CARLIE CHRISTENSEN, United States Attorney (#633)
JOHN W. HUBER, Assistant United States Attorney (#7226)
BRETT R. PARKINSON, Assistant United States Attorney (#10310)
Attorneys for the United States of America
185 South State Street, Suite 300
Salt Lake City, Utah 84111
Telephone: (801) 524-5682
Facsimile: (801) 524-6924

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	CASE NO: 2:09-cr-413-TS
Plaintiff,	:	SENTENCING MEMORANDUM
vs.	:	
JORDAN HALLIDAY,	:	Honorable Ted Stewart
Defendant.		

The United States respectfully submits this sentencing memorandum to assist the Court in determining an appropriate sentence in this case.

FACTUAL AND PROCEDURAL HISTORY

During the early part of 2009, a federal grand jury in the District of Utah was investigating possible violations of 18 U.S.C. § 43 (Animal Enterprise Terrorism) and 18 U.S.C. § 1503 (Influencing or Injuring Grand Jurors or Officers of the Court). On March 4, 2009, William James Viehl and Alex Jason Hall were indicted on two counts of Animal

Enterprise Terrorism in connection with an August 19, 2008, attack on the McMullin mink farm, and an October 19, 2008, attempt to intentionally damage the Mathews mink farm. (Case no. 2:09cr119 DB). Although other perpetrator(s) are suspected, the investigation has not yet resulted in an indictment against any other individual(s), nor has the investigation resulted in any indictment for the unsolved mink-release attack on the Lodder mink farm in September, 2008. The Lodder mink-farm attack in Kaysville, Utah was more extensive than the McMullin mink farm attack, and resulted in victim damages of several hundred thousand dollars.

As part of the grand jury's investigation into these mink-farm attacks, the defendant Jordan Halliday appeared before the grand jury. Halliday is the founder of the Animal Defense League of Salt Lake City ("ADL-SLC") and was believed to have relevant information to the grand jury's investigation. What occurred during the defendant's appearance and thereafter is the basis for the conviction in this case.[1]

On February 18, 2009, Halliday appeared before the grand jury, pursuant to a hand-delivered subpoena. While in the witness waiting room with the prosecutor and

[1]It is also important to note that during the course of the grand jury's investigation, members of the grand jury were approached and photographed as they were leaving the federal courthouse on February 18, 2009, which was the first day Halliday was subpoenaed to testify before the grand jury. Because of the security concerns this incident raised, the Court implemented certain security measures, at the United States' request, for members of the grand jury as they traveled to and from the courthouse. Suspects in that possible grand juror intimidation remain unknown.

FBI agent prior to entering the grand jury room, neither Halliday nor his attorney asserted any privilege excusing him from testifying. Rather, the defendant silently handed a document over that appeared to be in *pro se* pleading format which asserted deficiencies with the subpoena. When in front of the grand jury, Halliday refused to take the oath, and then refused to answer questions posed by responding to essentially every question with "no comment." As a backdrop to this conduct, a February 9, 2009, posting on the website of the ADL-SLC (www.adlslc.org) had announced that "a local AR [animal rights] activist" was subpoenaed to the February 18 grand jury and that "[h]e will be resisting the Grand Jury and Remaining silent."

Due to his non-cooperation during the February 18, 2009 grand jury proceeding, Halliday was personally served with a subpoena to reappear in front of the grand jury on March 4, 2009. In advance of that appearance, the United States cured Halliday's claimed deficiencies with his February 18, 2009 subpoena. Moreover, on February 25, 2009, the United States filed a Motion to Compel or Show Cause. The United States moved to compel Halliday's testimony before the grand jury on March 4, 2009, and moved to have Halliday confined, pursuant to the recalcitrant witness statute (28 U.S.C. § 1826), if he continued to refuse to obey the grand jury subpoena, the admonition of the United States Attorney, and any further admonition or direct order of the Court.

