

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,)	
Plaintiff,)	
)	
vs.)	Case No. 16-10141-02-EFM
)	
PATRICK STEIN,)	
Defendant)	
_____)	

SENTENCING MEMORANDUM

On April 18, 2018, a jury convicted Patrick Stein of Conspiracy to Use a Weapon of Mass Destruction and Conspiracy to Violate Civil Rights. These convictions were based largely upon voluminous recordings of Patrick discussing his desire to kill Muslim residents of Garden City, Kansas, and upon the government’s surreptitious encouragement of those desires through the use of confidential informants and undercover agents. Patrick Stein now stands convicted and facing sentencing.

I. INTRODUCTION

For one who only listened to the trial evidence, one might think Patrick Stein’s story begins and ends with hate. But Patrick’s story does not begin with his sentencing, his conviction, his trial, or even with his involvement in a militia.

When Patrick was born, his mother was in the throes of alcoholism—a battle she would not overcome until Patrick was over 11 years old. For the first few years of his life, Patrick was—per other members of his family—the kid tasked with “keeping a beer

in mom's hand." Perhaps unsurprisingly, when he was 10, Patrick had his own first experience with alcohol.

Alcohol got a grip on Patrick. When he was only 14, Patrick was placed in inpatient drug and alcohol treatment for the first time. Over the next 30 years, this pattern emerged. Substance abuse. Family strife. Business or personal failure. Medical detoxification. Treatment. Repeat.

Patrick would ultimately require multiple medical detoxifications. He would receive substance abuse treatment—both in- and outpatient—several times in his life. He would ultimately receive mental health treatment, including prescriptions for ADHD, depression, anxiety, insomnia, and alcohol dependency.

Patrick's struggle with dependency and mental health issues contributed to the failure of two marriages, the estrangement of his sons, and an inability to find connection or success in work, and even placed him in a situation that caused Patrick to become the victim of a violent crime while working as a truck driver.¹ The destruction wrought in Patrick's life was consistent, continuous, and contributory to the story of this case.

The patterns of failure and strife in Patrick's life consistently led him to seek acceptance and to belong to organizations with purpose. In the mid-2000s, Patrick sought to establish a biofuels plant that he could run and operate with, and on behalf of, his family and outside investors. When that failed along with the economy in 2008, Patrick

¹ See Paragraph 102 of the presentencing report.

was unmoored and struggling. He became consumed by fear and anger, seeking to fill the holes in his life with substances and by pursuing duty and “brotherhood” in an organization with purpose—the militia.

And then in 2016, he met Dan Day.

Rather than try to use Dan Day to talk Patrick Stein out of his fearful beliefs, or encourage him to use nonviolent means to address his fears about Muslims, rather than tell him it was ok not to pursue action, rather than have agents knock on Patrick’s door and interview him to scare him and disrupt his thinking, the FBI chose to use Dan Day to reinforce every one of Patrick Stein’s beliefs, his rhetoric, and his hate, for their own ends.

And in Patrick Stein, they found the perfect, vulnerable target. Patrick had relapsed into alcohol use following his most recent inpatient treatment in Prescott, Arizona in late 2013/early 2014. His relapse continued until at least the beginning of his engagement with the Kansas Security Force, and he used methamphetamine regularly for at least 5 months after meeting Dan Day (and likely further along into the conspiracy for which he was convicted). In fact, the FBI suspected Patrick was using methamphetamine regularly well into his interactions with Dan Day. In an instant message, Agent Amy Kuhn wrote regarding Patrick that “[h]e is kind of all over the place right now, I’m guessing he is using more meth causing him to be all over.” (FBI Instant Message from Agent Amy Kuhn to Agent Mark Engholm, May 13, 2016, at 3:01 p.m.). Patrick’s

vulnerability made him subject to influence, and the government's uncritical acceptance and endorsement of all of Patrick's views, through the "yes men" of Dan Day and UCE Brian, wielded such influence to motivate Patrick.

Dan Day and UCE Brian pushed, prodded, and encouraged Patrick to engage in and continue a conspiracy to use a weapon of mass destruction, as well as to violate the civil rights of Muslim residents of Garden City. And while his decision to engage in that conspiracy was wrong, and although he has been convicted of that conspiracy, his sentence should reflect the reality of that conspiracy, not the rhetoric of the government. The reality of the conspiracy is that, at the time of Patrick's arrest, it had no bomb. It had in its possession a total of 1 gram of actual explosive material. It had not acquired the means to make a bomb, the ingredients to complete a bomb, or the ingredients or materials to make even a sizable part of a bomb.

At its best—or worst—the conspiracy was at least 1 week away from obtaining some type of device supplied by the government. It was about 1 month away from any operational plan. And at the moment of Patrick's arrest, the conspiracy had not settled on the means, the personnel, the time, the tactics, or the reality of an actual attack. The conspiracy remained primarily in the realm of the rhetorical.

These arguments are not made to "relitigate" the trial. Patrick has been convicted of conspiracy. And he will be sentenced for conspiracy. But Patrick should be sentenced for the "reality" of his offenses—largely rhetorical—and not as if the object of the

offense had happened in reality. Talking about a bomb is different than planning to acquire a bomb. Planning to acquire a bomb is different than possessing a bomb. Possessing a bomb is different than placing a bomb. Placing a bomb is different than detonating a bomb.

Pursuant to 18 USC § 3553(a), Patrick is to be sentenced for what he did, not what he might have done.

II. FEDERAL SENTENCING UNDER 18 USC § 3553(a)

The primary directive of federal sentencing is that any sentence imposed must be “sufficient, but *not greater than necessary*,” to accomplish the purposes of punishment. 18 USC § 3553(a). Rather than being hamstrung by a mandatory Guidelines calculation, a court may impose a non-Guidelines sentence (1) “on the basis of traditional departure grounds,” (2) “because the Guidelines sentence itself fails to properly reflect § 3553(a) considerations,” or (3) “because a case warrants a different sentence regardless.” *United States v. Rita*, 127 S. Ct. 2456, 2465 (2007). “[T]he sentencing court does not enjoy the benefit of a legal presumption that the Guidelines sentence should apply.” *Id.*

In *United States v. Angel-Guzman*, 506 F.3d 1007 (10th Cir. 2007), Judge McConnell cautioned that when the district court is considering what sentence to impose, “[t]he Sentencing Guidelines range does not apply, even presumptively, until the court has considered all relevant circumstances in light of § 3553(a).” *Id.* at 1015.

18 U.S.C. § 3553(a) requires the Court to “impose a sentence sufficient, but not greater than necessary” to achieve the goals laid out in Subsection (a)(2), which states a sentence should reflect the seriousness of the offense, promote respect for the law, provide just punishment, deter criminal conduct, protect the public, and provide the appropriate correctional treatment to the defendant. In the determination of a “sufficient” sentence, the statute further requires the Court to consider a number of factors, including: “(1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed [to accomplish the (a)(2) goals set out above]; (3) the kinds of sentences available; (4) []the sentencing range established . . . in the guidelines; (5) any pertinent policy statement . . . issued by the Sentencing Commission; (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense.” 18 U.S.C. § 3553(a)(1)-(7).

Sentencing requires “nuance and careful discrimination between and among cases and defendants based on the factors enumerated in 18 U.S.C. § 3553. That nuance is impossible under a Guideline that is structured as bluntly as [the terrorism enhancement].” *United States v. Jumaev*, 12-CR-00033-JLK, USDC Colorado, “Memorandum Opinion and Order on Sentencing,” (Doc. 1920), at 21, July 18, 2018 (internal quotations omitted and brackets added).

Conspiracy to Use a Weapon of Mass Destruction carries a statutory maximum sentence of life imprisonment. 18 U.S.C. § 2332a (a)(4). The statutory sentence of the civil rights violation is not more than ten (10) years. 18 U.S.C. § 241. Patrick Stein respectfully submits that the 3553(a) factors support a sentence substantially less than life. A sentence of no more than 15 years, with a lengthy postrelease supervision period, is “sufficient” to accomplish the goals of the statute, and a term of longer imprisonment is “greater than necessary” to achieve the same goals.

III. SENTENCING FACTORS

A. Nature and Circumstances of the Offense

1. General Circumstances

Despite nearly four (4) weeks of testimony, including that of FBI Special Agent Amy Kuhn, and paid FBI Confidential Human Source Dan Day, the majority of evidence consisted of audio recordings of the defendants discussing the use of explosive devices at the Mary Street apartments in Garden City, Kansas. Dan Day made these recordings as part of his “undercover” persona for the FBI while pretending to be a member of the conspiracy.

Patrick Stein was afraid of the Muslim refugees that had come to live in the western Kansas towns of Liberal, Dodge City, and particularly Garden City, Kansas. As trial testimony showed, Patrick conducted surveillance, from a distance, on the African Mall in Dodge City. During cross-examination, CHS Dan Day testified that Mr. Stein

told him that the surveillance was conducted during the day and using binoculars (Dan Day, Trial Tr. 4/3/18 (real-time) at p. 256-57) . Patrick Stein also participated in surveillance with Jason Crick’s militia group at the Somali mall in Garden City in February 2016. *Id.* at 258.

Patrick was afraid of Muslims because of what he read about them on the internet and the videos he watched on YouTube. Dan Day testified “I heard all kinds of YouTube videos that he watched, not just Muslims, and that's the reason that he didn't like Muslims.” *Id.* at 287. Patrick’s knowledge of the Quran, the Muslim holy book, came directly from the internet and conservative talk-show hosts such as Sean Hannity and Michael Savage. Patrick himself had never read the Quran, nor had he participated in a comparative study of any religion.

All of Patrick’s exposure to the Muslim religion has been negative—by choice, through the media to which he exposed himself, and by government design through Dan Day and the UCE. Dan Day provided false information to Patrick and the others about Somali men wearing expensive suits, (Dan Day, Trial Tr. 4/3/18 (real-time) at p. 105, 242), driving new vehicles, (9-4-16 Phone call between Dan Day and Patrick Stein), and overtaking apartment buildings (Lula Harris, Trial Tr. 3/26/18 (real-time) at p. 329). Dan Day also implied that the residents of the Mary Street apartments were involved in some form of illegal trafficking—whether of guns, (Dan Day, Trial Tr. 4/3/18 (real-time) at p. 104), drugs (*Id.* at 105), or humans (*Id.*). All this information was untrue, and it was all

calculated to stoke Patrick's fear and thus hatred of Muslims in general and the residents of Mary Street in particular.

2. Speculative vs. Actual Danger

When Patrick Stein was arrested, the total amount of actual explosive material possessed among all three co-defendants was approximately 1 gram (Dr. Jack Barrow, Trial Tr. 4/9/18 (real-time) at p. 14, 32, 45, 69, 71-72; Dr. Jason Miller, Trial Tr. 4/5/18 (real-time) at p. 270). This quantity had been produced after months of talk and planning.

At worst, when Patrick was arrested, he was about one week away from having some kind of "explosive device" created from his inert, non-explosive urea, despite there being no evidence he could have created it himself, had even tried, or even knew how to do it. Further, even upon the delivery of the fictional "bomb" to be provided by the UCE in this case, Patrick would have been, at best, over 3 weeks away from any theoretical attack.

The "attack" upon which the government builds its sentencing case is entirely speculative. To punish someone for the characteristics of what a theoretical attack over a month away could have been requires so many assumptions as to render it as counterfactual as assuming the attack would never have actually happened. In other words, if the government gets to fill in the gaps between the arrest and the attack with speculation as to the actual follow-through, it is equally fair for the court to consider

speculation of things that would have disrupted actual follow-through or changed the minds of the defendants.

So, for instance, there are questions and details that were never discussed among the co-defendants about carrying out an actual attack on an actual place against actual people at an actual date and time. To answer operational questions about an actual attack, the government must speculate.

Further, there are questions about external factors that could have intervened to prevent an actual attack, even assuming operational questions were answered. To answer these questions about external forces regarding an actual attack, the government must speculate.

Why does this matter? Because a sentence, in this case, should reflect the actuality, likelihood, and imminence of danger—not the dangerousness or vileness of the defendants’ words. In a “terrorism” prosecution, determining the actual intent of defendants is an “inevitably speculative endeavor.” Amy Waldman, The Atlantic, “Prophetic Justice,” October 2006, at <https://www.theatlantic.com/magazine/archive/2006/10/prophetic-justice/305234/> (accessed October 23, 2018). While the danger of such a speculative endeavor can be mitigated in prosecutions of stings for drug crimes, as drug crimes are typically “common and oft-repeated behaviors,” in “terrorism” cases, the actual risk and behavior is

“exceedingly rare.” Jesse Norris, “Why the FBI and the Courts Are Wrong About Entrapment and Terrorism,” 84:5 MISSISSIPPI L.J. 1257, 1322 (2015). Thus:

Drug . . . stings are meant to ensnare people who have already habitually engaged in these crimes but have eluded detection. Terrorism stings, in contrast, are meant to stop people who would have engaged in terrorism in the future. This makes all the difference. In the drug context, for example, a defendant’s immediate willingness to sell drugs to an undercover informant is a strong indicator that he was in the habit of selling drugs. . . In the case of terrorism, however, . . . the chance that a particular person, even one who holds robustly pro-terrorist views, will commit a terrorist attack is extraordinarily low.

Id. at 1322-23. Thus, a mitigated sentence can be used to minimize the risks associated with the speculative nature of the objects of the crimes.

To be clear, the questions above are not guilt questions—the defendants’ words and expressions of agreement, along with the limited actions they took, led a jury to convict them of conspiracy. The questions are, however, circumstance, seriousness, and danger questions. This case is largely a rhetorical case—about words. The government, from the beginning of their opening, started not with actions, but with words. (*See* Government Opening, Trial Tr. 3/22/18 (real-time) at p. 52 (“Number one, the cockroaches got to go, period. That was a comment that defendant Patrick Stein made”). The words spoken by the Patrick Stein were plentiful, violent, hateful, and consistently shared among the group. As the Court noted in an earlier hearing, Mr. Stein was “extraordinarily loquacious.”

The actions taken by Patrick Stein, however, were small, isolated, hidden, not communicated to the group, sometimes contradictory, sometimes slowly undertaken,

sometimes not undertaken at all, disorganized, ad hoc, unplanned, insignificant, left a lot to do, and largely reflected his inability to actually accomplish anything of meaning, particularly without the help of the FBI. The sentence should reflect that fact.

Further, the actions not taken by the FBI reveal their true belief about the dangerousness of Patrick Stein. At the outset, the FBI never intervened to tell Patrick to “knock it off,” even before he had begun “organization mode.” The government mocked that notion in court, but in reality, it is a strategy used both in other cases and districts and in this district. The FBI never put Patrick under full-time surveillance. They never monitored, in real-time, a GPS tracker on Patrick. They never surveilled the mosque, or warned the mosque, or warned local law enforcement or local Muslim leaders or the apartment owners. This despite the fact that Patrick Stein had supposedly wanted to just go “kick in doors” and start shooting and could have done so anytime he wanted.

Even when they thought the group “had everything they needed” (Dan Day, Trial Tr. 4/2/18 (real-time) at p. 32, 126, 154); (Dan Day, Trial Tr. 4/3/18 (real-time) at p. 217-18) (Amy Kuhn, Trial Tr. 4/10/18 (real-time) at p. 198, 204, 241) to make a bomb “within hours,” (Dr. Jack Barrow, Trial Tr. 4/9/18 (real-time) at p. 112-13), the FBI chose not to arrest Patrick Stein. Rather, they decided to leave him out, un-surveilled and un-monitored, and the community un-warned. They continued to send in Dan Day, an untrained paid informant, to do nothing other than continue to wear a wire and completely agree with the defendants, to “maintain his persona.” Even later, they chose

not to arrest any of the defendants, but rather to introduce a UCE to create more evidence and more chargeable offenses.

