

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

---oOo---

BEFORE THE HONORABLE MORRISON C. ENGLAND, JR., JUDGE

---oOo---

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. 2:06-cr-00035

ZACHARY JENSON,

Defendant.

_____ /

---oOo---

REPORTER'S TRANSCRIPT

JUDGMENT AND SENTENCING

THURSDAY, DECEMBER 4, 2008

---oOo---

Reported by: DIANE J. SHEPARD, CSR #6331, RPR

APPEARANCES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

For the Government:

LAWRENCE G. BROWN
ACTING UNITED STATES ATTORNEY
501 I Street, Suite 10-100
Sacramento, California 95814
BY: R. STEVEN LAPHAM
Assistant U.S. Attorney

For the Defendant:

SHARI RUSK
Attorney at Law
1710 Broadway, Suite 111
Sacramento, California 95818

1 SACRAMENTO, CALIFORNIA

2 THURSDAY, DECEMBER 4, 2008

3 ---oOo---

4 THE CLERK: Calling criminal case number 06-00035,
5 United States v. Zachary Jenson.

6 MR. LAPHAM: Good morning, Your Honor. Steve Lapham
7 for the United States.

8 THE COURT: Good morning.

9 MS. RUSK: Good morning, Your Honor. Shari Rusk on
10 behalf of Zachary Jenson, who is present, out of custody.

11 THE COURT: Thank you. Good morning. This is the
12 time and place set for the pronouncement of judgment and
13 sentence. Ms. Rusk, are you prepared to proceed today?

14 MS. RUSK: Yes, Your Honor.

15 THE COURT: Mr. Lapham?

16 MR. LAPHAM: Yes, Your Honor.

17 THE COURT: On July 18, 2006, the defendant appeared
18 before the Court with his attorney and entered a plea of guilty
19 to the charge of conspiracy. The matter was referred to the
20 Probation Office for a Presentence Evaluation and Report. The
21 Court has read and considered that report dated November 6,
22 2008.

23 Counsel, have you both received and read a copy of
24 that report?

25 MS. RUSK: Yes, Your Honor.

1 MR. LAPHAM: Yes, Your Honor.

2 THE COURT: And Ms. Rusk, have you had sufficient
3 time to discuss the presentence report in detail with your
4 client?

5 MS. RUSK: I have.

6 THE COURT: And Mr. Jenson, have you received a copy
7 of the report?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: And have you had sufficient time to
10 discuss the report with your attorney in detail?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: I will note for the record that there
13 were objections to the report that were filed that the Court
14 has -- well, that the Probation Office has responded to.

15 Ms. Rusk, were there any other objections that were
16 filed that I'm not aware of?

17 MS. RUSK: No, Your Honor.

18 THE COURT: Did you wish to be heard regarding the
19 responses to those objections at this time?

20 MS. RUSK: Your Honor, you did get our sentencing
21 memorandum?

22 THE COURT: Yes, I did.

23 MS. RUSK: We also filed a statement, a declaration,
24 from Mr. Jenson this week. Does the Court have that?

25 THE COURT: Yes, I did receive that as well, and also

1 the character letters, reference letters that were also
2 attached to the report. I've reviewed all of those at this
3 time.

4 Mr. Lapham, is there anything that I have not
5 reviewed from the Government that's been submitted?

6 MR. LAPHAM: No, Your Honor. We did not submit a
7 sentencing memo.

8 THE COURT: Very well. There being no other
9 objections to the presentence report, the Court will adopt the
10 findings and determine them to be true and correct.

11 According to the report, the applicable advisory
12 offense level will be 30, and the advisory criminal-history
13 category will be VI, with the advisory maximum range of 60
14 months of imprisonment.

15 It is the recommendation of probation for a period of
16 24 months of incarceration. Ms. Rusk is requesting probation.
17 Mr. Lapham, I'm not certain what the Government's position
18 would be at this point in time, but I'll let you go ahead and
19 make your position as well.

20 MR. LAPHAM: Your Honor, the short version is I think
21 we're going to leave it up to your good judgment. I've read
22 Ms. Rusk's sentencing memorandum. I don't find frankly much to
23 disagree with in the sentencing memorandum from a factual
24 standpoint.

25 I agree with a lot of the statements she makes about

1 Mr. Jenson's involvement in this conspiracy. He certainly was
2 not the leader. That was Mr. McDavid, who was several years
3 older.

