

1.

1 THEODORE JOHN KACZYNSKI, PRO SE

2 04475-046

3 U.S. PENITENTIARY MAX

4 P.O. BOX 8500

5 FLORENCE CO 81226-8500

6 Telephone 719-784-9464

7

8 UNITED STATES DISTRICT COURT FOR THE

9 EASTERN DISTRICT OF CALIFORNIA

10 (Sacramento Division)

11

12 UNITED STATES OF AMERICA

13 Plaintiff

14 v.

15 THEODORE JOHN KACZYNSKI

16 Defendant

Case No.

2:96-cr-00259-GEB-
GGH

17

18

URGENT

19 DEFENDANT'S MOTION FOR RETENTION

20 OF EVIDENCE

21

22

23

24

25

26

Mot. for Retention of Evidence, 1.

FILED

MAY -9 2011

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BY DEPUTY CLERK

1 BAIL STATUS: Kaczynski is serving a life
2 sentence.

3 There has been no previous application for
4 exactly the same relief as requested here.

5
6 URGENCY. For reasons that will be
7 apparent from the content of this Motion,
8 the Motion needs to be decided before
9 the government's sale of my property
10 begins on 5/18/11.

11 I would have filed this Motion sooner,
12 but I had to prepare a reply brief, due
13 5/4/11, in 9th Cir. Case No. 10-10495.

14
15
16 JURISDICTION. It's not clear to me
17 who has jurisdiction over this Motion,
18 which deals with matters closely related
19 to, but not identical with, those of my
20 current appeal to the 9th Cir., No. 10-10495.
21 That appeal possibly deprives the District Court
22 of jurisdiction, but since the issues raised in
23 this Motion have not been decided by the
24 District Court, the 9th Cir. may likewise
25 lack jurisdiction.

26 But someone ought to have jurisdiction

3.

1 over this Motion, so I am sending this
2 same Motion both to the District Court
3 and to the 9th Cir.

4

5

6 FACTS. This Motion is motivated by
7 a very recent and unexpected development.

8 On 4/27/11 I received a visit from
9 two "SIS" officers of this prison, Ms.
10 Krist and Mr. McAllister, who told me that
11 the Chicago office of the FBI wanted
12 a sample of my DNA to compare with
13 some partial DNA profiles connected
14 with a 1982 event in which someone put
15 potassium cyanide in Tylenol. The officers
16 said the FBI was prepared to get a
17 court order to compel me to provide
18 the DNA sample, but wanted to know
19 whether I would provide the sample
20 voluntarily.

21 I told the officers that I wanted to
22 think about the FBI's request before
23 giving my answer. Later the same
24 day, 4/27/11, I sent the officers a
25 written answer in which I said I would
26 give the DNA sample voluntarily, if the

1 FBI would satisfy a certain condition that
2 is not relevant here.

3 I have never even possessed any
4 potassium cyanide. But, even on the
5 assumption that the FBI is entirely
6 honest (an assumption I'm unwilling to
7 make), partial DNA profiles can throw
8 suspicion on persons who are entirely
9 innocent. For example, such profiles can
10 show that 5%, or 3%, or 1% of
11 Americans have the same partial profile
12 as the person who committed a certain
13 crime.

14 If it happens by chance that I fit one
15 of the partial DNA profiles that the
16 FBI has in relation to the 1982 cyanide
17 incident, then it will be not only to
18 my advantage, but to the advantage
19 of society in general, to resolve
20 correctly the question of any putative
21 connection between me and the cyanide
22 incident.

23 For this purpose, some of the evidence
24 seized from my cabin in 1996 may turn
25 out to be important. Therefore:

26

1 RELIEF SOUGHT. I request that this
2 Court order the government to refrain
3 from disposing of, and instead to
4 retain until my death, some of the
5 evidence seized from my cabin in 1996,
6 and related information, as follows ((1)
7 through (6)):

8 (1) The government should retain all
9 lists and records of evidence seized
10 from my cabin, because these lists and
11 records will show whether any known
12 cyanide compounds were found in my
13 cabin.

14 (2) The government should retain all
15 records of chemical analyses performed
16 on substances found in my cabin,
17 because such records will reveal
18 whether any of the analyses detected
19 cyanide compounds.

20 (3) The government should retain all
21 powders, liquids, granulated materials,
22 mixtures, and other materials of a
23 possibly chemical nature that were
24 found in my cabin, so that these
25 can be chemically analyzed or
26 re-analyzed, as may in future turn

6.