The United States further requested that the Chief Judge "admonish" Halliday and "directly order the witness to comply" if he continued to refuse to answer questions without just cause. A show cause hearing was scheduled for March 4, 2009, in the event such a hearing was needed. The notice to Halliday explained that if he refused to testify a hearing would be held on March 4, 2009, and "at that time Jordan Halliday shall show just cause why he should not be held in contempt for disobeying a grand jury subpoena and a direct order of the Court to testify before the grand jury."

A February 27, 2009, posting on Halliday's website of ADL-SLC was captioned "SLC AR ACTIVIST SUBPOENAED ONCE AGAIN TO GRAND JURY." It stated, in part:

> Jordan Halliday has been subpoenaed once again to appear before a grand jury. Last time he filed a motion and refused to cooperate with the grand jury. This time the subpoena has been corrected and he has been set up for a contempt of court hearing after the grand jury on assumption by the prosecutor that he will resist again.

On March 4, 2009, Halliday appeared before the grand jury and refused to answer any questions; his repeated response was "no comment." The prosecutor requested Chief Judge Tena Campbell's presence and she admonished Halliday. The Chief Judge personally attended the grand jury proceedings, and verbally ordered him to answer questions unless he had a valid privilege. After the Chief Judge left and questioning resumed, Halliday asserted, for the first time, a Fifth Amendment privilege. He claimed

the privilege in connection with innocuous questions such as where he lived and the names of family members, as well as other questions. Grand jurors noted that Halliday's demeanor became more assertive and disdainful.[2]

As a result of Halliday's actions in the grand jury, the parties appeared for the show cause hearing in front of Chief Judge Campbell later that morning. At Halliday's request, the Court allowed additional time to prepare pleadings on the issue, and set another hearing for March 13, 2009. In his memorandum filed in advance of that hearing, Halliday's attorney asserted that Halliday "is a co-founder of the Utah branch of the Animal Defense League" which is described as "an international association of individuals concerned about the ethical treatment of animals." According to Halliday's memorandum:

> Twice subpoenaed before the grand jury, on February 18, 2009, and March 4, 2009, Jordan has resisted questioning involving his membership status and/or leadership position in various organizations of political and social nature involved in advocating for animal protections. He has been questioned about whether he organized a rally in front of the federal courthouse, and if he knows who did organize such rally, or if it were an organization to which he belongs that planned the rally. He has been asked about his family members, and whether one is married to an animal rights activist, including a false implication before the grand jury that a family member

[2]The United States previously submitted, under seal, relevant copies of all grand jury related material including court orders, grand jury transcripts, civil contempt hearing transcripts, etc. Relevant citations to such will be titled, "Submission Exhibit No. ___."

> has been convicted of crimes involving animal rights activities. He has been asked about websites or 'posts' on internet locations, either on behalf of organizations or himself. He has been asked if he sent or received emails at certain specified email addresses.

Halliday asserted a First Amendment claim of his "right of association and speech," as well as a Fifth Amendment claim of protection against self-incrimination.[3]

The Court dismissed Halliday's various arguments against the grand jury process, and ordered him to answer questions before the grand jury. Prior to the March 13, 2009 hearing, the United States Attorney acquired permission from the United States Department of Justice, Assistant Attorney General, to extend immunity to Halliday for his grand jury testimony. In turn, during the March 13, 2009 hearing, the Court issued a written compulsion order, pursuant to the United States' motion and 18 U.S.C. §§ 6001-6003. (Submission Exhibit No. 5.) The compulsion order mooted Halliday's Fifth Amendment claim, assuming such a claim could have been made in good faith.

Moreover, the United States contended that Halliday had already committed contempt of court when he asserted, in bad faith, a Fifth Amendment privilege during the March 4, 2009 grand jury appearance. The United States presented evidence in support of this argument. In the course of the investigation on the mink farm attacks, federal

---

[3]The March 4, 2009, and March 13, 2009 transcripts are included as Submission Exhibit No. 4.

agents lawfully acquired text message communications between the telephone of William Viehl (a now-convicted defendant in the 2008 mink farm attack case) and Halliday's telephone concerning Halliday's obstruction of the grand jury process on March 4, 2009. That day was Halliday's second grand jury appearance, and the same day that Chief Judge Campbell verbally ordered Halliday to answer questions. Agents recovered a March 4, 2009 a text message to Halliday from Viehl asking: "[s]o your [sic] not in jail. What happened." The response from Halliday was "Got the court extended until the 13th. We need time to file motions and such."