4 The plea agreement contemplated that his break for
5 cooperation would be that we would have a five-year cap on his
6 sentence. And at the time that we entered into the plea
7 agreement, we fully contemplated making a recommendation of
8 five years at judgment and sentencing.

9 I think what we saw at trial changed our mind. I
10 think, as it turns out, it looks like Mr. Jenson has turned his
11 life around somewhat, and we're frankly very impressed by that.

12 Having said that, whether the Court wants to sentence
13 him somewhere between the 2- and 5-year range, or go lower, I
14 would leave that to your good auspices.

15 THE COURT: What is your position with respect to
16 Ms. Rusk's request that there be just straight probation?

17 MR. LAPHAM: Your Honor, that's a difficult question.
18 And it's difficult question because these are very serious
19 charges. And ordinarily I couldn't dream of a circumstance in
20 which straight probation would be acceptable in a situation
21 like this.

22 For rehabilitation purposes I don't think it's
23 necessary to sentence Mr. Jenson to jail time. The only
24 question remains is whether for deterrent purposes, because of
25 the serious nature of the charges, some jail time is required.

1 THE COURT: Well, I'll put this on the record here,
2 first of all, and I'm going to ask you a question about this in
3 just a moment.

4 In determining what the sentence will be for this
5 particular defendant, the Court must look to the cases of
6 United States versus Booker and United States versus Fanfan, as
7 well as the advisory sentencing guidelines, the statutory
8 considerations of 18 United States Code, Section 3553(a).

9 And the Court must fashion a sentence which will be
10 fair, just, and reasonable to this particular defendant but not
11 be longer than necessary to satisfy the goals of deterrence and
12 punishment for the public.

13 That being said, one of the factors that's contained
14 in 3553(a), which I think is subsection one, which we're
15 looking at, is the nature and circumstances of the offense and
16 the history and characteristics of the defendant.

17 I think that it's clear that the history and
18 characteristics of the defendant have been more than adequately
19 set forth during the course of what's in your sentencing
20 memorandum. I understand that. On the other hand, this is an
21 extremely serious offense that he was involved with as far as
22 the conspiracy.

23 The other section that I would like to have a
24 response from both sides on is the fact that there is a need to
25 avoid unwarranted sentencing disparities between those who have

1 been involved in similar types of criminal conduct with
2 similar criminal histories.

3 And I think that in order to make this sentence one
4 that is going to be in compliance with that statutory
5 consideration, the Court must make some findings with respect
6 to that in light of the sentence that Mr. McDavid received in
7 this same conspiracy, and I'm sure that others have received
8 who have been in a similar situation as Mr. Jenson, involved
9 with conspiracies involving criminal activities that are of the
10 nature and size and scope of this one.

11 So Mr. Lapham, if you would want to address that
12 particular issue?

13 MR. LAPHAM: I will. Mr. McDavid, of course,
14 received a very lengthy sentence. I think that was justified
15 based on several factors. He was the leader, undisputed leader
16 of this scheme. He devised the scheme. He was the first one
17 that proposed it. He recruited not only Mr. Jenson, but
18 Ms. Weiner, and Anna, the Government's informant.

19 He was the one who clearly was leading all of the
20 conversations and the discussions specifically about targeting.
21 He was the one who selected the target, the Forest Genetics lab
22 in Placerville, that became the ultimate primary target, I
23 think.

24 He was the one who drove a lot of the conversations,
25 and in particular the conversation about accidental death. You

1 will recall, Judge, that he was the one who drew the map of the
2 Forest Genetics lab, when they made their visit there, and
3 noted all the cameras and so forth, surveillance cameras. But
4 he was also the one that noted that there were scientists in
5 residence at that facility. And so the question naturally came
6 up, what about the possibility of accidental death when they
7 actually committed their bombing. And it was Mr. McDavid who
8 had absolutely no problem with the possibility that somebody
9 might be accidentally killed. And it was Mr. Jenson who made the
10 point that if that happened, he was out of here, that he was in
11 favor of aborting the whole operation.

12 I think that speaks well, of course, for Mr. Jenson.
13 And I do agree with Ms. Rusk's characterization that Mr. Jenson
14 seems somewhat disconnected and less of a leader, less of a
15 participant in a lot of the discussions about the plot and the
16 targeting.