All of these observations are made not to criticize the FBI's choices, but rather to note that the FBI's choices were based on a real-time assessment of the real danger of the defendants. Either the FBI concluded that the defendants posed no real, imminent danger to the public and thus were safe to leave un-arrested, or they decided to dangle the public as bait so they could get more and sexier charges. If the defendants were truly, to the FBI's knowledge, hours away from being able to make their own bomb, the defendants must not have really wanted to make their own bomb because they never did.

In reality, the timeline for the defendants obtaining their own explosives was long. After months of talking and weeks of work, the defendants had managed to have in their possession at the time of arrest a total of 1 gram of explosive material. After the introduction of the UCE, the FBI accelerated that timeline to 1 week for a completed bomb, even though Patrick Stein provided inert urea instead of the much more volatile ammonium nitrate—apparently not even understanding the difference. The FBI filled in all the gaps in Patrick's knowledge, wherewithal, and ability with a *deus ex machina*, in the form of Brian, that solved all of the problems with the “real danger” narrative the government was trying to sell. The acceleration of the timeline, and the resulting perception of danger was artificial and speculative and should be considered as such.

3. 2016

18 USC § 3553(a) requires the court to consider the circumstances of the offense when crafting an appropriate sentence. Those circumstances must include the backdrop to this case. 2016 was “lit.” The court cannot ignore the circumstances of one of the most rhetorically mold-breaking, violent, awful, hateful and contentious presidential elections in modern history, driven in large measure by the rhetorical China shop bull who is now our president.

Much has been written about Trump’s election, but two things are relevant to the time period surrounding this case. First, almost no one thought Trump was going to win . Second, Trump’s appeal as the voice of a lost and ignored white, working-class set of voters (Patrick Stein) is the connection most often cited for his ultimately surprising victory.

This matters for two reasons. First, Trump’s brand of rough-and-tumble verbal pummeling heightened the rhetorical stakes for people of all political persuasions. A person normally at a 3 on a scale of political talk might have found themselves at a 7 during the election. A person, like Patrick, who would often be at a 7 during a normal day, might “go to 11.” *See SPINAL TAP*. That climate should be taken into account when evaluating the rhetoric that formed the basis of the government’s case.

Second, Patrick Stein was an early and avid supporter for Donald Trump. His connection to Donald Trump was so complete and long-standing that the surprising win cannot be ignored when evaluating the actual danger or likelihood of an actual attack.

Trump's win changed everything, and it is reasonable to speculate that it would have changed things among the defendants as well. The urgency for action would be gone. The feeling of a losing battle would be gone. The conspiracies, in part, would be disproven as the transition from Obama to Trump took place. It is logical to conclude that the discussed attack would never have happened in the world that existed post-Trump.

B. History and Characteristics of the Defendant

In their book *Why We Hate*, authors Jack Levin and Gordana Rabrenovic describe patterns that can lead individuals to hate-motivated activities and crimes:

Frustration increases the likelihood that an individual will turn violent. People who cannot fulfill their goals and are dissatisfied with their lives may decide to strike back against those they regard as responsible for their plight. . . Moreover, there are circumstances in which the true source of the frustration is difficult if not impossible to identify. . .

When the source of our difficulties is very powerful or difficult to identify or both, we tend to redirect or displace our anger to some innocent target, especially a target that is both visible and vulnerable. In other words, we tend to attack someone who is easily identifiable and likely incapable of striking back.

Jack Levin & Gordana Rabrenovic, Why We Hate 25-26 (2004) (Hereinafter "Why We Hate").

Levin and Rabrenovic also describe the language used in hate-motivated crimes committed by the defendants (and Americans in general):

The enemy is typically dehumanized, in an effort to reduce the feelings of guilt and shame associated with murdering decent and honorable human beings. Often the "other" has been referred to as a "cancer" that needs to be removed from society. Serving as the equivalent of the N-word

for blacks, the term *gook* has, for example, been employed in a long history of supporting wars waged against Asians by the United States.

Why We Hate at 35-36. As this Court is well aware, in this case, the terms used were “cockroaches” and “infestation.”

These opening paragraphs of Why We Hate read like a synopsis of Patrick Stein’s pre-sentencing report, which contains an accurate and detailed report of Patrick’s history and personal characteristics, thus eliminating the need to report such information here.

C. Goals of Sentencing

i. The need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense.

Patrick Stein does not deny the seriousness of his offense but respectfully suggests that a 15-year sentence with at least 10 years of supervised release would adequately reflect the seriousness of the offense, promote respect for the law and provide just punishment. If he were sentenced to 15 years, Patrick Stein will have spent about half of his remaining life in prison upon his release, a strong signal of the seriousness of the offense. *See United States v. Amawi*, 695 F.3d 457, 488 (6th Cir. 2012) (“[I]t was reasonable for the district court to credit the fact that if he serves his entire sentence, he would have spent nearly half of his remaining life in prison when released.”) (brackets added).

Additionally, Patrick Stein is now a convicted felon and will remain a convicted felon for the remainder of his life. In the eyes of his community, the state of Kansas, the country and the government, he is also a terrorist and no matter where he goes after he is

released he will be under some form of observation. As this Court is aware, serious collateral consequences—aside from the personal shame—adhere to a felony conviction.

ii. The need for the sentence to afford adequate deterrence to criminal conduct and protect the public from further crimes of the defendant.

A 15-year sentence would also adequately satisfy this statutory factor. Such a sentence, in conjunction with mandatory supervision, would adequately deter Patrick Stein from re-offending and, generally would protect the public from Patrick Stein committing further crimes. Lengthy supervised release has been held to be additional deterrence and protection. *See id.*

D. Kinds of Sentences Available

This Court has discretion in setting the terms and conditions that Mr. Stein must follow while he is on supervised release. Considering options in supervised release, as well as its availability, is an important part of the “individualized determinations” required under 18 U.S.C. § 3553(a). *United States v. Wright*, 747 F.3d 399, 417 (6th Cir. 2014).

E. The Guidelines Range and the Policy Statements

Mr. Stein has addressed the guidelines range and policy statements in his arguments and objections to the PSR. He would apply those arguments here to the extent that they show a reduced guideline range.

F. The Need to Avoid Unwarranted Sentence Disparities Among Defendants with Similar Records Who Have Been Found Guilty of Similar Conduct

Comparison with other “terrorism” cases throughout the country reveals that sentences vary widely, but most remain far below the range of life. In fact, as of 2011, just over 10% of individuals prosecuted and sentenced in association with “terrorism” were sentenced to 15 years or longer. Francesca Laguardia, *Terrorists, Informants, and Buffoons: The Case for Downward Departure as a Response to Entrapment*, 17 Lewis & Clark L.Rev. 171, 190 (2013). This reflects the reality that:

In the terrorism context, laughably incompetent criminals of little motivation and few philosophical opinions appear upon arrest as scheming ideological masterminds requiring immediate intervention, only to have those appearances dissipate over the months and years of prosecution that follow. As incompetent and directionless oafs, the harsh sentences aimed at true terror masterminds would seem entirely inapplicable.

Id. at 175. In fact, despite the rhetoric of the prosecution:

[I]ncidents of terrorism thus far have not been accomplished by individuals who have learned to build bombs through Internet postings or *The Anarchist Cookbook*. Instead, training is required in order to turn an aspiring terrorist into an actual threat. As Peter Bergen has stated, “It’s ridiculous to think that the U.S. or any other military would do its training over the Internet . . . Radicalization is one thing, having operational cells with the capacity to launch attacks is something else entirely.”

Id. at 191.

In this case, involving more “incompetent and directionless oafs” than “scheming ideological masterminds,” a sentence in excess of 15 years would be inappropriate.

Analysis of a variety of cases with similar, or worse, conduct, reveals that defendants are often given lesser sentences.

In *United States v. Abu Khalid Abdul-Latif*, (11-CR-00228-01-JLR (W. D. Wash)), the defendant pleaded guilty to conspiracy to murder United States agents and to use weapons of mass destruction. **Abdul-Latif** had planned to attack a military recruit processing office, using automatic weapons and grenades. According to the government, the defendant wanted to attack when he could get the “largest possible gathering” of recruits and family members, and his “goal” was to “inspire others with a message of hate.” Abdul-Latif took steps to plan the attack and purchase weapons, and despite his guilty plea, “has not disavowed the radical ideology that inspired his attack plot, nor has he expressed any meaningful remorse.” He was sentenced to 18 years in prison. See *Press Release*, United States Attorney’s Office Western District of Washington, “Seattle Man Sentenced to 18 Years in Prison for Plot to Attack Seattle Military Processing Center,” March 25, 2013, at <https://archives.fbi.gov/archives/seattle/press-releases/2013/seattle-man-sentenced-to-18-years-in-prison-for-plot-to-attack-seattle-military-processing-center> (accessed October 3, 2018).

Abdul-Latif’s co-defendant, **Walli Mujahidh**, (11-CR-00228-02-JLR (W. D. Wash)), was described as a “cold-hearted, enthusiastic partner” who “talked at length in recorded conversations about the innocent people he planned to gun down.” In addition, he actually traveled from Los Angeles to Seattle, with the purpose to secure weapons and then carry out the attack. He was sentenced to 17 years in prison. See *Press Release*, United States Attorney’s Office Western District of Washington, “Former Los Angeles

Man Sentenced to 17 Years in Prison for Role in Plot to Attack Seattle Military Processing Center,” April 8, 2013, at <https://archives.fbi.gov/archives/seattle/press-releases/2013/former-los-angeles-man-sentenced-to-17-years-in-prison-for-role-in-plot-to-attack-seattle-military-processing-center> (accessed October 3, 2018).

Aziz Sayyed (18-CR-00090-AKK-HNJ (N. D. Alabama)), pleaded guilty to plotting a terror attack in Huntsville, Alabama, as well as pledging support to ISIS. He had acquired chemicals for a bomb attack similar to one that had previously been successful in Manchester, England. He was sentenced to 15 years in prison and lifetime postrelease supervision. *See* David Kumbroch, WHNT.com, “Man Sentenced to 15 Years in Prison for Planning Terror Attack in Huntsville, Pledging Support for ISIS,” June 20, 2018, at <https://whnt.com/2018/06/20/man-sentenced-to-15-years-in-prison-for-planning-terror-attack-in-huntsville-pledging-support-for-isis/> (accessed October 3, 2018).

Rezwan Ferdaus, (11-CR-10331-RGS (D. Mass)), was sentenced to 17 years in prison after pleading guilty to attempting to damage and destroy a federal building (the Pentagon) and attempting to provide material support to terrorists. He constructed IED detonation components, supplying 12 of them to a UCE he believed to be a member of al Qaeda, with “the intention that they be used to kill U.S. soldiers overseas.” When told that his devices had killed soldiers, Ferdaus said he felt “incredible,” and that was “exactly what [he] wanted.” After multiple deliveries, with confirmed “kill” counts, Ferdaus made a training video for al Qaeda demonstrating how to construct detonators.

He also planned to fly an explosives-laden drone into the Pentagon and follow with a ground attack. He traveled to Washington D.C. to conduct surveillance, and he obtained explosives and automatic weapons. During this investigation, FBI UCEs told Ferdaus “more than 25 times that he did not have to go through with his plan...that there was no shame in backing out, and that he could turn back at any time.” *See Press Release*, United States Attorney’s Office District of Massachusetts, “Man Sentenced in Boston for Plotting Attack on Pentagon and U.S. Capitol and Attempting to Provide Detonation Devices to Terrorists,” November 1, 2012, at <https://archives.fbi.gov/archives/boston/press-releases/2012/man-sentenced-in-boston-for-plotting-attack-on-pentagon-and-u.s.-capitol-and-attempting-to-provide-detonation-devices-to-terrorists> (accessed October 3, 2018).

Where longer sentences are given, even those sentences do not reach life, and they are often reserved for more completed acts or more immediate dangers.

For example, **Mohamed Osman Mohamud**, (10-CR-00475-HZ (D. Oregon)), a Portland man, actually placed a “bomb” (provided by the FBI) near a Christmas tree lighting ceremony with the goal of getting “the most casualties.” *United States v. Mohamud*, 843 F.3d 420, 429-30 (9th Cir. 2016). He connected the wires on a “detonator” and used a cell phone to attempt to “detonate the bomb.” Following his arrest, FBI agents found videos of past Portland Christmas Tree Lighting Ceremonies, al Qaeda videos,

references to “jihad,” and plans to “secure [him]self from the FBI.” *Id.* The jury rejected his entrapment defense, and he was sentenced to 30 years imprisonment. *Id.* at 431-32.

James Cromitie, (09-CR-00558-Cm (S. D. N.Y.)), was convicted of conspiracy and attempt to use weapons of mass destruction for a plot to attack an Air National Guard Base in New York and to bomb two synagogues in the Bronx. *United States v. Cromitie*, 727 F.3d 194, 199 (2d Cir. 2013). In that case, the defendant drove and placed “bombs” in the trunks of pre-parked cars, after surveilling targets and establishing battle plans. *Id.* at 203. He was sentenced to a 25-year mandatory minimum sentence under 18 U.S.C. § 2332g – Conspiracy to acquire and use anti-aircraft missiles.² *Id.* at 204.

Michael Finton, (09-CR-30098-DRH-CJP (C. D. Ill.)), an Illinois man, pleaded guilty to attempting to use a weapon of mass destruction to bomb a federal courthouse in Springfield, Illinois. He parked a truck with a completed “bomb,” activated a timer, and then called a detonator via cell phone with the hope that he would “kill innocent civilians, committed public servants, and dedicated first responders.” He also hoped that his bomb would be big enough to destroy a target across the street—a congressman’s office. He received 28 years in prison. *See Press Release*, United States Attorney’s Office Central District of Illinois, “Illinois Man Admits Plotting to Bomb Federal Courthouse and Is Sentenced to 28 Years in Prison,” May 9, 2011, *at*

² Mr. Cromitie was convicted of: Count 1 – Conspiracy to use a weapon of mass destruction 18 U.S.C. § 2332a; Count 2-4 – Attempt to use a weapon of mass destruction 18 U.S.C. § 2332a; Count 5 Conspiracy to acquire and use anti-aircraft missiles 18 U.S.C. § 2332g; Count 6 – Attempt to acquire and use anti-aircraft missiles 18 U.S.C. § 2332g; Count 7 – Conspiracy to kill officers and employees of the United States 18 U.S.C. §§ 1114, 1117; and Count 8 – Attempt to kill officers and employees of the United States 18 U.S.C. §§ 1114, 2.

<https://archives.fbi.gov/archives/springfield/press-releases/2011/si050911.htm> (accessed October 3, 2018).

In cases involving support for foreign-oriented terrorism or actual battlefield training or involvement, sentences have been similarly circumscribed.

Hamid Hayat, (07-10457 (N. D. Cal.)), was convicted of providing material support to terrorists for actually attending a “terrorist training camp in Pakistan” and returning to the United States “to await orders to carry out a terrorist attack.” *United States v. Hayat*, 710 F.3d 875, 880 (9th Cir. 2013). He was sentenced to 24 years. *Id.* at 884.

Tarek Mehanna, (12-1461 (D. Mass)), was convicted of conspiring to provide material support to al Qaeda, providing material support, and conspiring to kill persons in a foreign country. *United States v. Mehanna*, 735 F.3d 32, 41 (1st Cir. 2013). He traveled to Yemen in search of a terrorist training camp and then provided translation services for articles and materials on pro-al Qaeda propaganda websites. *Id.* He was sentenced to 210 months (17.5 years). *Id.* at 40.