Another March 4, 2009, text message from Halliday to Viehl read:

> Well, after my dave chapelle ... I plead the 5th routine today. I was making some fo [sic] the gj laugh. I was sayin' like "1-2-3-4-5th!". And they asked to see and they asked to see and they asked her to grant me more time as well, because they needed more time. The prosecutor was pissed as fuck.

Dave Chappelle is a popular comedian who performs a comic routine that Halliday claims in the text message to have been mimicking before the grand jury. (Submission Exhibit No. 6.) In context, the video clip illustrates Halliday's intention to mock the grand jury process and wilfully disobey Chief Judge Campbell's direct verbal order. His actions were not "based on his own constitutional rights and his lack of interest in helping the government to convict others." (Def. Br. at 22.)

On March 13, 2009, Chief Judge Campbell held a hearing on the issue of whether coercive measures, or civil contempt powers, should be used to obtain Halliday's compliance with court orders. At the conclusion of the hearing, the Court ruled that Halliday was in civil contempt of court and incarcerated him in order to compel his testimony before the grand jury. Halliday told the Court at that time that he intended to continue to resist the grand jury. Following the March 13, 2009 hearing, the court issued a written order denying Halliday's motions and granting the United States' Motion to Compel or Show Cause. (Submission Exhibit No. 2.) The order stated:

> [B]ased on the law, evidence in the record, and statements made by parties in court and in relevant pleadings, the court finds that Mr. Halliday knowingly refused, without just cause or excuse, to obey the court's earlier order to testify based on the grand jury subpoena issued in a lawful grand jury investigation. Accordingly, Mr. Halliday is in civil contempt for such refusal.

Halliday filed a timely notice of appeal which was eventually denied by the Tenth Circuit, and he remained in coercive custody for civil contempt until late June, 2009, when the grand jury's term expired. At that time, the Court found that the coercive measures of custody were not going to result in Halliday complying with the Court's orders. Halliday continued to assert through counsel that he would not comply with the Court's orders. Consequently, the United States sought an indictment for criminal

contempt, which the grand jury issued on June 24, 2009. On June 29, 2009, the magistrate judge released Halliday from custody pending trial in this matter.

In preparation for sentencing, the Probation Office prepared a Presentence Report (hereinafter "PSR"). In the PSR, the Probation Office recommends that the base offense level for the defendant's conduct is a 14, which is based on the application of USSG § 2J1.2. (PSR ¶ 19.) In addition, the PSR recommends the application of a 3-level enhancement for "substantial interference with the administration of justice." (*Id.* at ¶ 20.) With a 3-level reduction for acceptance of responsibility,[4] the report recommends an adjusted offense level of 14, criminal history category I, with an advisory guideline range of 15 to 21 months. (PSR ¶¶ 25, 27, 46.)

DISCUSSION

With the above factual background, the United States requests that the Court carefully consider the following in imposing the sentence in this case: (1) the defendant's history and his common, continuing tendency to tout his self-importance over the authority of the rule of law; (2) the defendant's desire to elevate this case into a showpiece of activism and encourage others to follow his contemptuous example; and (3)

[4]Notwithstanding the defendant's last minute decision to plead guilty, the United States is willing to move the Court for the third-level reduction for acceptance of responsibility. *See* USSG § 3E1.1.

the impact that the defendant's contemptuous conduct had on the district court and the grand jury.

1. The Defendant's History

The PSR reveals a disturbing patter that began early in the defendant's life and continues to today. The defendant consistently judges himself to be above the rules and laws that govern others, and when authority point out the contrary, he holds tighter to those rash assessments. This pattern results in the defendant locking himself in a position of un-retractable defiance that lands him outside the expectations and norms of society.

