 261-62 (1982).

"in a district inconvenient to the defendant, or in which the chance of conviction appears to be greater"). Thus, in evaluating a Rule 21(b) motion, "[t]he important question is whether the government has sought, or will gain, an unfair advantage by prosecuting this case in this district." United States v. Long, 697 F. Supp. 651, 656 (S.D.N.Y. 1988).

In Platt v. Minnesota Mining & Manufacturing Co., 376 U.S. 240 (1964), the Supreme Court listed ten factors that have been adopted by courts assessing Rule 21(b) motions:

> (1) location of * * * defendant; (2) location of witnesses; (3) location of events likely to be at issue; (4) location of documents likely to be involved; (5) disruption of defendant's business unless the case is transferred; (6) expense to the parties; (7) location of counsel; (8) relative accessibility of place of trial; (9) docket condition of each district or division involved; (10) any other special elements which might affect the transfer.

Id. at 243-44. The defendant bears the burden of showing that the Platt factors support a transfer. See United States v. Washington, 813 F. Supp. 269, 275 (D. Vt. 1993), aff'd, 48 F.3d 73 (2d Cir. 1994), cert. denied, 115 S. Ct. 2596 (1995); United States v. Aronoff, 463 F. Supp. 454, 461 (S.D.N.Y. 1978). Moreover, because "'[i]t will always be true that any trial will result in some inconvenience to both parties,'" the defendant must show "substantial inconvenience." United States v. Bloom, 78 F.R.D. 591, 608 (E.D. Pa. 1977) (quoting United States v. Green, 373 F. Supp. 149, 154 (E.D. Pa. 1974)); see United States v. Wecker, 620 F. Supp. 1002, 1004 (D. Del. 1985); United States v. United States Steel Corp., 233 F. Supp. 154, 157 (S.D.N.Y. 1964) (Weinfeld, J.). In short, the defendant must show that

"litigating his trial in the district from which he seeks a transfer * * * either burdens his defense or creates undue prejudice against him." 8A Moore's Federal Practice ¶ 21.04[1] at 21-17-18

Kaczynski has failed to carry his burden. Indeed, Kaczynski does not allege that he cannot effectively mount a defense in this district or that the government has acted arbitrarily in bringing a prosecution arising from a New Jersey murder in New Jersey. Moreover, in contrast to nearly every case in which a court has granted a Rule 21(b) transfer, the government has not brought this case far from the district where the wrongdoing occurred or unreasonably divided a single course of conduct into multiple prosecutions in multiple districts. For these reasons alone, Kaczynski's motion to consolidate two pending indictments is neither "for the convenience of the parties" nor in the "interest of justice" as Rule 21(b) uses those terms.

Kaczynski's motion also ignores the Platt factors that require rejection of his motion. First, he wholly fails to take into account the most crucial factor: the location of the events at issue. Congress has provided that "[t]he trial of offenses punishable by death shall be had in the county where the offense was committed, where that can be done without great inconvenience." See 18 U.S.C. § 3235. Here, each indictment charges a capital offense, and the government will not suffer inconvenience in trying the cases separately. See United States v. Parker, 103 F.2d 857, 861 (3d Cir.) ("Obviously, the

inconvenience referred to in the statute is that of the Government since the [defendants] could hardly complain of being tried at the place where their offense was committed."), cert. denied, 307 U.S. 642 (1939).

Moreover, Kaczynski has been indicted in both New Jersey and Sacramento because the government's evidence shows that he is a serial bomber who sent or planted bombs that resulted in deaths in each of those districts. Each of the offenses charged in the Sacramento indictment rests on a bomb that was either mailed from or placed in Sacramento. By contrast, the bomb that forms the basis for the indictment in this case was mailed from the Northern District of California and has no connection to Sacramento. Thus, though related, the crimes charged in the two indictments had different victims and inflicted harm in separate communities.[2]

Rule 21(b) is not designed to allow a defendant who has

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[2] This case is thus easily distinguishable from the only case that Kaczynski cites in which a court transferred a prosecution under Rule 21(b) to consolidate it with another pending prosecution. In United States v. Ray, 234 F. Supp. 371 (D.D.C. 1964), the government brought two separate prosecutions in the District of Columbia charging the defendant with defrauding the Small Business Administration on two different occasions. After one of the cases was moved to another district with the government's consent, the district court ruled that the second case should be moved to the same district. The court reasoned that the case before it should be consolidated with the case that had already been transferred. It also concluded that the case should be transferred because "different parts of the crime [were] committed in two or more districts," and the district to which the transfer was sought was the defendant's home and principal place of business. Id. at 372. By contrast, the two prosecutions that Kaczynski seeks to consolidate arise from two distinct crimes, against distinct victims, occurring in separate jurisdictions.

caused serious harm in two districts to consolidate two indictments and obtain a single trial. Instead, as already explained, it is intended to redress inconvenience or unfairness caused by the government's ability to choose among multiple venues. In addition, there is a substantial public interest in trying violent crimes in the communities where they occur. Cf. Taylor v. Louisiana, 419 U.S. 522, 530 (1975) (Sixth Amendment right to jury trial also allows "[c]ommunity participation in the administration of criminal law"). As one court has explained, "It is important in criminal cases for the community to be confident wrongdoing conducted in its state against its citizens is penalized." United States v. McDonald, 740 F. Supp. 757, 765 (D. Alaska 1990); see United States v. Russell, 582 F. Supp. 660, 664 (S.D.N.Y. 1984) (community that has "an active interest" in a case should be the site of trial). Murder is a uniquely serious crime that invariably has a substantial effect on the community where it occurs, a fact that no doubt influenced Congress's decision to require that capital offenses ordinarily should be tried in the county where the offense was committed. Kaczynski, who, the government alleges, intentionally sent the lethal bomb into this district, should not be able to rely on Rule 21(b) to remove this prosecution from the jurisdiction that has the greatest interest in it. See United States v. Maldonado-Rivera, 922 F.2d 934, 965 (2d Cir. 1990) (Rule 21(b) motion properly denied when location of "primary evil" was in district where case originally brought), cert. denied, 501 U.S. 1211 (1991); United

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In short, when, as here, the government brings prosecutions in more than one district because the defendant's conduct has caused the deaths of victims in each district, Rule 21(b) should not provide a vehicle for second guessing that decision. As other courts have recognized in denying Rule 21(b) motions, "the situs of prosecution is generally a decision more properly within the province of the Attorney General." United States v. Persico, 621 F. Supp. 842, 858 (S.D.N.Y. 1985); see United States v. Long, 697 F. Supp. at 656 ("The United States has broad discretion in deciding whether and when to bring a criminal prosecution."). In this case the Attorney General, in compliance with the congressional directive in Section 3235, has reasonably determined that separate prosecutions should be brought in Sacramento and New Jersey. Thus, Kaczynski's motion should be denied.

Kaczynski also overlooks a second important factor, the location of the witnesses. Many of the government's witnesses in this case will be federal law enforcement officers and experts whose duties include testifying when called to do so; it is not inconvenient for these witnesses to testify anywhere in the United States. See United States v. Green, 983 F.2d 100, 103

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Most of the other Platt factors also militate against or fail to support Kaczynski's motion. First, Kaczynski has no connection to the Sacramento area; he is not a resident of that district, and thus he cannot argue that transferring this case there would bring him closer to family, friends, or other resources. Likewise, the defendant has no business, so it cannot be disrupted; in any event, he is in pretrial detention. Because Kaczynski is being represented at public expense, he cannot complain that the expense of representation at a second trial in New Jersey is inconvenient or unfair to him. See United States v. Maldonado-Rivera, 922 F.2d at 965. Although the government

seized a substantial quantity of documents and other evidence from Kaczynski's cabin in Montana, it has no objection to transporting the relevant documents to New Jersey and making them available to Kaczynski's New Jersey attorneys. In fact, the government is making preparations to begin providing discovery to Kaczynski's New Jersey attorneys immediately. Kaczynski has attorneys in both districts, and judging by the composition of his Sacramento defense team (which includes the Federal Public Defender for the Eastern District of Washington), he may be able to rely on his Sacramento attorneys in New Jersey. In fact, his Sacramento attorneys signed the Rule 21(b) motion that he filed in this district.

In short, it is simply not true that, as Kaczynski argues, there are no interests weighing in favor of retaining this case in this district. To the contrary, Kaczynski's motion runs counter to the very purpose of Rule 21(b) and finds no support in the majority of the factors that a court should assess in weighing his motion.

B. The Possibility of a Single Trial in Sacramento Does Not Outweigh the Factors Favoring Denial of Kaczynski's Motion.

Kaczynski claims, however, that this case should be transferred under Rule 21(b) because, in his view, it would be more convenient to consolidate the indictment in this case with the indictment pending against him in the Eastern District of California. Thus, he argues, considerations of judicial economy weigh in favor of the proposed transfer.

Although judicial economy is a relevant consideration under Rule 21(b), it has little force in a capital case subject to Section 3235. Nor should considerations of judicial economy be dispositive where, as here, the defendant's own conduct has created the need for two separate prosecutions, and the government has legitimate and substantial reasons for seeking indictments in two districts.

In any event, Kaczynski overstates the burden on the parties and the judicial system of having separate trials on the New Jersey and Sacramento indictments. A trial on the New Jersey indictment will be focused primarily on the single bombing that forms the basis for that indictment. See United States v. Russo, 646 F. Supp. 816, 818 (S.D.N.Y. 1986) (declining to transfer indictment to consolidate it with another pending indictment in part because pending case was "relatively simple and focused"). Moreover, during the first trial in California, the parties will have become familiar with the witnesses, evidence, and the legal issues and thus presentation of the case in this district is likely to be substantially streamlined.

Kaczynski asserts that the trial in this case will be "duplicative" because the government will seek to introduce proof of all the UNABOM bombings in the Sacramento trial as "other acts" evidence under Fed. R. Evid. 404(b). Kaczynski is correct that in the Sacramento prosecution, the government intends to introduce evidence of the 12 uncharged bombings to prove that all of the UNABOM bombs were committed by the same person and to

corroborate Kaczynski's written admissions. Presentation of some evidence concerning the Mosser bomb for those purposes in Sacramento will hardly render a trial on the charges in the New Jersey indictment "duplicative," however. It is also somewhat incongruous for Kaczynski to rely on this factor when he undoubtedly intends to oppose the government's use of evidence concerning the Mosser bombing as Rule 404(b) evidence in California.

Finally, it is worth noting that the government has sought to promote judicial economy by including in the Sacramento indictment every offense within the statute of limitations that had any connection to Sacramento.[3] The government believes, however, that the bombings that resulted in death should be prosecuted where the death occurred. The convenience to the defendant of facing a single trial, standing alone, should not outweigh this critical factor.

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[3] Counts 2-4 of the Sacramento indictment arise from a bomb that exploded in Tiburon in the Northern District of California, and Counts 5-7 of the Sacramento indictment rest on a bomb that exploded in New Haven, Connecticut. Venue is proper in the Eastern District of California for these offenses because the bombs were sent from Sacramento. See 18 U.S.C. § 3237. Kaczynski speculates that venue is proper in Sacramento for the counts charged in this indictment on the theory that a bomb sent from San Francisco to New Jersey must have passed over the Eastern District of California. Even if valid, Kaczynski's contention ignores the fact that the bombing charged in the indictment in this district had no connection to the Eastern District of California. In any event, it is far from clear that Count 3 of the indictment, which charges a violation of 18 U.S.C. § 924(c)(1), could have been brought in Sacramento. See United States v. Fagan, 821 F.2d at 1008 (fact that there is only one district in which all counts of indictment could be brought shows that "the government's selection of the forum was not arbitrary").

Kaczynski also contends that transfer of this case to Sacramento would promote a speedy resolution of the charges arising from the bombing that killed Mosser. He argues that "[w]ithout a transfer to Sacramento * * * trial on the New Jersey charges will necessarily be continued until after the Sacramento trial and will result in a long delay in trial." Initially, however, Kaczynski cannot reasonably claim that he is genuinely concerned about delay. Kaczynski sought and received two 60-day delays in the Sacramento proceedings. At a status conference on November 22, 1996, he sought a further delay until March 3, 1997, to file a motion to suppress the evidence seized from his cabin, an additional delay to file a motion for change of venue, and a substantial delay in setting a date for the Sacramento trial. In accordance with Kaczynski's wishes, the district court in Sacramento gave Kaczynski until March 3, 1997, to file a motion to suppress, and until June 2, 1997, to file his change of venue motion. The court then set trial for November 12, 1997. Because Kaczynski has sought to delay the resolution of the Sacramento charges, he can hardly complain that delay in the New Jersey trial is a factor favoring transfer of the case to Sacramento.

In any event, there is no need to delay trial in this case. As set forth in the letter filed with the Court today, because of unforeseen developments since the October 29 status conference in this case, the government has reconsidered its preference for the order of prosecution. These developments include the defense's disagreement with our conclusion that the Sacramento trial would

constitute "other proceedings concerning the defendant" for purposes of the application of the Speedy Trial Act to this case; the setting of a November 12, 1997, trial date in Sacramento; and the defense's argument that this case should be delayed until after the Sacramento trial. Accordingly, the government believes that the trial in this case can and should begin on June 30, 1997, and that it can be completed without interfering with the Sacramento trial date. In short, if delay is a concern of the Court, then the government urges the Court to set the case for trial.

Contrary to Kaczynski's claim, moreover, any delay in bringing the New Jersey trial does not implicate the Speedy Trial Act. Congress has specifically provided that "[a]ny period of delay resulting from other proceedings concerning the defendant," including "delay resulting from trial with respect to other charges against the defendant" is excluded from the time in which a defendant must be brought to trial under the Act. 18 U.S.C. §§ 3161(h)(1) & (h)(1)(D). See United States v. Anello, 765 F.2d 253, 256 (1st Cir.), cert. denied, 474 U.S. 996 (1985); United States v. Lopez-Espindola, 632 F.2d 107, 109-110 (9th Cir. 1980). Because Kaczynski will thus receive a trial in New Jersey within the limits set by Congress, the delay in bringing him to trial on the New Jersey indictment is not a factor favoring transfer. See United States v. Russell, 582 F. Supp. 660, 662 n.2 (S.D.N.Y. 1984) ("ever since the passage of the Speedy Trial Act * * * consideration of docket conditions has become largely

immaterial"); United States v. Oster, 580 F. Supp. 599, 603 (S.D. W. Va. 1984) (since the enactment of the Speedy Trial Act delay caused by docket conditions "is no longer an appropriate factor for consideration in a Rule 21(b) analysis"); United States v. Bein, 539 F. Supp. 72, 75 (N.D. Ill. 1982) (same).[4]

CONCLUSION

For the foregoing reasons, the defendant's motion to transfer proceedings to the United States District Court in Sacramento, California, should be denied.

Dated: December 5, 1996

Respectfully submitted,

FAITH S. HOCHBERG
UNITED STATES ATTORNEY
DISTRICT OF NEW JERSEY

By: _____
ROBERT J. CLEARY
J. DOUGLAS WILSON
SPECIAL ATTORNEYS TO THE
UNITED STATES ATTORNEY GENERAL

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[4] Kaczynski asserts (Memorandum at 10) that "a second trial on related charges violates the spirit, if not the rule, against multiple prosecutions inherent in the Double Jeopardy Clause of the Fifth Amendment." That assertion is flatly erroneous. The Double Jeopardy Clause bars multiple prosecutions for the "same offense." Plainly, the offenses arising out of the bombing charged in New Jersey are not the "same offenses" as those charged in the Sacramento indictment. See United States v. Felix, 503 U.S. 378, 385 (1992) (offenses are not the "same offense" for double jeopardy purposes when they involve "no common conduct"). Moreover, the Supreme Court has made clear that the Double Jeopardy Clause does not bar a prosecution on an offense that the government has previously introduced as "other crimes" evidence under Fed. R. Evid. 404(b). See Dowling v. United States, 493 U.S. 342, 347-50 (1990); see also United States v. Russo, 646 F. Supp. at 817-18 (rejecting analogous double jeopardy claim).

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CONCLUSION

For the foregoing reasons, the defendant's motion to transfer proceedings to the United States District Court in Sacramento, California, should be denied.

Dated: December 5, 1996

Respectfully submitted,

FAITH S. HOCHBERG
UNITED STATES ATTORNEY
DISTRICT OF NEW JERSEY

By: Robert J. Cleary
ROBERT J. CLEARY
J. DOUGLAS WILSON
SPECIAL ATTORNEYS TO THE
UNITED STATES ATTORNEY GENERAL

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UNABOM / pleadings

IN THE UNITED STATES DISTRICT COURT

FOR DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,	:	CRIMINAL NO. 96-607
v.	:	
THEODORE JOHN KACZYNSKI	:	

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION FOR CHANGE OF VENUE PURSUANT TO FEDERAL RULE OF CRIMINAL PROCEDURE 21(b)

CHESTER M. KELLER, ESQ.
ASSISTANT FEDERAL PUBLIC DEFENDER
FOR THE DISTRICT OF NEW JERSEY
972 BROAD STREET
NEWARK, NEW JERSEY 07102

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LEGAL ARGUMENT

VENUE SHOULD BE REMOVED IN THE INSTANT MATTER TO THE EASTERN DISTRICT OF CALIFORNIA PURSUANT TO FEDERAL RULE OF CRIMINAL PROCEDURE 21.

The instant matter is a criminal prosecution that should take place in the Eastern District of California. Federal Rule of Criminal Procedure 21(b) allows for the change of venue of a criminal matter for the convenience of parties and witnesses and in the interest of justice. This provision gives the Court broad discretion to transfer cases to another district if it is satisfied that it would be in the interests of justice. Prosecution has been brought in New Jersey in the instant matter based on this vicinage being the final destination of the mail bomb that was allegedly sent from San Francisco, California. Nearly all the essential government and defense witnesses come from Montana or California. This is a classic case for the implementation of Rule 21(b) for the convenience of parties and witnesses and the interests of justice to transfer venue to the Eastern District of California.

The United States Supreme Court has clearly stated that "questions of venue in criminal cases . . . are not merely matters of formal legal procedure. They raise deep issues of public policy . . ." United States v. Johnson, 323 U.S. 273, 276 (1944). The Third Circuit in United States v. Passodelis, 615 F.2d 975, 977 (3d Cir. 1980) reviewed various Supreme Court precedent and concluded that

> . . . the Court has consistently viewed the venue provisions of the Constitution as important safeguards protecting an accused from unfairness and hardship in defending against prosecution by the federal government. Though our nation has changed in ways

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> which it is difficult to imagine that the Framers of the Constitution could have foreseen, the rights of criminal defendants which they sought to protect in the venue provisions of the Constitution are neither outdated nor outmoded.

The government response in the instant matter fails to recognize that the venue provisions of the Constitution exist to protect the defendant. United States v. Johnson, 323 U.S. 273 (1944) affirmed a judgment quashing an information for violation of the Federal Denture Act. Essentially, the Court believed that since the statute did not contain any specific provision relative to venue then a prosecution could not be had in the district to which dentures were sent but only in the district from which they were sent. The Court placed great weight on the unfairness of prosecution far from the residence of the defendant, thereby making witnesses much more difficult to obtain for the defense.

There are a number of trial Court decisions that have relied on Federal Rule of Criminal Procedure 21(b) to transfer venue in the appropriate case. In U.S. v. Atwood, 538 F. Supp. 1206 (E.D. Penn. 1982) a criminal prosecution involving fraud in government contract bidding was transferred from the Eastern District of Pennsylvania to the Western District of Virginia. The defendant was a resident of Virginia and nearly all of his witnesses resided in western Virginia. Though some of the government witnesses resided in Philadelphia, most of the activities in question had more of a nexus in Virginia rather than Pennsylvania. The Court citing to Platt v. Minnesota Mining & Mfg. Co., 376 U.S. 240., 243-44, 84 S.Ct. 769, 771-72, 11 L.Ed2d. 674 (1964) listed ten factors that were determinative:

(1) Location of the defendant;
(2) Location of possible witnesses;
(3) Location of events likely to be in issue;

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(4) Location of documents and records likely to be involved;
(5) Disruption of the defendant's business unless the case is transferred;
(6) Expense to the parties;
(7) Location of counsel;
(8) Relative accessibility of place of trial;
(9) Docket conditions of each district or division involved; and,
(10) Any other special elements which might affect the transfer.

United States v. Atwood, 538 F. Supp. at 1206.

The Court granted a defendant's motion for transfer of venue to the Western District of Virginia based upon "the residence of the defendant, location of possible witnesses and the cost of witnesses traveling to Philadelphia compared with the expense of the government witnesses traveling to Virginia, and the location of events in issue all favor transfer." Id. at 1211.

In Atwood, the Court was persuaded by the fact that the defendant was a resident of Virginia, with "no meaningful contact with the State of Pennsylvania." Id., at 1207. Moreover, in reaching its decision to transfer venue to Virginia, the Court indicated that the defendant's home district was entitled to real weight. The Court explained that "the location of possible witnesses is an important consideration because it directly affects defendant's ability to defend himself at trial." Id. at 1207.

In United States v. Gruberg, 493 F. Supp. 234 (S.D.N.Y. 1979) a tax prosecution was transferred based on a defense motion for the convenience of the parties and witnesses and the interests of justice. The Court observed that the "government's convenience is, however, a factor given little weight when other considerations of convenience suggest transfer of a trial under Rule 21(b)." 493 F. Supp. at 243. Also, in United States v. Benjamin, 623 F. Supp. 1204 (D.C.D.C. 1985) another criminal tax prosecution was transferred on motion of the defense to the

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Eastern District of California from the District of Columbia. The Court did so based on the convenience of the parties and the interest of justice. It also noted that the United States is ubiquitous and the Department of Justice should be at home in any location that a federal court sits. 623 F. Supp. at 1212.

Courts are vested with the discretion to transfer cases to another district in which the commission of the offense was alleged to have occurred, if satisfied that it would be in the interest of justice. United States v. Smith, 918 F.2d. 1551 (11th Cir. 1990). The purpose of Rule 21(b) is to monitor the earlier practice in which government prosecutors had the final choice of jurisdiction. Rule 21 permits the Court, upon a defendant's motion, to transfer the case for trial in any district, regardless of whether or not the receiving district was one in which the crime was alleged to have occurred.

There is clear Constitutional and statutory support for the instant prosecution to be held in California. Article III, § 2, clause 3 of the United States Constitution states that the "Trial of all Crimes . . . shall be held in the State where the said crimes shall have been committed." The Sixth Amendment explains that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed." Such language indicates that the defendant enjoys the right of venue. 18 U.S.C. § 3237(a) explains, in part, that the prosecution of the instant offense can clearly be held in California if the mail bomb was allegedly sent from there:

> any offense involving the use of the mails, transportation in interstate or foreign commerce, or the importation of an object or person into the United States is a continuing offense and, except as

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> otherwise expressly provided by enactment of Congress, may be inquired of and prosecuted in any district from, through, or into which such commerce, mail matter, or imported object or person moves.

The defense does not dispute that such statute and Constitutional provision allow for prosecution in New Jersey. However, it appears clear that prosecution is also proper in California and far more convenient for the parties and transfer of venue is certainly in the interest of justice.

The Court should exercise its broad discretion in the instant matter to transfer prosecution to the Eastern District of California. One major factor that the Court should consider is that Mr. Kaczynski initially was to be brought to trial by the United States in the Eastern District of California based on allegations that the government clearly believes are related. The United States has advised Mr. Kaczynski's attorney in the Sacramento indictment that the Government will offer proof at the Sacramento trial of a large number of various incidents that Mr. Kaczynski was allegedly involved, including the events pertaining to the instant New Jersey indictment. The United States has advised this Court that it is prepared to introduce evidence of the New Jersey mail bombing during its direct case in the Sacramento prosecution. The duplicitous nature of such a governmental undertaking strengthens the argument for venue transfer.

A review of the various factors enumerated in the Platt decision also seem to argue strongly for the instant indictment to be heard in Sacramento:

1. Location of defendant - Mr. Kaczynski is presently being held in pretrial detention in Sacramento, California awaiting trial on Indictment No. 96-259 in the Eastern District of

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California. The trial has been set for November 12, 1996. Originally, the United States intended to proceed with the New Jersey indictment upon conclusion of the California indictment. By letter to this Court dated December 5, 1996 the government now changes course and expresses a desire to prosecute in New Jersey initially. The convenience of all parties might suggest that Mr. Kaczynski remain in California and be tried there on the matter underlying the instant New Jersey indictment.

2. Location of possible witnesses.

A) Prosecution witnesses - The investigation of the various incidents alleged against Mr. Kaczynski was largely the work of a government task force based in California. If the government intended to prosecute the New Jersey case in the same manner that it has indicated that it may prosecute the Sacramento indictment it is clear that numerous law enforcement agents based in California would be required to travel to New Jersey for trial. Further, the search of our client's residence in Montana will seemingly be a major component of the prosecution. Once again, numerous law enforcement personnel from the western part of the United States may be needed as witnesses. Of course, the defense recognizes that some of the New Jersey investigation was conducted by federal and local law enforcement based in this state. However, the large majority of government witnesses would have to travel from the California vicinage.

B) Defense witnesses - Potentially, there are a number of people who resided in Montana and California who could be essential witnesses for Mr. Kaczynski. The ability to question the government proofs as to our client's location on a certain date and time may be greatly aided by witnesses from those areas of the country. If the instant prosecution is pursued

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as a capital punishment case, the mitigation defense team that has been formed and based in California would be essential to the proper defense of Mr. Kaczynski.

3. Location of events likely to be in issue - It seems clear that the instant prosecution does not have any event taking place in New Jersey that can be at issue in this trial. No one can question that a mail bomb was received in New Jersey with tragic consequences. However, many of the events in Montana and California certainly may be at issue in this case. The lawfulness of the search of our client's residence in Montana, as well as the actual fruits of such search seem to be central issues in this prosecution. The issue as to whether Mr. Kaczynski could have possibly been in San Francisco in early December 1994 in order to mail the bomb to New Jersey becomes of paramount importance.

4. Location of documents and records likely to be involved - The government has been providing volumes of discovery regarding the various allegations to the defense counsel in the Eastern District of California. No such discovery has been provided yet to our office, though the government response suggests such discovery will soon be forthcoming to New Jersey defense counsel. It seems totally inconvenient and unnecessary to produce the voluminous amount of documents that exist in this case a second time. If all the necessary discovery has been provided in the Eastern District of California, it seems needless to produce the enormous amount of documents again in New Jersey.

5. Description of defendant's business - This factor does not seem applicable in the instant matter.

6. Expense to the parties - Obviously, this prosecution involves a major effort that is made evident by the suggestion made by the United States that the Sacramento prosecution may

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be extensive. Apparently, the government is prepared to span a twenty-five year period from 1971-1996 to weave together disparate acts of vandalism and violence. Many acts are allegedly based in California and only the instant matter involves New Jersey. If the government intends to prosecute the New Jersey case in any similar fashion it will result in enormous expense for both parties to adequately prepare this case for another trial that would be 3000 miles away from the trial in Sacramento. The government makes no assertion that the New Jersey prosecution will be strictly limited to the New Jersey incident. If the New Jersey matter can be transferred to California and eventually consolidated for trial purpose, the United States government would realize significant savings.

7. Location of counsel - This factor does not seem to be significant. Clearly, the Department of Justice is present throughout the country and capable of trying cases in any district. See United States v. Benjamin, 623 F. Supp. 1204 (D.C.D.C. 1985). Also, the Federal Defender offices in the Eastern District of California and New Jersey have been appointed to represent Mr. Kaczynski in the respective prosecutions. Our office in New Jersey is prepared to transfer the New Jersey matter to the Federal Defender offices in Sacramento if a change of venue is granted.

8. Relative accessibility of place of trial - Since almost all of the witnesses for both parties are located in California or Montana, the Federal Courthouse in Sacramento, California is far more accessible for these witnesses than the Federal Courthouse in Newark, New Jersey. The federal and local law enforcement officials based in New Jersey who investigated the New Jersey incident should not be more inconvenienced by a prosecution in Sacramento, California because the United States suggests such witnesses may be necessary in California in any event.

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9. Docket condition of each District - Counsel has no specific information regarding this factor, though the Federal Speedy Trial Act assumes that either Court can handle this matter in a timely fashion. See United States v. Benjamin, 623 F. Supp. 1204 (D.C.D.C. 1985).

10. Any other special element which might affect the transfer -

The unusual nature of the instant New Jersey prosecution is that the United States intended initially to proceed with virtually the exact prosecution in the Eastern District of California. The United States makes clear in its papers that the government intends to introduce evidence about the New Jersey incident into the California trial. Therefore, it seems logical that the government will attempt to introduce the various California incidents listed in the Sacramento indictment at any New Jersey trial of the instant indictment, though it suggests that the New Jersey case will be streamlined. Such a duplicitous effort by the United States should be avoided as extremely inconvenient to the parties and not in the interest of justice. Another special element of the instant prosecution is the fact that the United States could attempt to introduce evidence spanning a twenty-five year period that took place throughout the country. Though many witnesses can be anticipated, certain issues may arise, such as the government's motive theories, that may not have been anticipated by counsel. Special problems are presented by the trial of stale factual issues when witnesses possessing potentially relevant information are located far from the trial venue. If the United States calls an unanticipated witness or offers an unexpected theory, it may be difficult for the defense to challenge it when any countervailing evidence is located in a distant jurisdiction.

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A review of the various factors enumerated in the Platt decision makes it clear that the convenience of the parties and the interest of justice suggest that the instant New Jersey matter should be transferred to the Eastern District of California.

It should be noted that Congress has enacted a statute regarding venue in capital cases. Of course, the United States has not made any final determination as to whether the California or the New Jersey case will be a capital prosecution, but Title 18 U.S.C. § 3235 should be addressed in any event in light of the instant motion. The statute simply states that capital prosecutions should be had "in the county where the offense was committed where that can be done without great inconvenience." Of course, 18 U.S.C. § 3237(a) makes clear that the offenses alleged in the New Jersey indictment are continuing offenses and may be prosecuted in any district that had involvement in the mail matter. The United States will apparently allege that the mail bomb that exploded in New Jersey on December 10, 1994 was mailed from San Francisco, California. Therefore, the offense can truly be said to have been committed in either California or New Jersey and § 3235 would seem to have no bearing on the motion.

However, the case law that sought to interpret the prior statutory version of 18 U.S.C. § 3235 clearly indicates that the Court is left with the ultimate discretion as to venue even in capital cases. In United States v. Fries, 3 U.S. 515 (1799) the decision that "great inconvenience" prevented the trial from being held in the county where the crime was committed was deemed conclusive after a verdict. The former version of 18 U.S.C. § 3235 was embodied in 28 U.S.C. § 101 and was consistently found by the Courts to be a determination left to the sound discretion of the judge. See Davis v. United States, 32 F.2d 860 (9th Cir. 1929); Greenhill v. United States, 6 F. 2d 134 (5th Cir. 1925). The wording of the statute makes clear that only a

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qualified right is offered, not an absolute right. See Brown v. United States, 257 F. 46 (5th Cir. 1919), reversed on other grounds, 256 U.S. 335 (1921) - A case briefly cited by the government in its papers gives a full explanation of the legislative history and intent of 18 U.S.C. § 3235. In United States v. Parker, 19 F. Supp. 450 (D.N.J. 1937) a predecessor judge of this Court explained why our country's forefathers promulgated this statute and the Constitutional provisions regarding venue:

> The Constitution and the statute protected the citizen against the power of these new and strange courts. It accorded a personal privilege like that of free speech, the right to be free from unreasonable searches, etc., also granted by constitutional amendment. Being a personal privilege, it must be measured by the reasons underlying the grant.

19 F. Supp. at 459. Ultimately, the Parker Court found that "the exception in the statute, rather than the statute itself, applies. 19 F. Supp. at 460. It also found that the "privilege, being, as we have seen, personal, can be waived." 19 F. Supp. at 461. The filing of the instant motion indicates Mr. Kaczynski's willingness to waive his personal privilege of prosecution in New Jersey.

It has been clearly shown that the instant prosecution should be held in the Eastern District of California based on the convenience of the parties and the interest of justice.

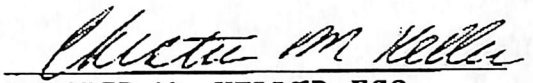
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CONCLUSION

In the interest of convenience of all parties and the interest of justice, the Court should grant Theodore Kaczynski's motion to transfer the indictment under Federal Rule of Criminal Procedure 21(b) to the United States District Court in Sacramento, California.

Dated: December 6, 1996

Respectfully submitted,



CHESTER M. KELLER, ESQ.
Assistant Federal Public Defender
for the District of New Jersey

Attorney for Defendant
Theodore John Kaczynski

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Memorandum of Law, were served by telecopier, on Robert S. Cleary, Esq., Special Attorney to the United States Attorney General, 450 Golden Gate Avenue, Federal Building 16th Floor, San Francisco, California on the 6th day of December, 1996.

Chester M Keller

CHESTER M. KELLER, ESQ.
Assistant Federal Public Defender
For the District of New Jersey

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CHRISTOPHER O'MALLEY

TRENTON OFFICE
DAVID E. SCHAFER
BRIAN P. REILLY
LISA VAN HOECK

December 9, 1996

HAND DELIVERED

Honorable Dickinson R. Debevoise
United States District Court Judge
Martin Luther King Jr. Federal Building
and Courthouse
50 Walnut Street
Newark, New Jersey 07102

Re: United States v. Theodore John Kaczynski
Criminal No. 96-607

Dear Judge Debevoise:

We are writing to Your Honor to clarify the defense position in the above-captioned matter regarding the applicability of the Speedy Trial Act.

18 U.S.C. § 3161(h)(1)(G) makes clear that any period of "delay resulting from any proceeding relating to the transfer of a case or the removal of any defendant from another district under the Federal Rules of Criminal Procedure" shall be excluded in computing time under the Speedy Trial Act. Therefore, if Your Honor grants the defense motion to transfer the instant indictment to the Eastern District of California for purposes of trial, the time is excludable under the statute. If Your Honor does not grant the defense motion to transfer, then the defense is prepared to stipulate that the prosecution in the Eastern District of California constitutes "other proceedings concerning the defendant" pursuant to 18 U.S.C. § 3161(h)(1) which excludes the time period from December 10, 1996 until the conclusion of the defendant's trial in the Eastern District of California from the time computations required by the Speedy Trial Act.