Rafiq Sabir, (05-00673-02-LAP) was sentenced to 25 years in prison for providing material support to al Qaeda for pledging allegiance and offering services as a battlefield doctor and a martial arts trainer. *United States v. Farhane*, 634 F.3d 127, 132-33 (2d Cir 2011).

Jose Padilla, the popularly-known “dirty bomber,” was convicted of conspiracy to murder persons outside the United States and to provide material support to terrorists. *United States v. Jayyousi*, 657 F.3d 1085, 1091 (11th Cir. 2011). He and his co-defendants “formed a support cell linked to radical Islamists worldwide and conspired to send money, recruits, and equipment overseas.” *Id.* at 1092. At sentencing, he was listed as a career offender “because of his extensive criminal history, which included 17 arrests and a murder conviction.” *Id.* at 1117. He had received “al-Qaeda training.” *Id.* Padilla was initially sentenced to 208 months, a downward departure from his 360-life range. *Id.* at 1115-16. That sentence was reversed. *Id.* at 1119. Upon resentencing, he was sentenced to 21 years, with a supervised release term of 20 years. *See* Amended Judgment, 04-CR-60001-MGC, Southern District of Florida, Miami Division (CM/ECF Document 1458) (September 9, 2014).

In “one of the most significant terrorism prosecutions in recent years,” **Ahmed Abu Khatallah**, (14-CR-00141 (D. D.C.)) the “mastermind” of the Benghazi attacks in Libya, was convicted of conspiring to provide material support to terrorists, maliciously destroying United States property, and using and carrying a semiautomatic weapon during the attack. He was sentenced to 22 years. He was accused of “heading an extremist militia and directing the attacks.” Frank Miles, [FoxNews.com](https://www.foxnews.com/us/benghazi-mastermind-sentenced-to-22-years-in-prison), “Benghazi mastermind sentenced to 22 years in prison on federal terrorism charges,” June 27, 2018, at [https://www.foxnews.com/us/benghazi-mastermind-sentenced-to-22-years-in-prison-](https://www.foxnews.com/us/benghazi-mastermind-sentenced-to-22-years-in-prison)

[on-federal-terrorism-charges](#) (accessed October 3, 2018). Prosecutors, in that case, had sought a life sentence, while the defendant requested 15 years. Khatallah’s attack—he was described as a “key plotter”—involved the “first killing of a U.S. ambassador while in the performance of his duties in nearly 40 years,” as well as 3 other individuals. *See* Spencer S. Hsu, Washington Post, “Libyan militia leader gets 22-year sentence in Benghazi attacks that killed U.S. ambassador,” June 27, 2018, *at* https://www.washingtonpost.com/local/public-safety/libyan-militia-leader-to-be-sentenced-in-2012-benghazi-attacks-that-killed-us-ambassador/2018/06/27/55782e5c-789a-11e8-ae44-4d04c8ac6158_story.html?utm_term=.eef2c004e966 (accessed October 3, 2018). (quoting Assistant U.S. Attorney Michael C. DiLorenzo).

Finally, the defendants in *United States v. Amawi*, (06-CR00719 (N.D. Ohio)), were convicted of conspiracy to kill persons outside the United States, conspiracy to provide material support to terrorists, and distributing information regarding the manufacture of explosives. *United States v. Amawi*, 695 F.3d 457, 465 (6th Cir. 2012).

Mohammad Amawi, one of the defendants, traveled to Jordan to provide computers and videos for jihadists going to Iraq. *Id.* at 467-68. He and his co-defendants “shared an intent to engage in activities that were aimed at killing or maiming United States military personnel” and had “provide[d] material support to these activities.” *Id.* at 477. Each defendant had an offense level of 58, with a terrorism enhancement-caused criminal history of VI, and a guideline sentence of life imprisonment. *Id.* at 485. The district court

departed downward to sentences of 100 to 240 months imprisonment, and those sentences were upheld as substantively reasonable. *Id.* at 486-87. In that case, the district court specifically considered that if defendant Amawi served his entire 20-year sentence, he would have “spent nearly half of his remaining life in prison.” *Id.* at 488. The court further found that the lifetime supervised release term would provide additional deterrence and security. *Id.*

In cases where longer terms of imprisonment are imposed, they often involve actual attacks.

For example, **Aafia Siddiqui**, (10-3916 (S. D. N.Y.)), was convicted of attempted murder of United States nationals (among other things) for gaining control of an M-4 rifle and shooting at American officials in Afghanistan while shouting “I am going to kill all you Americans” and “death to America” and other expletive-filled threats. *United States v. Siddiqui*, 699 F.3d 690, 696-97 (2d Cir. 2012). She was sentenced to 86 years. *Id.* at 696. She had been previously connected to various attempts to assassinate Afghan officials and carry out a “mass casualty attack.” *Id.*

In recent years there have been two cases in Kansas in which a defendant reached the point of no return, only to be arrested before he could actually push the button on an FBI decoy bomb.

The first was the case of Terry Loewen. Mr. Loewen worked at Wichita’s Eisenhower Airport and devised a plan, with the help of FBI Confidential Human

Sources thought to be members of *al Qaeda in the Arabian Peninsula*, to blow up an aircraft while it was on the tarmac and filled with passengers. He was arrested as he tried to gain access to the airfield with an inert FBI “bomb.” Mr. Loewen did not know that the FBI and airport officials had deactivated the gate at which he attempted to gain access. See Complaint and Affidavit, *United States v. Loewen*, 13-CR-10200, Attached as Exhibit A. According to the government, “[t]here is no doubt that, had the plan gone as [Loewen] expected, **hundreds** of innocent travelers would have been killed.” *United States v. Loewen*, 13-CR-10200-MLB (D. Kan), “Response of the United States to Defendant’s Motion to Dismiss,” (Doc. 94) March 2, 2015, at 1-2 (brackets and emphasis added).

Mr. Loewen pleaded guilty to one count of attempted use of a weapon of mass destruction and entered an 11(c)(1)(C) agreement with the government to 20 years, with lifetime supervised release. The government agreed that this sentence was “consistent with the sentencing factors of 18 U.S.C. § 3553(a)” and did “not offend the advisory sentencing guidelines” despite application of the terrorism enhancement. *United States v. Loewen*, 13-CR-10200-MLB (D. Kan), “Plea Agreement Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C),” (Doc. 108) June 8, 2015, at 3, 4 (brackets and emphasis added).

The second recent Kansas case is that of John Booker. Mr. Booker is one of the elusive North American “knuckleheads” that the government has apparently never seen

in the wild. In March of 2014, after seeing his post on Facebook that being killed in a jihad would be a “rush,” the FBI went to tell him to, essentially, “knock it off.” Agents knocked on Mr. Booker’s door and conducted an interview with him. During the interview, Mr. Booker admitted that he “enlisted in the United States Army with the intent to commit an insider attack against American soldiers. . .” He also admitted that he had “formulated several plans for committing jihad once enlisted,” and that he “wanted to target someone with power.” Mr. Booker was denied entry into the Army.

Seven months later, Mr. Booker, still unarrested, became involved with a Confidential Human Source (CHS1) and expressed a “desire to engage in violent jihad,” and to “kill the American soldier.” With the help of the FBI and CHS1, Mr. Booker made an anti-American video, discussed making a pro-ISIL propaganda video, and was introduced to a second Confidential Human Source (CHS2). Mr. Booker was so intent on jihad that he told CHS2 that being a suicide bomber was “his number one aspiration because he couldn’t be captured.” Mr. Booker settled on Fort Riley as the place to conduct his suicide bombing and worked with his FBI connections to obtain the components needed to build his car-bomb. Mr. Booker was arrested outside a little-used gate of Fort Riley as he was making the final connections on the FBI-supplied “bomb.”

Like Mr. Loewen, Mr. Booker entered into an 11(c)(1)(C) plea agreement with the government. Unlike Mr. Loewen, however, in addition to pleading guilty to Attempted Use of a Weapon of Mass Destruction, Mr. Booker also pleaded to Attempted

Destruction of Government Property by Fire or Explosion. And unlike Mr. Loewen, Mr. Booker agreed to a sentence of 30, not 20 years. *See* Complaint and Affidavit, *United States v. Booker*, 15-MJ-05039, Attached as Exhibit B.

Both Mr. Loewen and Mr. Booker agreed to the application of USSG § 3A1.4, the so-called Terrorism Enhancement. And because of this, their offense levels were each 43 (even with acceptance of responsibility), and their criminal history categories were VI. However, neither were given life sentences. Because in each case a life sentence was greater than was necessary to comply with paragraph (a)(2) of 18 U.S.C. § 3553. *See United States v. Ranum*, 353 F. Supp. 2d 984, 986 n.1 (E.D.Wis. 2005) (the guidelines clash with § 3553(a)'s primary directive to 'impose a sentence sufficient, but not greater than necessary to comply with the purposes' of sentencing, also quoting Justice Kennedy's 2004 speech to the ABA that "prison sentences are too long...").

Obviously, these do not represent the totality of "terrorism" cases where sentences were imposed. They do, however, illustrate the variety of sentences and reflect the overall trend that life sentences are often rejected in favor of more determinative, circumscribed sentences measured in years rather than lifetimes.

G. The Need to Provide Restitution to Any Victims of the Offense

There were no victims of this offense. Thus there is no need to provide restitution.

IV. DEPARTURES AND VARIANCES

A. The proposed guidelines criminal history score improperly overstates Patrick's true criminal history

According to the pre-sentence report, Patrick Stein's real criminal history score is zero (0). This should have placed him in category I of the Guidelines' Criminal History range. However, due to the Terrorism Enhancement, Patrick's Criminal History Category has been artificially inflated to category VI.

In this case, a criminal history score of VI is substantively unreasonable. “[S]ubstantive reasonableness addresses whether the length of the sentence is reasonable given all the circumstances of the case in light of the factors set forth in 18 U.S.C. § 3553(a).” *United States v. Huckins*, 529 F.3d 1312, 1317 (10th Cir. 2008) (internal quotation marks omitted). “[T]he automatic assignment of a defendant to a Criminal History Category VI is not only too blunt an instrument to have genuine analytical value, it is fundamentally at odds with the design of the Guidelines. It can, as it does in this case, import a fiction into the calculus. It would impute to a defendant who has had no criminal history a fictional history of the highest level of seriousness.” *United States v. Jumaev*, 12-CR-00033-JLK, USDC Colorado, “Memorandum Opinion and Order on Sentencing,” (Doc. 1920), at 17, July 18, 2018 (quoting *United States v. Mehanna*, No. 1:09-CR-10017-GAO (D. Mass. April 12, 2012)).

Patrick Stein has no scoreable past criminal activity. His only adult convictions relate to incidents that occurred (1) over 30 years ago—a vehicle registration offense, and

(2) over 20 years ago—a more serious burglary charge related to an alleged drug debt from a time that Patrick Stein was involved with methamphetamine. Due to the age of these convictions, they were properly given zero (0) criminal history points, and Patrick’s original criminal history category was correctly set at category I yet the terrorism enhancement adjusted the category upward to VI.

The Guidelines provide the basis for the requested downward departure as USSG § 4A1.3(b)(1) clearly states:

If reliable information indicates that the defendant’s criminal history category substantially over-represents the seriousness of the defendant’s criminal history or the likelihood that the defendant will commit other crimes, a downward departure may be warranted.

See also United States v. Robertson, 662 F.3d 871, 879 (7th Cir. 2011) (“[A] within-Guidelines sentence may be inappropriately high when . . . the defendant’s criminal history category substantially over-represents the seriousness of the defendant’s criminal history. . .”).

This is not a case where Patrick Stein had multiple, minor criminal offenses that added up to an unfairly high score. Rather, this is a case where Patrick Stein had zero scorable criminal offenses but was given the highest criminal history score based solely on an arbitrary decision of the United States Sentencing Commission. Patrick Stein has a true criminal history score of zero and corresponding category of I. His artificially inflated category of VI substantially over-represents Patrick’s criminal history, and his ultimate sentence should take that into account.

B. A life sentence conflicts with § 3553 (a)'s primary directive to impose a sentence that is "sufficient but not greater than necessary."

A life sentence is much greater than necessary to accomplish the goals of federal sentencing.

On October 14, 2016, Patrick met with UCE Brian at a Dodge City McDonald's and gave him 300 pounds of inert urea. Brian was under the belief that the fertilizer was ammonium nitrate, a highly volatile substance commonly used for making fertilizer bombs. He was mistaken, but Patrick was arrested shortly after handing the inert urea over to the undercover FBI agents.

At the time of Patrick's arrest, Curtis Allen had already been arrested for an alleged domestic violence incident against Lula Harris, his live-in girlfriend. Based on that arrest, Gavin Wright told both the FBI's paid informant and Patrick Stein that he was out of the conspiracy and no longer wanted anything to do with it. As Patrick told UCE Brian, the conspiracy consisted of only himself and the paid informant. It was an interesting end to a case that began with only Patrick Stein and that informant, Dan Day.

Patrick Stein first met Dan Day in February of 2016. Dan Day had already been working as a paid FBI informant for several months. In fact, based on Dan Day's reporting the FBI had opened a domestic terrorism file on Jason Crick, the first subject of Dan Day's undercover activities. Approximately two months after he met Dan Day, the FBI opened a domestic terrorism file on Patrick Stein, based almost entirely on Dan Day's uncorroborated reporting. At the time of the "Opening Electronic Communication"

(hereinafter the “Opening EC”), only one meeting involving Patrick Stein had been recorded: a meeting to discuss the possible reaction of the government to an attempt to amend the Constitution of the United States under an Article V convention of the States. And while the group had the procedure for that process completely incorrect, it was still a constitutional way to go about effecting governmental change.

While the Kansas Security Force was concerned about and planned for the reaction of the government following the presentment of the Article V documents,³ the FBI had a different idea about what Patrick Stein and KSF were planning. From the Opening EC:

GCRA [Garden City Resident Agency] believes sufficient predication exists which identifies Patrick Stein as being a leader of an organized group of individuals who advocate and threaten force or violence to achieve both political and social goals. Stein has espoused and promoted hatred for the government and has contributed to an apparent plan or intention to act against the government. GCRA requests to initiate a full investigation related to Patrick Stein as a Tier 5 – Radicalizer / Recruiter, Priority Level 3 subject. Possible violations include:

- 18 USC 1505 – Obstruction of justice
- 18 USC 2332f – Bombing of places of public uses, government facilities
- 18 USC 249 – Hate Crimes
- 18 USC – 241 Conspiracy against rights
- 18 USC 247 – Damage to religious property; obstruction of free exercise of religious beliefs
- 18 USC 2384 – Sedition
- 18 USC 2385 Advocating the overthrow of the government.

³ This was documented in the April 19, 2016 KSF meeting that was recorded by Dan Day.

As the Opening EC makes clear, this case did not start as a case of conspiracy to use a weapon of mass destruction. It began as a case of political discourse and discontentment, in which defensive actions against an attacking government were discussed, not “first strike” options.

The defendants were ultimately convicted of conspiracy, essentially an agreement to bomb an apartment complex that housed a mosque. The closest Patrick Stein came to an actual bombing was when he delivered inert urea to UCE Brian at McDonald’s on October 14, 2016.

Unable to arrest any of the defendants actually pressing the button in an attempt to detonate an FBI supplied “bomb,” the government had to be satisfied with an agreement and speculation that the defendants would actually have gone through with a plan. But if we are going to allow speculation that they would have tried to activate a bomb, we must allow for speculation in the other direction: that something would have happened to stop them from pushing the button. The sentence should take that into account.