When just 17 years old, the defendant was merely skateboarding on private property — a seemingly innocuous thing for a teenage boy to do. The property was clearly marked with "no skateboarding" signs, and unsurprisingly a police officer soon responded to give the defendant and his cohorts some trespass warnings, and to shoo them off of the property. The scenario is easily visualized, and most likely occurs dozens of times throughout the valley each year.

The defendant — unlike his fellow skateboarders at the time, and unlike most any person finding himself is such a situation — reacted in absolute defiance, and escalated the encounter after each and every effort of the police officer to bring order to the situation. First, he fled while the other three boys received their warnings. Then, when the officer found him and told him to stop, the defendant replied: "no, I have the right to

be here." The officer then turned on his patrol car lights, and ordered the defendant to stop and provide his identification. The defendant fled again across a busy street. The officer followed and created yet another opportunity for the defendant to de-escalate the encounter by warning the defendant to provide his identification or be arrested for disorderly conduct.

What happened next roughly correlates with the defendant's actions in his contempt of court actions here, in that the defendant resists any attempt — whether by invitation, warning, or coercive measures — to bring him into compliance with the law's norms and expectations. The officer reported:

> Mr. Halliday said "I didn't do anything wrong and I don't have to stop." I told Mr. Halliday he was under arrest and to put his hands behind his back, he refused, so I grabbed his right arm. Mr. Halliday resisted arrest and he pushed me back. I pushed him into some bushes while trying to get him into custody. Mr. Halliday spun out of my grasps and he tried running away. I caught him and I told him he was under arrest, he said "I'm not under arrest, show me your badge and ID." I was wearing my full Uniform with Badge and ID showing. I grabbed Mr. Halliday by his right arm again and I tried to get him into custody, but he resisted and I had to take him to the ground. Mr. Halliday was able to spin out of my grasps again. Mr. Halliday then got into a fighting stance, so I was forced to Tase him with my Taser gun to avoid any further physical conflict and possible injury me or Mr. Halliday. While being Tased Mr. Halliday went down to his knees and then he grabbed the Taser wires with his hand in an attempt to pull out the Taser Prongs. This action didn't work and it only gave Mr. Halliday a better shock. After Mr. Halliday was Tased for 5 seconds he rolled over on his stomach and he placed his hands behind his back.

(Copy of police report has been provided to defense counsel).

In another incident, the defendant displayed his flawed reasoning that his priorities and perspectives enjoy an elevated status above the rules and laws that govern the rest of us. In 2007, the Salt Lake County Council and Salt Lake City Council passed ordinances outlawing targeted residential picketing. In the years previous, animal rights activists singled out homes of persons they unilaterally declared to be enemies of animals, and then engaged in harassment campaigns at the homes of targeted individuals. Elected representatives in Salt Lake responded with the duly passed ordinances.

Nevertheless, the defendant and others ignored the Salt Lake City ordinance and engaged in unlawful behavior outside the home of a University of Utah researcher in a quiet Salt Lake neighborhood at about 8:30 p.m. on April 27, 2008. The defendant was in a group of about 20 people, most of whom covered their faces with masks or bandanas, and were shouting and marching outside the targeted residence. The defendant was in a group which had previously been at the same location on the same date, but at about 1:00 a.m. Police had approached that earlier group and advised them of the parameters of the targeted picketing ordinance before the group eventually dispersed on its own. Despite the hours-earlier admonishment, the defendant returned to the researcher's residence to place himself outside the law that governs the rest of us. A jury of his peers convicted the defendant in the Salt Lake City Justice Court, and his appeal for a trial de novo is pending in the Third District Court.

Even while on pretrial release in this contempt case, the defendant pushes the limits of this Court's tolerance. On July 26, 2010, the United States Pretrial Services Officer reported that the defendant continues to communicate with animal rights groups despite being warned against such conduct by the magistrate judge. Beyond that officer's observations, the United States Attorney's Office and the FBI have made similar observations that the defendant appears to be violating the spirit of the magistrate judge's orders, if not the explicit terms. The defendant continues to call for like-minded, animal rights-motivated persons to support him, even calling for financial support of his criminal defense despite the fact that the government is providing for all the defense costs.