17 The only thing I disagree with, I think she said
18 Mr. Jenson often admonished the group that they were going too
19 fast. I don't think that's true. I think that happened once,
20 the night before the take-down, when the whole thing was
21 seeming to fall apart for a moment. They had had a problem
22 with their experiment, the glass had broken, they had to go
23 back to square one. There was a lot of dissension that night,
24 and Mr. Jenson kind of said we need to pull back and not move
25 so fast. We're making mistakes. I think that's the context of

1 that comment.

2 But otherwise I agree with the substance of what
3 Ms. Rusk is saying in her sentencing memo. That he was much
4 less connected to this crime than Mr. McDavid was. And then,
5 of course, there is the age disparity. Mr. McDavid was 28
6 years old at the time, clearly the much more mature individual
7 of the group, and the one who was leading the charge. So I
8 think there's a basis for treating these two individuals in a
9 very different way.

10 THE COURT: All right. Ms. Rusk?

11 MS. RUSK: Your Honor, of course, we respectfully
12 agree with what the Government has said.

13 As the Court pointed out, the statute requires a
14 punishment that's sufficient but not greater than necessary.
15 And on the point of unwarranted sentencing disparity, it's
16 exactly that. It should not be unwarranted. But when there
17 are factors that warrant a different sentence, then clearly
18 that's what the Court is required to do is to weigh those
19 factors individually.

20 And there are three things in Mr. Jenson's case that
21 are different than his co-defendants. One is his background,
22 characteristics and history are extremely different. Two is
23 his participation at every level in the offense. And three is
24 his post-offense behavior. He immediately cooperated with the
25 Government. He testified at trial. He has been out of

1 custody, and he has been doing remarkably well.

2 So his post-offense conduct, his conduct during the
3 offense, and his history and characteristics all put him in a
4 unique position. I don't know that anybody is more aware of
5 the gravity of these offenses than Mr. Jenson is. It's
6 something that he lives with every day, that he takes
7 incredibly seriously.

8 And in terms of deterrence, Mr. Jenson's a writer.
9 This is what he wants to do is to really make a difference
10 here. I think he could have a huge effect on deterrence by
11 speaking truthfully about young kids who get co-opted into this
12 movement idealistically, and the dangers and harms that could
13 come from it. I think the deterrent effect of him getting
14 probation would be huge in this case.

15 And I also want to let the Court know that while no
16 one has ever been here in any of the Zach's court appearances,
17 today we do have his mother present, his girlfriend, and his
18 third-party custodian, T.C. Pritchett, and they are requesting
19 that they be allowed to very briefly address the Court on
20 Mr. Jenson's behalf.

21 THE COURT: On the issue of deterrence you say that
22 probation would be a deterrence. In a situation such as this
23 where you have a group of people who are conspiring to engage
24 in three extremely violent acts, involving the public, the
25 Government, and everything else that that entails, for someone

1 to get probation after being involved in that, doesn't that
2 seem like it might make it okay for a while, as long as you are
3 young, as long as you are impressionable, as long as you are
4 just letting things happen, it's okay. You will just get a
5 slap on the wrist and move on.

6 At some point in time where is the responsibility for
7 those actions? Because once you are 18, you are 18, you are an
8 adult. And that's what he has to look at, and to say I blame
9 this on this factor, and I was this, I mean that happens all
10 the time. And this is not just a petty theft or shoplifting or
11 something to that effect. This is something that was extremely
12 violent and had a potential for causing a great deal of harm to
13 not only property but more importantly human life.

14 MS. RUSK: That's absolutely true, Your Honor. And
15 Mr. Jenson has a felony conviction. He did serve time in
16 Sacramento County Jail, a few months time before he -- six
17 months -- he was in Sacramento County Jail for six months
18 before he was released. He attempted -- you know, from the
19 very first he did cooperate. So I think his message is if you
20 get involved in something like this, even if you are young and
21 impressionable, even if you are the least involved, even if you
22 speak out against violence, even if you immediately renounce
23 your ways and help the Government convict the perpetrators, you
24 are going to suffer a felony conviction. He already did do
25 jail time.

1 He has got this hanging over him for the rest of his
2 life. He is facing a substantial prison sentence. I mean, he
3 has lived the last year or two knowing that he could face five
4 years in federal prison. It's not a light sentence. And based
5 on all the factors together, what he has done since he has been
6 out of custody, in his particular case I think probation is
7 appropriate. And I think he is somebody who would carry the
8 message that you can't do things like this because it could
9 result in harm to people. It's wrong. You shouldn't believe
10 in the false glamor of this, that you are actually doing
11 something good for the environment by risking killing somebody.
12 I think he is somebody to spread that message perfectly that it
13 is the wrong thing to do, and that you will pay a very heavy
14 penalty.