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Thank you for this opportunity to comment upon the Speedy Trial Act implications of Your Honor's ruling on the defense motion to transfer.

Respectfully submitted,

John F. McMahon
Federal Public Defender for the
District of New Jersey

Quin Denvir
Federal Public Defender for the
Eastern District of California

cc: Robert Cleary, Esq.
Special Attorney to the United States
Faith S. Hochberg, Esq.
United States Attorney for the
District of New Jersey

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UNABOM/pleadings

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CRIMINAL NO. 96-607

UNITED STATES OF AMERICA, :

Plaintiff, :

v. :

THEODORE JOHN KACZYNSKI, :

Defendant. :

O R D E R

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Defendant, Theodore John Kaczynski, having moved to transfer proceedings in this case to the United States District Court for the Eastern District of California; and the court having considered the submissions and arguments of counsel; and for the reasons set forth in an opinion of even date,

IT IS this 17th day of December 1996 **O R D E R E D** that defendant's motion is **DENIED**.

DICKINSON R. DEBEVOISE
U.S.S.D.J.

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CRIMINAL NO. 96-607

UNITED STATES OF AMERICA, :

Plaintiff, :

v. : **OPINION**

THEODORE JOHN KACZYNSKI, :

Defendant. :

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DEBEVOISE, Senior District Judge

The indictment in this case, filed on October 1, 1996, contains three counts. Count One charges that the defendant, Theodore John Kaczynski, transported a bomb and bomb components from Montana to San Francisco, California; that on or about December 3, 1994 defendant mailed the bomb from San Francisco to Thomas J. Mosser in North Caldwell, New Jersey; and that on or about December 10, 1994, while in his home, Mr. Mosser opened the package containing the bomb, causing it to explode, killing Mr. Mosser. Defendant is charged in Count One with transportation of an explosive with intent to kill or injure in violation of 18 U.S.C. § 844(d) and 2(b).

Count Two charges defendant with mailing an explosive device with intent to kill or injure in violation of 18 U.S.C. § 1716. Count Three charges use of a destructive device in relation to a crime of violence in violation of 18 U.S.C. § 924(c)(1). The offenses charged in the indictment are potentially punishable by death.

Defendant has moved for an order pursuant to Fed.R.Crim.P. 21(b) granting a change of venue to the Eastern District of California. For the reasons set forth below the motion is denied.

Defendant's motion is predicated upon the prosecution of a ten count indictment filed in the Eastern District of California on June 18, 1996. That indictment charges defendant with four

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other bombings, which, the government alleges, are part of a series of bombings which defendant committed. During its case in chief in the California trial the government will seek to present evidence of other bombings, including the New Jersey bombing charged in the present indictment, to prove identity and for other purposes under Fed.R.Evid. 404(b).

Defendant contends that in view of the government's intention to use other crimes evidence, failure to transfer venue to the Eastern District of California where the trial of this indictment could be consolidated with trial of the other indictment, will result in a duplicative trial. The trial of the New Jersey indictment after the trial in California will require the prosecution and defense of the charges arising out of the New Jersey offense twice - once as a part of the government's Rule 404(b) evidence in California and once as the government's case in chief here. This would have the effect, defendant contends, of subjecting him to prejudice akin to double jeopardy.

Further, defendant argues that the various factors determinative of a transfer application point to transfer in this case, citing Platt v. Minnesota Mining & Mfg. Co., 376 U.S. 240 (1964).

In general, a defendant has a right to be tried in the district where the offense was committed. U.S. Const. Art. III, § 2, ¶ 3; U.S. Const. Amend. VI; Fed.R.Crim.P. 18. Where the charged offense involves the use of the mails or transportation in interstate commerce, the offense is considered to be a

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"continuing" one and may be prosecuted "in any district from, through, or into which such commerce, mail matter, or imported object or person moves." 18 U.S.C. § 3237(a). In cases where the maximum potential penalty is death, venue is to lie "in the county where the offense was committed, where that can be done without great inconvenience." 18 U.S.C. § 3235. In the present case the government properly brought the indictment in the District of New Jersey. It does not appear that it could have brought the indictment in the Eastern District of California. The bomb allegedly was mailed in San Francisco, in the Northern District of California, and it is unlikely that it traveled through the Eastern District on its way to New Jersey.

Fed.R.Crim.P. 21(b) provides:

> For the convenience of parties and witnesses, and in the interest of justice, the court upon motion of the defendant may transfer the proceeding as to that defendant or any one or more of the counts thereof to another district.

The venue provision of the constitution, statutes and rule provide a safeguard protecting an accused from unfairness and hardship in defending against prosecution by the federal government. These provisions, however, can be waived, and defendant has waived them by bringing this motion.

The Eastern District of California case has a strong nexus to Sacramento, a city within that district. Count One charges that defendant transported a bomb into the Eastern District of California and planted it behind Rentech, a Sacramento computer store, where it exploded and killed Hugh Scrutton. Counts Two through Four charge defendant with sending a bomb through the

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mail from Sacramento to Tiburon, California, where it exploded and injured Dr. Charles Epstein. Counts Five through Seven charge that defendant mailed a bomb from Sacramento to New Haven, Connecticut, where it exploded and injured Dr. David Gelertner. Finally, Counts Eight through Ten charge that defendant sent a bomb from Oakland to Sacramento, California, where it exploded and killed Gilbert B. Murray. Each of the counts thus arose out a bomb that either exploded in or was sent from the Eastern District of California.

The New Jersey case, as far as is presently known, has no nexus to the Eastern District of California. The indictment alleges that defendant sent a bomb from San Francisco, which is in the Northern District of California, to North Caldwell, New Jersey, where it killed Mr. Mosser.

The defendant bears the burden of showing that the Platt factors support a transfer. See United States v. Washington, 813 F. Supp. 267, 275 (D. Vt 1993), aff'd, 48 L.3d 73 (2d Cir. 1994), cert. denied, 115 S. Ct. 2596 (1995). A defendant must show that "litigating his trial in the district from which he seeks a transfer ... either burdens his defense or creates undue prejudice against him." 8A Moore's Federal Practice ¶ 21.04[1] at 21-17-18. Of itself a trial in New Jersey would not prejudice defendant or prevent him from obtaining a fair and impartial trial. Significantly he does not move under Rule 21(a) which provides for a transfer for prejudice in the district.

At the outset it must be noted that bringing a prosecution

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in this district cannot be considered arbitrary or unreasonable. New Jersey is the state to which a bomb was sent and it is the state where a death resulted. While there may be a pattern to various bombings as the government argues, each was a discrete and separate crime, terrible in nature, and there is no requirement that they all be tried together.

While there is a surface plausibility to defendant's argument that the government's proof of the circumstances of the New Jersey bombing in the California trial as part of its Rule 404(b) evidence makes it appropriate to try the New Jersey indictment there, this consideration does not outweigh the powerful reasons to try the New Jersey charges separately.

The California proceedings are already complex. The indictment encompasses four bombings, and the government will seek to offer evidence of twelve other bombings as part of its Rule 404(b) evidence. It is estimated that the case will take three to four months to try. At the hearing on the transfer motion the government represented that evidence of a bombing introduced for Rule 404(b) purposes would be substantially less extensive than the evidence required to prove a criminal charge based upon such a bombing. Thus a consolidation of the New Jersey case with the California case would further extend what promises to be an already lengthy trial.

On the other hand, the government estimates that trial of the guilt phase of the New Jersey case by itself would take no more than three weeks. At the hearing on the transfer motion the

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government represented that it did not intend to introduce evidence of the other fifteen bombing events at the New Jersey trial. In view of the fact that much, if not most, of the preparatory work for the New Jersey case will have been accomplished in connection with the California case, and in view of the relatively simple nature of the New Jersey case, it should be possible to commence and conclude the trial in New Jersey in a reasonable time after conclusion of the California case. This suggests that the most efficient procedure is to permit the California case to proceed on its present course, a detailed motion schedule and trial date having already been set, and to try the New Jersey case separately after the California case is resolved.

Defendant will oppose the government's Rule 404(b) motion, and there is no way of knowing whether and to what extent the California court will grant the motion. It may conclude that the four Sacramento related bombings which are the subject of that case are sufficient to support the government's pattern argument and that proof of additional bombings should be excluded. It may permit only limited proofs concerning other bombings. If the New Jersey indictment were transferred to the Eastern District of California the court there might well decide not to consolidate it with the case pending there, opting to try it separately at the conclusion of the earlier case.

Assuming that the court in California decides to admit evidence of the New Jersey bombing pursuant to Rule 404(b), that

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would not be a compelling reason to transfer the New Jersey case. As noted above, each bombing is a separate, distinct offense. The government has included four of them in the Eastern District of California indictment because they have a common nexus, i.e., the bomb in each of those instances having been mailed to or from Sacramento. The bomb in the present case has no connection with either Sacramento or the Eastern District of California. The offense in the present case should be deemed to have been committed in New Jersey, where the victim was killed. Congress has provided that "[t]he trial of offenses punishable by death shall be had in the county where the offense was committed, where that can be done without great inconvenience." 18 U.S.C. § 3235. As will be more fully explained below, this case can be tried in New Jersey without great inconvenience either to the defendant or to the government.

The Platt factors which should be considered when deciding a transfer motion under Rule 21(b) are:

> (1) location of corporate defendant; (2) location of possible witnesses; (3) location of events likely to be in issue; (4) location of documents and records likely to be involved; (5) disruption of defendant's business unless the case is transferred; (6) expense to the parties; (7) location of counsel; (8) relative accessibility of place of trial; (9) docket condition of each district or division involved; and (10) any other special elements which might affect the transfer.

376 U.S. at 243-44.

The various Platt factors, considered in their totality, do not support a transfer of venue.

There is no corporate defendant the location of which must

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be considered. Defendant's residence is neither Sacramento nor New Jersey. At the present time he is being held in California in pretrial detention. He does not appear to have any other ties to that area.

At this time it cannot be stated with certainty who the government and defense witnesses may be or where they are located. There will undoubtedly be many government agents who participated in the investigation of the case, but they are in government employ and would expect to be sent wherever necessity calls. There will be New Jersey law enforcement officers and medical personnel for whom travel to California would be an inconvenience. Both the principal New Jersey trial and, if there be a conviction, the mitigation phase, would require the presence of witnesses from many parts of the United States, for whom Sacramento and Newark would each present some degree of inconvenience.

The events likely to be in issue also took place in many parts of the United States - defendant's cabin in Montana, San Francisco where the bomb is alleged to have been mailed, and New Jersey where the bomb exploded. There will be no Rule 404(b) other bomb evidence in the New Jersey case.

The government has gathered documents from a number of locations and has assembled them in Sacramento in preparation for the trial there. It has expressed its willingness to turn over copies of these documents to defendant's New Jersey attorneys.

Defendant has no business which could be disrupted by a

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failure to transfer. Expense to the defendant is not a factor since he is being provided a defense at government expense. There is no assurance that if this case were transferred to the Eastern District of California the trial judge would consolidate it with the case pending there. Even if he did any financial savings to the government do not weigh heavily in a transfer decision.

Defendant has capable counsel in both Sacramento and in Newark. They appear to be working together smoothly and effectively. If the case were to be transferred to California the New Jersey attorneys' services might still be useful there.

As to accessibility, Newark is highly accessible from every part of the country, Sacramento perhaps somewhat less so.

There appear to be no problems either in Sacramento or Newark which would prevent the relevant court from proceeding to trial as soon as the parties are ready.

There is another factor which weighs against a transfer in this case. The indictment charges a particularly heinous offense which had a severe impact within New Jersey. The New Jersey community has an interest in the case which, unless outweighed by other factors, favors a trial here. This is a factor which most likely influenced Congress' decision to require that capital offenses ordinarily should be tried in the county where the offense was committed. Although technically it can be argued that this offense was committed in the Northern District of California and in every district through which the bomb passed on

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its way to New Jersey, the offense must be viewed as having been committed in New Jersey where the bomb exploded and killed Mr. Mosser. This is the community having the greatest interest in this proceeding.

For all the foregoing reasons defendant's motion to transfer this case to the Eastern District of California is denied. I shall prepare and file an appropriate order.

DATED: December 12, 1996

DICKINSON R. DEBEVOISE
U.S.S.D.J.

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U.S. Department of Justice

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December 2, 1996

MEMORANDUM

TO: John C. Keeney
Acting Assistant Attorney General
Criminal Division

FROM: Charles J. Stevens
United States Attorney
Eastern District of California

Faith S. Hochberg
United States Attorney
District of New Jersey

SUBJECT: Request for Authorization to Seek the Death Penalty Under 18 U.S.C. §§ 844(d) and 1716 Against **Theodore John Kaczynski**

TIMETABLE: **NOT IMMEDIATE**

I. INTRODUCTION

This memorandum is submitted jointly by the United States Attorneys for the Eastern District of California and the District of New Jersey pursuant to § 9-10.000 of the United States Attorneys' Manual ("the Protocol") which, to promote consistency and fairness in the Department's death penalty decision-making process, charges the United States Attorney, and the Attorney General's Review Committee with the responsibility to consider whether it is appropriate to seek the death penalty and to make recommendations to the Attorney General.

On June 18, 1996, a federal grand jury in the Eastern District of California returned a ten count indictment charging the defendant with various offenses related to the mailing or placement of improvised explosive devices which resulted in the deaths of Hugh Scrutton and Gilbert B. Murray and serious injuries to Dr. Charles Epstein and Dr. David Gelernter. On October 1, 1996, a federal grand jury in the District of New Jersey returned a three count indictment charging the defendant with offenses related to the mailing of an improvised explosive

device which resulted in the death of Thomas J. Mosser. The homicide offenses in his case are potential capital crimes.

For the reasons stated herein, we recommend that the United States seek the death penalty for each of the charged homicides. The trial team joins in this recommendation and supporting analysis.

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B. **Recommendation**

For the murder of Hugh Scrutton in violation of 18 U.S.C. § 844(d), the United States Attorney for the Eastern District of California requests authorization to seek the death penalty against **Theodore John Kaczynski**.

For the murder of Thomas J. Mosser in violation of 18 U.S.C. §§ 844(d) and 1716, the United States Attorney for the District of New Jersey requests authorization to seek the death penalty against **Theodore John Kaczynski**.

For the murder of Gilbert B. Murray in violation of 18 U.S.C. §§ 844(d) and 1716, the United States Attorney for the Eastern District of California requests authorization to seek the death penalty against **Theodore John Kaczynski**.

C. **Overview of the Case**

Kaczynski is charged with being the notorious "Unabomer" who, over a period of 17 years, placed or mailed 16 improvised explosive devices which resulted in three deaths and 29 injuries.

D. **Time Constraints**

The defendant was indicted on the above offenses in the Eastern District of California on June 18, 1996. Based on a stipulation between the parties, the district court entered an order dated July 18, 1996, declaring this case complex and finding excludable time.

At a status conference on September 20, 1996, the government advised the court that it expected the Attorney General to make a decision regarding the death penalty by the end of the year. Over the government's objection the court declined to set a motions schedule or trial date and continued the matter to November 22, 1996 for further status conference.

With respect to the District of New Jersey case, by order dated November 6, 1996, the court set December 10, 1996 as the date for the defendant's arraignment.

II. THEORY OF LIABILITY

The specific statutory sections violated and theory of liability for each homicide are as follows.

The murder of **Hugh Scrutton** is alleged in Count One of the California indictment as a violation of 18 U.S.C. § 844(d).

18 U.S.C. § 844(d). This statute requires proof that the defendant transported an explosive in interstate commerce with the intent to kill, injure or intimidate another individual. To obtain the death penalty the government must prove that, as a proximate result of the defendant's conduct, a death occurred.

The defendant is liable under this statute because he constructed an explosive device in Montana, transported that device to Sacramento, California, and placed it in the parking lot behind Rentech Computer Store where the victim found it and was killed when it exploded.

The murder of **Thomas J. Mosser** is alleged in Counts One and Two of the New Jersey indictment as violations of 18 U.S.C §§ 844(d) and 1716, respectively.[1]

18 U.S.C. § 844(d). As indicated, this statute requires proof that the defendant transported an explosive in interstate commerce with the intent to kill, injure or intimidate another individual. To obtain the death penalty the government must prove that, as a proximate result of the defendant's conduct, a death occurred.

18 U.S.C. § 1716. This statute requires proof that the defendant knowingly placed an explosive in the mail, or caused an explosive to be delivered through the mail and that the defendant did so with the intent to kill or injure another person. To obtain the death penalty the government must prove that, as a proximate result of the defendant's conduct, a death occurred.

The defendant is liable under both statutes because he constructed an explosive device in Montana, and transported that device to San Francisco, California, where he placed it in the mail for delivery to Mr. Mosser at his home address in North Caldwell, New Jersey and the device resulted in the death of Mr. Mosser.

The murder of **Gilbert B. Murray** is alleged in Counts Eight, and Nine of the California indictment as violations of 18 U.S.C

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[1] Count Three, which also relates to the murder of Thomas J. Mosser, charges use of a destructive device during and in relation to a crime of violence in violation of 18 U.S.C. § 924(c)(1). This crime is not a capital offense and will not be addressed here as a theory of liability for the substantive homicide offense.

§§ 844(d) and 1716, respectively.[2]

18 U.S.C. § 844(d). As indicated, this statute requires proof that the defendant transported an explosive in interstate commerce with the intent to kill, injure or intimidate another individual. To obtain the death penalty the government must prove that, as a proximate result of the defendant's conduct, a death occurred.

18 U.S.C. § 1716. This statute requires proof that the defendant knowingly placed an explosive in the mail, or caused an explosive to be delivered through the mail and that the defendant did so with the intent to kill or injure another person. To obtain the death penalty the government must prove that, as a proximate result of the defendant's conduct, a death occurred.

The defendant is liable under both statutes because he constructed an explosive device in Montana, and transported that device to Oakland, California, where he placed it in the mail for delivery to the California Forestry Association in Sacramento, California where it resulted in the death of Gilbert B. Murray, the recipient of the mailed package.

It should be noted, with respect to the death of Hugh Scrutton only, that in United States v. Cheely, 36 F.3d 1439 (9th Cir. 1994), the court struck down the death penalty provision contained in 18 U.S.C. § 844(d) as lacking procedural safeguards to narrow the class of offenders eligible for the death penalty. The same year Congress amended the statute to address the constitutional infirmities noted by the court. These amendments took effect on September 13, 1994, prior to the deaths of Thomas J. Mosser and Gilbert B. Murray. Because section 844(d) provided for the death penalty at the time the defendant murdered Hugh Scrutton, and because the defendant will ultimately be tried pursuant to the procedures set forth in the 1994 amendments, it is the opinion of the trial team that the defendant remains eligible for the death penalty despite the temporary invalidity of the statute's death penalty provision. See Dobbert v. Florida, 432 U.S. 282 (1977).

III. FACTS AND EVIDENCE

A. Interlocking Nature of Evidence

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

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[2] Count Ten, which also relates to the murder of Gilbert B. Murray, charges use of a destructive device during and in relation to a crime of violence in violation of 18 U.S.C. § 924(c)(1). This crime is not a capital offense and will not be addressed here as a theory of liability for the substantive homicide offense.

NO.	DATE	Location of Detonation	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 professor and assistant
11	12/11/85	Sacramento, CA	Death of Hugh Scrutton
12	2/20/87	Salt Lake City	Major 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 five of the devices, the government will seek to prove that the defendant is responsible for all sixteen devices.[3] The government will also seek to introduce evidence that, during the search of Kaczynski's cabin, agent's found a fully functional improvised explosive device. As explained below, due to the interlocking nature of the evidence, proof that the defendant was responsible for all seventeen devices strengthens the government's case with respect to any particular device.

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 in all these bombings 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 Unabomer 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...".

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[3] On June 28, 1996, the government unsealed four "John Doe" indictments relating to Devices 6, 10 and 12. The validity of these latter indictments has not been tested.

On April 20, 1995, the Unabomer mailed Device 16 which killed Gilbert B. Murray, a lobbyist for 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 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 35,000 word manifesto. 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 unabomer 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 Unabomer 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 cabin. Among other things the agents located:

(1) The typewriter used on all Unabomer correspondence since 1982. This typewriter ties Kaczynski to mailing labels and correspondence which accompanied Devices 6, 7, 9, 10, 13, 14 and 15. Because the FBI lab has concluded that all 16 of the Unabom devices were constructed by the same individual, connecting Kaczynski to one device effectively connects him to all the devices. 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). Based on a forensic comparison with the original the FBI lab has determined that it is a true carbon copy made at the time of the original.

(3) A handwritten draft of the manifesto.

(4) Carbon copies of the 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) The stapler which, according to the FBI lab, was used in Devices 13 and 14 and the four copies of the manifesto.

(6) Copies of several of the letters that accompanied Unabom devices including the letter to Professor McConnell that accompanied Device 10 with a handwritten notation that a bomb was sent with the letter; a carbon copy of the June, 1993, New York Times letter which contains the secret identifying number.

(7) A handwritten autobiography 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.

(8) Notebooks written largely in code or in Spanish (together with the key to the code) and a diary written in English which together contain admissions to each of the 16 bombing incidents.

(9) 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. Kaczynski's coded notes also occasionally refer to a particular device as being the product of a particular experiment.

(10) A piece of paper on which was written the secret ten-digit identifying number used by the Unabomer.

(11) Green paneling nails which have been forensically matched to green paneling nails used as shrapnel in Device 15.

(12) A fully functional improvised explosive device which contains a component from the electrical system which is virtually identical to components used in Devices 13, 14 and 15.

B. The Capital Offenses

1. The Murder of Hugh Scrutton

Sometime between 10:35 a.m. and 12:00 noon on December 11, 1985, an improvised explosive device, designed as a road hazard, was placed outside the back door of Rentech Computer Company in Sacramento, California. When Hugh Scrutton, the owner of Rentech, exited from the back door of the store at approximately 12:04 p.m., he attempted to remove the device, activating the anti-lift mechanism, and was killed when it detonated.

The device which killed Scrutton contained the initials "FC", the characteristic signature of the Unabomer. The device has also been forensically linked by the FBI Lab to other Unabom devices through a variety of common characteristics and components. In a June, 1995 letter to Penthouse Magazine, the Unabomer claimed responsibility for this device. A direct carbon copy of this letter was found in Kaczynski's cabin during the April, 1996 search. Also found in the cabin during that search were two documents - one in mathematical code and the other in Spanish - in which the defendant describes this device and its results and claims credit for this bombing.

2. The Murder of Thomas J. Mosser

On December 10, 1994, Thomas J. Mosser, General Manager of Young and Rubicam, opened a package which had been delivered by mail to his home the previous day. Upon opening the package, the package exploded with tremendous force, killing Mosser instantly.

The device which killed Thomas J. Mosser has been forensically linked by the FBI Lab to other Unabom devices through a variety of common characteristics and components. Also, green paneling nails used as shrapnel in the Mosser device have been forensically matched to green paneling nails found in Kaczynski's cabin. The mailing label affixed to the Mosser device has also been determined by the FBI Lab to have been typed on the typewriter found in Kaczynski's cabin.

In an April, 1995 letter to the New York Times, the Unabomer claimed credit for the bomb which killed Thomas Mosser. In a June, 1995 letter to Penthouse Magazine the Unabomer reiterated that claim. A direct carbon copy of each of these letters was found during the April, 1996 search of Kaczynski's cabin.

During the search of Kaczynski's cabin, agents also located a description of the Mosser bomb written in Spanish, a bus schedule for December, 1994, plotting a route from Helena to San Francisco and a copy of the San Francisco Examiner dated December 2, 1994 (the bomb was mailed on December 3, 1994). Agents also found the following entry in Kaczynski's journal: "The device in Experiment 244 was used in December, 1994, and it gave a totally satisfactory result."

3. The Murder of Gilbert B. Murray

On April 24, 1995, Gilbert B. Murray, President of the California Forestry Association (CFA), Sacramento, California, opened a package which had been received by the CFA that day in the U.S. Mail. Upon opening the package, the package exploded with tremendous force, killing Murray instantly.

The device which killed Gilbert B. Murray has been forensically linked by the FBI Lab to other Unabom devices through a variety of common characteristics and components. Most notably, certain components of the device are substantially similar to components contained in Device #17, the fully armed

device found in Kaczynski's cabin during the April, 1996 search. Also, lead from the Murray device has been forensically matched to lead contained in the device found in Kaczynski's cabin.

In a June, 1995, letter to the New York Times, the Unabomer claimed credit for the bomb which killed Gilbert Murray and described details of the device which had not been released to the public. A direct carbon copy of this letter, as well as a handwritten draft of the letter, was found during the April, 1996 search of Kaczynski's cabin. The Unabomer also claimed credit for this bombing in June, 1995 letters to Scientific American and the Washington Post. Direct carbon copies of these letters were also found during the cabin search.

During the search of Kaczynski's cabin, agents also located a description of the Murray bomb written in Spanish agents also located a bus schedule for March, 1995, with handwritten notations plotting a route from Helena to San Francisco.

c. The Defendant

Kaczynski was born in Chicago, Illinois, on May 22, 1942, and is currently 54 years old. At an early age, it was determined that Kaczynski had an I.Q. well into the genius range. After attending public schools in the Chicago area, where he skipped two grades, he commenced undergraduate studies at Harvard University at the age of 16 and graduated with honors four years later. Kaczinski received a Ph.D in Mathematics from the University of Michigan in 1967 and he received an award that year for having the best doctoral thesis in the field of mathematics.

In Fall, 1967, Kaczynski became an Assistant Professor at the University of California, Berkeley. At the conclusion of his second year at Berkeley, Kaczynski resigned his position and began searching for a plot of land to purchase in a remote location in the wilderness. His search took him to Northern Canada and Alaska but, after the Canadian government declined his application to purchase land in that country, he settled on a 1.4 acre parcel near Lincoln, Montana. In 1971, Kaczynski built a small one room cabin there which has no power and no running water. With a few exceptions noted below Kaczynski lived there for the next 25 years. He survived largely by hunting game and foraging for wild edible plants.

The documents found in Kaczynski's cabin during the April, 1996 search include an autobiography to the age of 27 and a daily journal for the years thereafter. These two documents, as well as others found in the cabin, provide a detailed picture of Kaczynski's life and his motivation for becoming a serial killer.

In Fall, 1966, as Kaczynski was about to begin his fifth year of graduate studies at the University of Michigan, he was seized for about a two week period with the idea of having a sex change operation. This was apparently the result of his lack of social success with women, rather than any deep-seated misgivings about his own sexuality. To obtain a referral for the operation,

Kaczynski made an appointment to see a psychiatrist, but changed his mind while he was in a doctor's waiting room and quickly concocted a story for the psychiatrist to explain his visit. Upon leaving the doctor's office he felt humiliated by the experience and hatred for the psychiatrist. In fact, he wanted to kill the doctor. This, he says, was a major turning point in his life. He said to himself: "Why not really kill that psychiatrist and anyone else whom I hate . . . What was entirely new was the fact that I really felt I could kill someone."

Following this revelation, Kaczynski made the decision to live out his dream of living a primitive life style in the wilderness. According to Kaczynski, man was intended to live the life of a hunter-gatherer, that is, living off the land, dependant on one's own wit and skills for survival. It is only through this life style that man realizes a purposeful existence. Consequently, even before accepting the teaching position at Berkeley, Kaczynski resolved to stay there only long enough to earn enough money to buy a plot of land in some remote location. When he left Berkeley in 1969, his intention was to go deep into the Alaskan or Canadian wilderness, but when this plan was frustrated, he settled for Montana.

During this time period, Kaczynski began developing and expanding on his views that technological progress was threatening individual liberty and was the cause of many of society's problems. In 1971, he prepared a 23 page essay which appears to be an early version of the manifesto. He also wrote numerous letters to the editors of major newspapers and magazines setting forth his anti-technology views and even attempted to interest people in forming an anti-technology group. One of these letters was even published in the Saturday Review. While one may criticize these views, and those expressed in the manifesto, as being naive or simply wrong-headed, it is difficult to dispute that the writings are articulate and well thought out with no apparent signs of dissociative or delusional thinking.

Although, as indicated, Kaczynski formed the desire to kill as early as 1966, he struggled with the idea of actually committing the act, which he knew was wrong and could lead to severe punishment. In April, 1971, he made the following entry 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. . . . But if it were not for the advance of science I would not rebel to such an extent as to risk severe punishment."

In December, 1972, Kaczynski explained the foregoing passage in another journal entry:

> "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 a 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 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. . . ."

In 1974, referring to the intrusion into his solitude created by a large group of snowmobilers, Kaczynski recorded in his journal:

> "You can hardly conceive how much this upsets me. . . It makes me want to kill people. I hope someday I will work up the nerve to do so."

Throughout this time period Kaczynski remained clear and articulate about the root causes of his need for revenge. In 1974, he wrote:

> "It may be asked why I experience such an intense desire for a place of my own out off from civilization, while most people do not. I suggest the following: Frustration and unhappiness are widespread in technological civilization. Most people, partly because they are not very self-analytical and partly because they have not experienced any other way of life, do not know why they are not very happy or what it is that they lack. Probably what they are missing is the life for which the human race has been psychologically suited by natural selection - that of a hunter-gatherer. . . I know exactly what I want out of life, and I want it very badly, and it is organized

technological society that prevents me from getting it."

It was in 1975 that Kaczynski took the first tentative steps down what would become a very 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. Of a more deadly nature, he strung wire at neck height across roads frequented by motorcyclists. This vandalism continued over several summers.

In May, 1978, Kaczynski returned to Chicago where he lived with his mother and father and worked for approximately a year. Shortly after returning home, he planted his first bomb at the University of Illinois, Chicago Circle Campus. Kaczynski explains in a journal entry found in the cabin that he had selected the name of the victim at random from the ranks of professors engaged in technical fields and that, after he found that the package would not fit in a mailbox, he left it in a campus 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 be killed." Kaczynski concludes: "I have not the least feeling of guilt about this - on the contrary I am proud of what I did."

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 bad 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 happened to penetrate a vital organ). But I had hoped that the victim would be blinded or have his hands blow off or be otherwise maimed."

With respect to these first two devices Kaczynski reiterated a familiar theme:

> "As for motivation, I hate the technological society because it deprives me of personal autonomy. The technological society may be in some sense inevitable, but it is so only because of the way people behave. Consequently, I hate people. I may have some other reasons for hating some people, but the main reason is that people are responsible for the technological society and its associated phenomena, from motorcycles to computers to psychological controls. Almost anyone who holds steady employment is contributing his part to maintaining the technological society. Of course, the people I hate most are those who consciously and willfully promote the technological society, such as scientists, big businessmen, union leaders, politicians, etc., etc. I emphasize that my motivation is personal revenge. I don't pretend to any philosophical or moralistic justification. . . My ambition is to kill a scientist, big businessman,

> government official, or the like. I would also like to kill communists."

Kaczynski was clearly aware that what he was doing was a crime and that he faced punishment if caught. In the same journal entry he writes:

> "[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.

Kaczynski also took steps to avoid detection. Elsewhere he notes that his biggest reason for returning to Chicago was to kill someone and explains:

> "In Montana, if I went to the city to mail a bomb to some big shot, Dick Lundberg would doubtless remember that I rode his 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."

With reference to later devices, Kaczynski refers to use of disguises and planting false evidence such as hair fibers, all to avoid detection.

In March, 1979, Kaczynski was faced with a difficult decision, whether to accept a promotion or quit his job and return to his wilderness life in Montana. Kaczynski chose the latter course, explaining:

> "It was terribly hard for me to do this. But I had to quit for the following reasons. I will not fritter away my life as a pawn of the system. And I have to get my revenge. Also, I am so tired of stress and struggle - making a bomb (buying materials separately at different places, working on it secretly in my rom, etc.) is an ordeal; I have to force myself to do it and it takes a lot of forcing. It would be the same with planning out and executing any other means of murdering a big-shot* safely. [asterisk says: scientist, businessman, govt. official, etc.] . . . I have nothing to look forward to in life but that purposeless round of getting up every morning, going to work, coming home again, eating, going to sleep, and getting up for work again the next morning. . . For these reasons I want to get my revenge in one big blast. By accepting death as the price, I won't have to fret and worry about how to plan things so I won't get caught. Moreover, I want to release all my hatred and just go out and kill. When I see a motorcyclist tearing up the mountain meadows, instead of fretting about how I can get revenge on him safely, I just want to watch the bullet rip through his flesh and I want to kick him in the face while he is dying."

> "You mustn't assume from this that I am currently being tormented by paroxysms of hatred. Actually, during the last few months (except at a few times) I have been troubled by frustrated hatred much less than usual. I think his is because, whenever I have experienced some outrage (such as a low-flying jet or some official stupidity reported in the paper), as I felt myself growing angry, I calmed myself by thinking - `just wait till this summer! Then I'll kill"' Thus, what I've been feeling in recent months is not hot rage, but a cold determination to get my revenge."

Kaczynski's antipathy toward airplanes was known to his family. As a young adult, Kaczynski refused to fly because he had "a grudge against planes." This grudge seemed to stem from the fact that for Kaczynski airplanes were a symbol of the technological society which was intruding upon his environment and life style. While living in the wilderness, Kaczynski would occasionally record in his journal the number of jets which passed overhead during the course of a particular time period. His attitude is reflected in an entry in December, 1977.

> "What principally galls me about it, is that the decisions about the creation and use of these planes are made by somebody else, not by me; I have to swallow whatever they want to shove down my throat; I can't influence or modify their decisions. Unpleasant things imposed by nature or by chance - like bad weather - these things one takes philosophically. But to be imposed on by human beings is a humiliation."

Kaczynski was more explicit in a journal entry in August, 1978:

> "For several months past now I have experienced a desire for death. I have been feeling ever since, say, last fall, that I have nothing left to hope for in life. . . There's no place airplanes don't fly. . . . By now I have practically lost all hope of attaining this end [getting away from civilization]. Thus, my happiness in my Montana hills is spoiled every time an airplane passes over or anything else happens that reminds me. . ."

> "There was just one thing that really made me determined to cling to life for awhile, and that was the desire for <u>revenge</u>. I wanted to kill some people, preferably including at least one scientist, businessman, or other big shot."