Of more serious concern is the fact uncovered by the FBI. On March 25, 2010, local FBI agents assisted Iowa-based agents in serving a federal search warrant at the home of animal rights extremists in Salt Lake City. The Iowa agents were investigating a destructive crime that had been claimed by the Animal Liberation Front ("A.L.F."), and connections were traced to Salt Lake City. The search warrant was sealed, as is typical, with no warning or public knowledge ahead of the time of service. Nonetheless, photograph taken contemporaneous with the execution of the search warrant service has been attributed to the defendant on the animal rights extremist website http://www.greenisthenewred.com/blog/fbi-raids-utah-activist-house-alf-iowa/2550/ . The photograph appears to be taken from across the street of the search

warrant service with a caption stating: "FBI raid of Salt Lake City house of animal rights activists. Photo by Jordan Halliday." Here, again, a federal judge instructed the defendant to have "No association with animal group[s] A.L.F., E.L.F., Vegan Straight Edge (VSE)." However, the defendant again placed himself above the law. For the defendant to learn of the search warrant service, and appear on scene to photograph and editorialize it as a "raid," suggests the obvious conclusion that Halliday remains in contact and association with specifically prohibited groups.

The "nature and circumstances of the offense and the history and characteristics of the defendant" should be carefully considered by the Court in determining an appropriate sentence. 18 U.S.C. § 3553 (a)(1). The defendant's history and his characteristics, as noted above, support a sentence within the range recommended in the PSR.

2. The Defendant as an Example to Others

As an individual, the defendant touts his right to unfettered freedoms. He may argue that his self-centered actions hurt no one else, and he most certainly downplays the importance of any government intervention into his conduct. Unfortunately, his acts of contempt here affect not just his own self, but he broadcasts his actions as one of a martyr who has fallen victim to some supposed grand conspiracy, and he entreats others to act similarly, either implicitly or explicitly.

In some sense, the defendant's contempt has brought a certain stardom within the counterculture animal rights extremist movement. The defendant has not shied away from such, but has sought it out and embraced it. He has tweeted to unknown numbers, blogged updates regarding his crusade on his ADL-SLC website and at least one other (www.saltlakecriminaldefense.com/tag/jordan-halliday/), participated as an invited guest on a syndicated animal rights radio show[5], directed all comers to his www.supportjordan.com website, and provided statements to mainstream and alternative news media.

As a consequence, the defendant's like-minded supporters are watching to see what sentence the court will impose and thereafter weigh the significance of such a sentence. Of course, this Court is always mandated to fashion a sentence "to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense" as well as "to afford adequate deterrence to criminal conduct." 18 U.S.C. § 3553 (a)(2)(A) and (B). With the attention that the defendant has personally brought to his case, the Court should especially consider the ripple effects of the imposed sentence. The sentence can either encourage others to directly disobey the orders of the federal district court, or serve as a deterrence for such future conduct. In other words, the

[5]October 3, 2010 interview on Go-Vegan radio, where he describes his website (ADL-SLC) as very supportive of "direct action."

sentence defendant receives must not only deter his future criminal conduct, but also send the appropriate message to ensure that, as an unintended consequence of a lenient sentence, the defendant's supporters are not emboldened to follow the defendant's contemptuous ways.

3. Impact of Contempt Upon Federal District Court

The spectrum of contemptuous behavior is wide. On one end, as has been seen in this district, being late for a federal court hearing can render someone in contempt of court. The defendant's actions, however, are on the opposite end of the spectrum. The defendant's actions had serious implications and impeded the administration of justice.

The PSR effectively uses the United States Sentencing Guidelines to articulate and quantify the effect of the defendant's offense, and its unique impact upon the federal district court. The defendant's contempt greatly impacted the court and consequently warrants the specific offense characteristic outlined in paragraphs 19 and 20 of the PSR. The defendant would have the Court find his contempt as run-of-the-mill disobedience. Reality suggests otherwise.

