

# Prosecution's Request to Seek the Death Penalty in the Unabomber Trial

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December 2, 1996

MEMORANDUM

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FROM:

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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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ATTACHMENTS

- 1. Indictments
- 2. Death Penalty Evaluation Forms
- c. Non-Decisional Information
- D. Letter from Anthony Bisceglie, Esq.



## B. Recommendation

For the murder of Hugh Scrutton in violation of IS 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 IS 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 "Unabomber" who, over a period of 17 years, placed or mailed 16 improvised explosive devices which resulted in three deaths and 29 injuries.

## D. Timeconstraints

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.<sup>1</sup>

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, S 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 §§ 844 (d) and 1716, respectively.<sup>11</sup>

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,\$,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.

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<sup>1</sup> 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.

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 Unabomber was responsible for 16 bombings throughout the United States. The bombings, which are set forth below, resulted in 3 deaths and 29 injuries:<sup>1</sup>

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<sup>1</sup> 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.<sup>2</sup> The government

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<sup>2</sup> 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.

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 Unabomber since 1982.

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

On April 20, 1995, the Unabomber mailed Device 16 which killed Gilbert B. Murray, 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 unabomber by the FBI" which stated that the group was planning to "blow up an airliner out of Los Angeles International Airport some time during the next six days". The letter had the effect of paralyzing nationwide air travel over the long Fourth of July weekend.

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

Penthouse Magazine and UC Berkeley Professor Tom Tyler. The Unabomber also sent a letter to Scientific American further expounding on his anti-technology views.

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

1. The typewriter used on all Unabomber 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 Unabomber 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 Unabomber 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 tendigit 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 Unabomber. 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 Unabomber 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 Unabomber claimed credit for the bomb which killed Thomas Mosser. In a June, 1995 letter to Penthouse Magazine the Unabomber 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 Unabomber 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 Unabomber 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. Kaczynski 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."<sup>11</sup>

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 account^ 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 room, 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 this 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 revenge. 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:

"[Newspapers 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 Unabomber 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. 3592JLa.L121*

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:

1. The defendant intentionally killed the victim.

Hugh Scrutton Homicide. Applicable because: (1) the device which killed Hugh Scrutton was an antipersonnel 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.

1. 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.

1. 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.

1. 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. § 3392 (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. Mossex- 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.

2. 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.

3. 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 Huub Scrutton. Applicable because the defendant's journals attest to deep-seated, longstanding 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. § 3523(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 50 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 Unabomber. 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 penalty 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, BÀTF 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.

## **V. 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.

## **VI. 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.

The Ted K Archive

Prosecution's Request to Seek the Death Penalty in the Unabomber Trial

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