> "This actually was my biggest reason for coming back to Illinois this spring. In Montana, if I went to the city to mail a bomb to some big shot, Dick Lundberg would doubtless remember I rode his bus that day. In the anonymity of the city I figured it would be much safer to buy materials for a bomb, and mail it. (Though the death-wish had appeared, it was still far

> from dominant, and therefore I preferred not to be suspected of a crime.)"
>
> . . . .
>
> "The last day or so I have definitely desired death. But I want to go back and die in my home hills of Montana - the only place where I've experienced any real, lasting happiness, except in early childhood. I'd like to kill a few people before I die, as a matter of principle. (At present I feel no hatred)."

In July, 1979, after returning to Montana, Kaczynski took a hike into the back country and noted aircraft noise "almost without interruption" followed by a loud sonic boom. His journal entry states:

> "This was the last straw and it reduced me to tears of impotent rage. But I have a plan for revenge. I think I can make it work."

The next day he recorded the following in his journal:

> "In this trip I had been sort of putting aside my anger at the jets, in order to enjoy this wonderful forest. But that solid hour of jet noise (partly jets and partly light planes) yesterday, capped by a startling sonic boom, brought up all that anger. Things are spoiled for me now, so I will go home today. Then I will work on my revenge plan."

In October, 1979, Kaczynski recorded in his journal:

> "When I went out on my hike this summer I was planning to lie in ambush by some roadside (dirt by-road) a long way from home and shoot some trail-bikers or other mechanized desecrator of the forest, without too much regard for the consequences. But once I was out in the woods I started to reconsider for 2 reasons. One was that once I was out in the woods I felt so good that I started to care about the future again - I wanted to have more years to spend in the woods. The other reason is that I thought of an excellent scheme for revenge on a bigger scale and didn't want to screw it up by getting caught for something else before I had a chance to carry it out. Considering technological civilization as a monstrous octopus, the motorcyclists, jeep-riders and other intruders into the forest are only the tips of the tentacles. I was not really satisfied with striking at these. My other plan would let me strike perhaps not at the head, but at least much further up along the tentacles."

In November, 1979, Kaczynski caused a bomb to be placed on board American Airlines Flight 444 from Chicago to Washington, D.C. which was set to detonate at a particular altitude. Seven months

later he mailed a bomb to Percy Wood, the president of United Airlines. A coded notebook leaves no doubt as to Kaczynski's intention with respect to the plane:

> "Plan was to blow up an airliner in flight. . . . Unfortunately plane not destroyed, bomb too weak."

During this time, Kaczynski continued to record in his journal that he viewed his wilderness life style ruined by the intrusion of technology, principally in the form of excessive numbers of airplanes.

Journal entries for subsequent years continue to articulately record Kaczynski's opposition to technology. One entry of particular interest is dated May 6, 1985. In that entry, Kaczynski notes that in the last few years his attitude about the inevitability of technology's triumph has changed to one of some hope. He then states:

> "I might add that, partly owing to my added hopefulness, my opposition to the technological society now is less a matter of a bitter and sullen personal revenge than formerly. I now have more of a sense of mission [,] a concern with issues wider than personal resentment of the technological society. Nevertheless, it should be made clear that the motivating energy behind my actions comes from my personal grievance and personal resentment of the technological system. I certainly wouldn't take such risks from a pure desire to benefit my fellow man."

In the six months immediately following that entry, Kaczynski placed or mailed four more devices, one of which killed Sacramento Computer store owner Hugh Scrutton.

Kaczynski clearly had no remorse for his conduct nor empathy for his victims. With respect to the injuries to Professor Fischer's secretary when she opened Device #6, he recorded:

> "[N]ewspapers said bomb drove fragments of wood into her flesh. But no indication that she was permanently disabled. Frustrating that I can't seem to make a lethal bomb."

With respect to Device #11 which killed Hugh Scrutton, Kaczynski wrote:

> "According to San Francisco Examiner, December 20, the operator (owner? manager?) of the store was killed, blown to bits on December 12. Excellent. Humane way to eliminate somebody. He probably never felt a thing."

What wrestling Kaczynski did with his conscience had a predictable outcome. With respect to Air Force Captain John Hauser, who was seriously injured by Device #8, Kaczynski wrote:

> "Berkeley bomb did well for its size. It was sprung by Air Force pilot, 26 years old, named HAUSER, working on Masters Degree in Electrical Engineering. He probably would have been killed if so position (sic) relative to bomb as to take the fragments in his body. As it were mainly his right arm was hit. Witnesses said, "whole arm was exploded, blood all over the place." One newspaper said arm was "mangled", another said it was "shattered" and that he would never recover fully or full use of arm and hand. Also there was damage to one eye. . . . I was relieved what kind of guy sprang the trap. I had worried about possibility that some young kid, undergrad, not even Computer Science major might get it. But this guy clearly member of technician class might even be one of the guys that has flown those fucking jets over my home. This gives great relief to my chocking (sic) frustrated anger and sense of impotence against the system. At same time, must admit I feel badly about having crippled this mans arm. It has been bothering me a good deal. This is embarrassing because while my feelings are partly from pity, I am sure they come largely from the training, propaganda, brain washing we all get, conditioning us to be scared by the idea of doing certain things. It is shameful to be under the sway of this brain washing. But do not get the idea that I regret what I did. Relief of frustrated anger outweighs uncomfortable conscience. I would do it all over again. So many failures with the feeble ineffective bombs was driving me desperate with frustration. I have to get revenge for all the wild country being fucked up by the system. Later. Further research of newspapers yielded . . . HAUSER'S arm severed or nearly severed. Tips of three fingers torn off. Use of hand and arm permanently impaired, to what degree not known. Hauser father of two kids. He was working toward his PhD, contrary to other paper that said Masters. He was afraid his dream ruined. Dream was to be an Astronaut. Imagine a grown man whose dream is to be an Astronaut. I am no longer bothered by having crippled this guy, partly because I just got over it with time, partly because his aspiration for so noble (sic)."

The history of Kaczynski's bombings reveal a patient, methodical killer. After his first seven bombs, Kaczynski did not strike again for nearly three years from 1982 to 1985. Then, after four bombs in 1985 and one in 1987, he was silent for more than 6 years. In his April, 1995, letter to the New York Times, the Unabomer explained these periods of apparent inactivity:

> "Our earlier 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."

The foregoing explanation is corroborated by several thousand pages of documents written in Spanish found in Kaczynski's cabin which reflect an enormous amount of experimentation during the two time periods in question. These experiments were designed to perfect the lethal capacity of Kaczynski's bombs.

IV. THE DEATH PENALTY

A. Overview

In determining whether or not the government should seek the death penalty, the U.S. Attorney, the Attorney General's Review Committee, and the Attorney General must determine whether the applicable statutory aggravating factors and any non-statutory aggravating factors for which notice has been provided sufficiently outweigh any mitigating factors to support seeking a sentence of death; or, in the absence of any mitigating factors, whether the aggravating factors themselves are sufficient to support seeking a sentence of death.

To qualify for consideration in this analysis, an aggravating factor must be provable beyond a reasonable doubt. Recognizing that there may be little or no evidence of mitigating factors available for consideration at the time of this determination, any mitigating factor reasonably raised by the evidence should be considered in the light most favorable to the defendant. The analysis employed in the weighing of aggravating and mitigating factors that are found to exist should be qualitative, not quantitative. See USAM, § 9-10.000(G).

B. Aggravating Factors

1. Threshold Culpability Factors under 18 U.S.C. § 3592(a)(2)

The threshold culpability factors under Section 3592(a)(2)(A) through (D) which are applicable (or arguably so) to each of the homicides are as follows:

(A) The defendant intentionally killed the victim.

Hugh Scrutton Homicide. Applicable because: (1) the device which killed Hugh Scrutton was an anti-personnel weapon which was designed to detonate when the victim bent over it and attempted to pick it up; (2) the device was designed with such explosive force and shrapnel that death or serious injury was probable; and (3) defendant's written admission reflects that the device achieved its intended result.

Thomas J. Mosser Homicide. Applicable because: (1) the device which killed Thomas J. Mosser was an anti-personnel weapon which was designed to detonate when the victim opened the package; (2) the device was designed with such explosive force and shrapnel that death or serious injury was probable; and (3) defendant's written admission reflects that the device achieved its intended result.

Gilbert B. Murray Homicide. Applicable because: (1) the device which killed Gilbert B. Murray was an anti-personnel weapon which was designed to detonate when the victim opened the package; (2) the device was designed with such explosive force and shrapnel that death or serious injury was probable; and (3) defendant's written admission reflects that the device achieved its intended result.

(B) The defendant intentionally inflicted serious bodily injury that resulted in the death of the victim.

Hugh Scrutton Homicide. Applicable for the reasons set forth in "(A)" above.

Thomas J. Mosser Homicide. Applicable for the reasons set forth in "(A)" above.

Gilbert B. Murray Homicide. Applicable for the reasons set forth in "(A)" above.

(C) 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.

Hugh Scrutton Homicide. Applicable for the reasons set forth in "(A)" above.

Thomas J. Mosser Homicide. Applicable for the reasons set forth in "(A)" above.

Gilbert B. Murray Homicide. Applicable for the reasons set forth in "(A)" above.

(D) 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.

Hugh Scrutton Homicide. Applicable for the reasons set forth in "(A)" above.

Thomas J. Mosser Homicide. Applicable for the reasons set forth in "(A)" above.

Gilbert B. Murray Homicide. Applicable for the reasons set forth in "(A)" above.

2. Statutory Aggravating Factors under 18 U.S.C. § 3592(c)

The statutory aggravating factors under Section 3592(c)(1) through (15) which are applicable (or arguably so) to each of the homicides are as follows:

(1) Death during commission of another crime. -- The death, or injury resulting in death, occurred during the commission or attempted commission of, or during the immediate flight from commission of, an offense under . . . section 844(d) (transportation of explosives in interstate commerce for certain purposes).

Murder of Hugh Scrutton. Applicable because the defendant's writings reflect that he constructed the device which killed Hugh Scrutton in Montana and transported it, in whole or in part, to California.

Murder of Thomas J. Mosser. Applicable because the defendant's writings and bus schedules found in his cabin reflect that he constructed the device which killed Thomas J. Mosser in Montana and transported it, in whole or in part, to California.

Murder of Gilbert B. Murray. Applicable because the defendant's writings and bus schedules found in his cabin reflect that he constructed the device which killed Gilbert B. Murray in Montana and transported it, in whole or in part, to

California.

(5) Grave risk of death to additional persons. -- The defendant, in the commission of the offense, or in escaping apprehension for the violation of the offense, knowingly created a grave risk of death to 1 or more persons in addition to the victim of the offense.

Murder of Hugh Scrutton. Applicable because the device which killed Hugh Scrutton was placed in a parking area located directly behind a strip mall which contained several different businesses. That Hugh Scrutton was alone when he found the device or that there were not bystanders within the lethal range of the device was completely fortuitous.

Murder of Thomas J. Mosser. Applicable because the device which killed Thomas J. Mosser was delivered by US Mail and opened by Mosser in the kitchen of his home. Other family members were present in other parts of the house when the device exploded. When the device detonated it did so with such force that green paneling nails which were used as shrapnel were embedded in steel frying pans and were hurled to other portions of the house. That Mosser was alone in the kitchen when he opened the package and that none of the other family members in the rest of the house were seriously injured in the explosion was completely fortuitous.

Murder of Gilbert B. Murray. Applicable because the device which killed Gilbert B. Murray was delivered by US Mail and handled by several other employees of the California Forestry Association prior to its ultimate delivery to Murray. When the device detonated it did so with such force that large chunks of metal and shrapnel penetrated walls and traveled to virtually all parts of the office building which housed CFA. That Murray was alone in his office when he opened the package and that none of the other employees were seriously injured in the explosion was completely fortuitous.

(9) Substantial planning and premeditation -- The defendant committed the offense after substantial planning and premeditation to cause the death of a person or commit an act of terrorism.

Murder of Hugh Scrutton. Applicable because the defendant's journals attest to deep-seated, long-standing hatred toward those such as Hugh Scrutton whom he considered proponents of technology.

Kaczynski developed the desire to kill as early as 1966. His notebooks, which catalog his bomb making experiments, reflect his extreme patience and desire to perfect his ability to construct lethal devices. Defendant's writings, including letters to the New York Times, demonstrate that the defendant has devoted a considerable amount of thought to the use of murder to accomplish his ends and has justified it in his own mind. Finally, transporting the bomb by bus from Montana to California not only required substantial planning but permitted substantial time for reflection on the anticipated consequences.

Murder of Thomas J. Mosser. Applicable for the reasons set forth with respect to the murder of Hugh Scrutton. In addition, Mosser was the defendant's second murder victim.

Murder of Gilbert B. Murray. Applicable for the reasons set forth with respect to the murder of Hugh Scrutton. In addition, Murray was the defendant's third murder victim.

3. Non-Statutory Aggravating Factors under 18 U.S.C. § 3593(a)

The non-statutory aggravating factors under Section 3593(a) (other "factors concerning the effect of the offense on the victim and the victim's family, . . . and any other relevant information") which are applicable (or arguably so) to each of the homicides are as follows:

(1) Other Victims. During his 17 year reign of terror, the defendant's bombs have resulted in serious injuries to several other victims. In some cases the survival of the victim was attributable to rapid arrival of medical assistance rather than any precaution on the part of the defendant whose devices were clearly designed to kill. In other cases, the survival of the victim was the result of the equally fortuitous fact that the device was opened by the victim in such a way that the deadly shrapnel contained in the device missed vital organs. Other victims of defendant's bombings have included prominent members of the business and scientific community including Percy Wood, the president of United Airlines; John Hauser, an Air Force Academy graduate working on his Ph.D whose acceptance into the astronaut training program was rescinded after his hands were mutilated; Dr. Charles Epstein, a nationally known geneticist and a pioneer in the field of Down Syndrome and human gene therapy, whose career as a concert cellist was terminated when he lost the use of his hands; and Dr. David Gelernter, a prominent computer scientist, author and Yale professor. In one instance, the defendant attempted to

bring down a jetliner carrying nearly 80 passengers but the explosive force of the device was blunted by surrounding objects in the cargo hold.

(2) Future Dangerousness. The government is in possession of over 25 years of defendant's writings which reflect defendant's unmitigated hatred and need to take his revenge upon society. Contrary to some published reports, these feelings were not motivated by an altruistic desire to save humanity but by unvarnished anger. It is highly improbable that such hatred will be easily surrendered or effected in any way by lengthy incarceration. Indeed, the hatred and frustration will likely be exacerbated because what the defendant objects to the most is the control society exerts over an individual's life. What is also clear from the items seized from the cabin is that the defendant did not intend to honor his promise to stop killing if his manifesto was published. Among other things agents found in the cabin a fully functional explosive device ready to be mailed, a "hit list", and correspondence with a radical environmental group whom he tried to convince to publish his manifesto so that he could withdraw his promise to stop killing. Finally, as reflected in Section IIIC of the memorandum, the defendant's desire to kill came first and his preferred method of killing was secondary. Given a continuing desire to kill, the defendant is certainly ingenious enough, dedicated enough and patient enough to continue his lethal preoccupation behind prison walls.

c. Mitigating Factors

1. Statutory Mitigating Factors under Section 3592(a)

The defendant has made no submission to assist the government in identifying arguably mitigating factors. The statutory mitigating factors under Section 3592(a)(1) through (7) which are applicable (or arguably so) to each of the homicides are as follows:

(6) Disturbance. -- The defendant committed the offense under severe mental or emotional disturbance.

The government has not yet received a psychiatric evaluation of the defendant and, as previously noted, the defense has not provided the government with any insight into the defendant's mental condition.

As reflected in Section IIIC of the memorandum, the defendant has a long standing antipathy toward society and a desire to live a non-traditional life style largely away from that society. The defendant also has written of his belief that he has suffered from "some

form of depression". There are indications of some form of personality disorder. Based on the preliminary opinion of the government's psychiatric expert, such a personality disorder does not appear to be a severe mental or emotional disturbance as severity is generally viewed in the psychiatric community, but may well be such as to be judged severe by a jury. A psychiatric examination following formal notice of insanity will clarify this issue.

The defendant was raised in an intact middle class family which stressed education and academic achievement. There is no history of child abuse or neglect. In fact, the defendant's parents expressed pride in his accomplishments throughout his formative years and continued to be supportive of the defendant well into his adulthood even though he had chosen to abandon the career path that they hoped he would pursue in favor of a life in the woods. He has an I.Q. in excess of 150 and was educated at Harvard and the University of Michigan.

2. Non-Statutory Mitigating Factors under § 3592(a)(8)

Despite numerous requests by the trial team, the defendant has made no submission to assist the government in identifying arguably mitigating factors. However, by letter dated July 9, 1996, attorney Anthony Bisceglie, representing the Kaczynski family, set forth three reasons why the government should not seek the death penalty. (Letter attached at TAB D). Those reasons, which arguably constitute non-statutory mitigating factors ("Other factors in the defendant's background, record, or character, or any other circumstance of the offense that mitigate against imposition of the death sentence"), are as follows:

(1) Compassion for David Kaczynski. In consideration for David Kaczynski's difficult and heroic decision to turn in his brother and to encourage such conduct by similarly situated individuals in the future, the government should exercise compassion so that David Kaczynski does not have to live with the knowledge that he caused his brother's death.

(2) Atonement for Government Leaks. To atone for the government's alleged breach of its agreement to David Kaczynski that it would honor his request for confidentiality, as evidenced by governmental leaks to the media shortly after commencement of the April 3 search of the defendant's cabin, and to set the right example for future confidential sources, the government should honor David's other request which was to spare his brother's life.

(3) No purpose of deterrence or institutional revenge would be served by imposition of the death penalty because Theodore Kaczynski's crimes were a product of

mental illness.

The first mitigating factor deserves some further explanation and emphasis. We believe it will be the defense's most persuasive argument to us and to the jury in opposition to the death penalty. David Kaczynski found himself in the difficult position of knowing that the only way he could save the lives of unknown and unidentified innocent citizens was to jeopardize his brother's life by fully cooperating with the government. In an effort to resolve this dilemma, his initial effort to cooperate was conditioned on the government promising not to seek the death penalty if his brother turned out to be the Unabomer. When the government rejected that offer, he made the heart-wrenching decision to provide evidence against his brother, fearing that the information might someday be used to build a capital case against his brother. Perhaps no more powerful or succinct statement can be made on behalf of David Kaczynski than his own remarks to the Washington Post: "It would be very, very difficult to live with myself knowing that I had delivered my injured, disturbed brother over to be killed."

In the opinion of the prosecutor and agent who have debriefed David Kaczynski, he is an extremely moral, thoughtful, sincere and law-abiding individual who is deeply conflicted over his motivations for turning in his brother and who will suffer greatly should the death peanlty be imposed. As a witness, he will evoke a great deal of sympathy and compassion from the jury.

D. **Weighing of Aggravating and Mitigating Factors**

After weighing the aggravating and mitigating factors as to each of the capital offenses, we have concluded that the aggravating factors sufficiently outweigh the mitigating factors to justify seeking imposition of the death penalty against the defendant for the capital offenses in this case. The aggravating and mitigating factors we have found and considered are as follows:

(1) Threshold Culpability Factors: Intentionally killed, inflicted serious bodily injury resulting in death, engaged in conduct intending to kill, knowingly created a grave risk of death in both the Scrutton and Murray homicides.

(2) Statutory Aggravating Factors: Both deaths were caused during the commission of another statutorily specified offense; in the commission of both homicides, the defendant knowingly created a grave risk of death to one or more persons in addition to the victim of the offense; and both homicides involved substantial planning and premeditation.

(3) Non-statutory Aggravating Factors: Other Victims, future dangerousness

(4) Statutory mitigating factors: Mental or emotional disturbance which, in the absence of a psychiatric examination, does not appear to be severe.

(5) Non-statutory mitigating Factors: Compassion for David Kaczynski; public policy of encouraging others to assist law enforcement; atonement for government leaks. David Kaczynski's invaluable cooperation in this case and the suffering he will endure should the defendant be executed are undeniably compelling factors which must be given very serious consideration. Nevertheless, we believe that the gravity and protracted nature of the defendant's crimes, viewed within the framework of the aggravating factors set forth above, are sufficient to tip the scales in favor of seeking the death penalty.

V. FEDERAL PROSECUTION

A. Interest

Where concurrent jurisdiction exists with state and local government, it is anticipated that a federal indictment for an offense subject to the death penalty will be obtained only when the federal interest in the prosecution is more substantial than the interests of the state or local authorities. USAM 9-10.000. In this case, concurrent jurisdiction for the five prosecutable Unabom events would lie in Sacramento County, California (2 deaths), Marin County, California (1 serious injury), Essex County, New Jersey (1 death) and New Haven County, Connecticut (1 serious injury).

(1) Relative Strength of State's Interest

With the exception of some initial statements by the Sacramento County District Attorney, no local prosecutor has expressed interest in prosecuting any Unabom offenses. The offenses themselves have a distinctly federal characteristic because they involved interstate travel and use of the United States mails.

Since 1979, when this case was recognized as one involving a serial bomber, the case has been investigated by the FBI, BATF and the Postal Service. At the direction of the Attorney General, the Unabom Task Force (UTF) was formed in June, 1993. The UTF was composed of the FBI, BATF and Postal and included federal prosecutors from all involved districts. Although local law enforcement authorities have investigated or rendered assistance with respect to particular devices involving their jurisdiction, and have from time to time attended UTF meetings, no local investigators have maintained a consistent presence on the UTF or an active Unabom investigation. The search warrant in this case was the sole product of federal agents and prosecutors and all forensic evidence has been analyzed by one of the three federal agencies on the UTF. All evidence is currently maintained at either the UTF in San Francisco or the FBI Laboratory in Washington.

(2) Extent to which Criminal Activity Reached Beyond Local Jurisdiction

Between 1978 and 1995, Kaczynski was responsible for 16 explosive devices which were placed or received in eight states and eleven different localities. Four devices (#1-4) are related to the Chicago, Illinois area. Four devices (#5, 6, 10 and 12) are associated with the Salt Lake City/Provo, Utah, area. Seven devices are associated with the Northern California area. Devices 7 and 8 were placed in Berkeley, California. Device 11 was placed in Sacramento, California and devices 13, 14 and the New York Times letter dated June 24, 1993, were mailed from that area. Device 13 was mailed to the victim who resided in Tiburon, a suburb of San Francisco. Device 15 was mailed from San Francisco, California to the victim who resided in North Caldwell, New Jersey. The packages and letters sent to the San Francisco Chronicle, New York Times, Washington Post, Penthouse Magazine, and Dr. Tom Tyler, were all postmarked San Francisco, California. Device 16 was mailed in Oakland, California to a victim in Sacramento, California. The letters sent to Dr. David Gelernter, Dr. Phillip A. Sharp, Dr. Richard J. Roberts, and the New York Times dated April 24, 1995, were all postmarked in Oakland, California.

In late June, 1995, the Unabomer stated his intention to "blow up an airliner out of Los Angeles International Airport some time during the next six days". Although the Unabomer later withdrew this threat it nevertheless had the effect of disrupting and causing significant delays to nationwide air travel over the long Fourth of July weekend.

Kaczynski lived in Montana, where no Unabom events occurred, and traveled interstate to locations where the devices were placed or from which they were mailed. The overwhelming amount of evidence connecting him to the case was located in Montana. Additional evidence relating to his background, medical history and travel has been obtained from a variety of states including Illinois, Massachusetts, Michigan, California, Utah and Montana.

(3) Relative Ability and Willingness of State To Prosecute Effectively

A large number of key witnesses in this case will be federal employees who performed forensic analysis on the explosive devices and other physical evidence involved in the case or who assisted in the execution of the search warrant. Another large block of witnesses will consist of private citizens who can testify about various aspects regarding the receipt or placement of the devices. This latter category will consist of witnesses from at least eight states from California to Connecticut.

Due to the large federal involvement and the fact that the federal government is currently in possession of all critical evidence, no local prosecuting authority is in a position to

promptly or effectively undertake prosecution of the case.

B. **Venue**

The Sixth Amendment guarantees a defendant the right to be tried in the state and district where the crime was committed. See also Fed.R.Crim.P., Rule 18. Title 18, United States Code, section 3235 provides that offenses punishable by death shall be tried in the county where the offense was committed, "where that can be done without great inconvenience." The inconvenience referred to in this section is that of the government, because defendants "could hardly complain of being tried in the place where their offense was committed" on the grounds of inconvenience. United States v. Parker, 103 F.2d 857, 861 (3d. Cir.), cert. denied 307 U.S. 642 (1939). In cases of offenses begun in one district and completed in another, or committed in more than one district, trial may be in any district in which the offense was begun, continued or completed. 18 U.S.C. Section 3237.

VI. MISCELLANEOUS

The families of each of the three murder victims have offered their opinions regarding the death penalty. Ruth Dudley, mother of Hugh Scrutton, and Susan Mosser, wife of Thomas Mosser, have voiced their support of the death penalty in this case. Connie Murray, wife of Gilbert Murray, is still struggling to cope with the death of her husband and has not reached a firm conclusion regarding the death penalty.

VII. CONCLUSION

Based on careful consideration of the relative federal interest, all of the available evidence, and weighing all the aggravating and mitigating factors for each homicide, we have concluded that the aggravating factors sufficiently outweigh the mitigating factors to justify seeking imposition of the death penalty against the defendant in this case. Accordingly, we seek authorization to seek the death penalty against **Theodore John Kaczynski** for the murders of Hugh Scrutton, Thomas J. Mosser and Gilbert B. Murray.

FAITH S. HOCHBERG
United States Attorney
District of New Jersey

CHARLES J. STEVENS
United States Attorney
Eastern District of California

Attachments:
TAB A: Indictments
TAB B: Death Penalty Evaluation Forms
TAB C: Non-Decisional Information (Sealed)
TAB D: Letter from Anthony Bisceglie, Esq.

COPY

UNABOM/pleading

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FEB 10 1997

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. THEODORE JOHN KACZYNSKI, Defendant.	No. CR-S 96-259-GEB DEFENDANT KACZYNSKI'S OPPOSITION TO THE GOVERNMENT'S APPLICATION FOR HANDWRITING EXEMPLARS Date: February 27, 1997 Time: 2:00 p.m. Hon. Gregory G. Hollows

BACKGROUND

In an application lodged January 17, 1997, the government requested an order to compel defendant Theodore John Kaczynski to provide handwriting exemplars. Defendant opposes the government's motion on the ground that the government has no need for the exemplars in light of the voluminous handwriting samples already in its possession.

In its motion, the government represents that it seeks to establish that Mr. Kaczynski wrote a large number of documents that were seized from his cabin in Lincoln, Montana, during execution of a

search warrant during the week of April 3, 1996 (hereinafter "cabin documents"). The cabin documents are dated from 1957 through January, 1996. The government asserts that it needs handwriting exemplars from Mr. Kaczynski so that its experts can compare the exemplars to the writing on the cabin documents. The government anticipates that the "process of acquiring the requested exemplars may span several days." Government's Application, at 2. The government requests exemplars in English, Spanish, and numeric code.

In discovery, the government provided the defense with copies of a large number of handwritten documents reportedly written by Mr. Kaczynski, which his brother David turned over to FBI agents during their investigation of the "Unabomber" bombings (hereinafter "Kaczynski letters"). The documents consist primarily of letters by Theodore Kaczynski to his brother David and his mother Wanda. There are 152 such documents (excluding envelopes), totaling 837 handwritten and handprinted pages. Thirty-two of the documents, totaling 228 pages, are in Spanish.[1] The documents are dated from August, 1968, through November, 1995.

The defense has offered to stipulate that the Kaczynski letters were written by the defendant Theodore Kaczynski. The government thus may use the letters as handwriting exemplars to compare with the handwriting on the documents seized from Mr. Kaczynski's cabin. With these stipulated-to handwriting exemplars, the government has no need for additional exemplars.

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[1] Some of the documents are written primarily in English, but contain some writing in Spanish. These documents are counted in the Spanish document total.

writing in the presence of the examiner, or by having that person acknowledge authorship of other letters and documents written by him"). Moreover, the letters known to be written by Mr. Kaczynski are better exemplars than any that he could now produce because they were written closer in time to the time at which the cabin documents are believed to have been written. "Pre-existing standards should be writing specimens of an age as near as possible to the date on which the questioned writing was supposed to have been executed." Id. at 262. The Kaczynski letters were written between August, 1968, and November, 1995, while the cabin documents cover the period from 1957 through January, 1996.

Other factors that may influence the validity of a handwriting sample also suggest that the Kaczynski letters are better exemplars than any samples that Mr. Kaczynski could now provide:

> The appearance of a writing may also vary, depending upon the position of the writer (sitting, standing, or leaning), the writing instrument used (pencil, fountain pen, ballpoint pen), the writer's mood (excited or depressed emotionally), and other factors. In obtaining standards, therefore, it is important to attempt to secure exemplars executed as close as possible in time to the date of the questioned writing, and written under as similar circumstances as practicable.

Id. at 279.

Most of Mr. Kaczynski's letters appear to have been written by him in connection with his normal, daily affairs while he was in his cabin, just like the documents seized from his cabin would have been. Thus, the Kaczynski letters were written in circumstances more similar to the documents that the government wants to compare than exemplars written over and over again for several days at the command of FBI agents, under the stressful and artificial conditions of the Sacramento County jail, and under compulsion of a court order. In short, any handwriting

ARGUMENT

THE GOVERNMENT'S APPLICATION FOR HANDWRITING EXEMPLARS SHOULD BE DENIED BECAUSE THE GOVERNMENT ALREADY POSSESSES OVER 800 PAGES OF HANDWRITTEN LETTERS BY MR. KACZYNSKI THAT WOULD SERVE AS THE BEST SAMPLES FOR COMPARISON.

The government's application for production of handwriting exemplars requires a showing that the exemplars are needed for its case. See United States v. Rudy, 429 F.2d 993, 994 (9th Cir. 1970) (rejecting defendant's argument that government failed to show a need for handprinted exemplars where the government "had no exemplars of [the defendant's] handprinting, although his person and apartment had already been lawfully searched").[2] In this case, the government does not need the requested exemplars because it already possesses 152 documents written in English and Spanish and totaling 837 pages, which the defense will stipulate were written by Mr. Kaczynski. Documents known to be written by a subject are commonly used as exemplars in handwriting comparisons. Moenssens, et al., Scientific Evidence in Civil and Criminal Cases § 5.04, at 261 (4th ed. 1995) (known specimens "may be established by having the suspected writer give a sample of his

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[2] Several cases treat a government motion for handwriting exemplars as a motion for subpoena duces tecum under Rule 17(c) of the Federal Rules of Criminal Procedure. See, e.g. United States v. Vanegas, 112 F.R.D. 235 (D. N.J. 1986); United States v. McKeon, 558 F. Supp. 1243, 1244-45 (E.D. N.Y. 1983); but see United States v. Li, 55 F.3d 325, 328-29 (7th Cir. 1995) (district court's authority to order handwriting exemplars derives from All-Writs Act, not Rule 17(c)). Pre-trial production of documents under Rule 17(c) requires a showing of four elements: (1) the requested documents are relevant and evidentiary, (2) the materials are not otherwise procurable in advance of trial; (3) the moving party cannot properly prepare for trial without such production; and (4) that the application is made in good faith and is not intended as a general fishing expedition. United States v. Nixon, 418 U.S. 683, 699-700 (1974). Under this test, the government's motion should be denied because the requested handwriting samples are neither relevant nor needed by the moving party to properly prepare for trial, in light of the voluminous known samples already in the government's possession.

samples that the defendant now produces will be taken at a much later date and under much different circumstances than the cabin documents and thus will be less valid.[3]

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[3] Moreover, any handwriting expert testimony would not meet the standard for admissibility as scientific evidence under Daubert v. Merrell Dow Pharmaceuticals, 113 S. Ct. 2786 (1995). See, e.g. United States v. Starzecpyzel, 880 F. Supp. 1027, 1036-38 (S.D. N.Y. 1995) (concluding that forensic document examiner testimony does not meet the Daubert reliability standard for admission of "scientific" evidence; court admitted testimony as nonscientific expert testimony under Fed. R. Evid. 702, but noted that it may restrict experts regarding their degree of certainty in their conclusions); see also United States v. Velasquez, 64 F.3d 844 (3d Cir. 1995) (reversible error to exclude defense expert's proffered testimony criticizing the reliability of handwriting analyses). To the extent such testimony is admissible, handwriting experts will likely be restricted to testifying about the similarities and dissimilarities between the handwriting on the cabin documents and Mr. Kaczynski's known handwriting samples, but not be allowed to provide an ultimate opinion on whether Mr. Kaczynski wrote the cabin documents. See Starzecpyzel, 880 F. Supp. at 1049. Thus, given the more than 800 pages of documents that the defense has offered to stipulate were written by Mr. Kaczynski, the government has more than an ample number of known exemplars from which its experts can draw comparisons.

CONCLUSION

For the reasons stated above, the government's application for handwriting exemplars should be denied.

Dated: February 10, 1997.

Respectfully submitted,

QUIN DENVIR
Federal Defender

JUDY CLARKE
Federal Defenders of
Eastern Washington and Idaho

Attorneys for Defendant
THEODORE JOHN KACZYNSKI

Further, the government's application should be denied as unduly burdensome and unreasonable. A motion for pre-trial production of documents may be denied or modified if the request is "unreasonable or oppressive." United States v. McVeigh, 896 F. Supp. 1549, 1558 (W.D. Okl. 1995) (quoting Fed. R. Crim. P. 17(c)) (denying defendant's request to quash grand jury subpoena for handwriting exemplars since government's request for only three exemplars was not unreasonable or overbroad); see United States v. Mackey, 647 F.2d 898 (9th Cir. 1991) (affirming contempt order where defendant made "no claim that compliance with the subpoena would be unduly burdensome").

In its application, the government proposes that Mr. Kaczynski submit to "several days" of producing handwriting exemplars to government agents. In light of the more than 800 pages of handwriting exemplars already in the government's possession, the request for several days of additional exemplars is unreasonable and oppressive. For the defendant to devote several days to sitting and repeatedly writing exemplars at the government's command is not only unduly burdensome and oppressive to Mr. Kaczynski as a personal matter, but also will unfairly deprive him of time which he needs to assist in the preparation of the defense. Any minimal value in obtaining additional exemplars is far outweighed by the burden to Mr. Kaczynski of complying with the proposed order. See United States v. Kalter, 5 F.3d 1166, 1169 (8th Cir. 1993) (affirming district court's quashing of pre-trial subpoena for documents on ground that burden of producing records sought greatly outweighed any relevance they might have to the case).