1 out to be appropriate, to determine
2 whether they contain any cyanide
3 compounds.

4 (4) The government should retain the
5 originals of the following written
6 materials, because they may provide
7 evidence of my whereabouts in 1982,
8 or evidence as to whether I ever
9 committed any illegal acts involving
10 cyanide:

11 (a) All materials written in code
12 (together with the keys to the codes),
13 because the majority of the coded
14 materials were devoted to descriptions
15 of my illegal acts. These materials
16 will show whether I ever committed
17 any illegal acts involving cyanide.

18 (b) All letters received or sent by me
19 that may date from 1982 or later,
20 because they may provide evidence as to
21 my whereabouts and activities during
22 1982.

23 (c) All parts of my journals that may
24 date from 1982 or later, because they
25 may provide evidence as to my whereabouts
26 and activities during 1982.

Mot. for Retention of Evidence, 6.

1 (5) If the Court declines to order the
2 government to retain the materials
3 referenced under (4), then as a fallback
4 position I request:

5 (i) that the government be ordered to
6 retain photocopies of all of the written
7 materials listed under (4), each page of the
8 photocopies to be marked with some
9 form of endorsement sufficient to
10 guarantee its authenticity in such a way
11 that it will be accepted as legally
12 valid, admissible evidence in any future
13 judicial proceeding; and

14 (ii) that the government be ordered to
15 provide my designee, Julie Herrada, with
16 photocopies of all of the written materials
17 listed under (4), each page to be
18 authenticated in the manner described
19 under (i); and

20 (iii) that the government be ordered to
21 retain a record of the names and
22 addresses of all purchasers of written
23 materials listed under (4).

24 (6) In stating (5) as a fallback
25 position from (4), I do not concede that
26 anything less than (4) will adequately

1 protect my rights, nor do I waive or
2 forfeit my right to appeal, or otherwise
3 to challenge, the Court's denial of (4),
4 even if the Court grants my fallback
5 position (5).

6
7 CONFIRMATION OF FACTS. At the
8 moment I cannot provide written confirma-
9 tion from Ms. Krist or Mr. McAllister
10 of the facts stated supra, at 3-4. I am
11 at present trying to secure such confirmation.
12 If and when I obtain it, and sufficient
13 copies of it, I will promptly forward a
14 copy to this Court.

15 Meanwhile, since this Motion needs
16 to be decided before the sale of my
17 property begins on 5/18/11, the Court
18 may wish to confirm my statement of
19 facts by calling the phone number of
20 this prison, 719-784-9464, and asking
21 to speak with Ms. Krist or Mr.
22 McAllister in "SIS". Alternatively, the
23 Court may wish to contact the Chicago
24 office of the FBI.

25

26

1 REQUEST FOR COUNSEL. Since the
2 issues raised in this Motion are ancillary to
3 my criminal case, E.D. Cal. No. 2:96-cr-
4 00259-GEB-GGH, I believe I am entitled
5 to representation under 18 USC § 3006 A(c).
6 Therefore I request the appointment of
7 counsel to represent me in regard to
8 the issues raised in this Motion.

9 I prefer representation by John Balazs,
10 if Mr. Balazs feels he has time to
11 represent me adequately in relation to
12 these issues. If Mr. Balazs does not
13 feel he has time, or if for any other
14 reason he prefers not to represent me,
15 then I would like to be represented by
16 someone whom Mr. Balazs may
17 recommend.

18

19 Dated:
20 May 5, 2011

Respectfully submitted,
Theodore John Kaczynski
THEODORE JOHN KACZYNSKI

21

22

23

24

25

26

PROOF OF SERVICE

On May 5, 2011, at the United States Penitentiary Administrative Maximum Facility at Florence, Colorado, by United States Mail and using the prison's internal mailing system designed for legal mail, I served a copy of this MOTION FOR RETENTION OF EVIDENCE upon

UNITED STATES ATTORNEY
EASTERN DISTRICT OF CALIFORNIA
501 I STREET, SUITE 10-100
SACRAMENTO CA 95814

In the same envelope with the copy of this MOTION, I sent the United States Attorney a covering letter dated May 5, 2011. First-class postage was prepaid.

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

Executed on May 5, 2011.

Theodore John Kaczynski
THEODORE JOHN KACZYNSKI