C. The Guideline sentence 12 level enhancement is arbitrary, capricious, and unfair because it raises both guideline range and criminal history

In the main, the Commission developed Guidelines sentences using an empirical approach based on data about past sentencing practices, including 10,000 presentence investigation reports. See USSG § 1A.1, intro. comment., pt. A, ¶ 3. The Commission modif[ied] and adjust[ed] past practice in the interests of greater rationality, avoiding inconsistency, complying with congressional instructions, and the like.

Kimbrough v. United States, 552 U.S. 85, 96 (2007) (internal quotes and citations omitted).

“The Terrorism Enhancement, when applied, ‘takes a wrecking ball,’ to the initial Guidelines range.” *United States v. Jumaev*, 12-CR-00033-JLK, USDC Colorado, “Memorandum Opinion and Order on Sentencing,” (Doc. 1920), at 9, July 18, 2018 (internal citations omitted). The enhancement almost automatically reaches the “maximum statutory sentence and fail[s] to differentiate between various levels of conduct.” *Id.* at 20 (analyzing enhancement in context of material support of terrorism); *see also id.* at n.20 (noting the “difficulty” that “there is no distinction between less and more serious offenses, those in which actual harm occurred and those where it did not”).

Put another way, “[i]s terrorism sufficiently unique (and dangerous) that it justifies a sentencing ‘rule’ that goes against notions of individualized sentences that reflect the inevitable differentiation among criminals?” *Id.* at 22. “There is no rational basis for concluding that all individuals labeled as ‘terrorists’ and all crimes of ‘terrorism’ are equal. ‘Gradation of offenses’ is an important value in criminal law. ‘We do not treat a purse-snatcher like a rapist, [yet t]he Enhancement reflects a different view: a terrorist is a terrorist.’ The requirement to view any terrorist as every terrorist goes against the basic principles of sentencing and the factors set forth in 18 U.S.C. § 3553.” *Id.* at 22-23 (internal citations omitted and brackets in original).

In addition to artificially inflating Patrick Stein’s criminal history category from a I to a VI, the terrorism enhancement also arbitrarily enhances his guideline sentence by 12 points. There appear to be no empirical studies or other justifications for either

increase. *See Kimbrough*, 552 U.S. at 84 (“Given the Commission's departure from its empirical approach in formulating the crack Guidelines and its subsequent criticism of the crack/powder disparity, it would not be an abuse of discretion for a district court to conclude when sentencing a particular defendant that the crack/powder disparity yields a sentence ‘greater than necessary’ to achieve § 3553(a)'s purposes, even in a mine-run case.”). These factors all weigh heavily against a guidelines-based life sentence.

D. The defendant showed utter lack of sophistication

Patrick Stein’s crimes demonstrated an extreme level of hatred and fear, but they also demonstrated an utter lack of sophistication. *See United States v. Talk*, 13 F.3d 369, 371 (10th Cir. 1993) (“While not foreclosing the possibility that lack of sophistication could provide a valid basis for an upward or a downward departure, depending on the crime and the circumstances, we hold that forcible rape is not a crime where sophistication or lack thereof would justify any departure.”).

The recordings made by the FBI’s paid informant show that while Patrick Stein was the most vocal of the defendants, he was also the least knowledgeable of the defendants when it came to the actual mechanics of the plan. Patrick Stein did not know the difference between commercial and military grade C-4, and he did not know the difference between inert urea and ammonium nitrate, as he told UCE Brian. His lack of knowledge was such that Curtis Allen and Gavin Wright did not include him when they were experimenting with HMTD.

The defendants as a whole also showed a lack of sophistication as their plans changed as often as they met and ranged from dressing up as maintenance men and pumping anhydrous ammonia through the apartment vents, to dropping sticks of dynamite through holes punched in the roof, to placing trash cans around the building and packing them with explosives. In short, they had no real direction or plan other than to do something.

E. Government manipulation of the charges, even if not in bad faith.

On September 21, 2016, AUSA Tony Mattivi wrote case agents Robin Smith and Amy Kuhn and a variety of other FBI officials the following email:

Everyone:

Given recent developments, I'm reassessing where we are with possible charges in this case. Until now, I had been thinking about this case in terms of violations of 18 USC 844(i) and 18 USC 371 [Conspiracy to commit arson]. *With the events planned in the next several days, I think the defendants are crossing into the realm of us considering a charge of 18 USC 2332a* (attempting to use weapons of mass destruction – punishable by up to life imprisonment). We should (and I know we will, for tactical reasons as well as the legal reasons) pay close attention to whether any of our targets show up to any of these UC meetings armed. If so, that also gives us a valid basis for charging violations of 18 USC 924(c) (possession of a firearm in furtherance of a crime of violence, namely the attempted use of the WMD – punishable by a mandatory term of imprisonment for five years, mandatorily consecutive to any sentence imposed for the underlying WMD charge) And each time we can document a target showing up armed for a meeting, that's a separate and additional 924(c) count – with a separate (and potentially consecutive) sentence. Of course, the 844(i) and the 371 counts remain applicable.

Just wanted to share my thoughts as the case progresses and evolves. Please call or email if you have questions or want to discuss further (especially if you think I'm missing the mark here – please speak up!).

Thanks,

Tony

Tony Mattivi email Attached as Exhibit C (Emphasis added)

Prior to September 21, 2016, the United States government was thinking of this case in terms of a conspiracy to violate 18 U.S.C. § 844(i)—that is, destroying real or personal property used in interstate commerce by means of fire or explosive. § 844(i) carries a minimum term of 5 years and a maximum term of 20 years as long as injury or death does not result. There was no injury or death in Patrick Stein’s case.

So what changed after September 21, 2016? What “events” planned in the “next several days” could cause the government to move from a charge that would carry a maximum sentence of 20 years in prison to one that carried a potential life sentence? The only such event was the introduction of UCE Brian and the government’s offer to build the explosive device for the defendants. There was no change in plans. There was no change in targets. There was no change in means. The only change? The government was now going to supply a much bigger “bomb.”

Prior to September 21, 2016, the case consisted of the three defendants and Dan Day . In fact, Dan Day told the FBI—incorrectly, it turns out—nearly a month before Mr. Mattivi’s email that the defendants had everything they needed to build an explosive device. However, it appears that the size and scope of that theoretical explosive device was not sufficient, in the government’s eyes, to warrant an arrest.

The email quoted above clearly shows that charges were manipulated through the use of UCE Brian and his offer to make a much larger explosive than defendants would

have made on their own. *See* U.S.S.G. Pt. A.4 ("[A] sentencing court may control any inappropriate manipulation of the indictment through use of its departure power."); *United States v. Gamez*, 1 F.Supp. 2d 176 (E.D.N.Y. 1998) (Weinstein, J.) (departure from level 20 to 15 warranted in money laundering case because nature of crime more closely resembled structuring crime which had lower guidelines); *United States v. Lieberman*, 971 F.2d 989, 995 (3d Cir. 1992) (where prosecution charged defendant with tax evasion and embezzlement, knowing not groupable, and other defendants not charged, court can depart downward to ensure equality in sentencing and that U.S. Attorney not manipulate sentencing *even absent bad faith*) (emphasis added).

The federal criminal code is a complex amalgam of interchangeable statutes in which numerous charges can be used to fit any situation. There rarely seems to be one clear-cut statute or one clear-cut set of facts. The same can be said for the United States Sentencing Guidelines, as was seen by the contortions required to arrive at a base offense level in the pre-sentencing report.

This argument is similar to that of sentencing entrapment, in which a defendant is encouraged by government agents to provide a higher quantity of drugs than he was originally intending to sell. *See United States v. Staufer* 38 F.3d 1103 (9th Cir. 1994) (district court has authority to depart downward where defendant was encouraged by agents to furnish 10,000 doses of LSD, more drugs than defendant was predisposed to deliver (5,000 doses)). *See also United States v. Searcy*, 233 F.3d 1096, 1099 (8th

Cir.2000) (“This case demonstrates that the Sentencing Guidelines have a ‘terrifying capacity for escalation of a defendant's sentence’ as a result of government misconduct.”).

Patrick Stein is not alleging an escalation in his guideline sentence based on government misconduct, so much as he is alleging it is based on simple government conduct: the escalation from relatively simple trash can bombs envisioned by the defendants to vehicle-born-improvised-devices proposed by UCE Brian. This proposition alone raised the stakes not only on the investigation but on the potential sentences associated with that investigation as well. The ultimate sentence should take that into account.

F. Imperfect Entrapment

At the close of evidence, the defendants requested an entrapment instruction. (Doc. 374 Proposed Defense Jury Instruction No. 24). The instruction was denied by the Court. While Patrick Stein disagrees with the Court’s denial of this instruction, this is not the issue before the Court at this time. Rather, the question is whether the evidence presented was sufficient for this Court to make a finding of “imperfect entrapment” and grant a downward departure for the aggressive conduct of the government through its paid informant Dan Day.

The testimony at trial clearly demonstrated that it was Dan Day who:

- 1) “Found” ISIS recruiting flyers at the Garden City library and informed Jason Crick and other militia members, including the defendants.
- 2) Proposed the Mary Street Apartment complex as the target of the defendants’ plans—first mentioning the complex at the meeting in Brody Benson’s field and continuing to push this location because it was close to his house and close to the FBI office in Garden City.
- 3) Provided the defendants with information about the Mary Street Apartments, including telling them that the white residents had been moved out to make room for the Muslim refugees. He also told them that they were driving brand new cars and wearing expensive suits, and were more than likely involved in illegal activity, possibly funding terrorism.
- 4) Worked to keep the group together whenever there appeared to be friction that might jeopardize the conspiracy, spending hours on the phone with Patrick Stein convincing him that he just needed to let Curtis Allen have his own way because what they were trying to do was too important to let petty disagreements get in the way.
- 5) Pushed the group to have meetings when nothing was getting done.
- 6) Pushed the group to meet with the UCE, not only for what he could do for them now but what he could do for them in the future, often implying that UCE

Brian could provide them with supplies for the civil war the defendants believed was inevitable.

- 7) Always agreed with Patrick Stein, regardless of the outrageous statements or fantasies Patrick espoused.

UCE Brian also described his “legend” not only as an arms dealer who could provide the items that Patrick and the other defendants wanted for a price, but also as a like-minded individual who, like Dan Day, always agreed with Patrick.

While the Court found that these facts did not meet the requirements of entrapment, the facts do show a paid informant who took an active role in the conspiracy, playing the part of active KSF participant as well as a confessor and conciliator for Patrick Stein regarding his issues with Curtis Allen and Gavin Wright.

“Imperfect entrapment” is appropriate in situations where the government’s encouragement of criminal activity was not severe enough to constitute the defense of entrapment, but was nonetheless severe enough to warrant a downward departure at sentencing. *See United States v. Garza-Juarez*, 992 F.3d 896, 912 (9th Cir. 1991). With imperfect entrapment the defendant does not need to be devoid of any predisposition to commit the crime. *United States v. McClelland*, 72 F.3d 717, 725 (9th Cir. 1995). “[I]t is precisely those defendants who are predisposed but who are then pressured unduly by the government to go forward with the offense who are eligible to assert imperfect entrapment.” *Id.*

G. Variance Based on Fact That Patrick Stein’s Crimes Did Not Transcend National Boundaries.

Patrick Stein’s offense level was increased by 12 points (and his criminal history increased from category I to category VI), based on the terrorism enhancement found at U.S.S.G. § 3A1.4. This enhancement applies if the crime for which the defendant is convicted “involved or was intended to promote a ‘federal crime of terrorism.’” While Patrick has objected to the application of this enhancement, the United States Probation Office has applied it to his conviction on Count 1, conspiracy to use a weapon of mass destruction.

To define “federal crime of terrorism” § 3A1.4 looks to 18 U.S.C. 2332b(g)(5):

- (A) Is calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct; and
- (B) Is a violation of . . . 2332a⁴

In *United States v. Garey*, 383 F. Supp. 2d 1374 (M.D. Ga. 2005) United States District Judge Land, when faced with a similar objection from a defendant convicted under 18 U.S.C. § 2332a, among other charges, upheld the enhancement but expressed apprehension:

The Court’s concern centers upon the fact that this definition of federal crime of terrorism is included in the code section that is limited to terrorism that transcends national boundaries. 18 U.S.C. § 2332b. Violation of § 2332b, in which this definition appears, requires a finding that the offenses conduct “transcends national boundaries”; therefore, Defendant could not have been convicted under § 2332b . . . The question therefore arises as to whether the interpretation of this definition should be read in

⁴ Patrick Stein concedes that the crime for which he was convicted meets the second prong of the definition

the context of the entire code section and should thus be read to mean that federal crime of terrorism is an offense, *transcending national boundaries* .

..

383 F. Supp. 2d at 1378 (emphasis in original). Despite his concerns, Judge Land found that the guidelines did not require the offense to transcend national boundaries for the enhancement to apply and overruled the defendant's objection. *Id.*

However, Judge Land found that his concerns were enough to grant a variance to the defendant:

In this case, the guidelines increase the Defendant's offense level by twelve levels for conduct of which he was not convicted by a jury. . . . Nevertheless, under the guidelines, Defendant is arguably being held criminally responsible for conduct for which he was not indicted and for which he never could have been convicted [terrorism transcending national borders].

Id. at 1379. Judge Land also found it “troubling that another defendant who carried out a threat to bomb public facilities, injuring and maiming (but not killing) thousands of people, would face the same sentence as this Defendant who did not cause physical injury to a single person.” *Id.*

Judge Land granted the defendant a variance by finding that the terrorism enhancement did not accomplish the purposes of 18 U.S.C. § 3553 by accurately considering the “nature and circumstances of the offense.” He combined this with a finding that the increase in criminal history category did not accurately reflect and, in fact, ignores the “individual ‘history and characteristics’ of the Defendant, and instead places too much weigh on a questionable interpretation of what constitutes a federal

crime of terrorism under the guidelines.” *Id.* In the end, Judge Land used the defendant’s true criminal history category of III and an offense level of 41 to sentence the defendant to 360 months in prison.

Patrick Stein would ask this Court to adopt the same justification for a variance as that used by Judge Land and based his guidelines on his true criminal history category of I and an offense level of no more than 31 (43-12).

V. CONCLUSION

Patrick Stein has been convicted and will be sentenced for his role in the charged conspiracies. A sentence of no more than 15 years will be sufficient, but not greater than necessary, to appropriately reflect the reality of the crime with which he was involved and the factors for sentencing under law.

s/ James R. Pratt
 JAMES R. PRATT, #17716
 445 N. Waco
 Wichita, Kansas 67202
 Ph: (316) 262-2600
 Fax: (316) 262-2602
Jim@JamesRPrattLaw.com
 Attorney for Defendant

s/ Michael Shultz
 MICHAEL SHULTZ, #23133
 Shultz Law Office, P.A.
 445 N. Waco
 Wichita, Kansas 67202
 Ph: (316) 269-2284
 Fax: (316) 269-2011
michael@shultzlaw.net
 Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2018, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system which will send a notice of electronic filing to each counsel of record in this case.

I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants: none

s/James R. Pratt
JAMES R. PRATT #17716
Attorney for Defendant
445 N. Waco
Wichita, Kansas 67202
Ph: (316) 262-2600
Fax: (316) 262-2602
Jim@JamesRPrattLaw.com

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
(Wichita Docket)

FILED
U.S. District Court
District of Kansas

DEC 13 2013

Clerk, U.S. District Court
By K. H. H. H. Deputy Clerk

UNITED STATES OF AMERICA

Plaintiff,

v.