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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-S-96-0259 GEB

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she 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 February 10, 1997, I personally served a copy of the attached **DEFENDANT KACZYNSKI'S OPPOSITION TO THE GOVERNMENT'S APPLICATION FOR HANDWRITING EXEMPLARS** upon the plaintiff by hand delivery to plaintiff's counsel as follows:

Delivery by mail:

Robert Cleary
Special Assistant to
the Attorney General
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450 Golden Gate Avenue, 16th Floor
San Francisco, CA 94102

Delivery to U. S. Attorney's Office:

Steve Lapham
U. S. Attorney's Office
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Sacramento, CA 95814

DATED: February 10, 1997

TOTAL P.08

COPY

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MAR - 3 1997
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. THEODORE JOHN KACZYNSKI, Defendant.	CR. S-96-259 GEB NOTICE OF MOTION AND MOTION TO SUPPRESS STATEMENTS Date: May 16, 1997 Time: 9:00 a.m. Hon. Garland E. Burrell, Jr.

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

Please take notice that on May 16, 1997, at 9:00 a.m., before the Honorable U.S. District Judge Garland E. Burrell, Jr., defendant Theodore John Kaczynski, through

03/05/97 WED 10:59 FAX 916 554 2100 US ATTORNEY 002

counsel, Quin Denvir and Judy Clarke, will move the court to suppress from the trial in the above-captioned case all statements made by the defendant to law enforcement agents on or after April 3, 1996.

MOTION

On April 3, 1996, at approximately 12:27 p.m., Theodore Kaczynski was arrested at his cabin, transported in custody to a neighbor's cabin, and detained there by FBI agents, while Mr. Kaczynski's own cabin was secured by FBI agents. Agents told Mr. Kaczynski that he was detained and was not free to leave. The agents did not advise Mr. Kaczynski of his rights under Miranda v. Arizona, 384 U.S. 436 (1966). Mr. Kaczynski was continuously detained until 5:55 p.m., during which time he made a number of statements in response to questioning by FBI agents. At approximately 5:55 p.m., agents told Mr. Kaczynski that he was formally under arrest. While he was driven to the FBI's office in Helena, an agent, for the first time, advised Mr. Kaczynski of his Miranda rights.

Mr. Kaczynski moves to suppress all statements made during and after his detention on April 3, 1996, on the ground that this was an unlawful arrest, and any statements were fruits of the unlawful arrest. (Wong Sun v. United States, 371 U.S. 471 (1963).) Mr. Kaczynski's initial detention was "indistinguishable from a traditional arrest." (Dunaway v. New York, 442 U.S. 200, 212 (1979).) The entire detention, beginning at about 12:27 p.m. on April 3, was an arrest without

03/05/97 WED 11:00 FAX 916 554 2100 US ATTORNEY 003

probable cause in violation of the Fourth Amendment. (See Defendant's Motion and Memorandum In Support Of Motion to Suppress Evidence.)

Mr. Kaczynski also moves to suppress his statements to FBI agents because his statements were obtained in violation of the Supreme Court's decision in Miranda v. Arizona, 384 U.S. 436 (1966), which requires government agents to advise defendants of certain enumerated rights before beginning any custodial interrogation. Here, Mr. Kaczynski was arrested at approximately 12:27 p.m. on April 3, 1996, when FBI agents detained him at a neighbor's cabin. All statements he made before he was advised of his Miranda rights (sometime after 5:55 p.m.) must be excluded from evidence at trial as obtained in violation of Miranda.

Mr. Kaczynski requests an evidentiary hearing on this motion. At this time, it is premature to estimate the length of such hearing. The defense estimates that any argument on this motion at the May 16, 1997 hearing would require less than 30 minutes, and requests that the time and date of the evidentiary hearing be set at the May 16 hearing.

This motion is based on the instant motion; Defendant's Memorandum of Points and Authorities in Support of Motion to Suppress Evidence, including declarations and appendices; the warrant, and application and affidavit for search warrant with attachments dated April 3, 1996; and any

03/05/97 WED 11:00 FAX 916 554 2100 US ATTORNEY 004

other evidence or argument brought before or at the hearing on this motion.

Dated: March 3, 1997

Respectfully submitted,

QUIN DENVIR

JUDY CLARKE

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Defendant Kaczynski

03/05/97 WED 11:01 FAX 916 554 2100 US ATTORNEY 005

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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-S-96-0259 GEB/GGH CERTIFICATE OF SERVICE

The undersigned hereby certifies that she 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 March 3, 1997, I served a copy of the attached **NOTICE OF MOTION AND MOTION TO SUPPRESS STATEMENTS** upon the plaintiff by delivery as follows:

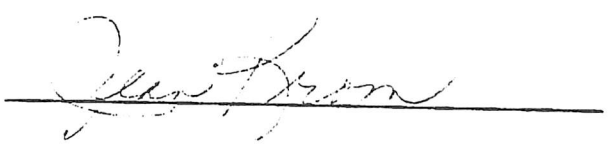
Via U.S. mail:

Robert Cleary
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450 Golden Gate Avenue, 16th Floor
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Via inter-office mail:

Steve Lapham
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DATED: March 3, 1997



Unabom / court opinions

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BY _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THEODORE J. KACZYNSKI,

Defendant.

_____/

Case No. CR-S-96-0259 GEB GGH

ORDER

On February 27, 1997, the parties appeared and argued their respective positions regarding the government's January 17, 1997, application to compel the production of handwriting exemplars. Quin Denvir and Judy Clarke appeared for defendant; R. Steven Lapham, Stephen P. Freccero, Robert J. Cleary, and Bernard F. Hubley appeared on behalf of the United States.

For the reasons set forth below, the government's application, treated alternatively as a motion under the All Writs Act or a motion for issuance of a subpoena, is granted in part and denied in part.

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BACKGROUND

Defendant was charged under the indictment filed June 18, 1996, with various counts of transportation, mailing, or use of an explosive device with intent to kill or injure. During a search of defendant's cabin near Lincoln, Montana, the government seized handwritten and handprinted documents written in English, Spanish, and numeric code. The government desires to establish that defendant wrote the cabin documents in order to introduce portions of them at trial as admissions of defendant.

In opposing the government's motion,[1] defendant offered to stipulate[2] to the fact that he handwrote or handprinted certain non-cabin seized documents, for the most part correspondence, which could be used as comparison documents by the government's handwriting expert:

> In discovery, the government provided the defense with copies of a large number of handwritten documents reportedly written by Mr. Kaczynski, which his brother David turned over to FBI agents during their investigation of the "Unabomber" bombings (Hereinafter "Kaczynski letters"). The documents consist primarily of letters written by Theodore Kaczynski to his brother David and his mother Wanda. There are 152 such documents (excluding envelopes), totaling 837 handwritten and handprinted pages. Thirty-two of the documents, totaling 28 pages, are [partially or completely] in Spanish. The documents are dated from August, 1968, through November, 1995.

Opposition at 2. See also, Exhibit A to Defendant's stipulation presented to the government. (RT. 5)[3] Due to the fact that the government had not previously, unequivocally accepted the stipulation, the

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[1] For purposes of simplicity, the court will refer to the government's request for handwriting exemplars as a motion, although the ordinary notice procedures were not satisfied. See footnote 5, infra.

[2] Absent extraordinary circumstances, a client is bound by his attorney's tactical decisions. Reed v. Ross, 468 U.S. 1, 13, 104 S.Ct. 2901, 2909 (1984). The authority of an attorney to make evidentiary stipulations or admissions is well established. United States v. Bentson, 947 F.2d 1353, 1356 (9th Cir. 1991); United States v. Zamora-Yescas, 460 F.2d 1272 (9th Cir. 1972). See also, Hanson v. Waller, 888 F.2d 806, 814 (11th Cir. 1989) (attorney may make admissions in course of management of the litigation).

[3] As noted by defense counsel at hearing, there may be several documents among those described which they cannot wholly attribute to defendant. Defense counsel are directed to notify the government forthwith concerning the identity of those documents and the location of the non-Kaczynski (defendant) handwriting.

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court confirmed at hearing that such a stipulation had been offered, the precise evidentiary contours of the stipulation, and after some initial hesitation on the government's part, that such a stipulation would be accepted.[4]

The issue the court must determine is whether the government has established a need for the sought present-day exemplars in light of defendant's stipulation. The concept of "need" initially requires a discussion of the legal basis for the government's motion, and the standard of need associated with that legal basis.

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[4]"The Court: Let me go back to Mr. Denvir. Would you put the stipulation to government counsel.

Mr. Denvir: The stipulation that we propose, Your Honor, is that for purposes of handwriting exemplars, the following documents--I believe it's the documents in Exhibit A to the stipulation--were written in the handwriting of Theodore Kaczynski and no other.

Now there's a problem on some of these. We'll have to change that for the ones where there's handwriting of [other] people on it. But for the purposes of the handwriting comparisons, certain documents were written by Mr. Kaczynski and no other, or certain parts were written by him and no other.

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The Court: You're stipulating to the authenticity of who wrote them, and I understand that's the only thing you're stipulating to.

RT 5-6.

Thereafter, a colloquy between the court and all counsel ensued concerning whether the letters which were the subject of the stipulation could be used as evidence for purposes other than their use as comparison documents by a testifying expert. The summation of that colloquy appeared at RT 7-8:

The Court:...I think once you say that Mr. Kaczynski wrote them, I don't think you can say for purposes of other things that he didn't write them.

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Mr. Denvir: That may follow, Your Honor. But what we offered, and that's all they're entitled to, is that he wrote them. If it [the stipulation] has other consequences in other evidentiary contexts, that's fine. But it's not part of this motion and it isn't necessary. We understand that other things may follow from it, but we don't see any reason to stipulate to that. We can deal with that later.

As posited by Mr. Denvir, the government ultimately accepted the stipulation:

Mr Hubley: We will accept the stipulation if we're entitled to use it for handwriting exemplars, as known standards, Your Honor.

RT 8-9.

Therefore, to the extent that future admissibility of the Kaczynski letters et. al., subject to the stipulation, hinges *only* on the fact of identification of their author, that fact has been established. However, the parties have not stipulated, and the court has made no ruling, concerning admissibility of the letters per se except as to permissible use as comparison documents by the government's expert.

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DISCUSSION

1. The Appropriate Basis and Standards for the Government's Motion[5]

Defendant correctly observes that the legal basis for ordering a handwriting exemplar, or any other type of exemplar, has been assumed for the most part. It certainly was assumed by the government in this case. Although there is much authority holding that taking a handwriting exemplar does not violate the Fourth or Fifth Amendments to the Constitution, e.g., Gilbert v. California, 388 U.S. 263, 87 S.Ct. 1951 (1967); United States v. Roth, 466 F.2d 1111, 1114 (9th Cir. 1972), such a holding does not serve as a basis for stating that the government possesses an inherent right to compel a defendant to undergo an exemplar process in the first place. That is, under what authority can the government seek to compel an arraigned criminal defendant to take action in benefit of the government's case that is outside the criminal discovery rules. All parties agree that there is no explicit, federal, criminal discovery rule that permits a compelled exemplar.

Nevertheless, there are two possible legal bases for such a motion--the All Writs Act, 28 U.S.C. § 1651, and Fed. R. Crim. P. 17(c) (subpoena).

The court favors those cases which indicate that a defendant's handwriting may be compelled pursuant to the All Writs Act. In United States v. Li, 55 F. 3d 325, 329 (7th Cir. 1995), the court found that compelling handwriting exemplars was necessary for a court to perform its "duty," and that § 1651 allowed writs in connection with the court's duty that were "agreeable" to the usages and principles of law. Li relied on Harris v. Nelson, 394 U.S. 286, 300, 89 S.Ct. 1082, 1091 (1969) for the correctly cited proposition that factual inquiries necessary to the judicial goal of accurate factfinding, ostensibly not authorized by other explicit procedures, were encompassed by § 1651. The court further finds that "[t]he Act is not an 'ossification of the practice and procedure of more than a

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[5] The government initially proffered to the court an ex parte application with proposed order which the court refused to sign. Thereafter, the parties agreed to a hearing date, and implicitly agreed that the matter could be treated as a motion. As defendant was aware of the two possible legal bases which authorize a handwriting exemplar motion, Opposition at 3(fn.2), the court finds no prejudice accruing to defendant on account of the government's failure to formally notice its legal basis for making an exemplar motion.

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century and a half ago'...but a 'legislatively approved source of procedural instruments designed to achieve the rational ends of law.'" In re Grand Jury Proceedings, 654 F.2d 268, 276 (3rd Cir. 1981). While the court certainly finds that use of the All Writs Act is not permitted when a specific rule governing a procedure is in effect, regardless of whether a governmental investigation will be hindered, Plum Creek Lumber v. Hutton, 608 F.2d 1283, 1289-1290 (9th Cir. 1989), the fact is that there exists no explicit rule, in this court's opinion, by which the government could seek handwriting exemplars. See also, United States v. McVeigh, 896 F.Supp. 1549, 1558 (W.D.Okla. 1995) (All Writs Act gives the court authority to order handwriting exemplars).

Several courts have held that the subpoena power granted by Fed. R. Crim. P. 17(c) permits the court to authorize a subpoena compelling the creation of a handwriting exemplar. United States v. Santucci, 674 F.2d 624, 627 (7th Cir. 1982) (grand jury subpoena); United States v. Venegas, 112 F.R.D. 235 (D.N.J. 1986). However, the plain words of Rule 17(c) appear to command the production of documents, information, or things that are already in existence, rather than the creation of new materials. Further, although Rule 17(c) subpoenas may be utilized for pretrial production, the subpoenas are primarily designed for the production of material to be utilized at trial; it is beyond any constitutional doubt that the government could not subpoena defendant as a witness at trial for the purpose of providing exemplars at that time.

In an abundance of caution, however, this order will consider the government's motion to be brought pursuant to both the All Writs Act and subpoena; the government is authorized and ordered to utilize a subpoena as an alternative basis for compelling the handwriting exemplar.

Nevertheless, whether one utilizes the All Writs Act or Rule 17(c) to obtain handwriting exemplars, the standards are essentially similar and relate to need balanced by intrusion or burden. The propriety of the compelled exemplar is determined by balancing the materiality of the requested exemplar with the scope of the intrusion or burden to the person from whom the exemplar is sought, i.e., what is "reasonable." United States v. New York Telephone Co., 434 U.S. 159, 172, 98 S.Ct. 364, 372 (1977) (All Writs Act); United States v. Goodridge, 945 F.Supp. 371, 373-374 (D.Mass. 1996)

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(All Writs Act); United States v. McKeon, 558 F.Supp. 1243, 1244 (E.D.N.Y. 1983) (setting forth the traditional materiality requirements of a Rule 17(c) subpoena). See generally, United States v. Rudy, 429 F.2d 993, 994 (9th Cir. 1970). While the government's burden is not necessarily demonstrating that the requested exemplar is the sina qua non of its case, the materiality showing must at a minimum rise to the level of a significant assistance before the balancing of intrusion or burden is undertaken.

2. Application and Balancing

The government initially sought "a substantial quantity of writing and printing from the defendant," (Appl. at 2), as exemplars to compare with the documents which included handwritten and handprinted exemplars in English, Spanish and numeric, perhaps chemical, "code." It anticipated collection of the samples would take several days. (Id.) The government concedes that defendant's stipulation reduces the need for days long exemplar taking. Defendant argues that the need for exemplars has been obviated by his stipulation.

The only expert affidavit before the court is that of FBI special agent and document examiner, David Attenberger. This examiner opines that the letters should be supplemented with "same text known handwriting and hand printing exemplars obtained directly from [defendant] which replicate the questioned writings." (Reply, Affidavit of David Attenberger, ¶5.) He states that comparison of the cabin documents to defendant's letters will be "suitable for making some comparisons." However, using present day, case specific exemplars are "prefer[able]," and will result in a "more complete and reliable comparison." In the words of government counsel Hubley, the government desires to utilize the "best evidence." The government does not attempt to balance its evidentiary needs with the general right of a defendant to be left alone by the government during case proceedings, i.e., the right not to have to prepare his adversary's case.

Defendant argues that, because he will stipulate that he wrote 152 letters comprising 837 pages in English and Spanish to his brother David and his mother Wanda, the government has no need for additional exemplars. Defendant contends that the request to devote any further time to providing additional exemplars is unduly burdensome and unreasonable. (Opp'n at 5 n. 3.) Furthermore,

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defendant argues that the best comparison documents for handwriting identification purposes are documents written contemporaneously with those to be authenticated, and that the government "prefers" to have additional exemplars does not establish a sufficient need for them.

The court finds that the defendant's stipulation significantly mitigates the government's need for more handwriting samples, but does not negate it. The government will be able to make many contemporaneous comparisons of defendant's formation of letters, combinations thereof, and numbers by viewing over 800 pages of correspondence along side of the cabin documents. The court would not order further handwriting examples merely for a present day sampling of defendant's alphabet writing or numbering idiosyncrasies. Nor would the court order further exemplars merely for the purpose of acquiring latter day letter combinations. However, comparisons of case specific, present day, phrase/sentence/paragraph exemplars with the case specific cabin documents at issue are obviously of greater evidentiary moment than opinions of authorship of the questioned documents made only by reference to known author, general correspondence. The government's need for case specific exemplars is enhanced by the fact that perhaps *the* critical evidence in this case is comprised of a substantial number of evidentiary written exhibits (the cabin documents) containing, by report of government counsel, important direct and implicit admissions. This is not a case where one or two lines of text will comprise the total of the documentary exhibits at issue, and the documentary exhibits are not the cornerstone of the case. Nor is this the type of case where a jury should be asked to consider a conviction with less than the full panoply of available evidence presented to them. In sum, the court finds that the need for accuracy in the truth-finding process in this case more than establishes the significant assistance the government must demonstrate.

Defendant's (and his counsels') needs in preparing his own case could outweigh the government's interest herein, if there were insufficient time in which to perform both exemplars and case preparation. Such is not the case here, however, where trial remains many months away. Although there is undoubtedly much preparation to be accomplished by the defense, no showing was

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made that performing the exemplars in the limited fashion contemplated by the court will result in a specific inability to accomplish other necessary tasks.

CONCLUSION

Accordingly, IT IS ORDERED that:

1. Defendant's stipulation concerning his authorship of the letters and other materials as set forth above is accepted; within five days from the filed date of this order, defendant shall file the document referenced as Exhibit A to the stipulation proffered to the government prior to the hearing;

2. The government shall subpoena defendant's handwriting exemplars pursuant to Fed. R. Crim. P. 17(c) as an alternative basis for the order permitting defendant's handwriting and handprinting exemplars under the All Writs Act;

3. The handwriting exemplars will be taken in the Sacramento County Jail within thirty days of the filed date of this order;

4. The exemplars will be taken by the government's expert or attorney presenting typed, *case specific* phrases/sentences/paragraphs to defendant, and defendant is directed to reproduce that typed material on government issued paper and with government issued writing implements in his own, undisguised handwriting or handprinting as requested; the defendant shall not be tasked with providing exemplars of individual letters or numbers, or combination of letters that are not case specific phrases/sentences/paragraphs; the government is limited to no more than three sessions to obtain the exemplars, not to exceed a total of five hours, with no session exceeding 2 hours.

5. Defendant may have an expert present for observational purposes during the exemplar sessions; this expert is not to interject himself or herself in the taking of the exemplars, nor shall the expert converse with defendant during the exemplar sessions; of course, defendant's attorneys are also authorized to be present;

6. No videotaping of the exemplar sessions shall be conducted without permission of the court;

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7. Defendant is entitled to a copy of the exemplars created by defendant; *unless and until there is a need to file or introduce the exemplars in court, neither the government nor the defense shall publicly disseminate the exemplars, or cause or otherwise permit the exemplars to be publicly disseminated.*[6]

IT IS SO ORDERED.

Dated: March 5, 1997.

GREGORY G. HOLLOWS
United States Magistrate Judge

Kaczynsk.exm

[6]"Public dissemination" is defined to include provision of the original exemplars or copies thereof to any person/entity that is not directly associated or retained with either the prosecution or defense for purposes of assisting in preparation of the exemplars for use in court.

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VNABOM/pleading

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. THEODORE JOHN KACZYNSKI, Defendant.	CR-S-96-0259 GEB Date: May 16, 1997 Time: 9:00 a.m. Hon. Garland E. Burrell, Jr.

NOTICE OF MOTION AND MOTION TO SUPPRESS EVIDENCE; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION TO SUPPRESS

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VERIFICATION

We, Quin Denvir and Judy Clarke, attorneys for Theodore John Kaczynski, hereby declare that the facts, and factual allegations in the Memorandum of Points and Authorities in Support of Defendant's Motion to Suppress, which are not otherwise supported by the declarations or appendices, are true and correct, to the best of our information and belief.

DATED: March 3, 1997

_____
QUIN DENVIR

_____
JUDY CLARKE

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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. S-96-259 GEB NOTICE OF MOTION AND MOTION TO SUPPRESS EVIDENCE Date: May 16, 1997 Time: 9:00 a.m. Hon. Garland E. Burrell, Jr.

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

Please take notice that on May 16, 1997, at 9:00 a.m., before the Honorable U.S. District Judge Garland E. Burrell, Jr., defendant Theodore John Kaczynski, through counsel, Quin Denvir and Judy Clarke, will move the Court to suppress from the trial in the above-captioned case all evidence observed or seized during execution of a search warrant by federal agents at Mr. Kaczynski's cabin and surrounding areas in Lincoln, Montana. The warrant was signed on April 3, 1996, and the search continued through April 11, 1996.

The evidence to be excluded includes all evidence observed or seized during the search of Mr. Kaczynski's property. Mr. Kaczynski also moves to exclude all fruits of the unlawful search, including, but not limited to: (1) any and all statements made to law enforcement officers on or after April 3, 1996; and (2) all evidence obtained during execution of a second

search warrant for Mr. Kaczynski's property issued on or about May 9, 1996.

Mr. Kaczynski moves to exclude this evidence on the ground that the evidence was obtained as the result of an unlawful search of his cabin and property in violation of the Fourth Amendment to the United States Constitution, for the reasons set forth in the accompanying Memorandum of Points and Authorities In Support of Defendant's Motion To Suppress.

Alternatively, Mr. Kaczynski requests an evidentiary hearing on this motion. He estimates that any argument on this motion at the May 16, 1997 hearing would require less than one hour. He also requests that the Court set a date for the evidentiary hearing at the May 16 hearing, since the length of the evidentiary hearing cannot be accurately estimated at this time.

This motion is based on the instant motion; the accompanying Memorandum of Points and Authorities, including declarations and appendices; the warrant, and application and affidavit for search warrant with attachments dated April 3, 1996; and any other evidence or argument presented before or at the hearing on this motion.

Dated: March 3, 1997

Respectfully submitted,

_____

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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. S-96-0259 GEB MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION TO SUPPRESS

INTRODUCTION

On April 3, 1996, the U.S. District Court for the District of Montana issued a search warrant for defendant

Theodore Kaczynski's cabin in Lincoln, Montana, at the request of agents of the Federal Bureau of Investigation. With their application for a search warrant, FBI agents submitted a 104-page affidavit. The affidavit presented the results of the Unabom investigation in a deliberately misleading manner in an attempt to create the illusion that the government had evidence establishing probable cause to believe that Mr. Kaczynski was the Unabomber and that there was a legal basis for searching his cabin. To create this illusion, the government relied on misstatements, omissions, speculation, and pages and pages of essentially meaningless minutiae. The affidavit attempted to seduce the reader by its detail, but it really was like a spinning compass, not pointing in any true direction.

Although the affidavit was rife with false and misleading statements, and omitted significant evidence tending to show that Theodore Kaczynski was not the Unabomber, even on its face, probable cause was missing. The first 58 pages of the affidavit presented information to show that a single person known as the Unabomber placed or mailed a series of explosive devices across the United States over a period of almost 17 years. The remaining portion of the affidavit attempted to show that FBI agents had evidence constituting probable cause that it was Mr. Kaczynski who was the Unabomber. This evidence fell within three general categories: (1) DNA evidence; (2) a "comparative analysis" by an FBI agent of documents believed to be written by Mr. Kaczynski and documents written by the Unabomber; and (3) evidence purporting to show that Mr.

Kaczynski had the opportunity to commit the Unabom crimes or could not be excluded as the Unabomber. This evidence was wholly insufficient to establish probable cause that Mr. Kaczynski was the Unabomber.

First, the affidavit stated that, based on an analysis of the DNA found on one Unabom letter, Mr. Kaczynski was included among the pool of persons who could have been the source of the DNA -- as were three percent of all Caucasians, three percent of all Blacks, five percent of all Southeastern Hispanics, and two percent of all Southwestern Hispanics -- almost 7,000,000 people in the United States. Second, the affidavit summarized the belief of an FBI agent, who lacked any training in linguistic analysis, that defendant's personal writings contained a number of so-called "similarities" with Unabom documents. Third, the affidavit set forth voluminous information concerning bus schedules, banking records, hotel stays, employment, education, etc., that tended to show only that Mr. Kaczynski could not be excluded as the Unabomber. Indeed, the affidavit stretched to implicate Mr. Kaczynski by his use of the correct (and commonly used) phrase "You can't eat your cake and have it, too."

In short, the affidavit simply failed to provide any trustworthy information that would convince a reasonably prudent person that Mr. Kaczynski committed the Unabom crimes. As explained in detail below, the "comparative analysis" showed only superficial, insignificant similarities between the Unabom manuscript and Mr. Kaczynski's known writings, by an agent with

no training in such analyses. The FBI's analysis failed to point to a single detail in more than 150 of defendant's letters that only the Unabomber would have known. Moreover, like Theodore Kaczynski, millions of persons could have been potential contributors of the DNA reportedly found on one Unabom letter and could have had the opportunity to commit the Unabom crimes -- and thus potentially could have been labeled as a Unabomber suspect and subjected to an intensive search of their homes by a swarm of FBI agents. At most, the affidavit indicated that Mr. Kaczynski could not be definitively excluded as the Unabomber, as was true of much of the United States population.

As set forth more fully in the Argument section below, the FBI also misled the judge by including in the affidavit numerous false and misleading statements, and by omitting crucial, exculpatory material. For instance, FBI agents deliberately failed to disclose to the judge that the FBI lab's DNA testing firmly excluded Theodore Kaczynski as being the source of DNA found on two Unabom letters, and likely excluded him as the source of DNA found on a third Unabom letter. The affidavit suggested that DNA evidence linked Theodore Kaczynski to a Unabom letter, when an accurate portrayal of the evidence that the FBI possessed would have told the judge that DNA testing excluded or tended to exclude Mr. Kaczynski as the Unabomber. This evidence alone -- if it had not been hidden from the judge who issued the warrant -- would have eliminated any possibility that the judge would have found probable cause.

In addition to the concealed DNA evidence, the affidavit also misled the judge by failing to advise him that the evidence tended to show that defendant had an alibi for at least one of the Unabom crimes. When the search warrant application was submitted to the judge, FBI agents knew that bank records indicated that Theodore Kaczynski had made an in-person deposit at a branch of Western Federal Savings in Helena, Montana, on December 11, 1985, at 11:17 a.m. -- the same date a device was placed by the Unabomber in Sacramento, California. Instead of disclosing this information in an unbiased light, the FBI told the judge only that they were "unable to determine as yet, whether [the] posting date [of December 11, 1985] accurately indicates that Theodore Kaczynski personally made a deposit on that day." This falsely indicated that either the FBI had not yet begun to investigate the bank deposit, or if it had, the available evidence was inconclusive. Rather than informing the judge that the known evidence established a strong alibi for Theodore Kaczynski for the bomb placed in Sacramento on December 11, 1985, the FBI misrepresented the evidence in the affidavit.

FBI agents also failed to disclose to the judge that Mr. Kaczynski did not match the description of the Unabomber given by the only eyewitness to a Unabom crime. That witness reported to the FBI that she was "positive she would recognize the individual if she saw him again in view of the fact that she had considerable time to watch him and he was only approximately four feet from her." FBI agents neither asked her to identify Mr. Kaczynski's photo as the Unabomber, nor disclosed in the

affidavit critical details of her description of the Unabomber. If the agents had been candid in the affidavit, the judge would have learned, among other things, that the witness described the Unabomber suspect as (1) 14-19 years younger than Mr. Kaczynski; (2) having curly or fuzzy, reddish-blonde hair, unlike Mr. Kaczynski; (3) having a ruddy, very reddish complexion, compared to Mr. Kaczynski's light or fair complexion; (4) having only a mustache, while Mr. Kaczynski had a beard and no mustache; and (5) missing the noticeable, unusual gait of Mr. Kaczynski.

By hiding exculpatory DNA evidence, misrepresenting evidence of an alibi for the December 11, 1985 bombing, and concealing an eyewitness description that did not match Mr. Kaczynski, along with many other false statements and material omissions set forth below, FBI agents intentionally duped the judge into issuing a search warrant by concocting the appearance of probable cause, where none existed. If the FBI had been frank with the judge, the affidavit would have shown beyond all dispute that the agents lacked probable cause to believe that Theodore Kaczynski was the Unabomber.

CIRCUMSTANCES SURROUNDING APPLICATION FOR AND ISSUANCE OF THE SEARCH WARRANT

The affidavit in support of the search warrant consists of 230 numbered paragraphs, which consume 104 pages of double-spaced type. It is supported by 6 exhibits and 6 attachments, including an 80-page copy of "Industrial Society and Its Future" (232 numbered paragraphs, 36 paragraphs of footnotes, and 2 pages of corrections), a 23-page typewritten essay, and a

50-page comparison of "T" (Ted) and "U" (Unabomber) documents. The completed document is 1-1/4 inches thick.

According to the government, United States District Judge Charles C. Lovell was presented with a partial draft of the search warrant affidavit on the afternoon of April 2, 1996. [1/] According to the government, this partial draft consisted primarily of the chronology of Unabom events, together with a copy of attachment 2, a manuscript entitled "Industrial Society and Its Future by FC," and a copy of attachment 3, the 23-page essay. The next day, April 3, 1996, a copy of the complete search warrant affidavit and attachments 1, 2, 3, 5, and 6 were presented to Judge Lovell shortly before 8:00 a.m. According to the government, attachment 4 was presented to Judge Lovell in installments that morning, with the first 39 pages delivered to the judge at approximately 8:30 a.m. and the last 11 pages at approximately 9:00 a.m.

The search warrant itself was issued at 9:10 a.m. on April 3, 1996 by Judge Lovell, approximately 1 hour and 10 minutes after it was presented to the court.

RELEVANT LAW

The Fourth Amendment to the United States Constitution provides that no search warrant shall issue without a showing of probable cause for the search. (U. S. Const., Amend. IV.) "Probable cause exists where `the facts and circumstances within their [the officers'] knowledge and of which they had reasonable

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1. The government has refused to provide the defense a copy of the partial draft.

trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed." (Brinegar v. United States, 338 U.S. 160, 175-176 (1949) (quoting Carroll v. United States, 267 U.S. 132, 162 (1925)); Beck v. Ohio, 379 U.S. 89, 91 (1964).) "The validity of the warrant must be assessed on the basis of the information that the officers disclosed, or had a duty to discover and to disclose, to the issuing Magistrate." (Maryland v. Garrison, 480 U.S. 79, 85 (1987).)

Even where an affidavit is found to contain probable cause, a defendant may challenge the search warrant on the ground that the affidavit contains intentional or reckless false statements, or omissions of fact, that tend to mislead the judge who issued the warrant. (United States v. Williams, 989 F.2d 1061, 1066 (9th Cir. 1993); see Franks v. Delaware, 438 U.S. 154 (1978).) A defendant is entitled to an evidentiary hearing upon a substantial preliminary showing that a false statement (or omission) was intentionally or recklessly included in the affidavit, where the false statement was necessary to the finding of probable cause. (Franks, 438 U.S. at 155-56; United States v. Stanert, 762 F.2d 775, 780-81, amended, 769 F.2d 1410 (9th Cir. 1985).) In the case of intentional or reckless omissions from an affidavit, the affidavit is evaluated for probable cause as if the omitted information were included in the affidavit. (United States v. Condo, 782 F.2d 1502, 1506 (9th Cir. 1986).) "The effect of misrepresentations and omissions on the existence of probable cause is to be considered

cumulatively." (United States v. Kiser, 716 F.2d 1268, 1274 (9th Cir. 1983).)

If after an evidentiary hearing the district court concludes that the judge who issued the warrant "was misled by information in the affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth," the warrant is invalid and evidence obtained during the unlawful search must be suppressed. (Stanert, 762 F.2d at 780 (citing United States v. Leon, 468 U.S. 897, 923 (1984)).) "There is no `good faith' exception to the Franks doctrine: a warrant based upon knowing or recklessly made falsehoods in the affidavit will be invalid." (Mills v. Graves, 930 F.2d 729, 733 (9th Cir. 1991).)

ARGUMENT

I.

THE GOVERNMENT MISREPRESENTED DNA EVIDENCE WHICH IF ACCURATELY PRESENTED WOULD HAVE SHOWN THAT THEODORE KACZYNSKI WAS EXCLUDED AS THE UNABOMBER

In a separate section at the very beginning of the probable cause section entitled "DNA," the affidavit stated:

> "98. A postage stamp obtained from the envelope used to mail a copy of the FC manuscript to Dr. Tom Tyler was subjected to DNA analysis by the FBI Laboratory-DNA Section. The results of that analysis were compared to results obtained from the postage stamp and envelope flap of a letter sent by Theodore Kaczynski to his brother David Kaczynski. Based upon the analysis of the DQ alpha (DQA1) and the Polymarker (PM) Loci, the source of the DNA on the known sample (Theodore Kaczynski's letter to Dave Kaczynski) is included as a potential contributor to the DNA detected

on the stamp from the letter received by Dr. Tyler.

"99. The estimated probability expressed as a percentage of selecting an unrelated individual at random from the population having DQA1 type 1.1,2 as detected in these specimens, is approximately 3 percent of Caucasians, 3 percent of Blacks, and 5 percent of Southeastern Hispanics and 2 percent of Southwestern Hispanics.