Indeed, the defendant argues that "[a]bsent some intent to prevent the government from prosecuting someone, obstruction of justice does not apply." (Def. Br. at 22.) The cases to which the defendant cites to support this position are inapposite. In *United States v. Brennan*, the defendant pled guilty to criminal contempt related to concealing and

improperly transferring money to his attorney. 395 F.3d 59, 64 (10th Cir. 2005). In applying the Guidelines the district court applied the fraud guideline (2B1.1) because it found it to be most analogous to his contempt (because the defendant basically stole money) and sentenced him to 36 months. *Id.* at 65. The Second Circuit affirmed the district court's application of the fraud guideline, notwithstanding the defendant's argument that the obstruction guideline (2J1.2) was more appropriate. *Id.* at 72-74. Interestingly, the Second Circuit noted that "the obstruction of justice Guideline is frequently used as the Guideline most analogous to a contempt offense." *Id.* at 73. The Second Circuit found the fraud guideline more applicable because of the flexibility it allowed the sentencing judge in order to take into consideration the loss amount associated with the defendant's actions. *Id.* at 73-74.

Interestingly in the other case cited by the defendant, *United States v. Alwan*, the Seventh Circuit upheld the application of the obstruction of justice guideline and the three-level substantial interference enhancement in a criminal contempt case. 279 F.3d 431, 440-41 (7th Cir. 2002). Similar to this case, the defendant was subpoenaed to the grand jury on several occasions, granted immunity by the government, admonished by the chief judge, and nevertheless refused to answer questions propounded by the prosecutor during the grand jury proceedings. *Id.* at 434-37. The district court found that the defendant refusal to testify was an effort to obstruct an ongoing criminal investigation and

applied the obstruction guideline and substantial interference enhancement and the Seventh Circuit agreed. *Id.* at 440-41.

The cases cited by the defendant and the defendant's conduct support application of the obstruction of justice guideline. The defendant seems to argue that the application of that guideline is inappropriate because the defendant did not have a desire to impede an investigation. (Def. Br. at 23.) This claim is inconsistent with the defendant's stated purpose for not testifying: "Jordan's objections to testifying were based on his own constitutional rights and *his lack of interest in helping the government to convict others*." (Id. at 22 (emphasis added).) By his own admission, the defendant was obstructing justice.

In addition, similar to *Alwan*, the three-level enhancement is appropriate. The Tenth Circuit has given guidance as to when the enhancement is appropriate. In *United States v. Smith*, 531 F.3d 1261 (10th Cir. 2008), the Tenth Circuit upheld the district court's application of a substantial-interference enhancement in a similar situation as this. The defendant in *Smith* was convicted of perjury related to a §2255 motion he filed wherein he stated that he was eligible for relief because the prior conviction, which was the basis of his §922(g) conviction, had previously been expunged. *Smith*, 531 F.3d at 1264. The defendant was ultimately convicted of perjury and the district court enhanced the defendant's applicable guideline range because the defendant's conduct resulted in the

"unnecessary expenditure of substantial governmental or court resources." *Id.* at 1270. The district court held that enhancement was appropriate because of costs associated with "the hearing held by the state to determine whether the file from [the defendant's] allegedly expunged 1982 conviction should be reopened," which required (1) the state to incur the expense of transporting the defendant to the hearing, (2) the presence of the district attorney and the state court, and (3) the employment of an expert to evaluate the record. *Id.*

Similar to *Smith*, a three-level substantial-interference enhancement should be applied in this case because the defendant's conduct resulted in the "unnecessary expenditure of substantial governmental and court resources." Because of refusal to testify before the grand jury and raise frivolous reasons for so doing, the United States incurred the costs associated with the following:

- Three grand jury appearances before a group of ordinary citizens who are mandated to leave the demands of their individual lives behind and engage in compulsory civic service;
- Special United States Marshal Service ("USMS") security precautions, and special USMS-provided grand juror transportation plans;
- Multiple hearings before the Chief District Court Judge and her staff;

- Request to the Assistant Attorney General to obtain immunity for the defendant, which, based on the defendant's sentencing memorandum, was not necessary, and
- A personal appearance by the Chief Judge in the grand jury room.