TERRY L. LOEWEN,

Defendant.

Case Number: 13-m-6261-01-KM#

CRIMINAL COMPLAINT

I, Federal Bureau of Investigation Special Agent Stephen Cousineau, being duly sworn, state the following is true and correct to the best of my knowledge and belief, and establishes probable cause that the following offenses have been committed:

COUNT 1

On or about December 13, 2013, in the District of Kansas and elsewhere, the defendant,

TERRY L. LOEWEN,

attempted, without lawful authority, to use a weapon of mass destruction against people and property within the United States and such property is used in interstate and foreign

commerce, and the offense, and the results of the offense, would have affected interstate or foreign commerce.

All in violation of Title 18, United States Code, Section 2332a(a)(2)(D).

COUNT 2

On or about December 13, 2013, in the District of Kansas and elsewhere, the defendant,

TERRY L. LOEWEN,

maliciously attempted to damage and destroy, by means of an explosive, a building, vehicle and property used in an activity affecting interstate and foreign commerce.

All in violation of Title 18, United States Code, Section 844(i).

COUNT 3

On or about October 7, 2013, in the District of Kansas and elsewhere, the defendant,

TERRY L. LOEWEN,

knowingly attempted to provide material support and resources, in the way of services, personnel and property as that term appears in Title 18, United States Code, Section 2339A(b), to Al Qaida in the Arabian Peninsula (AQAP), a foreign terrorist organization that has been continuously designated since January 19, 2010, knowing that the organization was a designated terrorist organization, (as defined in Title 18, United States Code, Section 2339B(g)(6)) and that the organization engages in and has engaged in and was engaging in

terrorist activity (as defined in Section 212(a)(3)(B) of the Immigration and Nationality Act) and terrorism (as defined in Section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989).

All in violation of Title 18, United States Code, Section 2339B(a).

The following facts were made known to me by personal observation or from information I received from other law enforcement officers, and/or from other individuals and does not contain all facts known to the agent, but only those facts sufficient to establish probable cause. Furthermore, statements of others, including those attributed to Terry Loewen, are set forth in substance and in part:

1. I am employed as a Special Agent with the Federal Bureau of Investigation (FBI). I have been employed as a Special Agent since September 25, 2011. I am currently assigned to the Wichita, Kansas, Resident Agency, Kansas City Division. Prior to service with the FBI, I was a Captain for the United States Army where I served for a total of six years. As a Special Agent of the FBI, I am authorized to investigate violations of laws of the United States, and I am a law enforcement officer with authority to execute arrest, search, and seizure warrants under the authority of the United States. I have participated in a wide variety of criminal investigations, to include white collar crimes, health care fraud, crimes against children, child exploitation, bank robbery, and other violent and non-violent Federal crimes. Additionally, I have participated in the preparation and/or execution of many search, arrests, and seizure warrants.

Background

2. AQAP is a Yemen based terrorist group that has claimed responsibility for several terrorist acts against the United States. On or about January 19, 2010, the United States Secretary of State designated AQAP as a foreign terrorist organization under Section 219 of the Immigration and Naturalization Act, and remains designated through the date of the complaint.
3. Terry Loewen (Loewen) is a U.S. person located in Wichita, Kansas. Loewen was born on 1955. On or about June 20, 2013, the FBI reviewed a copy of Loewen's valid U.S. passport that was attached to Loewen's Security Identification Display Area (SIDA) badge application and obtained from an employee at the Wichita Mid-Continent Airport. Loewen is a citizen of the United States. Information obtained by the FBI in May 2013 from the Kansas Criminal Justice Information System and FBI physical surveillance in September 2013 indicates that Loewen resides in Wichita, Kansas. As discussed below, Loewen is employed as an avionics technician for an aeronautics company.

Loewen's Interactions with FBI Employee 1

4. Loewen has engaged in online conversation with an individual who unbeknownst to him is an FBI employee (FBI Employee 1). Statements Loewen has made to FBI Employee 1 reflect his desire to engage in violent jihad¹ on behalf of al Qaeda. For example, on or about August 5, 2013, during a communication, Loewen told FBI Employee 1 in relevant part:

¹ "Jihad" is an Arabic term meaning "holy war," and while it has many different meanings, the defendant uses it to mean violent jihad.

As time goes on I care less and less about what other people think of me, or my views of Islam. I have been studying subjects like jihad, martyrdom operations, and Sharia law.² I don't understand how you can read the Qur'an and the sunnah³ of the Prophet (saw)⁴ and not understand that jihad and the implementation of Sharia is absolutely demanded of all the Muslim Ummah.⁵ I feel so guilt-ridden sometimes for knowing what's required of me but yet doing little or nothing to make it happen. I love my Muslim brothers and sisters, whether they agree with me or not, it's just hard to deal with the denial that some of them appear to be going through. I was texting a sister on line a week or two ago, and she insisted that jihad was wrong, that any pain Muslims were suffering was their own fault for not having enough iman,⁶ and that the Prophet never said apostates should be put to death. I do agree on one thing; the one thing we are doing wrong is that all 1.5 billion of us don't rise up against the rest of the world and tell THEM how it's going to be. Inshallah,⁷ it will happen soon.

Loewen closed his message by stating in relevant part,

One last thing I would like to make clear if I haven't already - I believe the Muslim who is labeled "a radical fundamentalist" is closer to Allah (swt)⁸ than the ones labeled "moderates". Just my opinion; if I'm off base, please set me straight.

² "Sharia" is the moral code and religious law of Islam.

³ "Sunnah" is an Arabic term meaning "direct path."

⁴ The initials SAW is an abbreviation for Salla Allahu 'Alaihi Wa Sallam which translated means May the blessings and the peace of Allah be upon him (Muhammad). This abbreviation is frequently used when the name of the Prophet Muhammad is spoken or used.

⁵ "Ummah" is an Arabic term meaning "the Islamic Nation."

⁶ "Iman" is an Arabic term meaning "faith or beliefs."

⁷ "Inshallah" or "Insha'Allah" is an Arabic term meaning "God willing."

⁸ The initials swt is an abbreviation for Subhanahu Wa Ta'ala which translated means "Allah is pure of having partners and He is exalted from having a son." This abbreviation is frequently used when the name of Allah is spoken or used.

5. On or about August 8, 2013, FBI Employee 1 offered to introduce Loewen to someone who could help him engage in violent jihad. In response to this offer, Loewen wrote in relevant part:

Brothers like Osama bin Laden and Anwar al Awlaki⁹ are a great inspiration to me, but I must be willing to give up everything (like they did) to truly feel like a obedient slave of Allah (swt). You stated you might be able to put me in contact with someone that might be able to help - not sure what that means, and I can't ask any direct questions, but with what I stated above, plus whatever I can impart to you in future correspondents [sic], perhaps you can better judge what it is I need. I in no way want to put you or any other brother in harms way - and that is a great concern of mine, so please be careful. I realize we don't know each other very well, and neither one of us knows who could be listening in, so please use caution. I very much appreciate your advice and offer of help (I certainly need it), but my love for fellow Muslims is much greater than my love for myself.

6. On or about August 17, 2013, Loewen informed FBI Employee 1 about his review of Awlaki articles and other al Qaeda-related texts. Loewen wrote in relevant part:

I have read Anwar Al-Awlaki's 44 ways of Jihad,¹⁰ and like everything I've ever read of his, it's very informative. . . . I have downloaded tens of thousands of pages on the subjects I mentioned earlier [referring to jihad, martyrdom operations and implementation of Sharia law]. Today I printed out something called the Al Qaeda Manual (or Manchester Manual),...

⁹ Prior to his death, Awlaki was a leader of al Qaeda in the Arabian Peninsula (AQAP). Awlaki helped recruit Umar Farouk Abdulmutallab, the man convicted of trying to blow up a transatlantic flight as it landed in Detroit, Michigan, on December 25, 2009. Awlaki is also believed to be behind the foiled attack in which two ink cartridge bombs, posted in Yemen, were intercepted in Britain and Dubai on their way to Chicago in the fall of 2010. Al Qaeda in the Arabian Peninsula (AQAP) claimed responsibility for this attempted terrorist attack. Awlaki used the Internet to engage in direct contact with individuals to encourage violent jihad, and was involved in the publication of "Inspire" magazine. According to open source reporting, Awlaki was killed on or about September 30, 2011, in Yemen.

¹⁰ "44 Ways to Support Jihad" is an essay that describes dying as a martyr, supporting the mujahideen, and encouraging others to engage in jihad.

7. On or about August 21, 2013, Loewen sent a message to FBI Employee 1 outlining his ideas for engaging in violent jihad. He stated in relevant part:

Let me get to the bottom line without being too revealing - I have numerous ideas of ways I could perform jihad in the path of Allah (swt) but outside du'a,¹¹ none of them are legal. I'm 58 years old and spending my remaining years behind bars for a good reason is not out of the question for me. I have considered supporting some of our brothers and sisters in prison, and have been sending money to the family of Yunnus Abdullah Muhammad, one of the founder [sic] of the Revolution Muslim website, which is the first website that really helped me understand what obedience to Allah (swt) was. He is doing eleven and a half years over the whole South Park fiasco; isn't democracy great? I still need to do more however. If by any chance you know of someone who is active in jihad and could use an occasional influx of "help", please let me know. Short of that, nothing I am doing now is enough. If the subject is too hot to handle, by all means let it go. I only want to help my brothers, not lead them to a destination they feel isn't for them. I just hate the kaffar¹² government and those who are following it to the Hellfire, and the sooner it and its followers get there, the better.

8. During communication with the FBI Employee 1 on or about September 2, 2013, Loewen stated in relevant part: "hey I read Inspire magazine; I believe in staying informed."¹³

9. On or about August 26, 2013, Loewen mentioned providing a "tour" to FBI Employee 1 of where he worked (the Wichita Mid-Continent Airport). Loewen thereafter commented in relevant part:

¹¹ "Du'a" is an Arabic term meaning invocation, prayer, or an act of supplication.

¹² "Kaffir," or "kuffar," is a term used by Muslims, often in a derogatory manner, to describe non-Muslims.

¹³ In July 2010, AQAP released the first edition of an English-language electronic magazine titled *Inspire*. This magazine featured, among other things, teachings from Awlaki, a death threat against an American citizen, and step-by-step directions for making a homemade bomb. The magazine is intended to be used to recruit individuals (especially Westerners) to engage in violent jihad, and to train and prepare them for jihad. Numerous issues of *Inspire* magazine have been published, each of which contained articles regarding violent jihad.

Let me preface the bottom line by saying I have become "radicalized" in the strongest sense of the word, and I don't feel Allah(swt) wants me any other way - I MUST be active in some kind of (dare I say it) jihad to feel I'm doing something proactive for the Ummah - giving money to those who fight for the Tawheed¹⁴ is one that I'm definitely [sic] interested in, but direct jihad against a civilian [sic] target is not out of the question. Point being, is my having access to airport property the primary reason for the tour - if the answer is "no" then I will not bring it up again.

10. On or about August 27, 2013, Loewen clarified his vision of engaging in terrorist activities, stating in relevant part:

Aiding the mujahdeen [sic] is pretty low stress for me ; it's always something I've wanted to do but you just can't walk up to any Muslim and ask - I don't know that even they wouldn't [sic] turn me in. Now, the work thing is very heavy stuff, because I don't really know how other brothers would want to handle it - it's just too big for me to handle on my own, and the more people that get involved, the more chance it has of going south[.] ... I guess I look at myself as the "access" guy at this point - just need more details, if any exist at this point - are we talking explosives, because I know nothing about that? It's all very surreal at this point, exciting, yet scary.

11. While continuing to discuss possible terrorist operations that could be conducted at his workplace, he stated that he was able to escort people out on the tarmac which leads to the airliners and control tower. Loewen stated that he could get access to bring a vehicle onto the tarmac, which would then have access to the runways, but not until January. Loewen apologized for asking for details "before the operation is in the planning stage." He asked FBI Employee 1 to give him some time to decide if this was the right way to go and, if he decided it was, that maybe they could then get others involved [in the plot].

12. On or about September 2, 2013, Loewen sent a message to FBI Employee 1 regarding the mistake he had made by allowing a family member to help him with his

¹⁴ "Tawheed," or Tawhid, is an Arabic term referring to the concept of monotheism in Islam.

computer. In a previous conversation with FBI Employee 1, Loewen stated that FBI Employee 1's conversations with Loewen were protected because Loewen did not allow a family member to use or see his computer. Because Loewen had been having trouble with his computer, he asked his family member to help him figure out the problem. The family member "fixed" it by deleting or uninstalling a program from the computer. Loewen had assumed that his recklessness had affected his relationship with FBI Employee 1 to the extent that he would have to cease all contact. Loewen wrote the following to FBI Employee 1:

I just spent an hour responding to your email (sic) and dumped it before I sent it (sic) - I don't think I have the will power to repeat it. It explained a great deal about what has happened the last couple of days and why I believe my "reckless endangerment" of myself and others has to come to an end. I understand how upset you are about this and I won't let it happen again, and I think the only way I can assure that is by isolating myself and any action I come up with, will have to be done alone. I'm not able to keep things in order, therefore causing an unsafe environment (sic) for myself and others, and the worse thing I can think of is someone else going down for my stupidity. I really don't see me living through anything I have in mind, assuming I can even pull (sic) it off. Again I apologize for this fucking mess, and will miss the wonderful conversations we had. Peace be with you my brother.

Loewen believed, based upon communication from FBI Employee 1 following his disclosure of allowing a family member to access his computer to remedy his issues, that FBI Employee 1 was upset with him for this breach in communications security and no longer trusted him. As stated in the communication above, Loewen indicated that to ensure he did not put himself, FBI Employee 1, or others at risk of exposure due to his recklessness, he would cease any further contact with FBI Employee 1.

After seeing Loewen's communication, FBI Employee 1 contacted Loewen and explained that he/she felt Loewen misinterpreted his/her comments and that they should discuss the issue in order to work through their misunderstanding and concerns. On or about September 3, 2013, following up FBI Employee 1's offer to work things through, Loewen initiated contact with FBI Employee 1 and explained in detail what happened, how it happened, and his assessment of whether or not FBI Employee 1's identity, or Loewen's plans for jihad had been compromised by a family member's work on his computer. Specifically, Loewen stated in relevant part: "[The family member] never saw any of our conversations, and if [he/she] had, [he/she] isn't the type to turn us in. . . ."

By the conclusion of the September 3, 2013, communications, Loewen had reasserted his commitment to engage in jihad, had thanked FBI Employee 1 for his/her understanding and forgiveness for potentially exposing his communications with FBI Employee 1 to a family member, indicated the precautions he would take to ensure that he did not repeat the same mistake, and agreed to remain in contact with FBI Employee 1.

13. On or about September 6, 2013, Loewen continued his vision of engaging in terrorist activities, stating to FBI Employee 1 in relevant part:

I believe the potential for me doing more is staggering. I have some rough ideas, but I know nothing about explosives. Don't you think with my access to the airport that I should put that to good use? I'm sure I am not as ready as I think I am, but by next year – who knows. Understand I have NO exxperience [sic] in things like this, but I'm willing to learn...Anyway, I'm just talking right now but I still feel I'm being led in this direction.

14. Loewen and FBI Employee 1 engaged in a conversation on or about September 9, 2013. Loewen stated the following:

I'm spending my spare time thinking over my options for "operations" and believe I'm moving way too fast for obvious reasons – trying to make up for lost time mostly...I'm going to stick with donating money to "needy Muslims" for a while. When ever [sic] it's convenient, please send me that info again.¹⁵ I want to transfer it to my thumb drive, but I will probably need help – thats why I deleted it last time. . . . Know a good place to hide it when I'm done?