"100. It is noted by your affiant that at least one of the victims previously mentioned (Dr. David Gelernter) and another suspect in the UNABOM investigation (whose identity is known to the UTF) have shared the same DNA Polymarker as Theodore Kaczynski. Because employment records for this person conflicted with known UNABOM events, UTF investigation eliminated this individual as a UNABOM subject." (Affidavit, p. 60, paras. 98-100.)

What the affidavit failed to disclose is that the DNA type found on two other Unabom letters and the predominant DNA type found on a third Unabom letter excluded Mr. Kaczynski as the source of the DNA. Thus, instead of leaving the judge with the misleading impression that Mr. Kaczynski's DNA type was consistent with the DNA type found on one Unabom letter, the affidavit should have stated that DNA testing excluded or tended to exclude Mr. Kaczynski as the source of DNA found on three Unabom letters.

The affidavit also contained misleading information in that it stated that sufficient DNA for accurate typing was actually present on the Tyler stamp (paragraph 98) when, in fact, the FBI laboratory's records do not support such a statement. Moreover, even if DNA were present, no Polymarker testing had been conducted on the Tyler stamp, meaning that, if

DNA were present at all, the letter to David Kaczynski and the Tyler letter shared only one genetic marker, not six. Finally, the affidavit understated the population percentages in violation of the FBI's protocol on DNA.

A. The Affidavit Failed to Disclose That Government DNA Testing Excluded Mr. Kaczynski As The Source of DNA On Three Unabom Letters

Laboratory reports provided to the defense in discovery reflect that DNA was found on postage stamps or envelopes of the following four Unabom letters -- the letters to Dr. Tom Tyler, Dr. David Gelernter, Richard Roberts, and Jerry Roberts. The affidavit contained information regarding the DNA testing of the Tyler letter, but failed to disclose the results of DNA testing on the other three Unabom letters. In this regard, the FBI laboratory reports reveal that (1) the DQA1 type on the stamp of the Unabom letter to Dr. Gelernter (Q167) excluded Mr. Kaczynski as the source of the DNA; (2) both the DQA1 type on the stamp and the Polymarkers on the envelope flap of the Unabom letter to Richard Roberts (Q174) excluded Mr. Kaczynski as the source of the DNA; and (3) the predominant DQA1 type found on the envelope flap of the Unabom letter to Jerry Roberts (Q370) was not the same DQA1 type as Mr. Kaczynski. (Declaration of Donald E. Riley, Ph.D., paras. 8-11.) None of this information about the other three Unabom letters was contained in the affidavit.

Thus, rather than the powerful DNA results the affidavit sought to show, the reality was that the DNA testing

from the letters to David Kaczynski solidly excluded Theodore Kaczynski from being the source of DNA on two of the Unabom letters, and likely excluded him from being the source of DNA on a third Unabom letter. (Riley Declaration, paras. 8-11.)

Extremely troubling is the fact that there were a number of possible DNA types present on the four letters mentioned above (Tyler, Gelernter, Richard Roberts, and Jerry Roberts). Only one of those possible types matched the supposed known type of Mr. Kaczynski. In seeking the search warrant in this case, law enforcement chose to disclose the one DNA type which they felt strengthened their case, concealing from the court all of the other types which excluded Mr. Kaczynski.

B. The Affidavit Contained False And Misleading Information Because Insufficient DNA For Typing Was Found On The Tyler Stamp

The affidavit stated that DNA analysis was conducted on the postage stamp from the envelope used to mail a copy of the Unabom manuscript to Dr. Tom Tyler, and that the results of that analysis were compared to results obtained from the postage stamp and envelope flap from a letter to David Kaczynski. The problem with this statement is that there were two separate tests performed to measure the amount of actual DNA present on the Tyler stamp. One test was run before typing (slot blot analysis), and the second test was performed after typing (post amplification gel). The results of the first test showed only a minuscule amount of DNA, far less than the

minimum amount necessary for valid testing as specified by the manufacturer of the testing kit. The second test showed absolutely no DNA being present in the sample. (Riley Declaration, para. 16.) If there were no or insufficient DNA present on the stamp, there certainly could not be a DNA comparison with the letter to David Kaczynski. Without that comparison, the only DNA evidence that the government had excluded Theodore Kaczynski as the contributor.

C. Even If DNA Were Present On The Tyler Stamp, The Affidavit Overstated The Comparisons Since No Polymarker Testing Had Been Conducted On That DNA

The affidavit at paragraph 98 (third sentence) stated that based upon analysis of the DQ Alpha (DQA1) and the Polymarker (PM) Loci, the source of the DNA on the letter to David Kaczynski was included as a potential contributor to the DNA detected on the Tyler stamp. Even if the government were correct in asserting that sufficient DNA for typing was indeed found on the stamp, the laboratory reports do not reflect that any Polymarker analysis was done on that DNA. (Riley Declaration, paras. 14-15.) Thus, the affidavit was false in stating that such an analysis was performed. Because this means that the letter to David Kaczynski and the Tyler letter shared only one genetic marker, rather than six, the value of the DNA comparison cited in the affidavit was considerably weaker than portrayed. (Id.)

D. The Affidavit Failed To Advise The Court That The Letters To David Kaczynski Contained Mixtures Of DNA Which Would

Increase The Population
Percentages In Paragraph 99

The laboratory reports provided to the defense show that DNA was found on various stamps and envelope flaps of letters Ted Kaczynski sent to his brother. The envelope of one of the letters (K408-2) contained a mixture of DQA1 types, indicating the presence of more than one person's DNA, as did the stamp on another letter (K419-1). (Riley Declaration, para. 19.)

The population percentages contained in paragraph 99 (3 percent of Caucasians, 3 percent of Blacks, 5 percent of Southeastern Hispanics, and 2 percent of Southwestern Hispanics) were based on the estimated percentage of the population with DQA1 type 1.1, 2. However, the FBI lab's protocols on DNA testing that were in effect at the time of the testing in this case provided that, where there is a possibility of a mixture of DNA types, the appropriate percentage to use was the sum of the percentages of all possible contributors to the possible mixture. (Riley Declaration, para. 20.) Consequently, the proper percentages of the population that could have contributed to the DNA should have been 7 percent for Caucasians, 13.4 percent for African Americans, and 4.6 percent for both Southwestern Hispanics and Southeastern Hispanics. (Riley Declaration, para. 20.)

This is highly significant. Census Bureau figures for 1990 report the population of the United States as follows (see Appendix IV.):

Caucasian:	188,128,296
Black:	29,986,060
Hispanic Origin:	11,557,774

Using the figures set forth by the government in Paragraph 99, 5,643,848 Caucasians, 899,581 Blacks, and 404,522 Hispanics, [2/] had DQA1 type 1.1,2. The comparable figures, using the proper FBI protocol for a DNA mixture, were 13,168,980 Caucasians, 4,018,132 Blacks, and 531,657 Hispanics.

Thus, there were multiple DNA types present on the known letters to David Kaczynski. As they did with the Unabom letters, law enforcement again chose the DNA type that would match the type that they had selected from the possible DNA types present on the Unabom letters, concealing the other possible "known" types on the Kaczynski letters.

As a separate matter, paragraph 100 stated that Mr. Kaczynski's supposed known polymarker type is the same as victim Gelernter. In fact, this statement is incorrect. Mr. Kaczynski's supposed known polymarker type is BB/AA/AA/BB/CC, whereas Mr. Gelernter's type is BB/AB/AB/AB/BC. They differ in four of the five polymarker loci.

This is significant because paragraph 100 also stated that another suspect, who had since been ruled out based on other information, had the same polymarker type as Mr.

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2. The census figures do not break down Hispanics into Southeastern Hispanics and Southwestern Hispanics, as in the affidavit. This figure for Hispanics in the text was calculated using 3.5 percent, the average of the 5 percent figure for Southeastern Hispanics and the 2 percent figure for Southwestern Hispanics set forth in the affidavit.

Kaczynski and victim Gelernter. The implication is that Mr. Kaczynski remained a suspect because of the matching polymarker types. To the contrary, if the government had recovered DNA from evidence in the Gelernter incident and if it had been able to obtain a polymarker type of BB/AB/AB/AB/BC (Gelernter type), then Ted Kaczynski would be excluded as a source of that evidence, not included, as paragraph 100 seems to suggest.

II.

THE GOVERNMENT PURPOSEFULLY FAILED TO DISCLOSE THE FACT THAT THEODORE KACZYNSKI DID NOT COME CLOSE TO MATCHING THE DESCRIPTION OF THE UNABOMBER IN VIRTUALLY ANY RESPECT

As we now show, the government failed to disclose to the judge that Mr. Kaczynski did not match in virtually any respect the description of the Unabomber given by a witness who, in her own words, had watched the Unabomber for a "considerable time" from "only approximately four feet" and was sure that she would recognize him if she saw him again. Compared to the witness' description, Mr. Kaczynski was 14-19 years older, 1-3 inches shorter, and 15-35 pounds lighter, with hair of a very different color and texture, very different facial hair, a very different-colored complexion, a much different-shaped face, a more muscular build, an unusual gait, and shorter fingers.

A. The Description Of The Unabomber Known To The Government

On February 20, 1987, at about 9:45 a.m., a man

placed an explosive device near the front tire of a car parked in the rear parking lot of CAAMS, Inc., a computer store in Salt Lake City, Utah. Approximately an hour later, Gary Wright, Vice-president of CAAMS, Inc., drove into the parking lot and noticed the device. When he moved the device, it exploded, inflicting injuries on Mr. Wright.

An employee of CAAMS, Tamara Fluehe, happened to look out the rear window and observed the man carrying a white canvas type bag. She watched as the man bent down by her car and reached in the bag. He took out the device, which looked like 2 pieces of wood nailed together with nails protruding from the top, and placed it in front of the tire to the left of her car. The man looked up at Ms. Fluehe, stood up, and walked away, carrying the bag.

Shortly after the explosion Ms. Fluehe wrote down on a piece of paper what she had seen, including a physical description of the man, which she later provided to the FBI. In her notes she wrote the following description:

> "His hands were white seemed to be right handed. He was wearing a grey hooded sweat shirt with the hood up over his head, dark thin framed glasses. **Blonde, redish** [sic] **colored hair** (**fuzzy**)(**curly**), **mustache, red colored/ skin. Hollowed out cheeks, slender build**, about **5'10", 165 lbs**. Semi faded levis."

On February 20, 1987, the same day as the explosion, Ms. Fluehe was interviewed by the Salt Lake City police and provided the following description of the man:

> "MWA, **28 years old, slender build, 165 lbs, 5'10" to 6'0"**, sunglasses (smoked

> colored), teardrop shaped, thin framed, wearing a light gray sweat jacket with the hood over his head; the hood was pulled forward but not tied; the jacket was zipped up. The suspects hair was **blonde** with a **red tint and fuzzy**. The hair came down on his forehead. Possibly a **light mustache; clean shaven**; reg. levis on, not real faded but not new. They were not loose fitting nor real tight."

On February 22, 1987, two days later, Ms. Fluehe was interviewed by the FBI and provided the following description of the man who had placed the device:

> "She could not recall anything unusual about his walk or build, and stated that he **did not appear to have any unusual gait**. She advised her overall impression of him was that he was clean and dressed casually with the hooded gray sweatshirt zipped to the top and Levis which appeared to have been worn but not overly so. She did not see his feet, but did recall that the drawstring on the hood of the sweat-shirt was hanging straight down and untied.
>
> "FLUEHE recalled that when she had made the statement to GAYE and turned back to look out the window, he was looking directly at her as if he heard her. She stated his face was expressionless and she did not see his teeth or anything unusual about his face. She advised there were no scars and marks on his face, and he had a **light strawberry blond colored mustache with no other facial hair**. She described his face as being **thin, reddish flush, rough looking complexion**, but not with pock marks or other types of deformities. She indicated her overall impression of him was that he looked healthy."

At that time, she told the FBI that she was "positive she would recognize the individual if she saw him again in view of the fact that she had considerable time to watch him and he was only approximately four feet from her."

On March 3, 1987, Ms. Fluehe was shown an artist's conception of the man, and she requested that it be colored "to reflect a **very reddish complexion**. This seemed of paramount importance to Ms. Fluehe."

On November 18, 1993, Ms. Fluehe was reinterviewed by the FBI. At that time, she provided the following description of the man:

> "FLUEHE described the person placing the device as having **natural curly-wavy type hair, reddish-blonde (strawberry-blonde)** in color, wearing a grey zippered hooded sweatshirt with the hood up around his head, plain `tear-drop' aviator sun-glasses. FLUEHE said that his physical build was **on the lean side**, approximately **6' tall, 160-180 pounds, sunken in cheeks with very prominent cheek bones**, a **ruddy complexion** and she could not remember if he had any facial hair or not."

On December 16, 1993, Ms. Fluehe was again interviewed by federal agents. At that time, she stated that the man who placed the device was in "his **mid twenties to mid thirties**." As he walked away, "he looked like a male in his **late 20's**." She reaffirmed that "she **did not observe anything unusual in his gait**."

B. Facts Known To The Government About Theodore Kaczynski's Description

As reflected in an FBI 302 (p. 23), in an interview on February 17 and 18, 1996, David Kaczynski provided the following description of his brother:

> "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."

At that time, David also told the FBI that he doubted that Ted would dye his hair. (Id.)

In addition, when the FBI asked if Ted's hair was curly, David stated that it had a slight natural wave, but was not curly. (Declaration of David Kaczynski, para. 4(B).) He told the FBI that he had never seen Ted with just a mustache. (Id., at para. 4(C).) When the FBI asked if Ted had long, thin fingers, David stated that he had short hands and remembered Ted's hands as longer than his, but nothing out of the ordinary. (Id., at para. 4(D).) David also told the FBI that Ted did not have prominent cheek bones or sunken cheeks. (Id., at para. 4(F).)

C. The Government Affidavit

In the section entitled "Chronology of Events," the affidavit set out a chronological description of the 16 Unabom incidents. (Affidavit, p. 7, para. 14.) In Paragraph 48, the affidavit summarized explosive device #12. In Paragraph 49, the affidavit reported that Tamara Fluehe had provided Unabom Task Force (UTF) investigators with a description of the man who placed the device, and then stated:

> "She stated his face was expressionless and she did not see his teeth or anything unusual about his face. She advised there were no scars and marks on his face, and he had a light straw-berry blond colored mustache with no other facial hair. She described his face as being thin, reddish flush, rough looking complexion, but not with pock marks or other types of deformities. She indicated her overall impression of him was that he looked healthy." (Affidavit, pp. 30-31, para. 49.)

In the section entitled, "STATEMENT OF PROBABLE CAUSE FOR THEODORE JOHN KACZYNSKI'S CONNECTION TO UNABOM EVENTS AND FOR THE SEARCH OF HIS RESIDENCE," in a subsection entitled "Identity," Paragraph 96 of the affidavit stated:

> "Investigation by the UTF has revealed that Theodore John Kaczynski is a white male, 5'9", 150 pounds, with a date of birth of May 22, 1942." (Affidavit, p. 59, para. 96.)

In another subsection, entitled "Comparison of Theodore Kaczynski's Known Whereabouts with UNABOM Device Dates," Paragraph 154 of the affidavit stated:

> "UNABOM Device #12 was placed at the outside rear of CAAMS Computer Store in Salt Lake City on February 20, 1987. A witness, Tamara Fluehe, described the individual placing the device as a white

> male, approximately 25-30 years old, 5/10" to 6' in height, 165 pounds, lean, wiry build, with a reddish, rough looking complexion and strawberry blond hair and light mustache." (Affidavit, p. 80, para. 154.)

The immediately following paragraph, Paragraph 155, stated in part:

> "Theodore Kaczynski is described as a white male, 5'9" 150 pounds with a lean, wiry appearance, and dark colored hair." (Affidavit, p. 80, para. 155.)

D. Through A Series of Misstatements And Omissions, The Government Covered Up The Fact That Mr. Kaczynski Did Not Match In Virtually Any Respect The Only Known Description Of The Unabomber, Given By A Witness Who Had Observed The Unabomber For A Considerable Amount Of Time From Four Feet Away And Was Positive She Could Identify Him Again

1. Age. The Unabomber was variously described as 28 years old, in his mid-twenties to mid-thirties, or looking like a male in his late 20's. At the time of the CAAMS incident, Mr. Kaczynski was 44 years old.

In the description of the Unabomber, the affidavit stated that his age was 25-30 years old. Mr. Kaczynski's age was purposely omitted from the immediately following paragraph of the affidavit which provided his description. The only way that the judge could have learned of the 14-19 year discrepancy in age would have been to go back 21 pages in the affidavit, uncover defendant's

II

birthdate, and calculate that he was 44 years old at the time of the CAAMS incident.

2. Height. The Unabomber was variously described as 5'10", 5'10" to 6'0", or approximately 6' tall. Mr. Kaczynski's driver's license showed him to be 5'9".

The 1-3 inch discrepancy in height was disclosed.

3. Weight. The Unabomber was variously described as weighing 165 pounds or 160-180 pounds. Mr. Kaczynski's driver's license showed him to weigh 145 pounds.

The 15-35 pound discrepancy in weight was minimized to 15 pounds in the affidavit. Instead of disclosing defendant's driver's license weight of 145 pounds, the government stated his weight at 150 pounds; instead of disclosing that the Unabomber's weight had been described as 160-180, the affidavit stated that the weight was 165.

4. Hair. The color of the Unabomber's hair was described as blonde and reddish colored, or blonde with a red tint, or reddish-blonde (strawberry-blonde) and his hair was described as curly, fuzzy, or naturally curly, wavy. David Kaczynski told the government, and Ted Kaczynski's driver's license confirmed, that his brother's hair was dark brown, and David stated to the government that his

brother's hair had a slight natural wave but was not curly.

The substantial discrepancy in hair color was disclosed. The fact that Mr. Kaczynski did not have curly or fuzzy hair like the Unabomber was purposefully omitted.

5. Complexion. The Unabomber's complexion was variously described as red-colored, reddish-flush and rough looking, very reddish, or ruddy. David told the government that his brother was light-complected, fair.

The fact that the Unabomber had a reddish, rough looking complexion was disclosed. The fact that Ted Kaczynski did not match that description -- he was light-complected, fair -- was purposefully omitted.

6. Face. The Unabomber's face was variously described as thin, hollowed-out cheeks, or sunken-in cheeks with very prominent cheek bones. David Kaczynski told the government that his brother did not have sunken cheeks or prominent cheek bones.

The fact that Ted Kaczynski did not have sunken cheeks or prominent cheek bones, while the Unabomber did, was purposefully omitted.

7. Facial Hair. The Unabomber was described as having a mustache or a light mustache with no other facial hair. David Kaczynski stated to the government, and

his brother's driver's license confirmed, that Ted Kaczynski had a beard; and David Kaczynski told the government that he had never seen Ted with just a mustache.

The fact that the Unabomber had a mustache was disclosed. The fact that Ted Kaczynski did not match that description -- he had a beard and had never been seen with a mustache by his brother -- was purposefully omitted.

8. Build. The Unabomber's build was variously described as slender or on the lean side. David Kaczynski stated to the government that his brother was lean and muscular, considered wiry.

The affidavit tried to portray Ted Kaczynski's build as the same as the Unabomber's, describing both as "lean, wiry." In fact, although both were described as lean, only Ted Kaczynski was described as wiry and muscular, while the Unabomber was described as slender.

9. Gait. The Unabomber was described as not having anything unusual about his gait. David Kaczynski told the government that his brother's left foot was noticeably pigeon-toed which affected the way he walks.

The affidavit purposefully omitted the fact that Ted Kaczynski had a noticeably unusual gait, and that the Unabomber did not.

10. Fingers. The Unabomber was described as having long fingers. David told the government that the length of his brothers's fingers was nothing out of the ordinary.

The affidavit purposefully omitted the fact that Ted Kaczynski did not have long fingers, and that the Unabomber did.

It was certainly not a mere coincidence that the government systematically misstated and omitted facts showing that Theodore Kaczynski did not match the Unabomber description. The government certainly knew that whether the suspect matched the physical description of the perpetrator was an important factor in the probable cause determination. (E.g., United States v. Pinion, 800 F.2d 976, 979 (9th Cir. 1986), cert. denied, 480 U.S. 936 (1987); United States v. Martin, 28 F.3d 742, 745 (8th Cir. 1994).)

III.

THE GOVERNMENT PURPOSEFULLY MISSTATED THE KNOWN EVIDENCE TO COVER UP THE FACT THAT AVAILABLE BANK RECORDS SHOWED TED KACZYNSKI TO BE IN HELENA, MONTANA ON DECEMBER 11, 1985, THE SAME DAY THAT THE UNABOMBER PLACED A DEVICE IN SACRAMENTO, CALIFORNIA

Paragraph 163 in Section K of the affidavit, entitled "Further Analysis of Theodore Kaczynski's Activities and UNABOM Incidents," stated:

> "The UTF has undertaken an extensive investigation of Theodore Kaczynski's known activities, with the objective of accounting for his whereabouts and location on specific dates between

> May 25, 1978, the date of the first UNABOM event, and June 24, 1995, the date of the mailing of the UNABOM manuscripts from San Francisco, California." (Affidavit, p. 82, para. 163.)

The affidavit went on to state that the UTF had reviewed interviews and documents from Dr. Carolyn Goren (para. 164), interviews and documents from the Park Hotel in Helena (para. 165), interviews and documents from Western Federal Savings (para. 166), and letters from Ted to his mother and brother (para. 167). The affidavit then stated:

> "Based on this review, with the exception of a deposit posted to one of the bank accounts on December 11, 1985, none of the postmarks, checks, hotel stays, or visits to the doctor are in conflict with dates of UNABOM incidents. The December 11, 1985 date corresponds to the placement of a bomb at Rentech in Sacramento, California. UTF has been unable to determine as yet, whether this posting date accurately indicates that Theodore Kaczynski personally made a deposit on that day." (Affidavit, p. 83, para. 167; emphasis added.)

The statement that the UTF had been unable as yet to determine whether Mr. Kaczynski personally made the deposit on December 11, 1985, was false. The clear import of that statement was that either (a) the UTF had not yet begun its investigation on that subject, or (b) if it had, the available evidence was inconclusive on the issue of whether Mr. Kaczynski personally made the deposit. Neither, in fact, was true. Rather, the UTF had investigated the matter, and all known evidence indicated that Ted Kaczynski had personally made that deposit on that date.

On March 12, 1996, the FBI served a federal grand jury subpoena on Western Federal Savings of Montana, asking for Mr. defendant's banking records. On March 30, the FBI received Mr. Kaczynski's monthly banking statements and deposit records. On April 1, the FBI interviewed the records manager for Western Savings. She examined a copy of a deposit slip on Mr. Kaczynski's account dated December 9, 1985. She stated that the deposit had been processed on December 11, 1985, at 11:17 a.m. by Teller No. 1 at the Helena Branch.

She further told the FBI that the deposit was coded as an in-person deposit, not a mail deposit; that Teller No. 1 was the lead teller and did not process mail deposits, except on rare occasions; and that mail deposits are processed by 11:00 a.m. She stated that it was "possible" that the deposit was a mail deposit, but not properly coded. Teller No. 1 also told the FBI that bank records indicated that it was an in-person deposit on December 11, 1985, at 11:17 a.m. When FBI agents asked Sherri Wood, the Lincoln librarian, and Dick Lundberg, the Lincoln contract mail carrier, if they had ever done any banking transactions for defendant, both replied, "No." (Declaration of Sherri Wood, para. 16, Declaration of Dick Lundberg, para. 9.) Not one of these facts was disclosed to the judge.

Thus, the affidavit statement that the FBI had been "unable to determine as yet" whether Mr. Kaczynski had personally made the deposit in Helena on December 11, 1985 was false. All the information developed during the FBI

investigation up to that time pointed to the conclusion that Ted Kaczynski had personally made the deposit, rather than mailing it in. First, the deposit was coded by the bank as a walk-in deposit. Second, it was processed at a time subsequent to when mail deposits were processed by the bank. Finally, the teller who processed it, the lead teller, did not process mail deposits, except on rare occasions. A contrary conclusion requires speculation that the deposit was by mail, even though it was processed at the wrong time and given the wrong code by the head teller who did not handle mail deposits.

The government should have disclosed the relevant facts to the judge, rather than falsely suggesting that it had no information available on the issue. If the government had done so, the affidavit would have revealed that all known evidence indicated that Ted Kaczynski was in Helena making a deposit at the time of the 1985 Unabom incident in Sacramento.

IV.

THROUGH A SERIES OF FALSE STATEMENTS, MATERIAL OMISSIONS, AND IRRELEVANT INFORMATION, THE GOVERNMENT IMPROPERLY ATTEMPTED TO SUGGEST THAT THERE WAS EVIDENCE THAT THEODORE KACZYNSKI HAD THE OPPORTUNITY AND/OR MEANS OF COMMITTING THE UNABOM CRIMES

A. The Government Falsely Indicated That Evidence Showed That Mr. Kaczynski Was Present In Chicago At Or Near The Time Of Two Unabom Incidents In That City

In a section entitled "Comparison of Theodore Kaczynski's Known Whereabouts with UNABOM Device Dates," the

affidavit stated:

> "143. 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.
>
> "144. UNABOM Device #2 was placed at Northwestern University on May 9, 1979. According to David, Theodore Kaczynski was working in Chicago on May 9, 1979.
>
> "145. 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 believe 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." (Affidavit, p. 77, paras. 143-145; emphasis added.)

Wanda Kaczynski told the FBI that Ted Kaczynski wrote a letter in 1978, inquiring as to whether there might be a job available at Foam Cutting Engineers, where his father worked. Ted's father determined that there was an opening, and Ted traveled from Montana to Chicago, beginning work at Foam Cutting Engineers on June 26, 1978. The statement in the affidavit that David Kaczynski indicated that his brother

could have returned to Chicago up to thirty days before beginning his employment at Foam Cutting Engineers was false. David told the agents that he "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." (Declaration of David Kaczynski, para. 3(I).) David specifically denied telling the agents that he believed Ted returned to Chicago up to 30 days before starting the job at Foam Cutting Engineers. (Id.) David's statement was confirmed by his mother's statement to the FBI, memorialized in an FBI report, that Ted "started working at Foam Cutting Engineers within a few days of his arrival at Lombard [the family home]." That report reveals that Wanda also told the FBI that Ted did not maintain any long-term friendship with anyone in the Chicago area and "that he would not have stayed with anybody else." Thus, the affidavit falsely portrayed that Ted Kaczynski was possibly in Chicago within a day or two of incident 1, when all the evidence available to the government showed that he did not arrive in Chicago until 3-4 weeks after the May 25, 1978 incident.

In addition, the statement in the affidavit that David told the FBI that Ted returned from Chicago to Montana in the "summer or fall" of 1979 was also false. Instead, David told the FBI that his brother returned to Montana "that summer or possibly early fall." (Declaration of David

Kaczynski, para. 3(J).) Thus, the affidavit falsely portrayed Ted as being present in Chicago in "the fall" of 1979, which might have encompassed the November 14, 1979 Unabom incident, when, in fact, the evidence available to the government showed that Ted had left Chicago by "early fall," long before that incident.

It is certainly not coincidence that the government purposefully misstated the available evidence to create the illusion that Mr. Kaczynski was in Chicago at or near the time of these two Unabom incidents.

In addition, the affidavit omitted information showing that Mr. Kaczynski was not in Chicago when Unabom device 4 was mailed from that city on June 10, 1980. In this regard, when interviewed by the FBI on March 23, 1996, Mr. Kaczynski's mother told the agents that "TED never visited Chicago after he returned to Montana in 1979," according to an FBI report. This significant information was not disclosed in the affidavit.

B. The Financial Support Mr. Kaczynski Received From His Family Over The Years Was Irrelevant To The Issue Of Probable Cause

Paragraph 159 stated:

> "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." (Affidavit, p. 81, para. 159.)

Paragraph 161 stated:

"In November, 1994, Theodore Kaczynski wrote David asking for a $1,000 loan, followed by another request for a $2,000 loan. David sent the money to his brother in the form of cashier's checks." (Affidavit, p. 81, para. 161.)

Paragraph 166 stated:

"Interviews and documents from a bank in Missoula, Montana (Western Federal Savings) where Theodore Kaczynski had two checking accounts and two Certificates of Deposit (CD) accounts. On May 15, 1984, Theodore Kaczynski obtained two Certificates of Deposit, for $500 each. CD account #207 was closed on September 26, 1984. CD account #208 was closed on August 20, 1985. On May 22, 1985 Ted opened checking account #110093923 with a $600 check and $51.17 he received on interest from CD #207. This checking account was closed on July 13, 1994: Theodore Kaczynski wrote approximately 400 checks on this account between May 22, 1985 and July 13, 1994. There were no deposits to the account from 1991 until the account was closed on July 13, 1994. The second account reflects the writing of 32 checks between February 21, 1995 and August 23, 1995, when the account was closed with a cash withdrawal of $203.53 in Missoula, Montana." (Affidavit, pp. 82-83, para. 166.)

Section L of the affidavit, entitled "Money Received by Theodore Kaczynski from David and Wanda Kaczynski," contained the following paragraphs:

"174. UTF investigation has identified two bank accounts at Western Federal Savings, Missoula, Montana, maintained by Theodore Kaczynski from 1984 to 1994 and February 21, 1995 through August 23,1995. A third bank account in Helena, Montana belonging to Theodore Kaczynski has also been identified.

"175. A review of Wanda Kaczynski's canceled checks and David Kaczynski's

records reflect the following funds sent to and/or deposited by Theodore Kaczynski, on the following approximate dates. The designation of a question mark indicates the UTF's inability to determine the specific date reflected on the document.

"CHECK DATE	DATE POSTED	AMOUNT
5/16/85	5/2?/85	$600.00
12/5/85	12/28/85	$600.00
12/27/85	1/8/85	$25.00
5/15/86	5/25/86	$600.00
7/1/867/[sic]	12/86	$20.00
11/22/86	12/4/86	$20.00
12/10/86	12/31/86	$620.00
5/10/87	5/27/87	$600.00
11/13/87	12/3/87	$15.00
5/15/88	5/21/88	$600.00
11/15/88	11/23/88	$10.00
5/15/89	5/31/91	$750.00
11/16/89	12/4/89	$10.00
12/10/89	12/29/89	$750.00
5/18/90	5/31/90	$750.00
12/10/90	12/27/90	$800.00
7/26/91	7/30/91	$7,032.81
11/94 (received from David)		$1,000.00
2/1/95 (received from David)		$2,000.00
TOTAL (5/16/85 - 2/1/95)		$16,802.81

"176. As previously stated herein, UTF has obtained documents pertaining to a deposit on a bank account maintained by Theodore Kaczynski on December 11, 1985.

"177. Of significance with respect to the above dates between 5/16/85 - 2/1/95, Theodore Kaczynski received $16,802.81, but his bank records indicate deposits of a lesser amount.

"178. Theodore Kaczynski opened the first account at Western Federal Savings on May 22, 1985, with the $600 check received from Wanda, dated May 16, 1985. The UNABOM subject was in the San Francisco Bay Area sometime between May 8, 1985 and May 15, 1985, UNABOM Device #8 was mailed to Boeing on May 8, 1985 and Device #9 was observed in Room 264 of Cory Hall, UCB, several days prior to the May 15, 1985 detonation.

"179. Theodore Kaczynski deposited the $600 check dated December 5, 1985 from his mother on December 28, 1995, and the $25.00 check, dated December 27, 1985, from his mother on January 8, 1986. UNABOM Device #11 was placed at Rentech Computer Rental, Sacramento, California on December 11, 1985, requiring the presence of the UNABOM subject in Sacramento.

"180. Suspect received $1,000 from David circa November 14, 1994, approximately one month prior to UNABOM Event #15, mailed to Thomas Mosser from San Francisco, California, on Saturday, December 3, 1994.

"181. Suspect received $2,000 from David circa January 19, 1995 and prior to the mailing of UNABOM Device #16 to Gilbert Murray from Oakland on April 20, 1995 and the mailing of the UNABOM manuscript from San Francisco on June 24, 1995.

"182. It should be noted that Theodore Kaczynski sent David a letter postmarked November 2, 1994, requesting $1,000.

"183. by letter postmarked December 23, 1994, Theodore Kaczynski requested the additional $2,000, stating `I need another $2,000...if and when I get over present difficulties sufficiently ... There won't be any further requests for loans...if another $2,000 won't do it, then I guess nothing will, so I may as well give up." (Affidavit, pp. 86-88, paras. 174-183.)

This detailed and repetitive information regarding funds that Ted Kaczynski received from his family was irrelevant to the issue of probable cause to believe that he was the Unabomber. All this showed was that over the 11-year period from 1985 to 1995, Ted's mother and brother had sent him a total of $16,802.81, an average of $1,528 per year. There was nothing about the amount of that money or its source that implicated defendant as the Unabomber.

Nor was the government able to show any correlation between Mr. Kaczynski's receipt of funds from his family and the Unabom events. First, no information was provided that any particular Unabom event (or all the events) required a certain amount of funding. Indeed, the first eight of the sixteen Unabom events occurred prior to May 16, 1985, the date of the first check Ted received from his family, which would certainly suggest that there was no link between the Unabom events and the money sent Mr. Kaczynski by his family.

Second, the government showed no pattern between particular receipts of money and particular Unabom events. For example, paragraph 178 stated that Ted's first receipt of funds was a week after Unabom events 8 and 9, while paragraphs 180 and 181 stated that Ted received money "approximately one month" [in fact, 18 days] before Unabom event 15, three months before event 16, and five months before the mailing of the manuscript. This would also suggest that there was no link between the Unabom events and the financial support Mr. Kaczynski received from his family.

Paragraph 177 also stated that it was "of significance" that Mr. Kaczynski received $16,802.81, but made bank deposits "of a lesser amount." However, the affidavit never disclosed the amount of the difference between checks received and checks deposited, nor even suggested why it would be "of significance" that Ted happened to cash one or more checks, rather than depositing them into his account.

Finally, the government failed to disclose that Ted

had sought $7,032 out of the $16,802 that he had received from his family expressly for the purpose of paying medical bills. On March 23, 1996, Wanda had told the FBI that after her husband's death in 1990 Ted "mentioned that he was having some medical problems and that he needed money for medical bills," and that "the treatment was expensive." She further stated that, after she sent him the $7,032 check, he "thanked her for the money and sent her an itemized listing of the medical expenses." None of this information was disclosed in the affidavit. In addition, the FBI knew that Mr. Kaczynski had seen Dr. Goren, a cardiologist, for heart problems in 1991. (Affidavit, p. 82, para. 164.)