These were not routine matters that took an insignificant amount of time. The Chief Judge carefully considered each of the defendant's claims for justification of his obstructionist acts, and found each and every one to be without merit. The defendant's tactics closely tracked the extremist play books linked to his own website with titles like "How to Crush the Grand Jury." He had a stated purpose of resisting long enough, so the prosecution and grand jury would give up. Every step in his continuous series of contemptuous acts was designed to specifically frustrate the judicial process.

Even the defendant's claim to a Fifth Amendment privilege was designed to frustrate the system. He mocked the Constitutional right in what he described as a comic routine before the grand jury. Moreover, judging by his most current pleading, he never had a reason to truly fear self-incrimination in the first place. Nevertheless, because he asserted the Fifth Amendment privilege on his second appearance before the grand jury, the United States went to great lengths to petition the Assistant Attorney General at the Department of Justice for leave to extend immunity to the defendant for his grand jury testimony, and seek an order of compulsion from the Chief Judge. Now reading the

defendant's sentencing memorandum, the defendant asserts that he had nothing to do with the crimes that the grand jury was investigating. Accordingly, the great efforts by officers of the court to protect the Fifth Amendment rights of the defendant before the grand jury was all for naught, as his assertion was never made in good faith. Rather, it was designed to obstruct and delay justice and the regular proceedings of the federal district court.

On the other hand, the United States continues to maintain that the defendant has inside information into the series of animal rights extremism crimes committed in the latter portion of 2008. The defendant's supposed "above-board" animal rights group scheduled an "anti-mink farm" meeting on the eve of the mink farm attacks. Further, there is evidence that the defendant notified news sources of the McMullin mink farm attack on the day of the attack, and even before police officers knew of the significance of the crime. In addition, there is the uncovered text messages between one of the perpetrators and the defendant where it is clear that the defendant had inside information regarding the attack. The defendant even suggests that they meet in apparent effort to get their stories straight. Although two persons have been convicted of their involvement in the McMullin mink farm attack, the United States believes that at least one other co-conspirator may have assisted in that crime, and has thus far escaped justice. Moreover, the much more damaging Lodder mink farm attack remains under investigation, and unsolved. At least three perpetrators are suspected in that uncharged attack where the

victim Lodder family business suffered losses upward of several hundred thousand dollars without anyone being held responsible for the crime. Meanwhile, the defendant has succeeded in keeping his inside information to himself.

In another vein, the United States takes very seriously the attempts at intimidation of the grand jurors before whom the defendant appeared. The defendant's grand jury appearances were advertised to his supporters. The defendant's supporters appeared outside the courthouse in relatively large numbers on the days the grand jury was hearing evidence on the investigation. After the first day the defendant appeared before the grand jury, several grand jurors were approached and photographed by an individual associated with the defendant's supporters. This caused considerable apprehension on the part of several grand jurors, and triggered USMS specialized security measures for the grand jury. The United States believes the defendant knows the identity of witnesses to the intimidation effort, if not the identity of the person who actually approached the grand jurors.

There was nothing ordinary about the defendant's conduct. Under these circumstances, the defendant obstructed justice and a guideline enhancement for his substantial interference with the administration of justice is wholly warranted.

///

///

CONCLUSION

The defendant's offense is a serious one, and should be treated accordingly by this Court. The time the defendant spent in coercive custody should not be considered as time served for his violation. He held the key to his freedom during that civil contempt custody. It was designed specifically, and authorized only to compel his testimony and compliance with the Chief Judge's direct orders. If he had complied, he would have been immediately released. Now he stands convicted for criminal contempt, and warrants a distinct sentence designed accomplish the purposes of Section 3553(a). Probation is not an appropriate sentence.

DATED this 29th day of October, 2010.

CARLIE CHRISTENSEN
United States Attorney

/s/Brett Parkinson

JOHN W. HUBER
BRETT R. PARKINSON
Assistant United States Attorneys