During the ensuing conversation, FBI Employee 1 sent the information on how to send money via Western Union, and then explained how to put the information in a notepad file and save it to a thumb drive. After he completed saving the information, Loewen stated in relevant part:

Works for me. I'll put it somewhere secure – I have all kinds of jihad-related materials [sic] on it.

15. During communication with FBI Employee 1 on or about September 13, 2013,

Loewen stated in relevant part:

Reading about the actions of the muhajideen [sic] and actually carrying them out is two different things. If not for my family, I would have already carried out some sort of operation – but thats my fault for putting others before Allah(swt) which I know better than to do.

16. On or about September 17, 2013, Loewen sent photos to FBI Employee 1 of what appeared to be fighter jet trainers on the tarmac outside his hanger. FBI Employee 1 asked Loewen if those jets were permanently stationed there.

¹⁵ FBI Employee 1 previously provided Loewen instructions on how to send money via Western Union on or about September 3, 2013. At that time, FBI Employee 1 provided Loewen the name of the recipient and details of what he could expect to happen based upon the amount of money he was trying to send. Loewen never sent any money to the individual referred to him by FBI Employee 1.

17. On or about September 21, 2013, Loewen responded to FBI Employee 1's question about the pictures of the jets that Loewen had taken on September 17, 2013. The following is Loewen's response:

As far as the birds go, I don't know what they were for sure - they were there less than an hour and left. I think there is an airshow somewhere close, but [don't?] know for sure. All they stopped for was fuel. The ones I sent pics of the other day actually stayed over night. We have had numerous Apache's [sic] land and stay over night - it's all going on next to where I work, but we have no involvement with them (at least not YET). They drop in, but I have no way of knowing when. I don't see anyway an operation could be planned in advance. It would have been possible today for me to have walked over there, shot both pilots(I don't know if they are armed or not), slapped some C4 on both fuel trucks and set them off before anyone even called TSA. Talks REAL cheap, however, so what I think I can do and what I actually can do are probably two different things. Next year I intend to get a ramp pass so I can drive my vehicle on the ramp. As far as what you tell the brothers - as long as my name isn't used I'm good with it. Like I said, I have the access, but unless someone thinks I'm teachable, thats about all I have to offer - but don't get me wrong; I certainly have the desire to learn how to perform an operation like this. I just haven't been given the "green light" by Allah(swt) yet - at least not that I'm aware of.

18. On or about October 3, 2013, FBI Employee 1 told Loewen that he/she had just returned from overseas after meeting with individuals connected with AQAP. FBI Employee 1 stated that the "brothers" were interested and excited to hear about Loewen's access to the airport where he worked. FBI Employee 1 also asked Loewen if he would be willing to "scout for potential targets, collect information on security measures in place, [and] take photos of security access points." He/She also asked if Loewen would be willing to plant some type of device when the time came for doing so. Loewen responded by stating the following:

Wow! Thats some heavy stuff you just laid down. Am I interested? Yes. I still need time to think about it, but I can't imagine anything short of arrest stopping me. But as you keep reminding me, I need to let Allah(swt) guide me. It's very hard for me to comprehend the fact that I could be part of such a massive operation. I'm just Allah's slave, and not a very good one at that. I have one question: How do you really know who I am or what my agenda really is? I pray to Allah(swt) every night that I'm not being misled, and if I am, that He will make it very apparant (sic) to me. I trust you but part of me wants to trust ANYBODY who says they believe what I do because those kind of people are SO rare, and I thirst for that. I'm sorry I can't say I trust you 100%; my greatest fear is not being able to complete an operation because I was set up. I hate this government so much for what they have done to our brothers and sisters, that to spent (sic) the rest of my life in prison without having taken a good slice out of the serpents head is unacceptable to me. If there is anyway of reassuring me, please do. As I said, I pray for guidance but God doesn't speak to me like He does others. I hope I haven't offended you, but this is like a dream come true for me, and I never expect things this good to occur in my life. I want nothing from this life but to please Allah (swt), and without engaging in jihad for His sake, I can't say that I did anything to please him. Peace be upon you and all my brothers and sisters in Islam.

19. On October 4, 2013, Loewen advised FBI Employee 1 that he had some questions about what his involvement might be and the kind of operation that was being considered.

Loewen stated in relevant part:

I have some questions about that - if what I ask is not a "need to know" at this time, tell me. Am I only involved as far as "prepping" for this is concerned, and just watching the rest unfold? And is it a martyrdom operation?; if so am I going to be part of that? I'm asking for a week to give myself time to process all this an (sic) give you an answer. As I've stated before, I won't be able to access the ramp with a vehicle until next year - so driving on to airport property with a van full of C4 is out of the question - after the first of the year, we could drive a city bus out there. It used to be vehicle access was an option, if that's changed I'm not aware of it.

20. On October 5, 2013, FBI Employee 1 explained that the plans had not been completely developed and asked if Loewen would be interested in a martyrdom operation.

FBI Employee 1 also stated that Loewen could back out at any time without the risk of losing face because no one knew his identity. Loewen responded that he wanted another few days to make his decision about going forward and stated the following:

Thank you for not getting anybody's (sic) hopes up too high in case I back out - to those on the front line I'm sure it would appear very cowardly of me. And they would probably be right. But it puts less pressure on me to do an operation, even if I would rather not. I have about 50 questions, but I realise (sic) descreption (sic) is of the utmost importance (sic). As far as things I would not want to engage in; you have said they are looking at a time close to the holidays; I can't see myself doing anything that involves killing children, unless I know everything is being done to minimize that. I understand it's a war, and some of these brothers may have had their children killed by this country, but in light of what the Prophet(saw) said concerning (sic) this, I just need to be sure it can be kept to an absolute minimum. And to address my wish for martyrdom (sic), I need to make sure I only desire it to please Allah(swt) . To kill numerous people and then trying to face anyone I know (including "moderate Muslims") is a fate worse than death to me. And I doubt I would last 5 minutes under torture - I would much rather die than roll over on a brother, even at this stage of the game. You are the only person I have any contact with on the jihad issue, but I would rather die than even give the authorities your name.

21. On October 7, 2013, Loewen sent numerous photographs of his airport access badge, entrance gates to the tarmac, and the devices used to access the gates. On October 8, 2013, Loewen also told FBI Employee 1 what the various codes and colors of his badge meant. Loewen also surmised that there were not any surveillance cameras at the gate.
22. On October 11, 2013, Loewen communicated with FBI Employee 1 stating that he was prepared to go forward. The following are Loewen's comments:

Thought I would run what I tried to send yesterday by you again. I will be unable to get gate access until next year (1/11/14) which is the date my badge expires. As far as airport terminal access, I will take a drive down that way soon, but I believe with a vehicle with company logo it would be no problem. If you like I can get a close up of the logo so a vehicle other

than ours could be painted to match, there by (sic) allowing more time to modify said vehicle for an operation, and then driven through the gate. Just a thought; I'm sure the brothers already have that figured out. I stated last week that I would decide by today if I'm in or out - count me in for the duration.

23. From October 11, 2013 through October 16, Loewen and FBI Employee 1 continued to communicate. Among the topics of conversation were Loewen's computer problems and the excitement about the operation. FBI Employee 1 told Loewen that he/she could provide him with a new computer if Loewen did not have the money to buy a new one. Loewen thanked FBI Employee 1 for the computer and stated the following:

All is good with me. Inshallah, this operation will be huge. Just to be a part of any operation with these brothers is a great honor for me, but of (sic) it can instill and great financial loss to the tagoot who run this country, then I will truly feel blessed. I pray the peace of Allah(swt) will be upon you and the other brothers. May this mission,inshallah, be fruitful for all of us.

24. Between or about October 18, 2013, through on or about October 19, 2013, Loewen and FBI Employee 1 communicated about Loewen meeting one of the brothers in person and providing the laptop at that time. FBI Employee asked Loewen if he would be available to meet in the next week. FBI Employee 1 reminded Loewen of the need for complete discretion and that security should be paramount. Loewen stated that he was not available during the weekend, but could meet during the week. Loewen also stated:

I will only bring a weapon if the brother thinks it to be advisable. The only reason I would see the need for one is if law enforcement were to show their ugly self's (sic), at which point I would start shooting to give the brother time to flee.

25. On or about October 22, 2013, Loewen told FBI Employee 1 that he would be available to meet with the brother on the next Friday night after work.

Loewen's Interactions with FBI Employee 2

26. On October 25, 2013, Loewen met in person with FBI Employee 2 whom he believed was a "brother" associated with AQAP. During the meeting Loewen reiterated his desire to help FBI Employee 2 with a mission to blow up a plane with numerous people on board. Loewen explained the access that he had to the airport and that he could not drive a vehicle onto the airport property until January 2014 when his badge was scheduled to be renewed.
27. On November 8, 2013, Loewen again met in person with FBI Employee 2. During this meeting, Loewen indicated that he was interested in becoming a martyr (i.e. dying in the attack), but that he needed to make sure that there was a reason for him to be martyred. Loewen also stated that he would not pull the "trigger" to blow up FBI Employee 2. The two also discussed the possibility of finding some way of escape so that it would not have to be a martyrdom operation. FBI Employee 2 suggested that Loewen could possibly travel overseas to a location where he could reside with other brothers. In discussing the specifics of the operation, which included taking a vehicle-borne improvised explosive device (VBIED) to the terminal near a number of passenger planes, Loewen suggested that another individual could come in to the terminal with a suicide vest and detonate that to coincide with the VBIED outside. FBI Employee 2 and Loewen discussed executing this plan just prior to Christmas which would cause the greatest impact physically and economically. They further decided that when discussing the airport and this mission they should use code words, and settled on the term "rental property."

28. On or about November 11, 2013, Loewen told FBI Employee 1 how the meeting with FBI Employee 2 went. In describing his meeting Loewen stated in relevant part:

I am well and the brother was very inspiring as always. We did look over the rental property, and I explained how we could accomplish the deed with the least resistance. I always think of things I would like to discuss further with him after we have parted company – so I may relay those questions and comments to you and you can get them to him, if thats (sic) possible. He asked me if I would like to take the ride all the way with him and I said yes, although he said he would ask the other brothers if it was possible for me to leave the country afterwards. I started thinking this would put other brothers in harms (sic) way, so I probably won't go that route. I told him I would go all the way with him to save other brothers much more valuable than me to the Ummah, from making that sacrifice. As I have told you before, I would consider that a great honor. I feel so close to this brother(as you said I would) that going to the end with him seems like the right thing to do. I haven't mentioned this to you because I only found out when I went to security inquiring about my badge: the airport is being renovated – whether thst (sic) is effecting (sic) the area the aircraft park in I don't know. I've been using Google maps to survey the area, but things may have changed. I will try to find an excuse to go down that way and scope it out, or check with one of the fuelers about it. I assume because of air traffic that area can't be blocked, but I will make sure....

29. On or about November 13, 2013, Loewen communicated with FBI Employee 1 again. Among other things, FBI Employee 1 discussed Loewen's willingness to sacrifice himself for the sake of other brothers. Loewen responded with the following:

Just finished checking the photos from the air of the renovation of said property – all improvements are taking place west of our rental properties. Haven't found the completion date yet, but it shouldn't take too much digging to discover. When complete, it will render our rental units useless. But even at that, it wouldn't change the overall strategy of our project, just add a little more distance to the normal drive. The brother asked me to check times on traffic going in and out, so I hope to have some fairly in-depth details for him. It may require me to pay a visit inside of the property, but most of the info is on the website, mashallah.... Did you notice the brother who got busted trying to fly to Syria to aid Al Qaeda in fighting the taghoot government – guess he

posted a large amount of radical information on Facebook and the FBI set him up. I keep a pretty low profile on Facebook anymore – I have more important things to attend to....

30. On or about November 15, 2013, FBI Employee 1 and Loewen communicated with each other. FBI Employee 1 commented about the “brother” who was arrested by the FBI and agreed with Loewen that it was better to keep a low profile. FBI Employee 1 also inquired about the renovations and the best time to buy the open house. Loewen responded with the following:

You understood correctly concerning the renovations. I am compiling (sic) information for the brother concerning times – a first glance it appears early morning will work best – right around sunrise actually. At that time, there would be about 3 properties ready to be inspected – a lot depends on the size of the vehicle and how many supplies it’s carrying, although he didn’t really think that would be an issue. He called yesterday and said he would call again tuesday (sic) for a meeting wednesday (sic) – said we need to go shopping for supplies (carpet and such). Let you know what we pick up, so we can decide how much more we need to get the properties ready to show....

31. On November 19, 2013, Loewen met with FBI Employee 2 and reiterated his desire to martyr himself with FBI Employee 2. FBI Employee 2 told Loewen that he, Loewen, could be the navigator (i.e. the individual who would give directions to the place where the device would be detonated) to the terminal if he was willing, and Loewen agreed. Loewen also provided FBI Employee 2 research that he had conducted on the best time to execute the attack based upon the number of people who would be boarding aircraft and the number of people who would be in the terminal. Loewen further expressed his desire to kill as many people as possible, and he explained where to park a vehicle full of explosives to accomplish that goal. Loewen also provided a diagram of the terminal and

tarmac including distances between the gate areas. Finally, Loewen agreed to purchase a component that would be used to detonate the explosive. FBI Employee 2 explained to Loewen that they would need other items to complete the explosive device. Loewen agreed to obtain those items from his workplace, and without prompting stated that he could wire the explosive device, since he does wiring as part of his employment. They agreed on a final plan, that once Loewen got gate access they would drive to the terminal in the early morning hours, and detonate the device between the terminals for maximum casualties, and that both FBI Employee 2 and Loewen would die in the explosion.

32. On November 21, 2013, Loewen met with FBI Employee 2 and provided the requested components that he had obtained from his employer. He further stated that, in order to not attract attention, he would not try to renew his badge until 30 days before it expired.

33. On or about December 3, 2013, Loewen met with FBI Employee 2 and provided containers that were to be used for the explosive material. Loewen and FBI Employee 2 discussed how the device would be constructed. Loewen reiterated his desire to wire the device and that he would flip the switch when it came time for that. Loewen also provided FBI Employee 2 another diagram of the terminal and marked an "X" to indicate the best place to park the vehicle to cause the most damage. Loewen also provided time schedules for departures at the airport and confirmed that very early morning would be the best time to execute the plan.

34. On December 6, 2013, Loewen renewed his SIDA badge and was told that he now had gate access to the tarmac pursuant to his request.

35. On December 9, 2013, Loewen used his badge to verify that he did in fact have gate access to the tarmac. At approximately 6:37 p.m. Loewen was able to gain access to the tarmac using his badge and exited the secure area at approximately 6:38 p.m.
36. On December 11, 2013, FBI Employee 2 met with Loewen again. The two of them went to another location where Loewen wired the triggering device, and he assisted FBI Employee 2 in assembling the rest of the bomb.¹⁶ Both agreed that Friday, December 13, 2013, would be the best day to execute their plan, and Loewen stated that he was happy that this was going to happen soon. Later that day FBI Employee 2 spoke with Loewen, who stated that he did not go in to work that day, but had spent the day writing letters to his family member and making lists about what he still needed to do.
37. On December 13, 2013, at approximately 4:45 a.m., FBI Employee 2 picked up Loewen at a local hotel. The two drove to the location where the bomb was being stored, and arrived at 4:55 a.m. Loewen finished wiring the device rendering it operational. At approximately 5:19 a.m., Loewen and FBI Employee 2 departed their location and began their route to Wichita Mid-Continent Airport. At approximately 5:40 a.m., FBI Employee 2 and Loewen arrived at the gate where Loewen tested his badge on December 11, 2013. At approximately 5:42 a.m. Loewen exited the vehicle and attempted to use his badge twice on the card reader access panel in order to gain entry to the tarmac.¹⁷ The badge and the code used by Loewen were unique to him, and validated by the security system, and would

¹⁶ All of the explosive material used in this device was inert.