Thus, the fact that Ted had received financial support from his family over the years was irrelevant to the probable cause determination.

C. The Government Misstated Information, And Omitted Material Information, To Give The Misleading Impression That It Had Evidence That Theodore Kaczynski Traveled Out-Of-State Via Bus, And The Remaining Information In The Affidavit Regarding His Use Of Buses Was Meaningless As To Probable Cause

Paragraphs 168-69 stated:

> "168. Recent investigation has determined that public bus transportation exists which would enable an individual to travel from Lincoln, Montana to San Francisco or Oakland, California, and return. Rimrock Trailways buses depart once per day from Lincoln to both Missoula and Great Falls, Montana. From either of those cities, bus service is available to Helena, Montana, or from Missoula, to Butte, Montana. Rimrock Trailways buses depart southbound daily from Helena,

> Montana, beginning at 9:00 a.m. They travel south through Butte to Idaho Falls, Idaho, where connection is made with Greyhound Lines. From Idaho Falls, Greyhound proceeds to Salt Lake City, Utah, with connections available to the San Francisco Bay Area via Reno, Nevada and Sacramento, California.
>
> "169. Such travel from Helena takes an average of 25.5 hours to Sacramento, 28 hours to Oakland and 28.5 hours to San Francisco. Return trips take the same amount of time and can be started several times per day. It is also possible to travel from Missoula, Montana to Butte, Montana on Greyhound Lines (and then on to Idaho Falls) but that takes several hours longer than to starting from Helena." (Affidavit, pp. 83-84, paras. 168-69).

The information in these paragraphs added absolutely nothing to a probable cause determination. These paragraphs only showed that an individual may travel by bus from Lincoln, Montana, to major California cities via RimRock Trailways and Greyhound Bus Lines. As the federal investigators undoubtedly knew, Greyhound links most major cities via its bus lines. (See Appendix V, Greyhound Map). With smaller bus lines, such as RimRock, acting as "feeders" into Greyhound's bus lines, virtually every city in the United States is linked by bus with every other city. Without information connecting Mr. Kaczynski to a specific bus trip that was in some way connected to a specific Unabom event by date or location, this information was totally irrelevant. Likewise, the affidavit added nothing by stating that a bus trip from Lincoln to other California cities was estimated to take between 25 to 29 hours, in the absence of any information connecting Mr.

Kaczynski to a specific trip, which the affidavit did not attempt to provide.

Next, the affidavit provided information from three bus drivers, which combined to give the misleading impression that there was evidence that Mr. Kaczynski had traveled out-of-state by bus:

> "170. On March 15, 1996, Mark Lloyd Campbell, a bus driver for RimRock Trailways, identified a photograph of Theodore Kaczynski as that of a person he has had as a passenger between Lincoln and Missoula `three or four times' within the past year.
>
> "171. On March 16, 1996, Larry D. Peterson, a bus driver for RimRock Trailways, identified a photograph of Theodore Kaczynski as that of a person he had as a passenger between Lincoln and Missoula `four or five times' within the past year.
>
> "172. On April 1, 1996, Thomas L. Stell, a bus driver for RimRock Trailways, identified a photograph of Theodore Kaczynski as a person he has had as a passenger on the bus route between Idaho Falls, Idaho and Great Falls, Montana (passing through Helena) a number of times since Stell began working for RimRock in September, 1994. Stell specifically recalled seeing Kaczynski at the bus driver switch point in Butte `at least three or four times.'" (Affidavit, pp. 84-85, paras. 170-172).

Even if these paragraphs regarding Mr. Kaczynski's use of the bus in 1995-96 were entirely accurate, they added little, if anything, to a probable cause determination. The affidavit made no attempt to show that Mr. Kaczynski had traveled by bus on any particular date or to any particular location. It was totally irrelevant that a person had happened to travel by

bus, since most people have at one time or another. There was no information concerning Mr. Kaczynski's bus travel that tended to connect him in any way with any Unabom incident.

Further, much of the information attributed to these bus drivers was misleading, untrue, and presented in a fashion that was designed to give the false impression that there was evidence that Mr. Kaczynski traveled by bus from Lincoln to other out-of-state cities for unstated reasons, rather than using the bus to go to nearby Montana towns for supplies, groceries, banking, or other errands. In mid-March, 1996, Mr. Campbell and Mr. Peterson, RimRock bus drivers, reportedly told FBI agents that they each saw Mr. Kaczynski as a passenger on their buses a number of times between Lincoln and Missoula within the previous year. (Affidavit, p. 84, para. 170 (Mr. Campbell) ("three or four times"); para. 171 (Mr. Peterson) ("four or five times").) But the affidavit intentionally left out the information that Mr. Peterson saw Mr. Kaczynski only on the route <u>from</u> Lincoln <u>to</u> Missoula, and that Mr. Campbell saw him only on the return trip <u>from</u> Missoula <u>to</u> Lincoln. (Declaration of Larry Peterson, para. 4; Declaration of Mark Lloyd Campbell, para. 4.) This information -- omitted from the affidavit -- suggested that Mr. Kaczynski traveled by bus from Lincoln to Missoula and back -- not onward to other destinations, as the affidavit seemed to suggest.

Significantly, the FBI also knew -- but intentionally omitted from the affidavit -- other information

indicating that Mr. Kaczynski's trips to Missoula were only short trips for errands, from which he would return to Lincoln the next day. FBI agents learned from an interview with a neighbor, Dick Lundberg, that Mr. Kaczynski occasionally traveled by bus to Missoula for supplies, but that on each occasion he returned the next day. (Declaration of Dick Lundberg, para. 5.) Another Lincoln resident, Sherri Wood, also told the agents that Mr. Kaczynski would go to Missoula or Great Falls for supplies or groceries. (Declaration of Sherri Wood, para. 13.) The agents also knew that one reason Mr. Kaczynski had to travel to Missoula was that he had two bank accounts there. (Affidavit, p. 86, para. 174.) But this information from Mr. Lundberg and Ms. Wood was deliberately left out of the affidavit.

In addition, the affidavit provided other false and misleading information that inaccurately suggested that Mr. Kaczynski traveled out-of-state by bus. For example, the affidavit falsely stated that Mr. Stell, another bus driver, saw Mr. Kaczynski as a passenger a number of times on the interstate bus route between Idaho Falls, Idaho, and Great Falls, Montana, since September, 1994. (Affidavit, p. 84, para. 172.) According to the affidavit, Stell reportedly told FBI agents that he specifically remembered seeing Mr. Kaczynski at least 3 or 4 times at the bus driver "switch point" on that route, in Butte, Montana. (Id.) Since Butte serves as the connecting point where RimRock's Montana bus lines feed into Greyhound's national bus lines, this left the

impression that Mr. Kaczynski was observed in Butte en route to, or on his way back from, an out-of-state destination.

But Mr. Stell told the agents that although he remembered seeing Mr. Kaczynski on his bus several times during the previous year, he only specifically recalled him on the intra-state Missoula to Helena route. (Declaration of Thomas Stell, para. 4.) He did not tell the agents that he remembered seeing the defendant on the interstate Great Falls to Idaho Falls route (as stated in the affidavit), but only that it was possible that he had seen him there. (Id., at para. 7.)

The fact that Mr. Stell only remembered seeing Ted Kaczynski on the route from Missoula to Helena is consistent with other information FBI agents learned during their investigation. In particular, the agents knew that Mr. Kaczynski had a bank account in Helena (affidavit, p. 86, para. 174.), and that he had made a deposit in person in Helena on December 11, 1985. (Affidavit, p. 84, para. 167; see also Section III, supra.) Mr. Lundberg told the agents that he gave Mr. Kaczynski a ride a few times a year into Helena to buy supplies. (Declaration of Dick Lundberg, para. 3.) Lundberg also told the agents that when he gave Mr. Kaczynski a ride into Helena for supplies, Ted would return the next day. (Id., at para. 4.)

Likewise, the affidavit is false and misleading in the way it reported Sherri Wood's statements about Mr. Kaczynski's alleged out-of-state bus trips. The affidavit

stated:

> "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 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." (Affidavit, p. 85, para. 173.)

But the affidavit intentionally omitted the fact that Ms. Wood's statement that Mr. Kaczynski "hops" on a bus and visits "was in the context of telling the agents that Mr. Kaczynski traveled to Missoula or Great Falls for supplies or groceries and not that he traveled out of state." (Declaration of Sherri Wood, para. 13.) The affidavit was also inaccurate in stating that Ms. Wood reported that she believed that Mr. Kaczynski had gone back to the Chicago or Detroit area in the last two or three years. Ms. Wood did not tell the agents this because she did not know it to be true. (Id., at para. 14.) When the agents asked her whether Mr. Kaczynski had taken any out-of-state trips, Ms. Wood told them that Mr. Kaczynski had talked about taking a trip to Chicago and to visit his Mexican friend, but she also told them that she "did not know whether Mr. Kaczynski had ever taken these trips or any trips out of state." (Id., at para. 15.) By taking statements out of context, omitting material information, and falsely reporting Ms. Wood's statements, the affidavit

deliberately left the erroneous impression that there was evidence that Mr. Kaczynski traveled interstate by bus, to support an inference that he traveled by bus to mail or place Unabom devices in other cities.

Further, FBI agents deliberately omitted from the affidavit other information suggesting that defendant did not travel by bus, except to nearby Montana cities for supplies and other errands. FBI agents interviewed a number of Greyhound bus personnel at the Missoula bus terminal. From Missoula, Greyhound buses travel interstate to many major Western cities, including San Francisco, Sacramento, and Seattle, Washington. Although agents interviewed the station manager, at least two or three ticket agents, and approximately six Greyhound bus drivers, no one recognized Mr. Kaczynski's photo as a Greyhound passenger. (Declaration of Steve Hintz, paras. 4-5.)

This information suggested that Mr. Kaczynski's bus trips from Lincoln ended in Missoula or Helena, rather than continuing on to other more distant cities in other states. This was consistent with other information known to the government, but omitted from the affidavit. David Kaczynski told FBI agents that his brother "had a great aversion to travelling," which would make it likely that he would take only short, not long, bus trips. (Declaration of David Kaczynski, para. 4(A).) Indeed, David had explained that Ted had cancelled his planned 1985 trip to Texas to see David because of the strain he experienced in travelling. (Id., at

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para. 4(A).) Once again, David's statement to FBI agents was missing from the affidavit.

In short, FBI agents knew that Mr. Kaczynski occasionally traveled by bus or otherwise intra-state from Lincoln to Missoula, Helena, or other nearby cities for supplies, banking, and other errands. By omitting significant exculpatory material and providing false information, the affidavit deliberately gave the misleading impression that there was evidence that Mr. Kaczynski traveled out-of-state to other California cities, presumably in connection with Unabomber bombings.

D. The Fact That Theodore Kaczynski Stayed At A Hotel In Helena, Approximately 60 Miles From His Cabin, On Various Occasions Over 15 Years Was Irrelevant To The Issue of Probable Cause

Paragraph 165 stated that the affiant had reviewed "[i]nterviews and documents from a hotel in Helena, Montana (Park Hotel), where Theodore Kaczynski stayed overnight on 31 occasions between April 14, 1980 and October 4, 1995," while paragraph 167 stated that none of the hotel stays "are in conflict with dates of UNABOM incidents." (Affidavit, pp. 82-83, paras. 165, 167.)

Section J of the affidavit, entitled "Comparison of Theodore Kaczynski's Known Whereabouts with UNABOM Device Dates," contained the following paragraphs:

> "146. UNABOM Device #4 was mailed from the Chicago area on June 3,1980 to Percy Wood, then President of

> United Airlines. UTF investigation has determined that in a letter to David from Theodore Kaczynski, dated August 21, 1981, translated from Spanish to English, Theodore Kaczynski writes, `Last year I was absent for a large part of the summer.' The UTF has documented Theodore Kaczynski's stay at the Park Hotel, Helena, Montana, on April 14-18, 1980 and August 13-15, 1980. This would have allowed an opportunity for Theodore Kaczynski to travel to Chicago during his absence from Montana.
>
> "147. UNABOM Device #5 was placed at the University of Utah on October 8, 1981. Theodore Kaczynski stayed at the Park Hotel in Helena, Montana on November 9-10, 1981, which was within a month of the placement of Device #5.
>
> "148. UNABOM Device #6 was mailed from Provo, Utah on April 23, 1982. Theodore Kaczynski was living in Montana during this time frame and stayed at the Park Hotel in Helena on May 12-13, 1982, within a month of the mailing of Device #6." (Affidavit, pp. 77-78, paras. 146-148.)

The government tried to use Mr. Kaczynski's hotel stays to implicate him as the Unabomber, in two separate ways. Neither was successful.

First, it pointed out that none of the hotel stays was in conflict with the Unabom events. That is hardly surprising. Mr. Kaczynski stayed at the Park Hotel 31 times over 15-1/2 years, an average of twice a year. During that same period, there were 11 Unabom events. [3/] Given the lengthy period involved and the small number of hotel stays, it was unlikely that Mr. Kaczynski's hotel stays would exclude him

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3. It should be noted that the first three Unabom events predated defendant's first stay at the Park Hotel, and the last two events occurred subsequent to his last stay at the hotel.

from the Unabom events.

Second, the government tried to link particular hotel stays with particular Unabom events. Thus, it noted Unabom event 4 in Chicago on June 3, 1980 and Mr. Kaczynski's overnight stays at the hotel in Helena on April 14-18, May 12-14, and August 13-15, 1980 (para. 146); Unabom event 5 in Salt Lake City on October 8, 1981 and Mr. Kaczynski's stay at the hotel in Helena on November 9-10, 1981 (para. 147); and Unabom event 6 in Provo, Utah, on April 23, 1982, and Mr. Kaczynski's stay at the Park Hotel on May 12-13, 1982. However, these random coincidences prove nothing. They certainly do not show a pattern that would indicate that Ted Kaczynski was the Unabomber. First of all, the government could only find hotel stays to attempt to "link" Mr. Kaczynski to 3 of the 11 Unabom events during the relevant period. In addition, the claimed pattern as to the three was different, with one of the hotel stays weeks before an event and the other two weeks after an event.

In short, it is hardly surprising or suspicious that a man in a remote rural area would have occasion approximately twice a year to visit a much larger town 60 miles away, where, among other things, he did his banking and shopping. The fact that three of those visits over 15 years happened to be within 30 days before or after one of the UNABOM events, which occurred hundreds or thousands of miles away, is pure coincidence and adds nothing to the probable cause showing.

E. The Fact That Theodore Kaczynski

Had Been In Some Cities Associated With Unabom Events At Times Unrelated To Those Events Added Little To The Probable Cause Determination

Paragraph 102 stated:

> "David Kaczynski informed the UTF that he and his brother grew up in Chicago, Illinois (the locale of the first four bombings); his brother had obtained his doctorate from the University of Michigan (the location of a mail bomb victim targeted by the UNABOM subject); his brother had taught at the University of California at Berkeley (the site of two UNABOM bombings); and his brother had lived and worked in Salt Lake City, Utah (the location of several UNABOM events.)" (Affidavit, p. 61, para. 102.)

First, it should be noted that there was no evidence linking Mr. Kaczynski to several Unabom sites: Sacramento (placement of device No. 11, mailing of devices Nos. 13 and 14), Provo (mailing of device No. 5), Oakland (mailing of devices Nos. 9 and 16 and four Unabom letters), and San Francisco (mailing of device No. 15 and six Unabom letters). Furthermore, Mr. Kaczynski's presence in other Unabom cities was many years earlier than the Unabom events themselves. For example, Mr. Kaczynski attended the University of Michigan at Ann Arbor, Michigan from 1963-67 (para. 103); device No. 10 was mailed to Ann Arbor in 1985 (para. 42). Similarly, Mr. Kaczynski taught at the University of California at Berkeley in 1967-69 (para. 104); devices Nos. 7 and 8 were placed in Berkeley in 1982 and 1985, respectively (paras. 33, 36). Finally, according to the affidavit, Mr. Kaczynski had lived in Salt Lake City in 1972-73 (para. 140); device No. 5 was placed

in Salt Lake City in 1981, device No. 10 was mailed from there in 1985, and device No. 12 was placed there in 1987 (paras. 27, 42, and 48).

Thus, Mr. Kaczynski's connection with some of the cities associated with Unabom events, at times totally unrelated to those events, added little to the probable cause determination.

F. The Affidavit Contained Other Misstatements And/Or Omissions On The Issue Of Evidence Of Mr. Kaczynski's Opportunity To Commit The Unabom Crimes

1. Paragraph 146:

Paragraph 146 stated:

> "UNABOM Device #4 was mailed from the Chicago area on June 3, 1980 to Percy Wood, then President of United Airlines. UTF investigation has determined that in a letter to David from Theodore Kaczynski, dated August 21, 1981, translated from Spanish to English, Theodore Kaczynski writes, `Last year I was absent for a large part of the summer.' The UTF has documented Theodore Kaczynski's stay at the Park Hotel, Helena, Montana, on April 14-18, 1980, May 12-14, 1980 and August 13-15, 1980. This would have allowed an opportunity for Theodore Kaczynski to travel to Chicago during his absence from Montana." (Affidavit, pp. 77-78, para. 146.)

The government stated that "[t]his would have allowed an opportunity for Theodore Kaczynski to travel to Chicago during his absence from Montana." (Emphasis added.) Contrary to the government's statement in the affidavit, there was no evidence that Mr. Kaczynski was absent "from Montana" that summer, as opposed to merely absent from his cabin in Lincoln.

Furthermore, the government's suggestion that Mr. Kaczynski had traveled to Chicago in 1980 was contrary to information the FBI had received from his mother that he had never visited Chicago after he returned to Montana in 1979 -- information not disclosed in the affidavit.

2. Paragraph 149

Paragraph 149 stated:

> "There were four UNABOM Devices during 1985, the UNABOM Subject's most active year. UNABOM Device #9 was mailed from Oakland, California on May 8, 1985. UNABOM Device #8 was found at Cory Hall, University of California, Berkeley on May 15, 1985, but witnesses reported first observing it several days earlier. UNABOM Device #10 was mailed from Salt Lake City on November 12, 1985. UNABOM Device #11 was placed outside Rentech Computer Rental, Sacramento, California on December 11, 1985." (Affidavit, p. 78, para. 149.)

Paragraph 150

Paragraph 150 stated:

> "From a review of Theodore Kaczynski's letters mailed to his brother and furnished to the UTF, it was determined that Theodore Kaczynski had planned to visit David at David's cabin in Alpine, Texas in 1985. By letter dated February 10, 1986, he canceled the trip stating, "Well, I can't come to see you after all. I am extremely sorry to inconvenience you with all these changes of plans. All I can say is that these changes of mind are not frivolous and arbitrary - they are due to changes of circumstances. There is more to this than you realize." (Affidavit, p. 79, para. 150.)

The government tailored its quotation from Mr. Kaczynski's letter to end with the sinister-sounding "There is more to this

than you realize." If the government had been candid with the judge, it would have extended the quotation from the letter to include the next few sentences, which would have eliminated any sinister connotation:

> "The proximate cause of this latest change of plans is that those jagoffs changed their minds about when they are going to do that logging. We had a lot of snow recently and it seems they're too sissy to work in the snow. So they're going to log when the snow goes down, whenever that may be. I had timed my trip to coincide with the logging. Now, I have some things that I have to get done. I don't know how much noise they will be making for how long, but if, as I fear, its going to be several weeks of roaring and grinding machinery, it will be unendurable--especially in view of what that noise signifies--and I will have to go away somewhere. So that means I will have to get as much as possible done now, while I have the chance. Once again, I'm extremely sorry about all this."

Thus, if the government had not tailored its quotations from Mr. Kaczynski's letter, it would have been clear that the fact that Ted planned to visit his brother sometime in 1985 and changed his plans for an innocent reason added absolutely nothing to the probable cause equation.

V.

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

A. "You Can't Eat Your Cake And Have It Too" Is The Earlier And More Logical Version Of The Proverb And Is Commonly Used.

In a section entitled "Additional Findings by the UNABOM Task Force," the affidavit states:

> "199. In paragraph 185 of the UNABOM Manuscript (Attachment 2), it is stated `...well, you can't eat your cake and have it too.' In a letter signed by Theodore Kaczynski, to his mother Wanda Kaczynski, date unknown, Theodore Kaczynski compares `...the increase in the complexity of our social organization that actually make necessary the erosion of privacy and freedom. We will be sacrificing some of the materialistic benefits of technology, but there just isn't any other way. We can't eat our cake and have it too.'
>
> "200. It is noted by your affiant that the common use English Language phrase is, `You can't have your cake and eat it too!'" (Affidavit p. 93, paras. 199-200.)

Contrary to the affidavit's assertions, the proverb as written in the Unabom manuscript and the letter to Wanda Kaczynski, is the first and the correct version of the saying. The proverb first appeared in Latin circa B.C. 194, when the dramatist, Titus Maccius Plautas wrote in Trinummus (Act II, Scene IV, Line 414), "Non tibi illud apparere si sumas potest". Bonnell Thornton translated this line from Trinummus as "You cannot eat your cake and have it too" in Comedies of Plautas (1769).

Even before Thornton's literal translation of the proverb, the phrase was used in a number of political, satirical and religious statements. In The Size, G. Herbert, referring to the church's involvement in government, asked: "Woulds't thou both eat thy cake and have it?" John Heywood labeled the phrase a "Proverbe" and included it in his work titled "Proverbes" (1546) as "Would yee both eat your cake and have your cake?" Other political satirists that have used the phrase include Davies, Scourge of Folly (no. 271)(1611), "A man cannot eat his cake and haue it stil"; Swift, Polite Conversation I.90 (1738), "She was handsome in her Time; but she cannot eat her Cake; and have her Cake"; and Trollope, Is He Poppenjoy? I.viii (1878) "You can't eat your cake and have it too".

Modern usage of the proverb in its correct and more logical form can be found in M. Drabble, Middle Ground 159 (1980), "Judith cannot eat her cake and have it." (See also William Safire, "Unabom(b)er; to `b' or not to `b'?", On Language, Houston Chronicle, June 2, 1996.) In this article, Safire states:

> "Correct usage of a much-abused proverb first recorded in the 16th century becomes evidence...(Referring to the references in the UNABOM Manuscript and the letter to Wanda Kaczynski)...In both instances, the having and the eating were in correct order. Many people err in saying, `You can't have your cake and eat it, too,' because you can - first you have it, and then you eat it. The impossible is the other way around; to `eat your cake and have it' is the absurdity that makes the point. Both the Unabomber's creed and the

> Kaczynski letter had it right, which is more than can be said for half the quoters of the proverb."

(Appendix II, pp. 20-21.) In addition to being the more logical and the first form of the saying, "You can't eat your cake and have it" is commonly used today. A variety of examples of the common usage of "You can't eat your cake and have it too" are as follows:

1. A financial column in the New York Times warns American investors of the risks involved in investing in Mexican treasury securities:

> "`These investors have been extremely lucky until now,' said Rogelio Ramirez de la O, an economist and consultant in Mexico City. `But there is a point at which **you cannot eat your cake and have it, too**. You cannot have high rates of return and not have a devaluation risk.'"

Louis Uchitelle, "High Mexican Interest Rates Are Luring Wall Street Cash", The New York Times, April 22, 1993, A1. (Appendix II, p. 2.)

2. A September 28, 1992 Washington Post article humorously applies "old sayings" to a recent U.S. economy:

> "I'm searching for an old saying that might give me some guidance. `The race is not to the swift' comes to mind. But I don't want to seem envious. **`You can't eat your cake and have it too'** is a comforting thought, but millions of Americans are disproving it every day."

Lawrence G. Proulx, "If You Ask Me; Weigh Your Words Carefully", The Washington Post, September 28, 1992, B5. (Appendix II, p. 5.)

3. The Connecticut Law Tribune tells the story of

the Steinbrenner fortune accumulated through business and baseball:

> "The irony is delicious. Steinbrenner's toy, the Yankees, is helping to bail out his family business, which gave him the money to buy the Yankees in the first place. Plus, of course, his Yankees ownership has made Steinbrenner a household name. Who says? `**you can't eat your cake and have it, too?**'"

Allan Sloan, "Steinbrenner's Fortunes: Yankees Soar, Ship Co. Sinks", The Connecticut Law Tribune, January 20, 1992, at 31. (Appendix II, pp. 7-8.)

4. Commenting on America's political alliances in 1981 in reference to the Middle East conflict, a letter addressed to the Economist states:

> "SIR--I have always wondered whether the wise English saying, `**You can't eat your cake and have it**', applies to the Americans and their allies. They seem to derive the benefit of Arab oil, and the benefit of almost all the recycled proceeds of sale; yet they are unwilling seriously to do any meaningful things as will help resolve the conflict between the Arabs and the Israelis in the Middle East."

Ghana Accra, "Arabs and Africans", The Economist, June 20, 1981, at 6. (Appendix II, p. 9.)

5. On August 11, 1996, an article about Chris Unger, a "onetime All-Bergen County player from Bergen Catholic", appeared in the Sports Section of The Record. At age 19, Mr. Unger decided to pursue his undergraduate studies at Princeton University rather than pursue a career as a professional soccer player. The story goes on to state:

> "But anyone subscribing to the `**You can't**

> **eat your cake and have it too**' theory had better not include Unger. Today he'll probably be in the MetroStars lineup when they take on the Colorado Rapids in Denver."

Bob Kurland, "Metro Gives Up His Suit and Tie For A Uniform", The Record, August 11, 1996, at S13. (Appendix II, p. 10.)

6. In a March 10, 1996 feature column, titled Notes & Queries, this letter is printed in response to Columnist Joseph Harker's question:

> "What's the point of having your cake if you are not able to eat it?
>
> "Readers Response: The original axiom was `**you cannot eat your cake and have it too**, which made perfect sense.'... Its present form seems to come from an American habit of changing a phrase into something quite meaningless."

Joseph Harker, Manchester Guardian Weekly, March 10, 1996, at 25. (Appendix II, p. 12.)

7. On September 16, 1994, Alan Brien reviews a book by Kingsley Amis entitled You Can't Do Both:

> "The `both' that Robin, the hero in Kingsley Amis' new novel, is regularly advised he cannot do is a variation on that knackered old stager about not being able **to eat your cake and have it too**--an instruction I have always thought barely worth inflicting on anyone over the age of four."

Alan Brien, Book Reviews, New Statesman & Society, September 16, 1994, at 37. (Appendix II, p. 14.)

8. In a September 3, 1994 letter to the editor, a reader is criticizing an attempt to have religion offered as an elective in public schools:

> "If we can't have Christian prayers in schools, then why should our tax dollars pay for Sikh or any other religious instruction in public schools? ... Well, excuse me, wasn't taking religion out of schools precisely what the fight was about in the first place? **You can't eat your cake and have it, too**!

"I'm Not Racist, Just Plain Fed Up," The Toronto Star, September 3, 1994, B3. (Appendix II, p. 16.)

9. An editorial looking back at Seattle news 50 years ago discusses War Food Administrator Marvin Jones' action of removing certain food items from the ration list in 1944:

> "War Food Administrator Marvin Jones loses no time in telling everybody that his measure of liberalization is only temporary. `Because we have plenty of food now,' says Mr. Jones, `it does not necessarily follow that we will have plenty later.'
>
> "What Mr. Jones apparently is trying to say is that **you can't eat your cake and have it**. Without coming right to the point, he seems gravely to doubt the possibility of baking another cake."

"Looking Back", The Seattle Times, May 7, 1994, at A9. (Appendix II, p. 18.)

B. The Comparative Analysis of Theodore Kaczynski's Writings And The Unabom Letters And Manuscript Is Unreliable, Incorrect, And Misleading.

In a section entitled "A Comparative Analysis: Theodore Kaczynski's Essay and Letters and the UNABOM Manuscript," the affidavit states:

> "110. The affiant has consulted with and reviewed the findings of FBI Supervisory Special Agent James R. Fitzgerald, who has directed the comparative analysis of all of Theodore Kaczynski's correspondence and

documentation in a side-by-side comparison of the UNABOM letters and 56 page manuscript entitled Industrial Society and Its Future. Through this study SSA Fitzgerald has informed the affiant that the content, context and writing style of Theodore Kaczynski's 6,374 word, 23-page, essay (attachment 3) and the 34,649 word UNABOM manuscript (attachment 2) are very similar. Some of those similarities are as follows:

"111. One of the 47 paragraphs in the 1971 essay, 35 of the paragraphs can be correlated by subject matter with paragraphs in the UNABOM manuscript.

"112. The comparative analysis provides over 160 examples of similarities including the following:

"Theodore Kaczynski wrote in his 1971 essay (see attachment 3) regarding his objection to Perry London's view in his book Behavioral Control, `I simply find the sphere of freedom that he favors too narrow for me to accept.' The UNABOM manuscript states in paragraph 93, `We are going to argue that industrial-technological society cannot be reformed in such a way as to prevent it from progressively narrowing the sphere of human freedom....' In paragraphs 111, 128 and 133, the UNABOM manuscript contains references to `...narrowing our sphere of freedom....narrows our sphere of freedom.....invades our sphere of freedom....'

"In Theodore Kaczynski's 1971 essay, he states: `Direct physical control of the emotions via electrodes and "chemitrodes" inserted in the brain.' Paragraph 158 of the UNABOM manuscript states: `It presumably would be impractical for all people to have electrodes inserted in their heads.'

"In Theodore Kaczynski's 1971 essay, he states: `Various electronic devices for surveillance. These are being used. For example, according to newspaper reports, the police of New York City have recently instituted a system of 24 hour television

surveillance over certain problem areas of the city.' Paragraph 147 of the UNABOM manuscript states: `...there are the techniques of surveillance. Hidden videocameras are now used to collect and process vast amounts of information.'

"In Theodore Kaczynski's 1971 essay, he states: `...Think of all the misery suffered as a result of Victorian repressions, sexual perversions, frigidity, unwanted pregnancies, and venereal disease.' Note two of the UNABOM manuscript reads: `During the Victorian period many oversocialized people suffered from serious psychological problems as a result of repressing or trying to repress their sexual feelings.'

"In Theodore Kaczynski's 1971 essay, he states: `Propaganda and image-making techniques. In this context we must not neglect the role of movies, television, literature, which commonly are regarded either as art or as entertainment, but which often consciously adopt certain points of view and thus serve as propaganda.' Paragraph 73 of the UNABOM manuscript states: `...Propaganda is not limited to "commercials" and advertisements ...the content of entertainment programming is a powerful form of propaganda.'

"In Theodore Kaczynski's 1971 essay, he states: `...we can assume that people will live more and more int he world of mass entertainment.' Paragraph 156 of the UNABOM manuscript states: `...yet mass entertainment is a means of escape and stress-reduction on which most of us have become dependent.'

"113. There are additional similarities between the writing of Theodore Kaczynski and documents related to the UNABOM events. In a handwritten and undated rough draft written by Theodore Kaczynski provided to the UTF by Wanda Kaczynski on March 23, 1996, Theodore Kaczynski states: `...Modern technology has led to the concentration of economic and political power...by Big Business and Big Government.' In note 13 of the UNABOM manuscript, the UNABOM subject

states: `...The conservatives are... exploiting his resentment of Big Government to promote the power of Big Business.'

"114. Other examples of similarities include the same uncommon (and in the last case inaccurate) spellings of words used in both categories of documents, such as `analyse' versus `analyze'; `wilfully' instead of `willfully'; licence instead of license and `instalment' rather than `installment.'

"115. A summary of similarities between documents associated with Theodore Kaczynski and documents associated with UNABOM events is contained in attachment 4 to this affidavit. Attachment 4 was prepared by SSA Fitzgerald in this investigation.

"116. Many letters written by Theodore Kaczynski to his brother David and mother Wanda discussed his wilderness lifestyle. These discussions of Theodore Kaczynski's lifestyle are consistent with the description of Theodore Kaczynski's lifestyle provided to the UTF by David and Wanda Kaczynski, as well as Butch Gehring, Theodore Kaczynski's neighbor in Montana and Dick Lundberg, contract mail carrier for the `stage route,' in Lincoln, Montana and on Stemple Pass Road, Montana. These discussions of Theodore Kaczynski's lifestyle are also consistent with reference to the UNABOM manuscript.

"117. The following are examples:

"In a letter to David Kaczynski dated August 28, 1979, Theodore Kaczynski says: `...by wilderness I meant a place where the nearest neighbor would be 5 miles away...' In paragraph 55 the UNABOM manuscript says: `many nuclear families lived by choice in such isolation; having no neighbors within several miles.

"In a letter to David dated November 17, 1982, Theodore Kaczynski says: `...partial destruction of the ozone layer in the atmosphere, which is caused by releases of fluorcarbons...' and in a letter dated September 21, 1988, says: `They predict

> that in the coming years there will be increasing more drought...because of the greenhouse effect.' Paragraph 169 of the UNABOM manuscript says, `No one knows what will happen as a result of ozone depletion, the greenhouse effect and other environmental problems...'
>
> "In a letter to Professor Sherman J. Preece, Department of Botany, University of Montana, Missoula, dated July 23, 1984, Theodore Kaczynski writes, '...primitive people...may have had some elaborate process for making edible, as with certain other plants.' Theodore Kaczynski refers to the `edibility of the roots' in several letters. Paragraph 198 of the UNABOM manuscript says, `When primitive man needed food he knew how to find and prepare edible roots...
>
> "In a letter to David dated August 21, 1981 Theodore Kaczynski writes, `...hunting and gathering wild fruits...killing an animal for its meat.' In paragraph 75 of the UNABOM manuscript, `...hunting not for sport...but to get meat that is necessary for food.'" (Affidavit, pp. 64-67, paras. 110-117.)

The FBI's analysis focused on the similarities between the word selection and word usage of Mr. Kaczynski in the T-Documents (writings of Mr. Kaczynski provided to the FBI by David and Wanda Kaczynski) and those of the author of various U-Documents (writings of the Unabomber). This analysis fails in a number of ways.

