

1 MARK J. REICHEL, State Bar #155034
2 THE LAW OFFICES OF MARK J. REICHEL
3 555 CAPITOL MALL, 6TH FLOOR, Suite 600
4 Sacramento, California 95814
5 Telephone: (916) 498-9258
6 FAX: (916) 441-6553
7 mark@reichellaw.com
8 www.reichellaw.com

9 Attorney for Defendant
10 ERIC MCDAVID

11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE EASTERN DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,)
14 Plaintiff,)

15 v.)

16 ERIC MCDAVID,)
17 Defendant.)

Case No. CR.S-06-0035-MCE

**DECLARATION OF JUROR DIANE
BENNETT IN SUPPORT OF
DEFENSE SENTENCING
MEMORANDUM**

Date: May 8, 2008
Time: 9:00 A.m.
Judge: Hon. Morrison C.
England

18 I, Diane Bennett , hereby Declare as follows:

19 1. I was a juror in the case of United States v. Eric McDavid. I
20 very carefully paid attention to the trial and was an active
21 participant in the jury deliberations. I submit this declaration for
22 the purposes of sentencing and as to what an appropriate sentence
23 should be for Eric McDavid based upon the evidence in the case.

24 After the verdict, I did not speak with the attorneys in the
25 hallway but I went outside of the building and was approached by the
26 media. I was not seeking out the media. When approached, however, I
27 just felt that I had to speak, so I did, on camera, with Sacramento's

28 Declaration for sentence

1 News 10. The report on News 10 of what I said is accurate; it is what I
2 said. The report is at
3 http://www.news10.net/display_story.aspx?storyid=33243

4 I was recently contacted by Mark Reichel to speak about the case
5 of Eric McDavid. When he called me, I stated to him "I am so glad you
6 called me." I stated this because there is much that I wanted to say
7 about the case and I was hoping it would help Mr. Reichel's work on the
8 case. We had not spoken after the verdict until the time that he first
9 called me.

10 I was also recently interviewed by journalist Andrea Todd for an
11 article in *Elle* Magazine. I have read the article in the May 2008
12 edition entitled "The Believers." All comments attributed to me are
13 accurately reported and the court is urged to please consider them for
14 sentencing.

15 I would like the court to know a little bit about myself. I am
16 and have been a resident of Sacramento area since 1988. I am married,
17 have 1 child, and work as a Speech Therapist with Elk school districts
18 in Sacramento.

19 2. The following matter in this paragraph is of great importance
20 to me and I brought them up first with Mr. Reichel in a phone
21 conversation, without his prompting. Mr. Reichel did not bring up this
22 subject to me, but I did with him. Specifically, I would like the court
23 to know that the jury, including myself, was very confused about the
24 jury instructions, especially regarding whether Anna was a government
25 agent or not. During deliberations, we asked the court to please
26 clarify for the jury the issue of whether Anna was a government agent,
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1 and if so, when did she become one. We were deliberating about the
2 issue for the defense of entrapment. We asked the court in writing if
3 Anna was a government agent in August of 2004, and if not, when did she
4 become one? We were told orally by the court that she was one in August
5 of 2004; we were also told to await the written answers to our
6 questions when we deliberated. We then got the court's written
7 answers, and that answer was that Anna was not a government agent. At
8 that point we were then all very confused and did not know what the
9 correct answer to that question was. The written answer was from the
10 court and stated "no" that she was not a government agent, yet we were
11 told orally that she was. With the written response of "no," and after
12 reading the other written responses from the court, we ended our
13 consideration of the issue of entrapment and soon thereafter voted to
14 convict. Originally, on the issue of entrapment, the vote was 7-5 to
15 consider the entrapment issue as a defense. Once the written response
16 advised Anna was not a government agent, we then changed to a guilty
17 verdict soon thereafter.

18 3. I have read Carol Runge's declaration. It was provided to me
19 by Mr. Reichel. I share many of her feelings about the case. My
20 opinion of the case is that the FBI agents were an "embarrassment" by
21 their lack of knowledge of FBI procedures and the way they handled the
22 investigation, specifically by allowing this case to develop the way it
23 did using Anna and providing all of the essential tools for the group;
24 the cabin, the money, the idea, the books, everything, and by letting
25 Anna "string Eric along" when she should have terminated the
26 relationship clearly with him; that the main witness "Anna" was not a
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1 credible witness at all. If we as a jury had the option of finding
2 that McDavid was only as culpable as the other two codefendants for the
3 general conspiracy then we would have voted for that only, and not the
4 more serious charge.

5 4. My feelings on the case include that Eric did not agree
6 with either Zach or Lauren to destroy the Institute of
7 Forensic Genetics, the Nimbus Dam, cell phone towers or gas
8 stations. I felt the evidence was only that he agreed to do
9 an illegal act and that he set fire in the bowl; I did not
10 find, nor do I think any of the jurors did, that Eric agreed
11 with someone other than Anna to destroy the IFG, the Nimbus
12 Dam, cell phone towers or gas stations as the government
13 alleged in the crime.

14 5. I did not find, nor do I think the other jurors did,
15 that Eric committed crimes in the name of "ELF" or the Earth
16 Liberation Front.

17 6. If we as a juror, at the very least myself, had been
18 allowed to consider Eric's financial and mental and physical
19 means and ability to commit the crime, his "wherewithal" to
20 commit the crime, without Anna's help, then we would have
21 found that he was entrapped. Eric's entrapment claim was 7-5
22 until the court gave the final instructions on entrapment,
23 including the instruction on the "relevant time period of
24 evidence" and the written response of whether Anna was a
25 government agent and when. The jury was confused about what
26 evidence we were allowed to consider for entrapment and what
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1 the legal instructions were.

2 7. Eric was not more culpable and not the leader among
3 the others; he was equal with the other 2 and Anna was the
4 leader.

5 8. I also feel that the FBI agents allowed Anna to do whatever she
6 wanted, that she had no guidance or oversight by the FBI, and that she
7 used Eric McDavid's romantic attraction to her as a way to "keep him on
8 the hook" until the group could be arrested. I felt that if she had
9 directly rebuffed his advances and directly told him that at no time in
10 the future they would have a chance at being romantic, then the
11 evidence showed that Eric McDavid would have left this group and this
12 idea and would not have gone as far as he did, culminating in his
13 arrest in January 2006. Her actions were inappropriate in that she let
14 his attraction toward her keep him on the hook and in the group and
15 that is why I felt that this was a very good case for an entrapment
16 defense.

17 9. Sentencing Eric McDavid to more time than the other 2
18 codefendants would be an injustice in the mind of this juror.

19 10. I join Carol Runge in the belief that Eric McDavid did not
20 have a fair trial for a variety of reasons and have stated my wish that
21 he should have a new one; I urge that the court sentence him exactly as
22 the other 2 codefendants in the case. I believe that fairness screams
23 out for that result. I saw all of the evidence, heard the law from the
24 court, and that is my very strongly held belief.

25 I have not spoken with Carol Runge or any of the other jurors
26 since the day of the verdict in this case.

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28 Declaration for sentence

1 I declare under the penalty of perjury that the foregoing is true
2 and correct to the best of my knowledge.

3 DATED: May 1, 2008.

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DIANE BENNETT

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