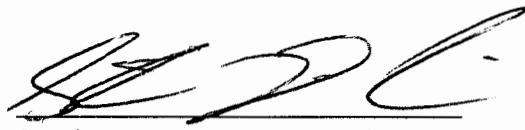
¹⁷ The gate that Loewen attempted to access had been disabled prior to his arrival at the airport.

have opened the gate had it not been disabled. Loewen was taken into custody after his two attempts at opening the gate.

38. Loewen left a letter dated December 11, 2013 for a family member describing his intent to conduct a martyrdom operation. It reads in part:

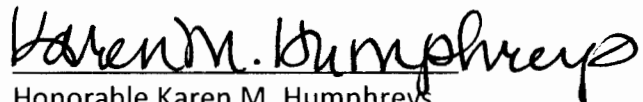
By the time you read this I will – if everything went as planned- have been martyred in the path of Allah. There will have been an event at the airport which I am responsible for. The operation was timed to cause maximum carnage + death. [. . .] My only explanation is that I believe in jihad for the sake of Allah + for the sake of my Muslim brothers + sisters. [. . .] Fact is, most Muslims in this country will condemn what I have done. [. . .] I expect to be called a terrorist (which I am), a psychopath, and a homicidal maniac. [. . .]

39. Based upon the above and foregoing information, which I affirm is true and correct to the best of my information and belief, I respectfully submit probable cause exists to support charges of attempted use of a weapon of mass destruction, in violation of Title 18, United States Code, Section 2332a(a)(2)(D); attempted use of an explosive device, in violation of Title 21, United States Code, Section 844(i); and attempted material support^{to} ^{fc} a foreign terrorist organization, in violation of Title 18, United States Code, Section 2339B(a).



Stephen Cousineau, Special Agent
Federal Bureau of Investigation

Sworn to before me and subscribed in my presence this 13th day of December, 2013, at Wichita, Kansas.



Honorable Karen M. Humphreys
United States Magistrate Judge
District of Kansas

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
(Topeka Docket)

UNITED STATES OF AMERICA,

Plaintiff,

Case Number: 15-mj-5039-KGS

v.

JOHN T. BOOKER, JR.,
a/k/a "Mohammed Abdullah Hassan,"

Defendant.

CRIMINAL COMPLAINT

(U) I, Federal Bureau of Investigation Task Force Officer Mark P. Engholm, being duly sworn, state the following is true and correct to the best of my knowledge and belief, and establishes probable cause that the following offenses have been committed:

COUNT 1

On or about April 10, 2015, in the District of Kansas and elsewhere, the defendant,

JOHN T. BOOKER, JR.,
a/k/a "Mohammed Abdullah Hassan,"

attempted, without lawful authority, to use a weapon of mass destruction, namely a destructive device as defined by Title 18, United States Code, Section 921, against property that is owned, leased, and used by a department and agency of the United States, that is: Fort Riley,

an active duty United States Army Installation located between Junction City and Manhattan, Kansas.

All in violation of Title 18, United States Code, Section 2332a(a)(3).

COUNT 2

On or about April 10, 2015, in the District of Kansas and elsewhere, the defendant,

JOHN T. BOOKER, JR.,
a/k/a “Mohammed Abdullah Hassan,”

attempted to maliciously damage and destroy, by means of fire and explosives, buildings, vehicles, and other personal and real property in whole or in part owned and possessed by, and leased to, the United States and departments and agencies thereof.

All in violation of Title 18, United States Code, Section 844(f)(1).

COUNT 3

On or between March 10, 2015 and April 10, 2015, in the District of Kansas and elsewhere, the defendant,

JOHN T. BOOKER, JR.,
a/k/a “Mohammed Abdullah Hassan,”

knowingly attempted to provide material support and resources, as that term is defined in Title 18, United States Code, Section 2339A(b), including property, services, and personnel, including himself, to a foreign terrorist organization, namely, the Islamic State of Iraq and the Levant (“ISIL”), knowing that the organization was a designated terrorist organization, and that the organization engages in and has engaged in and was engaging in terrorist activity and terrorism.

All in violation of Title 18, United States Code, Section 2339B(a).

The following facts were made known to me by personal observation or from information I received from other law enforcement officers, and/or from other individuals and does not contain all facts known to me, but only those facts sufficient to establish probable cause. Furthermore, statements of others, including those attributed to John T. Booker, Jr., are set forth in substance and in part:¹

1. I serve as a Federal Bureau of Investigation (FBI) Task Force Officer and a Technical Trooper with the Kansas Highway Patrol. I have served as a law enforcement officer since February of 1994, attending both the Kansas Law Enforcement Training Center and the Kansas Highway Patrol Academy. I am currently assigned to the FBI Joint Terrorism Task Force at the Topeka, Kansas, Resident Agency, Kansas City Division. As a Task Force Officer, I hold deputation as a Special Deputy U.S. Marshal pursuant to Title 28, I am authorized to investigate violations of the laws of the United States, and I am a law enforcement officer with authority to execute arrest, search, and seizure warrants under the authority of the United States. I have participated in a variety of criminal investigations, to include homicide, narcotic trafficking, crimes against children, counterterrorism, and other violent and non-violent crimes. Additionally, I have participated in the preparation and/or execution of many search, arrest, and seizure warrants.

Background

2. On October 15, 2004, the United States Secretary of State designated al Qa'ida in Iraq ("AQI"), then known as Jam'at al Tawhid wa'al Jihad, as a Foreign Terrorist Organization ("FTO") under Section 219 of the Immigration and Nationality Act and as a Specially

¹ Where quotes are used herein, affiant is relying on preliminary transcripts.

Designated Global Terrorist under section 1(b) of Executive Order 13224. On May 15, 2014, the Secretary of State amended the designation of AQI as a FTO under Section 219 of the Immigration and Nationality Act and as a Specially Designated Global Terrorist entity under section 1(b) of Executive Order 13224 to add the alias Islamic State of Iraq and the Levant (“ISIL”) as its primary name. The Secretary also added the following aliases to the ISIL listing: the Islamic State of Iraq and al Sham (“ISIS”), the Islamic State of Iraq and Syria (“ISIS”), ad Dawla al Islamiyya fi al ‘Iraq wa sh Sham, Daesh, Dawla al Islamiya, and al Furqan Establishment for Media Production. To date, ISIL remains a designated FTO.

3. John T. Booker, Jr., a/k/a “Mohammed Abdullah Hassan,” (“Booker”) is a 20-year-old United States citizen who is currently living in Topeka, Kansas. In or around February 2014, Booker had been recruited by the United States Army in Kansas City, Missouri, and he was scheduled to report for Basic Training on April 7, 2014.
4. On March 15, 2014, Booker publicly posted on Facebook: “I will soon be leaving you forever so goodbye! I’m going to wage jihad and hopes that i die.” On March 19, 2014, Booker publically posted on Facebook: “Getting ready to be killed in jihad is a HUGE adrenaline rush!! I am so nervous. NOT because I’m scared to die but I am eager to meet my lord.” That same day, the FBI became aware of Booker’s postings based on a citizen’s complaint. The FBI was able to identify Booker based on the publically available content on his Facebook account. On March 20, 2014, Booker was interviewed by FBI agents related to his Facebook postings. After being advised of and waiving his Miranda rights, Booker admitted that he enlisted in the United States Army with the intent to commit an insider attack against American soldiers like Major Nidal Hassan had done at Fort Hood, Texas. Booker

stated that if he went overseas and was told to kill a fellow Muslim, he would rather turn around and shoot the person giving orders. Booker stated that he formulated several plans for committing jihad once enlisted, including firing at other soldiers while at basic training at the firing range or while at his pre-deployment military base after completing his initial military training. Booker clarified that he did not intend to kill “privates,” but that he instead wanted to target someone with power. Booker also said that he did not intend to use large guns, but instead a small gun or a sword. Booker was subsequently denied entry into the military.

Booker’s Interactions with FBI Confidential Human Source 1

5. Since on or about October 8, 2014, Booker has engaged with an individual who is, unbeknownst to Booker, an FBI Confidential Human Source (CHS 1). Booker has repeatedly expressed to CHS 1 his desire to engage in violent jihad² on behalf of ISIL. For example, during a face to face conversation on October 10, 2014, Booker told CHS 1 in relevant part, that he: “was in jihad before, okay. I got captured. Okay, a long story short the people at the Masjid don’t like me because I support al Qa’ida openly. I’m not afraid, I was captured before . . . I was captured by FBI before . . . because I was with al Qa’ida.” Booker stated that he “joined the United States Army” and he “hadn’t really completed, I hadn’t really started . . . I was going to go in there and kill the American soldier.” Booker told CHS 1 that he dreamt of being in the Middle East, and then he showed CHS 1 a video on his phone of Muslims fighting American forces in Iraq. Booker

² “Jihad” is an Arabic term meaning “holy war,” and while it has many different meanings, the defendant uses it to mean violent jihad.

said he dreamt about going with the fighters and wished he was with them. Booker told CHS 1 that he had heard about Americans joining ISIL and that Booker wanted to join, but he didn't know anyone who could help him do so.

6. On or about November 12, 2014, Booker continued to communicate to CHS 1 about his desire to join ISIL. For example, Booker showed CHS 1 a video from YouTube about suicide bombers and martyrs and told CHS 1 that the first time Booker had viewed it he wanted to die a shaheed³. Booker spoke with CHS 1 about how peaceful the martyrs look after they die, and said he believes the bodies of martyrs do not decay after they die and that their blood smells like musk. That same day, CHS 1 told Booker that he had a "cousin" (who is also a FBI Confidential Human Source, hereinafter referred to as CHS 2) who could get people overseas and asked Booker what he wanted to do. Booker answered, "Anything. Anything you think is good. I will follow you." CHS 1 explained that they don't take "just anybody." CHS 1 told Booker that if Booker said he was ready to fight Booker would have to prove it. Booker responded: "I will kill any kuffar⁴. I will follow any place . . . Wallahi⁵, if I was with Daulah Islam⁶(ISIL) and they said look, we are going to the White House right now. Wallahi, I would go with them without any question."
7. On or about December 18, 2014, Booker told CHS 1 about other terrorist activities he could engage in before he travelled to Iraq, or in the event he could not go overseas. One of the plans Booker proposed was to get a gun or a grenade and kill American soldiers at a local

³ "Shaheed" is an Arabic term meaning "martyr." It is used as an honorific for Muslims who have died fulfilling a religious commandment, including those who die while conducting "jihad".

⁴ Kuffar or Kafir is a derogatory Arabic term commonly used to refer to non-Muslims.

⁵ Wallahi is an Arabic term meaning, "I swear to God."

⁶ Daulah Islam is an Arabic term referring to ISIL.

base (one of the closest military bases to where Booker resides is Fort Riley). Booker told CHS 1 that this act is permitted because the Koran says to kill your enemies wherever they are. Booker told CHS 1 that he believes American soldiers are the enemy of all true Muslims. Booker also said that he had considered a plan to capture a high ranking military officer and force him to say on video that ISIL is here in the United States so that "the kuffars will be afraid."

8. On or about February 3, 2015, during a conversation with CHS 1, Booker made reference to a video called "The Flames of War⁷," and then explained that he wanted to produce a propaganda video for ISIL. Booker stated that the video would threaten the American people and warn them to get their family and friends to quit the military. Booker told CHS 1 that he wanted to film the video with a military base or notable landmark in the background to show that ISIL is here in America. Booker suggested that they could capture and kill an American soldier immediately after filming the video. Booker told CHS 1 that his intent is to "scare this country" and to tell the people that "we will be coming after American soldiers in the streets . . . we will be picking them off one by one."

Booker's Introduction to FBI Confidential Human Source 2

9. On or about March 9, 2015, while under FBI surveillance, CHS 1 introduced Booker to CHS 2, who he explained was a high ranking sheik planning terrorist acts in the United States. Booker told CHS 1 and CHS 2 that he had studied suicide bombing and was inspired by an

⁷ In September of 2014, ISIL released a 55 minute video narrated by an unidentified operative in Syria with an American accent. The video, titled *The Flames of War*, was professionally edited and highlights the capture by ISIL forces of the Syrian Army's 17th Division base near Raqqa. During the video, captured Syrian soldiers are shown digging their own graves and then being shot gruesomely point-blank in the head.

American brother who he believed delivered a suicide bomb to a military base in Syria.

Booker told them that he heard a speech by the bomber, felt his words spoke directly to him, and he found the words “perfect” with Allah.

10. That same day, Booker also told CHS 1 and CHS 2 that he believed ISIL wanted to bring the fight back to Iraq. Booker said that the way to make that happen is to provoke the enemy at home so they (the United States) will have to send soldiers back into Iraq. Booker said the best way to do that is to hit the Army here (in the United States) so that Americans know the battle is not just overseas. Booker told CHS 2 that he had been watching a video of an American Syrian suicide bomber he called “Jihadi Joe.” Booker said he wanted to build and detonate a truck bomb like Jihad Joe⁸ did. Booker told CHS 2 that detonating a suicide bomb is his number one aspiration because he couldn’t be captured, all evidence would be destroyed, and he would be guaranteed to hit his target. CHS 2 asked Booker if he had a target in mind. Booker said he knew of a military post in Manhattan, Kansas called “the Big Red One.”⁹ Booker suggested this post would be a good target because the post is famous and there are a lot of soldiers stationed there¹⁰. Booker said that if they had a better target he was willing to go anywhere, and do anything, CHS 1 and CHS 2 asked him to do. CHS 2 counseled Booker that he can only move forward with his (Booker’s) plan for the

⁸ In July of 2014, in a video posted to social media, a 22 year-old American citizen Monar Mohammad Abu-Salha-nicknamed “Jihad Joe,” narrated a video in an effort to recruit westerners to join the Mujahedeen fighting in Syria. After making the video, Abu-Salha appears to drive a suicide truck bomb, containing 16 tons of explosives, into a Syrian army stronghold.

⁹ The “Big Red One” refers to the nickname of the U.S. Army’s 1st Infantry Division widely attributed to their shoulder patch, which is a large red number one on a green background. The nickname became widely used after the 1980 movie “The Big Red One” was released. The movie depicted soldiers’ experiences in the 1st Infantry Division battles during World War I and II. The 1st Infantry Division is based at Fort Riley, Kansas.

¹⁰ During a meeting on March 26, 2015, Booker researched population data on the internet and told CHS 1 and CHS 2 that Fort Riley has a daytime population of approximately 25,000.

sake of Allah, and that one cannot do it for any other person or reason. Booker responded that he understood that he could only move forward with his (Booker's) plan for the sake of Allah, because he understood that on the Day of Judgment Allah will know and throw anyone who lies into hell. CHS 2 counseled Booker that he must be truthful about his intentions, and Booker assured him that he was doing this only because he (Booker) wanted to, and only for Allah.