First, the FBI analysis relied on double use of content-linked word choices in the T and U-documents. (Declaration of Robin Lakoff, section 7.) In many instances, the FBI analysis alleges similarities between passages in the T-documents and the U-documents of two types, where in fact only one type of similarity exists. In each instance, the

similarity in content necessitates similarity in wording or diction. Paragraph 112 of the Affidavit contains several examples of this type of "double counting", e.g., Mr. Kaczynski's essay refers to "electrodes and chemitrodes," and the Unabom manuscript refers to "electrodes"; the essay refers to "electronic devices for surveillance," and the Unabom manuscript refers to "techniques of surveillance"; the essay refers to "propaganda and image-making techniques," and the Unabom manuscript to "propaganda"; and the essay and Unabom manuscript both refer to "mass entertainment". [4/] In each instance, similar words are used to discuss similar topics. These terms are so commonplace, particularly if one is discussing technology and social problems, that using them to establish common authorship is inappropriate and unreliable. A comparison of this sort is absolutely meaningless.

Second, the FBI relied on a comparison of words that are very common in daily usage and would be expected to appear in any number of English documents. [5/] For example, the FBI relied on the use of such words or phrases as "stuff," "more or

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4. Moreover, many of these words and phrases can be found in every day language. For example, a Nexis search turned up the phrase sphere of freedom in 47 news articles, including the New York Times, Chicago Tribune, Washington Post, Newsweek, U. S. News and World Report, and a transcript of "This Week With David Brinkley." (Appendix II, pp. 28-52.)

5. In addition to the fact that most of the words are very common, as noted later, many of these words were taken from quotations, and are not Mr. Kaczynski's own word selection and usage.

less," "gotten," "OK," [6] "presumably," "at any rate," "thereabouts," and "clearly," all of which are remarkably common words. (Lakoff Declaration, section 8.) Many of the other words relied on by the FBI are common in more formal or scholarly writings, e.g., "propaganda," "argue," "in practice," "purpose," "moreover," and "on the other hand". (Lakoff Declaration, section 9.)

Third, the FBI relied on claimed word similarities where the words in question are actually used in different senses or in different contexts. For example, the FBI erroneously compared the words "hunting," [7] "collective," "superfluous," "animal," "wilderness," "voluntary/voluntarily," and "behind" where the words are clearly used in very different contexts in the T and U-documents. (Lakoff Declaration, section 10.)

Fourth, the FBI analysis relied on claimed idiosyncrasies in spelling where the particular spellings are actually a common secondary form, as listed in dictionaries and

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6. The use of "OK" is so commonplace that a Nexis search revealed seventy-five instances of the use of "OK" in the headlines of newspapers across the country during the four-day period between February 23, 1997 and February 27, 1997. The use of the form "OK" also comports with Associated Press guidelines for its use. (Appendix II, pp. 22-27.)

7. The use of the word "hunting" suffers from an additional pitfall, as the quote contained in paragraph 117, which includes the word "hunting," appears in the original in Spanish. Accordingly, the quote from the August 12, 1981 letter, including the word "hunting," appears only in the FBI's translation of the letter, T-7.

manuals of English usage. (Lakoff Declaration, section 11.) For example, "wilfully," "analyse," and "licence" are the secondary English spellings for those words and the preferred spelling in Fowler's A Dictionary of Modern English Usage (2d ed. 1965).

Fifth, the FBI analysis ignored important dissimilarities between the T-Documents and the U-Documents which tended to show lack of common authorship. (See Appendix I, "Critique of FBI Analysis of The T-Documents and The U-Documents" (hereinafter "Critique"), pp. 8-12.) While the FBI noted similarities in spellings of various words (Affidavit, para. 114), it failed to note several inconsistent spellings between the T-documents and U-documents. For example, several T-documents contain the spelling "clorate," where a U-document contains the spelling "chlorate"; the essay contains "skilfully," while the Unabom manuscript spelling is "skillfully"; and several T-documents contain the spelling "guarantee" (used as a verb), while the Unabom manuscript spelling is "guaranty" (also used as a verb).

Split infinitives appear frequently in the T-documents, and only once in the Unabom manuscript. (Critique, pp. 10-12.) In addition, the manuscript used a single hyphen to set off text by dashes, while Mr. Kaczynksi's essay used two hyphens to set off text by dashes.

Sixth, the FBI's analysis relied on word usages that it attributes to Mr. Kaczynski when, in actuality, Mr. Kaczynski was quoting from other sources. (Critique, pp. 13-

33.) For example, reliance on the word "stuff" (Attachment 4, p. 1, Box 3) is meaningless, not only because of its common usages, but also because the T-document that contains the word quotes it from a book. The word "presumably" (Attachment 4, p. 2, Box 1) is taken from a quote in a T-document but not in a U-document. Likewise, the words "propaganda" (Affidavit, para. 112, and Attachment 4, p. 4, Box 1), "conjecture" (Attachment 4, p. 17, Box 4), "OK" (Attachment 4, p. 18, box 7), "exclusive" (Attachment 4, p. 23, Box 3), "silly" (Attachment 4, p. 24, Box 2), "Big Business and Big Government" [8/] (Affidavit, para. 113, and Attachment 4, p. 46, Box 3) are quotes taken from various books and are not words or phrases independently selected and used by Mr. Kaczynski.

The FBI also relied on word usages that it attributes to Mr. Kaczynski that are actually from quotations attributable to his family members. (Critique, pp. 26-32.) For example, in several instances, Mr. Kaczynski quoted from portions of letters that his brother had previously written to him. Attachment 4 to the Affidavit takes a portion of that quotation, attributes it to Mr. Kaczynski as his personal

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8. Not only are the terms "Big Business and Big Government" not in the defendant's own words, the comparison set forth in paragraph 113 of the Affidavit suffers from an additional shortcoming. The use of the terms "Big Business and Big Government" are so commonplace as to provide no indication of unique authorship. A Nexis search of the use of the words "Big Business and Big Government" revealed 765 instances of the use of the terms, with the first instance of use, beginning in August, 1954, with an opinion poll regarding average citizens concerns about big business and big government, and ending with an entry on February 23, 1997.

usage, and compares it to the language used in the Unabom manuscript. (Id.) Similarities in quotations are inconclusive at best because the similarity does not originate with the author(s) or the text(s) under examination and is therefore irrelevant to their identity. (Lakoff Declaration, section 12.)

In addition to attributing to Mr. Kaczynski words that were quotations from other English sources, the FBI analysis relied on words and phrases from both Mr. Kaczynski's English translations of Spanish materials, as well as from the FBI's own translations of materials originally written by Mr. Kaczynski in Spanish. Indeed, the FBI analysis attributed to Mr. Kaczynski words for which the FBI chose the translation, even where the translation is subject to question. (Critique, pp. 47-71.) Similarities in translations are inconclusive at best because the similarity could be the result of word selection on the part of the translator, rather than of the writer of the original document. (Lakoff Declaration, section 12.)

Seventh, a number of the words attributed to Mr. Kaczynski in the T-documents and to the Unabomber in the U-documents, simply do not appear in either the T-documents or U-documents. (Critique, pp. 71-74; Lakoff Declaration, section 13.)

In summary, the FBI analysis of the T-documents and U-documents was superficial, incorrect, misleading, and unreliable.

II

C. Any Connection Between Theodore Kaczynski And Some Books And Magazines Cited In The Unabom Manuscript Was Tenuous, At Best

Under the heading, "Further Comparative Analysis Between UNABOM Manuscript and Theodore Kaczynski's Letters," the affidavit stated:

> "118. The UNABOM manuscript (attachment 2) specifically refers by title to four books: The Ancient Engineers by L. Sprague DeCamp; Chinese Political Thought in the Twentieth Century, by Chester D. Tan; The True Believer, by Eric Hoffer; and Violence in America: Historical and Comparative Perspectives, by Roger Lane and edited by Hugh Davies Graham and Ted Robert Gurr. In the UNABOM manuscript, Note 16 has quotes from Chapter 12, pages 476-478 of Violence in America. The UNABOM subject sent a letter and a copy of his manuscript to `Scientific American' on June 24, 1995. The UNABOM subject referenced an article in the August, 1993 issue of `Scientific American' by Russell Ruthen, entitled, `Strange Matters: Can Advanced Accelerators Initiate Runaway Reactions?", and a July, 1993 article entitled `Risk Analysis and Management,' by M. Granger Morgon. The UNABOM manuscript made reference to articles in two magazines, `OMNI' and `Scientific American'.
>
> "119. In a letter from Theodore Kaczynski to David Kaczynski dated September 2, 1986, Theodore Kaczynski makes reference to `L. Sprague DeCamp's The Ancient Engineers'.
>
> "120. In an interview with the FBI on February 17-18, 1996, David Kaczynski advised that the Kaczynski family subscribed to `Scientific American' at least up until the time that he went to college. Moreover, `Scientific American' was around the house and readily available to family members. In Theodore Kaczynski's application for admission to Harvard College dated October 22, 1957, question "G" requests the applicant to cite examples of current reading, to include books,

magazines and newspapers. Theodore Kaczynski cites `Scientific American' to answer this question. UTF investigators interviewed Dr. Carolyn C. Goren, a cardiologist in Missoula, Montana, who has examined and treated Theodore Kaczynski. Dr. Goren provided several letters written to her by Theodore Kaczynski. In one of the letters dated May 26, 1991, Theodore Kaczynski references an article entitled `Aspirin' in the January, 1991, issue of `Scientific American.'

"121. On March 24, 1996, Wanda Kaczynski, Theodore's mother, provided a letter authored by Theodore dated December 14, 1969, and addressed to the editor of the Chicago Daily News. Paragraph 2 of the letter began, `The stricter gun control laws recommended by the U.S. Commission on Violence are a case in point.'

"122. The affiant notes that in 1968, President Lyndon Johnson formed a commission to address the growing problem of violence in America. This commission, the National Commission on the Causes and Prevention of Violence, headed by Milton Eisenhower, tasked a group of scholars to research the history and causes of violence in America. One of the members of this Commission was Eric Hoffer. James Q. Wilson, a Harvard Professor, was on the Commission's Advisory Committee. The scholars produced a report, The History of Violence in America, Historical and Comparative Perspectives, which entailed a thorough history of violence in the United States. This report was submitted to the Commission in 1969. Based on this report and others submitted by other groups working for the Commission, the Commission issued a number of recommend-tions to include the initiation of some sort of Federal gun control. These recommendations were reported in the New York Times during the Summer, Fall and Winter of 1969. Theodore Kaczynski's reference to the U.S. Commission on Violence and stricter gun control suggests that he read The History of Violence in America, Historical and Comparative Perspectives, another one of the four books referenced by the UNABOM

subject in the UNABOM manuscript." (Affidavit, pp. 68-70, paras. 118-122.)

First of all, it is important to recognize that, of the four books cited in the manuscript, there was no claimed connection between Mr. Kaczynski and two of the books, Chinese Political Thought in the Twentieth Century and The True Believer; and, of the two magazines cited, there was no claimed connection between Mr. Kaczynski and one, "OMNI."

As to the other magazine cited, "Scientific American," the only evidence was that Ted had read the magazine prior to entering college in 1957 and had referenced an article from it, entitled "Aspirin," in a 1991 letter. This was the slimmest of connections. There was no evidence that Mr. Kaczynski had any connection to the 1993 and 1995 issues of "Scientific American" referred to in the Unabom manuscript, of which more than 600,000 copies each were issued. (Declaration of Leigh Opferman, para. 2.)

As to the two books, the evidence was that Mr. Kaczynski had made reference to The Ancient Engineers in a 1986 letter. This again was a slim connection, since this book, first published in 1969, was widely read and is listed among the "greatest written works" in Volume 5, The Best in Science, Technology and Medicine, The Reader's Advisor (R. R. Bowker 1994), along with works by Aristotle and Euclid.

As to the other book, the affidavit concluded:

> "Theodore Kaczynski's reference to the U.S. Commission on Violence and stricter gun control suggests that he read The History of Violence in

> America, Historical and Comparative Perspectives, another one of the four books referenced by the UNABOM subject in the UNABOM manuscript." (Affidavit, p. 70, para. 122.)

The suggestion grossly exaggerated the significance of a single sentence in defendant's 1969 letter. First, Mr. Kaczynski's letter referred to "the U.S. Commission on Violence," when the name of the entity was "the National Commission on the Causes and Prevention of Violence," which suggested that Mr. Kaczynski's familiarity with the Commission was quite limited.

Second, the quotations in the manuscript were simply not comparable to the single reference in Mr. Kaczynski's letter. The quotations in the manuscript were from a report submitted to the Commission by several scholars, which concerned the effect of the industrial revolution on personal freedom in the United States in the nineteenth century (Manuscript, note 16).

On the other hand, Mr. Kaczynski's letter merely cited the recommendations of stricter gun control laws made by the Commission itself, recommendations which were not part of the scholars' report and which the affidavit concedes were the subject of considerable newspaper coverage in 1969. Reading a current newspaper account of a recommendation by the Commission in 1969 simply does not equate with citing a separate report to the Commission on a different subject, twenty-six years later. Mr. Kaczynski's letter only suggested that he was aware of the report's ultimate recommendation, which had been widely disseminated in the press -- not that he had read the report

itself, as the author of the Unabom manuscript obviously had.

Furthermore, the government failed to disclose the fact that experts/scholars contacted by the FBI had stated that the books cited in the Unabom manuscript were fairly common, as opposed to being esoteric or unique. The FBI contacted approximately 40 experts/scholars and asked them to read the UNABOM manuscript and to comment on the books cited therein. Upon information and belief [9/] the experts/scholars told the FBI that the books were fairly popular, not esoteric or unique. For example, a professor of sociology at Columbia University told the FBI that the books cited were fairly standard, nothing esoteric or outlandish, the type of books college students may read as part of their undergraduate work. (Declaration of Harry M. Ermoian, para. 4(d).) A professor of psychology at the University of California, Davis told the FBI that The True Believer was a common book and that none of the cited books was unique or esoteric. (Id., at para. 4(b).) A professor of sociology at the University of California, Davis, told the FBI that he was familiar with The History of Violence in America:

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9. The government provided the defense a list of the experts/scholars contacted by the FBI. The defense then asked for copies of any written reports submitted to the FBI and/or FBI written memorializations of oral reports provided. The government denied the request. The defense then contacted many of the experts/scholars on the list and, in the case of approximately 25, obtained written releases authorizing the FBI to release the requested materials. The defense sent the releases to the government with a renewed request for the materials, which was again denied. Thus, the information contained herein was obtained directly from the experts/scholars.

Historical and Comparative Perspectives and with The True Believer and that they were the type of materials that would be familiar to someone in sociology. (Id., at para. 4(a).)

If the government had provided this information to the judge, it would have been clear that the books cited in the manuscript were subject to wide exposure and that Mr. Kaczynski's purported limited connection to two of the four was essentially meaningless on the issue of probable cause.

D. The Government Made Material Omissions Regarding Its Claimed Scholarly Analysis Of The Unabom Manuscript

In a section entitled, "Scholarly Analysis of the UNABOM Manuscript," the affidavit stated:

> "125. Your affiant has reviewed the opinions expressed by a number of scholars and professional educators regarding their own evaluations of the UNABOM manuscript and associated UNABOM correspondence. None of these individuals had access to Theodore's [sic] Kaczynski's identity as a suspect nor to any of his writings. One individual (whose identity is known to the UTF) contacted the UTF and stated that he is familiar with The Technological Society, by Jacques Ellul, and that he believed the UNABOM subject has been influenced by this book that was popular in 1964. David Kaczynski advised investigators that around the 1971-72 period, the book by Jacques Ellul, The Technological Society, became his brother's `bible'. In a letter from Theodore Kaczynski to his brother David, postmarked August 21, 1981, Theodore Kaczynski refers to Jacques Ellul and discusses Ellul's philosophy.
>
> "126. Another individual, who is a doctor and a holder of a PhD (whose identity is known to the UTF), contacted the UTF and opined that the UNABOM manuscript was authored by an individual that was very familiar with and even paraphrased ideas

> from two books, In Defense of Elitism by William A. Henry, III (1994) and Behavioral Control by Perry London (1969). Your affiant notes that Theodore Kaczynski cites Jacques Ellul's The Technological Society and Perry London's Behavioral Control beginning on page 10 of his 23-page essay (attachment 3), and devotes several pages to London's philosophy. Perry London, on page 128 of his book Behavioral Control refers by name to University of Michigan Professor James McConnell. Professor McConnell was injured by a UNABOM mail bomb that was mailed from Salt Lake City, Utah, on November 12, 1985." (Affidavit, pp. 71-72, paras. 125-126.)

As to the individual referred to in paragraph 125, there were two significant omissions. First, the FBI had no evidence that the individual was a "scholar" or "professional educator," as stated in the affidavit. The FBI report summarizing the information provided by the individual stated that the individual was "unknown" to the FBI. Second, the government omitted the further information -- provided by that individual -- that the book The Technological Society by Jacques Ellul "was popular in 1964 and has received attention in the academic community since then." The government similarly omitted information received from the experts/ scholars contacted by the FBI, which confirmed the individual's statement regarding the popularity of Ellul's book. For example, one expert/scholar had told the FBI that she was very familiar with Ellul's works, that they were widely read in the late 1960's, most frequently by college students, and were very popular in general. (Declaration of Harry M. Ermoian, para. 4(c).) The expert/scholar's evaluation of the popularity of

Ellul's book is confirmed by its listing as one of the most influential written works in the area of science and technology in The Reader's Advisor (R. R. Bowker 1994).

As to paragraph 126, there was no evidence showing any connection between Mr. Kaczynski and one of the books cited by the individual providing information to the FBI, i.e., In Defense of Elitism by William A. Henry, III. Moreover, the individual who opined that the author of the manuscript was familiar with the two books made that statement in the context of providing a detailed profile of the suspect. The individual was known to the FBI as an expert: he was a mental health consultant to the Baltimore County Crisis Negotiation Team and the Baltimore County Police Department's Psychological Services. The government failed to disclose in the affidavit the details of the profile provided by the expert, almost none of which matched the information regarding Mr. Kaczynski known to the FBI:

> "The subject comes from a blue collar background and served for a time in the military, possibly as a combat engineer. The subject attended undergraduate school in the mid-70's in the Chicago, Illinois, metropolitan area and majored in psychology. The subject may have used the GI Bill.
>
> "The subject was probably a mediocre student. As a result, he was not accepted at an accredited university for graduate work. Dr. McGee believes that the subject then attended Forest Hospital's unaccredited freestanding professional school in Des Plains, Illinois. The subject probably worked in the Forest Hospital as part of the program of study. The subject was probably a discipline

problem and may have been expelled from the school. The subject's ego would drive him to seek a Ph.D. in psychology.

"The subject may have transferred to the California School of Professional Psychology in the late 1970's or early 1980's. This school had several campuses including a location in the San Francisco area.

"The subject's writing reflects knowledge of two books, `In Defense of Elitism' by William A. Henry III, published in 1994, and `Behavioral Control' by Perry London, published in 1969. The subject paraphrased ideas set forth in these books in the subject's manuscript. Excerpts of Henry's book were published in periodicals prior to 1994. The subject also reads `Psychology Today,' `Omni' and `Scientific American.' The subject mentions `OMNI' and `Scientific American' in the manuscript but he does not refer to the above books.

"Dr. McGee believes that the subject was a member of two or three book clubs including Behavioral Science Book Services, Psychiatry and the Social Sciences Book Club. If `Psychology Today' had/has a book club, the subject is likely to have subscribed to it as well.

"The subject expresses ideas in his manuscript which are indicative of a 1970's era perspective on psychological issues. The subject also seems to be anchored in a pop psychological perspective as opposed to a deep, sophisticated understanding of psychological issues and research.

"One of the victims of the `Unabomb' matter, James McConnell, conducted research on DNA matters. His experiments and conclusions were described in popular psychological journals, including `Psychology Today.' This is the type of research that would be provocative to the subject.

"The subject is a low-tech type of person. He probably travels by train. Salt Lake City is a connection point for train travel

from Chicago to San Francisco."

If the government had provided the information discussed above to the judge, the claimed "scholarly analysis" would have tended to negate the inference that Ted Kaczynski was the Unabomber, instead of purportedly adding to the probable cause determination.

E. The Affidavit Misrepresented The Statements Of Librarian Sherri Wood And Consequently Misrepresented Any Connection of Defendant To L. Sprague DeCamp's Books

Paragraph 173 stated:

> "On April 2, 1996, UTF investigators interviewed Sherri Wood the Librarian at the Lincoln, Montana branch of Lewis and Clark Library. She stated she was familiar with Theodore Kaczynski and that he was a frequent user of the library, using it in part for research projects. She stated she had assisted him in some of his research projects, conducting five state searches for books and periodicals. Wood specifically noted that she recalled ordering `tons of stuff' on L. Sprague DeCamp for Kaczynski. 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." (Affidavit, p. 85, para. 173.)

This paragraph attributed to Sherri Wood statements

that Mr. Kaczynski used the Lincoln Library frequently for research projects; that she had assisted him in these research projects, inferring that he sought vast searches for materials; that she conducted "five-state" searches for materials for him; and that defendant ordered substantial material by L. Sprague DeCamp (one of the authors referenced in the Unabom manuscript). In reality, Ms. Wood advised the agents that Mr. Kaczynski visited the library about once per month (since she had worked there since 1983) and that she assisted him in finding materials that were not available at the Lincoln library. (Declaration of Sherri Wood, para. 3.) This is a far cry from Mr. Kaczynski being a "frequent user" of the library (regardless of whether that point is significant or not) and a far cry from Mr. Kaczynski being involved in "research projects" (again, regardless of the significance of the point).

Ms. Wood also told the FBI that any computer check for materials not actually found in the Lincoln Library would necessarily involve a five-state check because the Library regularly used a "Five State Library Federation" to locate books. (Id., at para. 1.) The fact that any check for books not in the Lincoln Library involved a five-state check was omitted from the affidavit.

Finally, the affidavit stated that Ms. Wood specifically noted she recalled ordering "tons of stuff" on L. Sprague DeCamp for Mr. Kaczynski. According to Ms. Wood's declaration, this statement is false. Ms. Wood was asked by

the agents if she remembered ordering "The Ancient Engineers," and replied that she did. (Id., at para. 9.) However, when later asked if she recalled ordering books by L. Sprague DeCamp, she stated that, while she could recall ordering books by that author, she could not recall for whom she ordered the L. Sprague DeCamp books. (Id., at para. 10.)

The affidavit also failed to tell the reader that while the agents asked Ms. Wood whether Mr. Kaczynski requested Omni, Violence in America, and True Believer (all materials referenced in the Unabom manuscript), Ms. Wood advised that Mr. Kaczynski had not requested those items. (Id., at para. 12.)

VI.

THE AFFIDAVIT MISREPRESENTED DAVID AND WANDA KACZYNSKI'S STATEMENTS ABOUT TED KACZYNSKI AND OMITTED SIGNIFICANT INFORMATION PROVIDED BY DAVID AND WANDA KACZYNSKI

A. David Kaczynski

The affidavit attributed to David Kaczynski a variety of information about his brother, including his belief that Ted was the Unabomber (paragraphs 95, 101, 105, 106, 107, 108, 124, and 134), his knowledge of Ted's whereabouts from 1969 to 1986 (paragraphs 102, 132, 135, 138-145, and 152-153), his knowledge of Ted's request for money (paragraphs 159 and 161) and Ted's strained relationship with the family (paragraphs 136, 137, 156-158, 160, and 162). Most of the information attributed to David Kaczynski was either incomplete, misleading, completely wrong, or irrelevant.

In addition to misrepresentations regarding Ted's

whereabouts at times significant to two of the Unabom incidents and to omissions regarding Ted's appearance that make him different from the description of the Unabomber, [10] the government misrepresented David Kaczynski's statements about his brother being the Unabomber, misled David into ultimately concluding his brother must have written the Unabom documents, and omitted information David provided about his brother's reluctance to travel.

1. Statements in the Affidavit That David Kaczynski Believed His Brother Was the Unabomber Were False and Misleading

The affidavit sought to persuade the reader that David Kaczynski, after reading news reports of the Unabom events and reviewing the Unabom manuscript, concluded that his brother was responsible for the Unabom events. The individual statements attributed to David, as well as the overall impression of his degree of certainty, were both false and misleading. (See Declaration of David Kaczynski, paras. 3(A)-3(H).

Paragraph 95 stated that "[b]eginning on February 14, 1996, David Kaczynski informed members of the UNABOM Task Force (UTF) that he believes his brother ... to be the person

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10. As set forth in Section IV.A, supra, the affidavit misrepresented David's statements about his brother's whereabouts in connection with two of the Unabom events, which if presented accurately would have provided an alibi for Ted. As set forth in Section II, supra, the affidavit omitted David's description of his brother, which if presented accurately would have told the issuing judge that Ted did not match the description of the Unabomber.

responsible for the UNABOM event. ..." This statement was false. David Kaczynski told the FBI that in mid February 1996 he had suspicions his brother could be involved and hoped he could be ruled out as the Unabomber. (Declaration of David Kaczynski, para. 3(A).)

Paragraph 101 stated that David Kaczynski "developed a suspicion" of his brother's involvement after reading news media reports in approximately December 1994. This statement was false. David Kaczynski advised that at that time he had a passing thought that his brother could be involved. Indeed, according to David Kaczynski, paragraph 101 fit neither the tone nor spirit of his discussions with the FBI. (Declaration of David Kaczynski, para. 3(B).)

Paragraphs 105 and 106 attributed to David Kaczynski statements that (1) after reading published excerpts of the Unabom manuscript, he became "increasingly suspicious of strong similarities" between his brother's views and those of the Unabom subject; (2) after reading the entire manuscript he became "convinced" that his brother authored the Unabom manuscript because of the use of a "unique phrase" that he recognized as "his brother's terminology" and other statements that "leapt out" as expressing his brother's long held position on the role of art versus science in our society; (3) these statements "marked" the Unabom manuscript as his brother's product; and (4) a particular paragraph about art and the human experience stood out. All of these statements were false.

First, David told the FBI that after reading a news

account of the Unabom manuscript, he dismissed the possibility that his brother was the Unabomber. Second, David told the FBI that after reading the entire manuscript, he was not able to form an opinion about whether his brother was the Unabomber. Third, David did not tell the FBI that the phrase "cool-headed logician" was a "unique phrase" that he recognized as his brother's "terminology." He only told the FBI that his brother had used the phrase once in a letter. Fourth, David did not tell the FBI that anything in the manuscript marked the manuscript as his brother's product. Finally, while David did tell the agents that the discussion of art and science in the manuscript indicated a possible connection of his brother to the manuscript, he did not tell the agents that he recognized any particular paragraph, but only that one paragraph resembled ideas that he and his brother had discussed. (Declaration of David Kaczynski, paras. 3(C)-(D).)

Paragraph 107 indicated that David Kaczynski believed that Ted's commitment to rationality as a guiding principle would provide him justification for killing. This was not true. David told the agents that his brother would have to believe there was a reason that made something the right thing to do, but that his brother did not believe that the "end justifies the means." (See Declaration of David Kaczynski, para. 3(E).)

Paragraph 108 stated that David Kaczynski recognized substantial similarity between the ideas, concepts and expressions in a 23 page essay written by his brother in 1971

and the Unabom manuscript. This statement was false. David Kaczynski told the investigators that after reading his brother's essay, he felt less suspicious of his brother being the Unabomber. (Declaration of David Kaczynski, para. 3(F).)

Paragraph 124 attributed to David Kaczynski a conclusion, after reviewing all of the Unabom subject's writings, that his brother wrote them. David Kaczynski's declaration (at paragraph 3(G)) clarifies what drew him to that conclusion, stating that it was based on misinformation that his brother had misspelled the word "installment" as "instalment."

After being shown the Unabom letters in mid-March 1996, David Kaczynski said "I have difficulty believing it isn't him." Contrary to other allegations in the affidavit, this was the first time David Kaczynski had expressed such a high level of certainty that his brother was the Unabomber. David made this statement because when he noted that the Unabomber had spelled "installment" as "instalment, and stated to the FBI that that was a misspelling, the agents stated that his brother had "misspelled" the word the same way. Because David knew his brother to be very careful with his spelling, David attached great significance to the fact of the "misspelling" and con-cluded that his brother had likely written the Unabom letters. Had David known what he learned several days later -- that "installment" could be spelled correctly either way -- he would not have made the statement that he made. (Declaration of David Kaczynski, para. 3(G).)

Paragraph 134 stated:

> "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." (Affidavit, p. 74, para. 134.)

This paragraph was misleading. David told the investigators that his brother had sent a "tongue in cheek" letter to a professor. He told them the letter was clearly intended as a joke and would have been seen as such by the professor. The letter that David "could not explain" was a different letter, sent to a friend of David's. (Declaration of David Kaczynski, paragraph 3(H).)

2. The Government Omitted Information Provided By David Kaczynski That Weighed Against His Brother Being The Unabomber

David Kaczynski advised the FBI that his brother had a great aversion to traveling and that this was one factor that weighed against his brother being the Unabomber. (Declaration of David Kaczynski, paragraph 4(A).) Indeed, David Kaczynski explained that the cancellation of his brother's 1985 planned trip to Texas was because of the strain his brother experienced in traveling. If Ted Kaczynski were the Unabomber, he would have to have traveled from Lincoln, Montana to San Francisco, Sacramento or Salt Lake City on numerous occasions, something David Kaczynski evidently believed would have been remarkably

difficult for him to do. This information would have tended to exculpate Mr. Kaczynski and should have been included in the affidavit.

B. Wanda Kaczynski

The affidavit attributed to Wanda Kaczynski a conclusion that the description of the Unabomber fit her son, Ted (para. 195 -- "She noted that the description fit her son, Ted . . ."") and that if her son were the Unabomber, "he must be stopped" (para. 195). These statements are misleading. Mrs. Kaczynski did not say that her son fit the description of the Unabomber, but only that he lived alone and was against technology. (Declaration of Wanda Kaczynski, para. 11). In addition, Mrs. Kaczynski provided the FBI with reasons that would exclude Ted from the category of people who could have been the Unabomber.

According to FBI reports, Mrs. Kaczynski told the FBI that to the best of her knowledge Ted never went to Northwestern University since he did not go that far north in the Chicago area. Paragraph 144, which attributed to David Kaczynski that Ted was working in Chicago on May 9, 1979 (when a device was placed at Northwestern University), omitted this information from Mrs. Kaczynski. Mrs. Kaczynski's statements would have tended to indicate that Ted was not the person to place a device at Northwestern University.

Finally, as set forth in Mrs. Kaczynski's declaration, she gave the agents a variety of reasons why her son would not be the Unabomber. Specifically she told the

agents that her son "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." (Declaration of Wanda Kaczynski, para. 12.) In an affidavit that repeatedly attributed to David Kaczynski (albeit falsely) a belief his brother was the Unabomber (apparently to convince the judge that he should also so conclude), specific reasons countering that belief which had been provided by another close family member should have also been included.

VII.

THE REMAINING INFORMATION IN THE AFFIDAVIT WAS FALSE, SUFFERED FROM MATERIAL OMISSIONS, MILITATED AGAINST PROBABLE CAUSE, OR WAS ESSENTIALLY MEANINGLESS ON THAT ISSUE

A. The Government Purposely Failed To Disclose The Existence Of Other Suspects

Paragraph 206 of the search warrant affidavit alerted the court to other suspects that had been investigated during the governments quest to find the Unabomber. The paragraph reads as follows:

> "206. During this investigation the UTF agents have looked at a number of individuals as potential suspects. These investigations resulted either from tips provided by the public, leads given by other law enforcement officials, or analysis of data obtained from several sources. (As an example of the data analysis, the UTF obtain [sic] lists of individuals who were at a combination of the schools at the times that devices were either placed or sent there.) However, after further investigation, additional evidence was developed as to these individuals that indicated that the person should no longer be considered a priority

> suspect. (While we have not included all of the details of those individual investigations in this affidavit, it is available for the Court's review should the Court so desire.)"

(Emphasis Added.) The underlined statement in this paragraph was apparently false. In November 1996, the government provided defense counsel with portions of 2,417 "other suspect" files. According to the government, these files

> "were opened by the UTF on a number of identified and unidentified subjects and for a variety of reasons. Many of the files were opened as part of a historical review of information received from other law enforcement agencies; some were opened after cross-referencing databases; others were opened as a result of tips received from the public or investigative activities of the UTF." (Government's Letter dated November 25, 1996, p. 1.)

The government also represents that portions of the other suspect files provided the defense "should be sufficient to explain one or more of the following questions: (1) the identity of the individual assigned to the file; (2) how or why the individual came to the attention of the Unabom Task Force; or (3) the reason the individual was eliminated as a potential suspect or was not investigated further." (Government's Second Status Report, filed September 13, 1996, pp. 7-8.)

A review of the material provided reveals that the affidavit was not accurate: in many of the files there was no "further investigation" or "additional evidence developed" that excluded the suspect. In particular, the defense has identified at least 12 serious Unabom suspects that apparently were

neither closed by investigation nor given a lower priority status by the time of the arrest of Mr. Kaczynski. [11/] At a minimum, the judge should have been advised that there were a number of serious suspects still under investigation at the time that the government sought authorization to search Ted Kaczynski's property. Rather than present an accurate picture, the government chose to mislead the court into believing that there were no serious suspects other than Theodore Kaczynski.

B. The Government Misstated Available Information In An Attempt To Link Mr. Kaczynski With The Physical Components Of Unabom Devices

Under the heading, "Additional Findings by the UNABOM Task Force," the affidavit stated:

> "186. UTF investigations have obtained a copy of Theodore Kaczynski's Harvard transcripts and other material from Harvard. In the Theodore Kaczynski's [sic] Harvard file in [sic] a letter from his mother, dated July 16, 1958, which states:
>
> > `Much of his time is spent at home reading and contriving numerous gadgets made up of wood, string, wire, tape, lenses, gears, wheels, etc.; that test out various principles in physics. His table and desk are always a mess of test tubes, chemicals, batteries, ground coal, etc. He will miss greatly, I think, this browsing and puttering in his messy makeshift lab.'

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7. By way of a letter of February 7, 1996, defense counsel requested information on what further investigation was done on these twelve files that was not reflected in the information provided. As of March 2, the government has not provided the information.

"187. On March 23, 1996, Wanda T. Kaczynski, Theodore Kaczynski's mother, was interviewed by Special Agents of the FBI concerning her son. Mrs. Kaczynski provided the agents with ninety items which included: (1) further letters written by her son Ted, (2) several essays written by her son, (3) essays that she had written, (4) copies of checks made payable to her son from May, 1985 through July, 1991, and (5) a handmade cylindrical wooden box containing a handwritten letter from Theodore Kaczynski.