Booker creates a video message purportedly in the name of ISIL near Fort Riley

11. On or about March 10, 2015, while under FBI surveillance, Booker, CHS 1 and CHS 2 traveled together to Freedom Park near Marshall Army Airfield at Fort Riley, Kansas where CHS 2 took a video of Booker delivering an ISIL message that he (Booker) had written. Booker opened his speech with a statement in Arabic and then switched to English. He gave his bay'ah¹¹ to Abu Bakr Al Baghdadi (the leader of ISIL) and he encouraged all Muslims watching the video to give bay'ah to Al Baghdadi and to support Al Baghdadi and ISIL however they could. Booker then stated that ISIL would like to send a message:

to all the mothers, daughters, fathers, brothers, sisters and friends or loved ones of . . . any soldier in the United States military. Get your kids out. Get your loved ones out of the military. Because, wallahi, Dualah Islam¹² is coming for them. From inside, whether it be in their homes, whether it be on a base like this, whether it be in the recruiting stations, whether it be in the streets . . . Wallahi, we are coming for them and we seek their blood because their blood is halal¹³ for us to kill them.

¹¹ Bay'ah is an Arabic term referring to the traditional oath of allegiance to a leader.

¹² Dualah Islam is a known alias for ISIL.

¹³ Halal is an Arabic term meaning, lawful or permissible.

Booker rents a storage unit

12. On or about March 17, 2015, CHS 1 reported that Booker had called to tell him that he (Booker) had rented a storage locker near his apartment in Topeka, Kansas. Previously, CHS 1 told Booker that he (CHS 1) may send him some items for Booker to hold until the next time CHS 1 visited – perhaps a package or something in the mail. Booker told both CHS 1 and CHS 2 that his house was not safe to store things because he shares it with his cousin. At that point, CHS 2 suggested that Booker may want to rent a storage locker.
13. On or about March 20, 2015, the FBI obtained a list a list of people who had rented storage units at a particular location between March 1 and March 19, 2015. The list confirmed that Booker had rented unit 7007, a 10'x20' unit at that location on March 17, 2015.

Booker and CHS 1 purchase items needed to build vehicle bomb

14. On or about March 25, 2015, CHS 1 met with Booker. During this meeting, CHS 1 told Booker that he had been “selected” to accompany Booker on his suicide mission. CHS 1 provided Booker with a list of supplies that they needed to purchase in order to build the bomb. Booker then directed CHS 1 to several local retailers where CHS 1 could purchase the items. Booker asked CHS 1 if people would be able to figure out that they were building a bomb based on what they were purchasing. CHS 1 replied “no” that people wouldn’t know. While under FBI surveillance, CHS 1 and Booker traveled to several local retailers and purchased several components that could be used to make a homemade explosive device. From there, CHS 1 and Booker moved the components into Booker’s rented storage unit. That same day, when discussing Booker’s plan, Booker told CHS 1 that

he wanted to be the one to push the switch (meaning to detonate the explosives) when the time came.

15. On or about March 26, 2015, Booker met with both CHS 1 and CHS 2 to gather information about military targets in the area. Booker told CHS 1 and CHS 2 that they needed to blow it up somewhere that would really hurt (the military). Booker said that he wanted to see the fear in the kuffar's eyes as he pushed the button and they ran for their lives. During this meeting, Booker identified a primary and secondary route to travel from Topeka to Fort Riley, as well as several locations and access gates near the southeast corner of Fort Riley that he believed would be worthwhile targets.
16. On or about April 8, 2015, while under FBI surveillance, Booker and CHS 1 removed the items they (Booker and CHS 1) had purchased to construct the bomb from Booker's storage unit and transported them to a second storage unit where CHS 2 was waiting. The second storage unit held a large amount of inert explosive material that Booker understood was to be used to build their Vehicle Borne Improvised Explosive Device ("VBIED"). Pursuant to Booker's plan, Booker understood that CHS 1 and CHS 2 would build the VBIED, Booker and CHS 1 would eventually deliver it to Fort Riley, and Booker would detonate the VBIED in a suicide attack. CHS 1 and CHS 2 then provided Booker with a map of the area of Fort Riley at Booker's request. Booker used a marker to circle three potential target buildings and he drew arrows depicting the potential routes that he (Booker) and CHS 1 could take through the base to the buildings that he (Booker) had marked. Booker spoke with CHS 1 and CHS 2 about ensuring that all his debts were paid so that he could die a shaheed and enter paradise. CHS 2 began to tell Booker that if the debt was an excuse and that if he (Booker)

didn't want to move forward with his (Booker's) plan, but Booker cut him off and repeatedly said "no" and "I still want to do this, wallah. It's not like I am trying to get out of this." Booker went on to say "[i]t doesn't matter, debts or not, I am going to do this Friday." Booker then changed the subject.

17. That same day, Booker also made a second video inside the storage unit, in front of the stack of (inert) explosive materials, to complement his earlier video filmed near Fort Riley.

In the video, Booker stated, among other things:

Today, Inshallah,¹⁴ we are going to build this bomb with 1,000 pounds of Ammonium Nitrate. Inshallah, this will kill many kuffar. This message is to you America. You sit in your homes and you think that this war is just over in Iraq . . . Wallahi, we today we will bring the Islamic State straight to your doorstep. You think this is just a game, wallahi when this bomb blows up and kills as many kuffar as possible, maybe then you'll realize it.

18. On or about April. 10, 2015, Booker and CHS 1 drove to a location near Junction City, Kansas where they met CHS 2. CHS 2 met Booker and CHS 1 in the van in which CHS 2 had purportedly constructed the VBIED. CHS 2 explained the function of the inert VBIED to Booker and demonstrated how to arm the device. CHS 1 and Booker then drove the VBIED to an area near Fort Riley that Booker believed to be a little used utility gate that would allow them to enter Fort Riley undetected so that they could find an area to detonate the VBIED that would kill as many soldiers as possible. While Booker was making final connections to arm the inert VBIED at the gate, he was taken into custody without incident by members of the FBI.

¹⁴ "Inshallah" or "Insha'Allah" is an Arabic term meaning "God willing."

19. Based upon the above and foregoing information, which I affirm is true and correct to the best of my knowledge and belief, I respectfully submit probable cause exists to support charges of attempted use of a weapon of mass destruction, in violation of Title 18, United States Code, Section 2332a(a)(3); attempted use of an explosive device, in violation of Title 18, United States Code, Section 844(f)(1); and attempted provision of material support to a foreign terrorist organization, in violation of Title 18, United States Code, Section 2339B(a).

s/ Mark P. Engholm
Mark P. Engholm, Task Force Officer
Federal Bureau of Investigation

Sworn to before me and subscribed in my presence this 10th day of April,
2015, at Topeka, Kansas.

s/Daniel D. Crabtree
Honorable Daniel D. Crabtree
United States District Judge
District of Kansas

3/2/2018

Crusaders Update

From: "Mattivi, Anthony (USAKS)" >
To: "Doherty, Shelley A. (KC) (FBI)" >; "Varner, David M. (KC) (FBI)" >; "Relford, Thomas F. (KC) (FBI)" >; "Menzel, Michael A. (KC) (FBI)" >; "Tapp, Aaron G. (KC) (FBI)" >; "Jenkins, Tracey M. (KC) (FBI)" >; "Glass Jr, Christopher M. (KC) (FBI)" >; "Smith, Robin (KC) (FBI)" >; "Kuhn, Amy M. (KC) (FBI)" >; "Csoka, Nancy K. (KC) (FBI)" >; "Moore, Chad B. (KC) (FBI)" >
Subject: Crusaders Update

Everyone:

Given recent developments, I'm reassessing where we are with possible charges in this case. Until now, I had been thinking about this case in terms of violations of 18 USC 844(i) and 18 USC 371. With the events planned in the next several days, I think the defendants are crossing into the realm of us considering a charge of 18 USC 2332a (attempting to use weapons of mass destruction – punishable by up to life imprisonment). We should (and I know we will, for tactical reasons as well as the legal reasons) pay close attention to whether any of our targets show up to any of these UC meetings armed. If so, that also gives us a valid basis for charging violations of 18 USC 924(c) (possession of a firearm in furtherance of a crime of violence, namely the attempted use of the WMD – punishable by a mandatory term of imprisonment for five years, mandatorily consecutive to any sentence imposed for the underlying WMD charge). And each time we can document a target showing up armed for a meeting, that's a separate and additional 924(c) count – with a separate (and potentially consecutive) sentence. Of course, the 844(i) and 371 counts remain applicable.

Just wanted to share my thoughts as the case progresses and evolves. Please call or email if you have questions or want to discuss further (especially if you think I'm missing the mark here – please speak up!).

Thanks,

Tony

Anthony W. Mattivi

Assistant United States Attorney

District of Kansas

290 Carlson Federal Building

444 SE Quincy Street

Topeka, KS 66683

(Desk)

(Cell)

[gov](#)

[.gov](#) (JCON-S)

Message Headers:

Received: from hqv2-uembx-415.FBI.GOV (10.90.70.31) by HQV2-UEMBX-419.FBI.GOV (10.90.70.35) with Microsoft SMTP Server (TLS) id 15.0.1130.7 via Mailbox Transport; Wed, 21 Sep 2016 17:56:00 -0400
 Received: from HQV2-UEMBX-410.FBI.GOV (10.90.70.23) by hqv2-uembx-415.FBI.GOV (10.90.70.31) with Microsoft SMTP Server (TLS) id 15.0.1130.7; Wed, 21 Sep 2016 17:56:00 -0400
 Received: from mx-east-ic.fbi.gov (10.90.70.8) by HQV2-UEMBX-410.FBI.GOV (10.90.70.23) with Microsoft SMTP Server id 15.0.1130.7 via Frontend Transport; Wed, 21 Sep 2016 17:56:00 -0400
 Authentication-Results: mx-east-ic.fbi.gov; dkim=none (message not signed) header.i=none; spf=Pass smtp.mailfrom=Anthony.Mattivi@fbi.gov; domain=mx-east-ic.fbi.gov; ip=10.222.1.78 as permitted sender) identity=mailfrom; client-ip=10.222.1.78; receiver=mx-east-ic.fbi.gov; envelope-from=Anthony.Mattivi@fbi.gov; x-sender=Anthony.Mattivi@fbi.gov; x-conformance=spf_only; x-record-type="v=spf1"
 X-SMTP-Authentication: bypass
 X-SPF-Verify: bypass
 X-DKIM-Verify: bypass
 X-IronPort-AV: E=Sophos;i="5.30,375,1470715200"; d="scan'208,217"; a="1898086"
 IronPort-Phdr: 9a23:vd1+ghbYBXDSaHf1a1tyOFT/LSx+40fEezUN459I sYpIN5qZrsy4bnLW6fgltLVR4KTs6sC0LuM9fi7EjReqb+681k6OKRWUBEEjc hE1ycBO+WITXPBEfjxcYhF95DXI2t1uyMEXSBdqSLwaK+i760zceF13FOBZv IaytQ8Ij3p7xj7v5o8ObSj4LrQL1Wal1IhSyoFeZnegtqqwmFJwMzADUqGBDYe VcyDAgD1uSmxHh+pX4p8Y7oGx48sgs/M9YUKj8Y79wDfKbVgXnYF0v4IXXkTWL DU7VvjpPGIKRx1BkBAjI9g3rGt/Ksib+sudskADcdY3VZvF8GRqIzuYhAEvTIC oDMzMotk3QisFqkLNzoRnnqRZ+hYHTftRfLBAd7nbcMleDUZIQMddHwkHSOf RMpHt8QRHkcS593RrkUPoV2ADBOqCfnHyZQOIHX3m6I9zbJlWUv80QguGMG9D zorNLwPbxf6b9jIrjH2DQdI3mH21vLTdRUoure2ULZ+dtDd4UgkUQ3PjxOf rpKze3vf8+kLoWWfq6JFVomvgmMj4yg36nlM7YZkyqfjp8NfggThswB0xpQ4If W5Qwh1a9/IH5xO4WXSfbd/WttnC0hhdY8qnlRqU5V2KlLoN5l+VI6iuepKP

EXHIBIT C

3/2/2018

Crusaders Update

5FTfXf6JCTZzwnxvefSwgAjktQDq6OD6VciyyxICkjBMmdTd/IVLn1zwwYnPct
 VX3wbrkWKzzQnY5/ACA00yIqvdMLYgyfg+nJtVvkPdSGu+0mryhbSNPmc+vqCD
 6/7meanhvp+RLcdRzEm+EY9v0oyRK8V5eEBadGIB+P+g06Xj8Fe/b7FDleYek6
 KfvprbY8scuPj9S0Vu14c/61L3NTCs0dJQ3VosbRoFVjimzsKhb2vJKvH+S8y6
 gkisuDZggf7MP/vuBYubajCJs6rhe/I1wktNgC91hZB8zNMcSp8rAbO5EhvYsc
 2eLQI5NSS1yKDpAtQ72YQADybHSISCN6Db9Reu7+QkMqGvIsdVmx28Y7gLzd+v
 xzdtv1Ybdrjv9oAQa3mQH/8gL.U+YJ3XrnIFFWS0vuQ0kQaiio12LXXZ5IT7yfl
 I9mEHUqXnRcftbKHsyvTV9yeyEttzYWdcBwqkEHyueY+FHfgLdnTBDNVmI2IO
 cLG9V44/1FXmnQnmy71hP6KUxxYxIqminpAhzuVPIRY05HpRBtiB0n+MZ3xvkm
 QKATAxwvYs8gRG1I6f3P0g0LRjHttJ6qYMC11iOA==
 X-IPAS-Result: A0H1AQBYAeNX/04B3gpaAxoBAQEBAgEBAQEIAQEBA RUBAQE
 BAgEBAQEIAQEBA YJcNAEBAQE BZw58B40sq0SCBBSIKhQBAQEBAQEBAQKBA
 oIyBAEVAQSCFxEcXgFHJhMUEgEEEwgRnByKaY0LgkWMEI4AQEIAgEkHjIaRE
 BY4IFC4MHBYYZk1wBGYwRgzCBdYRkiRqHBYIeHoU7cgGEJV9BfwEBAQ
 Received: from pp-jdcw-3,doj.gov (HELO mx,doj.gov) ([10,222,1,78])
 by mx-east-ic,fb,doj.gov with ESMTP; 21 Sep 2016 17:56:45 -0400
 Received: from CAR-RDC04,car,doj.gov (car-rdc04,car,doj.gov [10,222,1,14])
 by pp-jdcw-3,doj.gov (8,15,0,59/8,15,0,59) with ESMTP id u8LLujq2018520;
 Wed, 21 Sep 2016 17:56:45 -0400
 Received: from USAHUBSML116,usa,doj.gov (10,200,16,106) by
 car-rdc04,car,doj.gov (10,222,1,14) with Microsoft SMTP Server (TLS) id
 14,2,347,0; Wed, 21 Sep 2016 17:56:23 -0400
 X-CrossPremisesHeadersFilteredBySendConnector: USAHUBSML116,usa,doj.gov
 Received: from USAHUBSML114,usa,doj.gov (10,200,16,104) by
 USAHUBSML116,usa,doj.gov (10,200,16,106) with Microsoft SMTP Server (TLS) id
 15,0,1156,6; Wed, 21 Sep 2016 17:56:44 -0400
 Received: from USAHUBSML114,usa,doj.gov ([fe80::c172:fc29:c541:1abd]) by
 USAHUBSML114,usa,doj.gov ([fe80::c172:fc29:c541:1abd%18]) with mapi id
 15,00,1156,000; Wed, 21 Sep 2016 17:56:44 -0400

Subject: Crusaders Update
 Thread-Topic: Crusaders Update
 Thread-Index: AdIUUXDO++yeGrGCQDuWjLPPgyXkPw==
 Date: Wed, 21 Sep 2016 21:56:44 +0000
 M

EXHIBIT C