"188. Among the letters was a handwritten letter to his mother where Theodore Kaczynski asks her to mail a fourth `manuscript' entitled `Three Worthy Artisans', to the magazine editors of Harper's Weekly. Also included in those documents obtained from Wanda Kaczynski was a typed article entitled, `How I Blew Up Harold Snilly' by `Apias Tuberosa, Pseudym [sic] for T.J. Kaczynski, 463 N. Ridge, Lombard, Illinois 60148.' Your affiant notes that the UNABOM subject has used several pseudonyms in connection with his devices and mailings.

"189. In the `Harold Snilly' article, Theodore Kaczynski describes how a high school classmate blew up a mixture of chemicals provided to him by Theodore Kaczynski. He writes in the article:

> `When I was in high school I took a course in chemistry. There was only one aspect of the subject which interested me, as any chemist could have seen from a brief inspection of my rather specialized home collection of reagents; (sic) powdered aluminum, powdered magnesium, powdered zinc, sulfur, potassium, nitrate, potassium permanganate...in suitable combinations these things are capable of exploding.' `One day in the laboratory, having finished my assigned experiment early, I though [sic] I might as well spend the extra time pursuing my favorite line of research. On theoretical grounds, a mixture of red phos-phorus and

> potassium chlorate seemed promising. (I did not know at the time that it is the red phosphorus in the scratching surface of a match-book, together with the potassium chlorate in the match-head, that makes a match light so readily. I later found that the mixture is extremely sensitive to friction and practically impossible to work with. The reader is advised not to play with it.'
>
> "190. An analysis of the elements found in the first six UNABOM devices indicates that they contained powdered aluminum, potassium chlorate, and match-heads, which were included [sic] the specific references made by Theodore Kaczynski in his essay above." (Affidavit, pp. 89-90, paras. 186-190.)

First of all, the fact that an individual took a high school course in chemistry or had a chemistry set is hardly probative on the issue of probable cause. Such courses and such sets were popular and widespread in the 1950's, when Ted Kaczynski was in high school. Second, the statements in paragraph 190 that three of the reagents mentioned in the "Harold Snilly" article -- powdered aluminum, potassium chlorate, and match-heads -- were present in the first six Unabom devices was wrong.

Contrary to the statement in paragraph 190, there was no evidence that powdered aluminum was found in any of the first six devices. (See paras. 17, 20, 23, 26, 29, 32.) Although aluminum residue was found in device number 3 (the American Airlines incident), the presence of aluminum residue does not necessarily support a finding that the residue was a product of aluminum powder. (Declaration of Warren L. Parker.) The residue could also be the product of aluminum flake, which is a

different form of aluminum. (Id.)

As to potassium chlorate and match-heads, potassium chlorate is one of the chemical compounds contained in match-heads. (Id.) It is the oxidizer which provides the oxygen which results in the burning of the match. (Id.) Therefore, the relevant inquiry was whether match-heads were found in devices 1 through 6, as alleged in paragraph 190, since potassium chlorate would, by definition, be found in the match-heads. Match-heads were found in devices 1, 2, 5, and 6. See paragraphs 17, 20, 29, and 32. (Id.) However, there was no evidence that match-heads were found in devices 3 and 4. (Id.)

Although potassium chloride was found as a residue in device 3, this could have come from either the burning of potassium chlorate or perchlorate. (Id.) While the potassium chloride residue could have come from the burning of potassium chlorate in match-heads, this was not necessarily the case. (Id.) Potassium chlorate or perchlorate is also found in several fireworks mixtures, and the potassium chloride could have been the result of the burning of such mixtures or similar chemicals. (Id.)

Thus, the government misstated the available information in an attempt to link Mr. Kaczynski with the physical components of the Unabom devices.

C. The Purported Connection Between Mr. Kaczynski And One Of The Unabom Targets Was So Attenuated As To Be Meaningless On The Issue Of Probable Cause

Section H of the affidavit, entitled "Theodore

Kaczynski and Professor James McConnell," stated:

> "127. As previously stated, transcripts obtained confirm that Theodore Kaczynski pursued his Masters and Doctoral degrees at the University of Michigan, Ann Arbor, Michigan, earning a PhD in Mathematics in 1967. During the same period of time, Professor James McConnell was a Professor at the same University.
>
> "128. Theodore Kaczynski's Harvard transcripts indicate that he took a course entitled the `History of Science' while pursuing his Bachelor of Arts degree at Harvard. The UNABOM explosive device that was mailed to Professor McConnell on November 12, 1985, was accompanied by a letter purported to be from a Ralph C. Kloppenburg, Department of History, University of Utah, Salt Lake City, Utah. The letter served as an enticement to encourage Professor McConnell to open the package and review an unsolicited doctoral dissertation. The letter read, in part:
>
> > `Dear Dr. McConnell:
> > "I am a doctoral candidate in history at the University of Utah.
> > "My field of interest is the History of Science, and I am writing my dissertation on the development of the Behavioral Sciences during the 20th century....'
>
> "129. In the 23-page essay attributed to Theodore Kaczynski (attachment 3), circa 1971, it states that `continued scientific and technical progress will inevitably result in the extinction of individual liberty' and lists as an `ominous' development `operant conditioning, (after the manner of B.F. Skinner and friends).' The essay ends by proposing the foundation of an organization dedicated to stopping federal and corporate aid to scientific research.
>
> "130. In the second paragraph of the UNABOM letter from `Kloppenburg' to Professor McConnell, the writer states in part,
>
> > `...I am attempting to analyze

> the factors in society at large that tend to promote vigorous development in a given area of science, and especially I am attempting to shed light on the way in which progress in a particular field of research influences public attitudes toward that field in such a manner as to further accelerate its development, as through research grants...'
>
> "131. Professor McConnell's behavior modification techniques were documented in scientific literature and involved `operant conditioning'. His findings were widely publicized in digests and journals, as well as a Psychology textbook, Understanding Human Behavior, which, according to the publisher became one of the top five best selling textbooks in its field. Professor McConnell received research grants from the National Institute of Mental Health (a Federal Agency) for his work in this field." (Affidavit, pp. 72-73, paras. 127-131.)

At the outset, it is important to recognize that the government did not claim any connection between Ted Kaczynski and the target/victims of 15 of the 16 Unabom devices. Moreover, the purported connection with one target, Professor McConnell, is so attenuated as to be meaningless.

First, the fact that Ted attended the University of Michigan during a year when Professor McConnell was a professor at that university has slight probative value, at best. Michigan is a very large university, and Mr. Kaczynski was in the mathematics department and Professor McConnell in the psychology department. There was no evidence, and no reason to believe, that the two ever had any contact.

Second, the fact that Mr. Kaczynski happened to have taken an undergraduate course at Harvard entitled "The History of

Science," while a letter accompanying one of the UNABOM devices purported to be from a graduate student in history at the University of Utah whose field of interest was the history of science, also has slight probative value, at best. Courses in history of science are taught at universities all over the country, as both lower-division and upper-division undergraduate courses, as well as graduate courses. (Declaration of L. Jeff Severson, paras. 2-3.) Most universities began offering history of science courses in the 1950's, 1960's, and early 1970's, although some have offered such courses since the early 20th century. (Id., at para. 5.) Undergraduate history of science courses usually contain 50-250 students, and as many as 1,000 students may enroll in some type of history of science course, per year, at a single university. (Id., at para. 6.) Thus, Ted Kaczynski was hardly unique in having taken a history of science course.

Finally, the fact that in 1971 Mr. Kaczynski was critical of "operant conditioning, (after the manner of B. F. skinner and friends)" and generally opposed federal and corporate aid to scientific research, while Professor McConnell's expertise was behavior modification involving operant conditioning and he was supported by federal grants, also has slight probative value, at best. Many people are concerned about the perils of behavior modification and the use of federal research funds, and the government did not establish that Professor McConnell could be termed "a friend" of B. F. Skinner.

D. The Information In A Number Of

Paragraphs Of The Affidavit Was Of Little Or No Probative Value On The Issue Of Probable Cause

1. Paragraphs 193 and 194

Paragraph 194 stated:

> "In the UNABOM Manuscript (Attachment 2) specific reference is made to the Sylvan Learning Center. This is the only business mentioned specifically, by name, in the UNABOM manuscript." (Affidavit, p. 91, para. 194.)

Paragraph 193 stated:

> "A Sylvan Learning Center was opened in Helena, Montana in 1994, one of three such centers in the entire state of Montana. Helena, Montana is approximately 60 miles from Theodore Kaczynski's home. The Sylvan Learning Center is a business whose primary focus is increasing the education skills of high school students, with a particular emphasis on English and Mathematical subjects." (Affidavit, p. 91, para. 193.)

What the government failed to disclose to the judge is the fact that there are 581 Sylvan Learning Centers located in the United States. (Appendix III.) There are Sylvan Learning Centers located in all 50 states, and as many as 52 located in a single state, California. (Id.)

If the government had disclosed the full facts to the judge, the mere fact that there was a Sylvan Learning Center located within 60 miles of Mr. Kaczynski's home would have been revealed as meaningless on the issue of probable cause, since the same thing is true of the great majority of the population of the United States.

2. Paragraph 158

Paragraph 158 stated:

> "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." (Affidavit, p. 81, para. 158.)

In an effort to portray Ted Kaczynski in a bad light, the government included the irrelevant fact that he did not attend the memorial service for his father, but then omitted the facts, reflected in the same FBI 302, that he called his mother on the day of the memorial service and resumed writing to her after the service.

3. Paragraph 184

Paragraph 184 stated:

> "UTF investigators have reviewed over 100 letters written by Theodore Kaczynski to his mother, brother and Dr. Goren, wherein Theodore Kaczynski discusses his feelings of anger. Likewise, the UNABOM subject expresses anger and frustration with modern society because of its dependence on modern technology. This anger is reflected in the UNABOM manuscript." (Affidavit, p. 88, para. 184.)

Some of Ted's letters discussed feelings of anger towards his family. The UNABOM manuscript expressed anger at modern society's dependence on modern technology. There was no correlation.

4. Paragraph 185

Paragraph 185 states:

> "In an undated letter to David from

Theodore Kaczynski, he wrote:

> `As you know, I have no respect for law or morality. Why I never committed any crime? (Of course, I'm not talking about something like shooting a grouse out of season now and then. I mean felony type stuff - burglary, arson, murder, etc.) Lack of motive? Hardly. As you know, I have a good deal of anger in me and there are lots of people I'd like to hurt. Risk? In some cases, yes. But there are other cases in which I can figure out ways of doing naughty things so that the risk would be insignificant. I am forced to the humiliating confession that the reason I've never committed any crime is that I have been successfully brainwashed by society. On an intellectual level I have only contempt for authority, but on an animal level I have all too much respect for it. My training has been quite successful in this regard and the strength of my conditioned inhibitions is such that I don't believe I could ever commit a serious crime. Knowing my attitude toward psychological manipulation of the individual by society, you can imagine how humiliating it is for me to admit to myself that I have been successfully manipulated.'" (Affidavit, pp. 88-89, para. 185.)

Mr. Kaczynski's expressed belief that he could never commit a serious crime militated against probable cause.

E. The Information In Other Paragraphs Of The Affidavit Was Absolutely Meaningless On The Issue of Probable Cause

Paragraph 97 - 1971 warranty deed for Mr. Kaczynski's property in Montana.

Paragraph 135 - Mr. Kaczynski's trip to British Columbia in the summer of 1969 with his brother.

Paragraph 137 - Mr. Kaczynski's 1970 note to his parents stating that they were the best parents anyone could have and that he was sorry if he disappointed them.

Paragraph 141 - Mr. Kaczynski's letter to his parents in the winter of 1974 stating that he would be away camping for awhile.

Paragraph 152 - Mr. Kaczynski's September 2, 1986 letter to his brother stating that he should visit between September 27 and October 4, 1986, but not outside those dates. [There was no UNABOM incident between December 11, 1985 and February 20, 1987].

Paragraph 153 - David visited Ted in 1986 and had not seen him since.

Paragraph 156 - when David wrote that he was getting married, Ted responded with anger, said he did not want to communicate with David again, and that, if David had anything important to say, to place a line on the envelope beneath the stamp.

Paragraph 157 - Ted did not respond to David's letter asking him to be the best man at David's wedding.

Paragraph 160 - Ted's 1991 letter to David stating that he did not want anything further to do with the family and telling David about his visits to Dr. Goren.

Paragraph 162 - Ted's 1995 letter rejecting David's suggestion of a visit to Montana and telling David not to write except for practical matters related to the property.

Paragraph 191 - Ted's letters to the Helena Public Library requesting various types of psychological, scientific, and historical magazines and books.

Paragraph 196 - visit of Ted's father and mother to Montana where they saw the root cellar he had constructed [the government omitted the mother's statement to the FBI that Ted used the cellar to preserve potatoes, onions, and carrots that he grew in the garden].

F. A Substantial Amount of Significant Information Set Forth In The Affidavit Clearly Militated Against Probable Cause

In evaluating whether the affidavit established probable cause on its face, or whether there is a showing of probable cause after correcting misstatements and material omissions in the affidavit, the Court must give due weight to the following substantial evidence in the affidavit which militated against a finding of probable cause:

Paragraph 123 (p. 70):

> "During the course of the UNABOM investigation, your affiant has reviewed various interviews of individuals who, for a variety of reasons, have suggested that the UNABOM manuscript was written by a friend, co-worker, or relative.

Often the conclusion reached by those individuals was that, in their opinion, the writings of their friend, co-worker, or relative were similar to that of UNABOM manuscript."

Paragraph 198 (p. 93):

"It is noted by your affiant that numerous comparative samples were obtained from typewritten letters attributed to Theodore Kaczynski or members of his family. To date, forensic analysis indicates that those typewritten samples do not match the typewritten documents connected to the Unabom events."

Paragraph 202 (pp. 93-94):

"A number of stamps have been obtained from devices mailed or placed by the UNABOM subject. A number of stamps have been obtained from the letters mailed and written by Theodore Kaczynski. According to the FBI Laboratory there is no forensic correlation between those samples."

Paragraph 203 (p. 94):

"Latent fingerprints attributable to devices mailed and/or placed by the UNABOM subject were compared to those found on the letters attributed to Theodore Kaczynski. According to the FBI Laboratory, no forensic correlation exists between those samples."

Paragraph 204 (p. 94):

"Your affiant is aware that other individuals have conducted analyses of the UNABOM Manuscript, including a professor at a University in Utah. Utilizing a technique named "Word Printing", this professor determined that the Manuscript was written by another individual, not Theodore Kaczynski, who had also been a suspect in the investigation."

Paragraph 205 (p. 94):

> "Numerous other opinions from experts have been provided as to the identity of the UNABOM subject. None of those opinions named Theodore Kaczynski as a possible author."

VIII.

INFORMATION OBTAINED FROM DR. CAROLYN GOREN SHOULD BE STRICKEN FROM THE AFFIDAVIT BECAUSE SUCH INFORMATION WAS OBTAINED IN VIOLATION OF THE PHYSICIAN-PATIENT PRIVILEGE AND MR. KACZYNSKI'S RIGHT OF PRIVACY IN HIS CONFIDENTIAL MEDICAL RECORDS

The affidavit also provides information from Dr. Carolyn Goren, a cardiologist in Missoula, Montana, who examined and treated Mr. Kaczynski for heart problems. According to the affidavit, Dr. Goren received several letters from Mr. Kaczynski, which she turned over to FBI agents. (Affidavit, p. 82, para. 164.) The affidavit refers to information from two of these letters, one dated April, 1991 (p. 69, para. 120), and the other dated May 26, 1991 (page 91, para. 192). As discussed in other sections of this memorandum, these letters provide no information to suggest that Mr. Kaczynski is the alleged "Unabomber" subject and are irrelevant to the probable cause determination.

Moreover, the court should determine whether the affidavit contains probable cause without any information obtained from Dr. Goren because such information is protected by the physician-patient privilege under Federal Rule of Evidence 501 and by Mr. Kaczynski's constitutional right of privacy. The

federal rule on privileges "applies to proceedings for the issuance of search warrants." (United States v. Lefkowitz, 618 F.2d 1313, 1317 n.5 (9th Cir.) (citing Fed. R. Evid. 1101(c) & (d)), cert. denied, 449 U.S. 824 (1980); United States v. Estes, 609 F. Supp. 564, 570-71 (D. Vt. 1985) ("Without a doubt, the marital communications privilege applies to proceedings held for the issuance of search warrants.").)

Under Federal Rule of Evidence 501, privileges in criminal cases are "governed by the principles of the common law" as interpreted by the courts "in light of reason and experience." (Fed. R. Evid. 501.) This rule does "not freeze the law governing the privileges of witnesses in federal trials at a particular point in our history, but rather directed federal courts to `continue the evolutionary development of testimonial privileges.'" (Jaffee v. Redmond, 116 S. Ct. 1923, 1927-1928 (1996) (quoting Trammel v. United States, 445 U.S. 40, 47 (1980)).) "[U]nder this developmental approach, a federal court, for example, can by judicial decision modify or eliminate a generally accepted privilege or create and recognize a new privilege . . . ." (10 Moore's Federal Practice §501.04[1], at V-23 (1996).)

Although a few early cases failed to recognize a physician-patient privilege under Rule 501 (see, e.g., In re Grand Jury Proceedings, 801 F.2d 1164, 1169 (9th Cir. 1986); United States v. Bercier, 848 F.2d 917, 920 (8th Cir. 1988)), the Supreme Court recently discredited this line of cases by holding that Rule 501 includes a psychotherapist-patient

privilege that protects confidential communications in the course of diagnosis or treatment between a patient and her psychiatrist, psychologist, or social worker. (Redmond, 116 S. Ct. at 1931.) The court in Redmond explained that in deciding whether recognition of a particular privilege is appropriate under Rule 501, courts must determine whether the privilege "promotes sufficiently important interests to outweigh the need for probative evidence." (Id. at 1928.) With respect to the psychotherapist privilege, the court explained that the privilege is warranted because it furthers the paramount public interest in promoting effective treatment for persons suffering from mental or emotional health problems:

> "The psychotherapist privilege serves the public interest by facilitating the provision of appropriate treatment for individuals suffering the effects of a mental or emotional problem. The mental health of our citizenry, no less than its physical health, is a public good of transcendent importance.
>
> "In contrast to the significant public and private interests supporting recognition of the privilege, the likely evidentiary benefit that would result from the denial of the privilege is modest. If the privilege were rejected, confidential conversations between psychotherapists and their patients would surely be chilled, ..." (Id. at 1929; footnote omitted; emphasis added.)

The Court also found significant that there is a consensus among state statutes to recognize some form of the privilege, which "indicates that `reason and experience' support recognition of the privilege." (Id., at 1930.)

As with the psychotherapist-patient privilege, Rule

501 should be construed as recognizing a physician-patient privilege. The Court in Redmond emphasized last year with respect to the psychotherapist privilege that the physician privilege "is justified as a means to promote quality medical care by encouraging the patient to disclose all information which would help the physician in diagnosing and treating illness and injury." (Weissenberger's Federal Evidence §501.8, at 214 (2d ed. 1995).) The physician-patient privilege commonly applies where the patient consults the doctor for treatment or diagnosis in expectation of treatment, and only to communications made in confidence. (Id., at 214-15.) "The privilege is held by the patient but the physician is ethically bound to assert it on the patient's behalf." (Id., at 215.) The majority of states have enacted a physician-patient privilege in one form or another. (Id., at 213.)

Here disclosure of the letters Dr. Goren turned over to FBI agents, and used in the affidavit, was prohibited by the physician-patient privilege. Those letters contain information about Mr. Kaczynski's physical and mental conditions and were submitted in connection with the diagnosis and treatment of his heart problems. There is nothing to suggest that Mr. Kaczynski ever waived the privilege or authorized the disclosure of medical information or records to federal agents.

Moreover, any information from Dr. Goren should be stricken from the affidavit as obtained in violation of Mr. Kaczynski's constitutional right of privacy in his medical records. (See Yin v. California, 95 F.3d 864, 870-71 (9th Cir.

1996) ("individuals have a right protected under the Due Process Clause of the Fifth or Fourteenth Amendments in the privacy of personal medical information or records") (citing Doe v. Attorney General of U.S., 941 F.2d 780, 795-96 (9th Cir. 1991), cert. denied, 65 U.S.L.W. 3444 (Feb. 18, 1997)); but see In re Grand Jury Proceedings, 867 F.2d 562, 565 (9th Cir.), cert. denied, 493 U.S. 906 (1989) (affirming district court's finding that interest of grand jury outweighed Jane Doe's interests in maintaining private psychiatric records).)

Because Mr. Kaczynski's letters to Dr. Goren were obtained by FBI agents in violation of the physician privilege and Mr. Kaczynski's right of privacy, information contained within those letters was improperly included within the affidavit and should not be considered in determining whether the affidavit sets forth probable cause.

IX.

ANY PORTION OF THE AFFIDAVIT THAT RELIES ON DOCUMENTS TAKEN FROM MR. KACZYNSKI'S FOOTLOCKER MUST BE STRICKEN FROM THE AFFIDAVIT BECAUSE THEY WERE OBTAINED THROUGH A WARRANTLESS SEARCH IN VIOLATION OF THE FOURTH AND FIFTH AMENDMENTS

In March 1996, FBI agents served a subpoena on Wanda Kaczynski, Ted Kaczynski's mother. The subpoena directed Mrs. Kaczynski to provide agents various documents concerning her son Ted. After turning over various items, Mrs. Kaczynski told the agents that her son kept his footlocker at her home. (Declaration of Wanda Kaczynski, para. 5.) She also informed the agents that the locker belonged to Ted and the contents of

the locker were his. (Id., at para. 6.) Because she believed the subpoena required her to provide whatever documents the agents requested, Mrs. Kaczynski opened the locker at the agents' request and permitted them to look in it. (Id., at para. 7.)

The agents seized a large number of items from the locker, including various letters. Letters seized from the footlocker are referred to in paragraphs 113, 121, 139, 188, 189, and 199 of the search warrant affidavit. [12/] These paragraphs -- and any others determined to be based on documents found in the footlocker -- should be stricken from the affidavit and attachments because they rely on documents that were unlawfully seized from Mr. Kaczynski's footlocker without a warrant in violation of the Fourth Amendment.

Unless an exception to the warrant requirement applies, the Fourth Amendment prohibits government agents from searching closed containers without a warrant. (United States v. Chadwick, 433 U.S. 1, 7-11 (1977).) Here the search of Mr. Kaczynski's footlocker was unlawful because FBI agents failed to secure a warrant to search the locker, and no exception to the warrant requirement applies. The government cannot successfully

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12. Paragraph 139 relies both on letters obtained from the locker and one letter obtained elsewhere. The letter that was not seized from the locker is the one in which Mr. Kaczynski reportedly wrote "no one could want better parents." (Affidavit, p. 76, para. 139.) Thus, the request in the text to strike paragraph 139 does not apply to this portion of the paragraph. The other letters referred to in paragraph 139 are letters to the editors of Chicago newspapers and various magazines, and were found in the footlocker.

claim that Mrs. Kaczynski voluntarily consented to the search of her son's footlocker because she told the agents the locker belonged to her son, and because she lacked authority to consent to the search of her son's locker. Moreover, Mrs. Kaczynski's "consent" was not knowingly and voluntarily given, but rather compliance with the agents' request was compelled through a subpoena. (See Bumper v. North Carolina, 391 U.S. 543, 548-580 (1968) (prosecution has burden of proving consent was voluntarily given; "burden cannot be discharged by showing no more than acquiescence to a claim of lawful authority"); see also In re P. I. Nwamu, 421 F.Supp. 1361, 1366 (S.D. N.Y. 1976) ("the effect of the subpoena on one who does not wish to comply is unquestionably more compelling than a simple request for voluntary compliance").)

Further, federal agents cannot circumvent the warrant requirement by searching a container belonging to the defendant via a subpoena to a third-party, where the third-party acted only as the custodian of the container for the defendant. (See Schwimmer v. United States, 232 F.2d 855, 861 (8th Cir.) ("appellant had such possession, control and unrelinquished personal rights in the books and papers [in a third-party's possession] as not to enable the question of unreasonable search and seizure to be escaped through the mere procedural device of compelling a third-party naked possessor to produce and deliver them."), cert. denied, 352 U.S. 833 (1956).)

When the agents' learned the footlocker belonged to Ted Kaczynski, not his mother, they should have sought a search

warrant before searching it and seizing its contents. By failing to do so, the agents' search of the footlocker and seizure of its contents constituted an unreasonable search and seizure in violation of Mr. Kaczynski's rights under the Fourth Amendment. (Id.; In re P. I. Nwamu, 421 F.Supp. at 1365-1366).)

Moreover, the agents' seizure of documents in Mr. Kaczynski's footlocker also violated his Fifth Amendment right against self-incrimination. Compelled production of private papers may violate the privilege against self-incrimination where the act of production itself has potentially incriminating testimonial elements -- i.e., the concession that the records exist, that they are in the person's possession, and that they are authentic. (Fisher v. United States, 425 U.S. 391, 410-412 & 412 n.12 (1975); United States v. Doe, 465 U.S. 605, 613 & 613 n.11 (1984).) Here, the subpoena to Mrs. Kaczynski requested, among other things, "[a]ll correspondence, letters, envelopes, reports, essays, articles and other documents written, typed or otherwise created by" Theodore Kaczynski. (Emphasis added.) Thus, the act of producing the requested documents in Mr. Kaczynski's footlocker in response to the subpoena implicitly conceded that the documents exist and tended to inform the government that the documents were written, typed, or "created" by Mr. Kaczynski, in violation of his right against self-incrimination under the Fifth Amendment. (Cf. Doe, 465 U.S. at 613 (compliance with subpoena "would indicate the taxpayer's belief that the papers are those described in the subpoena").)

Typically, the Fifth Amendment privilege protects only

the person who actually possesses documents from being compelled to produce such documents, not the documents' owner where the documents are in the hands of another party. (Couch v. United States, 409 U.S. 322, 328-33 (1973).) The privilege applies, however, in cases where the owner clearly retains "constructive possession" of the documents, even though the records are possessed by a third-party solely for custodial safekeeping. (Id. at 333.) Here, Mrs. Kaczynski possessed the documents only as the "custodian" or "bailee" for her son, Ted. As she told the agents, the footlocker belonged to Ted and the contents were his. (Declaration of Wanda Kaczynski, para. 6.) Because he retained "constructive possession" of the contents of his footlocker, the compelled production of the documents within were obtained in violation of the Fifth Amendment because the act of producing such documents conceded their existence and tended to authenticate them.

CONCLUSION

As discussed herein, the probable cause showing on the face of the search warrant affidavit was thin, at best. Stripped of the many meaningless details (which were apparently included to distract the reader), the facts set forth in the affidavit were simply insufficient to establish probable cause to believe that Mr. Kaczynski was the Unabomber. In this regard, the affidavit highlighted that the DNA type on a letter to David Kaczynski matched the DNA type on a Unabom letter. However, all that showed was that Mr. Kaczynski might be one of almost 7,000,000 Americans whose DNA type was found on the

letters.

Next, the affidavit relied on a simplistic FBI word-analysis of documents written by the Unabomber. However, the themes of the various documents and the words highlighted in the documents were so commonplace that one could not posit common authorship of the documents based on similarities of content and/or usage. Then, the affidavit tried to show some meaningful connection between Mr. Kaczynski and the four books and two magazines cited in the Unabom manuscript. No connection at all was shown as to two books and one magazine, and Mr. Kaczynski's claimed relationship to the others was tenuous at best, particularly considering the general popularity of the cited works. The affidavit also relied upon David Kaczynski's supposed belief that his brother was the author of the Unabom manuscript. However, as the affidavit conceded, a number of other individuals had expressed the belief that a relative, co-worker, or friend had written the manuscript, based on the similarity of the relative's, co-worker's, or friend's writings to the manuscript. (Affidavit, para. 123.)

As to the Unabom events themselves, as opposed to Unabom letters or manuscript, the affidavit set out a myriad of detail about Mr. Kaczynski's receipt of financial support from his family, hotel stays, bus travel, previous residences, etc. None of this information linked Mr. Kaczynski to a single Unabom event. It merely showed that he, like the majority of Americans, could not be excluded as a Unabomber suspect.

In short, taken at its face value as presented to the

judge, the affidavit fell short of the requisite showing of probable cause. But there is no reason to take the affidavit at its face value (as the judge would have done), because it is now clear that the affidavit was rife with false statements and wilfull omissions of material facts. For example, while offering the judge a suspect DNA analysis that included Mr. Kaczynski as potentially the Unabomber, the government wilfully withheld three other DNA analyses that would have excluded or tended to exclude him as a suspect.

In addition, the government hid from the judge that a witness had viewed the Unabomber from four feet away for a "considerable time" and then given detailed descriptions of the person she had seen. The reason that the government hid that fact was the further fact -- also hidden from the judge -- that the description of Mr. Kaczynski given the FBI did not match the witness' description in virtually any respect.

Also kept from the judge was the fact that documents and testimony available to the FBI provided Mr. Kaczynski an alibi for one of the Unabom events. Specifically, bank records and information from bank officials all showed Mr. Kaczynski personally making a deposit in Helena, Montana, on the date of a Unabom event in Sacramento.

In addition to these egregious defects, the affidavit was riddled with false statements and material omissions, all aimed to produce the illusion of probable cause. If the material information known to the FBI had been accurately and candidly provided to the judge, the illusion of probable cause

would have been completely dissipated and the warrant denied.

For these reasons, and those otherwise set forth above, Mr. Kaczynski's motion to suppress the evidence must be granted.

DATED: March 3, 1997

Respectfully submitted,

_____
QUIN DENVIR

_____
JUDY CLARKE

Attorneys for
Defendant Kaczynski

UNABOM FORMAL PAPERS FILED
Docket # 96-6-H-CCL
Draft Date: 8/8/96

#	CAPTION	DATE FILED
1	ORDER unsealing search warrant and return	4/15/96
2	DEFENSE MOTION TO RETURN PROPERTY, DISMISS COMPLAINT, STAY GRAND JURY PROCEEDINGS AND PROHIBIT FURTHER PROSECUTION	4/15/96 (unfiled copy)
3	ORDER asking government to respond to defense motion re return of property, etc., by filing memorandum of points and authorities; and further ordering that matter be set down for hearing and oral argument	4/16/96
4	Judge Charles Lovell's OPINION AND ORDER denying defendant 's motion to prohibit further prosecution because of leaked information	4/22/96
5	DEFENSE EMERGENCY MOTION UNDER CIRCUIT RULE 27-3 TO TEMPORARILY PROHIBIT THE UNITED STATES FROM INDICTING APPELLANT IN ANY DISTRICT FOR ANY ALLEGED "UNABOMBER " CRIME DURING THE PENDENCY OF THIS APPEAL	4/23/96 (unfiled copy)
6	ORDER (Judges Hall, Thompson and Rymer) denying defendant 's emergency motion	4/24/96
7	ORDER denying government 's motion for order excluding seven days from speedy trial calculation	5/1/96
8	APPLICATION FOR ORDER AND ORDER EXCLUDING PERIODS OF DELAY UNDER THE SPEEDY TRIAL ACT	5/24/96
9	ORDER granting joint petition filed by Petitioners National Broadcasting Company, Inc., The New York Time Company, Denver Post Corporation and Los Angeles Times for the unsealing of search warrant documents	6/13/96
10	INDICTMENT	6/18/96
11	ORDER setting down removal hearing for June 21, 1996	6/19/96
12	GOVERNMENT 'S STATUS REPORT AND APPLICATION FOR EXCLUSION OF TIME	7/18/96
13	ORDER appointing counsel for defendant	7/18/96
14	ORDER excluding July 19 - September 20, 1996 from the time computations required by the Speedy Trial Act	7/18/96
15	GOVERNMENT 'S SECOND STATUS REPORT	9/19/96
16	ORDER re status conference	9/20/96
17	MOTION TO COMPEL PRODUCTION OF DISCOVERY RELEVANT TO CHALLENGING THE CABIN SEARCH	
18	NOTICE OF MOTION AND MEMORANDUM IN SUPPORT OF MOTION TO TRANSFER PROCEEDINGS TO U.S. DISTRICT COURT IN SACRAMENTO, CA., UNDER FEDERAL RULES OF CRIMINAL PROCEDURE 21(b)	
19	SCHEDULING ORDER	12/4/96
20	MEMORANDUM OF THE UNITED STATES IN OPPOSITION TO DEFENDANT 'S MOTION TO TRANSFER PROCEEDINGS TO UNITED STATES DISTRICT COURT IN SACRAMENTO, CALIFORNIA, UNDER FEDERAL RULES OF CRIMINAL PROCEDURE 21(b)	12/5/96
21	MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT 'S MOTION FOR CHANGE OF VENUE PURSUANT TO FEDERAL RULES OF CRIMINAL PROCEDURE 21(b)	12/6/96

#	CAPTION	DATE FILED
22	12/9/96 LETTER FROM FEDERAL PUBLIC DEFENDER TO JUDGE DICKINSON DEBVOISE RE DEFENSE POSITION REGARDING THE APPLICABILITY OF THE SPEEDY TRIAL ACT	12/9/96
23	12/12/96 ORDER of Judge Debevoise denying defendant 's request to transfer proceedings in this case to the United States District Court for the Eastern District of California	12/12/96
24	12/2/96 memo from Charles Stevens and Faith Hochberg to John Keeney re Request for Authorization to Seek the Death Penalty Under 18 U.S.C. §§ 844(d) and 1716 Against Theodore John Kaczynski	12/2/96
25	DEFENDANT KACZYNSKI 'S OPPOSITION TO THE GOVERNMENT 'S APPLICATION FOR HANDWRITING EXEMPLARS	2/10/97
26	DEFENDANT KACZYNSKI 'S NOTICE OF MOTION AND MOTION TO SUPPRESS STATEMENTS	3/3/97
27	ORDER DATED 3/5/97 RE HANDWRITING EXEMPLARS	3/5/97
28	DEFENDANT KACZYNSKI 'S NOTICE OF MOTION AND MOTION TO SUPPRESS EVIDENCE; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT 'S MOTION TO SUPPRESS	3/3/97

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