15 THE COURT: As of today what is his current living
16 situation?

17 MS. RUSK: He has leased a home that he lives in with
18 his girlfriend, Sarah, who is present in court. She had no
19 place at the time that he leased the home, and his father
20 needed a place to live. So his father and Sarah are both
21 living with him in the State of Washington. He is working at
22 the Round Table pizza place. We've got the letters from his
23 manager.

24 He has been living stably. When his mother was faced
25 with losing her home, he contributed money for her to make her

1 mortgage payments. She's here in the courtroom, and she's also
2 written a letter to the Court to address that. I mean here,
3 while he had a federal felony conviction and a five-year
4 sentence hanging over his head, he was working full time, there
5 were instances his boss told me about where other young people
6 at work got into trouble at night, and he stayed far clear of
7 it and did the right thing. He exercised good judgment.

8 While he is doing that, he is helping out his
9 brother, his father, his mother, and his girlfriend and
10 behaving responsibly. I think Zach had a really tough time
11 before these offenses. He made a grave mistake that he
12 acknowledges, and he doesn't minimize it. He did whatever he
13 could to rectify it. And since then he has demonstrated
14 responsibility and maturity. He really is a different person
15 than the one who got involved in this a couple of years ago.

16 And I completely understand what the Court says about
17 deterrence, and I think Zach Jenson agrees with it, too. But
18 in this case the punishment that is sufficient but not greater
19 than necessary, that will in fact deter other young people from
20 getting involved in this sort of movement, is one that allows
21 him to speak out against it and get probation. There's also
22 mercy.

23 THE COURT: All right. Do you wish to have someone
24 speak?

25 MS. RUSK: Yes, Your Honor. Your Honor, Mr. Jenson's

1 mother, Valerie Barton.

2 THE COURT: Go ahead.

3 MS. BARTON: Forgive me. I'm just a tad nervous. I
4 would really like to provide the testimony on Zach's behalf,
5 coming from me, his mother, as you already have the letter I
6 wrote about him.

7 I would like to add more so you would sincerely
8 consider probation. I feel the things that really changed for
9 Zach is when my mother passed away in the year 2001. I was
10 going through the grieving process where I did not have my then
11 ex-husband provide me with any solace, no hugs to where I could
12 be just held. He basically left me alone and didn't understand
13 what I was going through, or when I would just yell about
14 losing my mother.

15 I think this made the distance from him and knowing
16 that the marriage was finally over. He then became unemployed
17 for two years, leaving a bigger strain on our marriage and the
18 family. I was working almost 40 hours extra a month in making
19 ends meet.

20 This is where I feel Zach started to escape. He
21 started being on the computer more, and he realized the family
22 was falling apart. He would read political stuff for up to
23 hours, and reading stuff. I didn't show any interest. And as
24 a mother I felt guilty about this, and I figured that, well, at
25 least he is not getting into trouble. And I guess he was doing

1 okay because he was just at home, and I knew he was safe.

2 My role as his mother was not the best time of him
3 being 17, and he felt very disconnected. And I think this
4 started his path. At 18 -- I just went through the divorce
5 when he was 18. I took him to the bus to start his peaceful
6 protest, and I said, you know, you've grown up, you are 18, you
7 are on your way. I myself started my move to Tennessee as I
8 just got divorced, and I needed to start my life over.

9 Zach and I kept in touch every few weeks, so he could
10 tell me he was doing okay, and he knew that I just was
11 struggling financially because it was a new move for myself.

12 At the time of his travel, Zach started speaking of
13 Eric because he looked up to Eric. Eric, I felt, befriended
14 Zach, took him under his wing, and in my belief I looked at
15 Eric as sort of like a gang leader taking a new kid under his
16 wing when they see they have no strong family ties. And he
17 knew that Zach was just detached from his family at the time.
18 I feel Eric felt he could teach Zach his way of thinking.

19 All can I tell you is Zach is a very kind,
20 warm-hearted person. This venture he was on he realized this
21 is not him. I know in my heart -- not just because I'm his
22 mother -- but I know he would never have carried forward what
23 the Government has said that he was involved in.

24 He wants to put these two years on the road behind
25 him. He has taken on major responsibility, which you have read

1 those in my letter and how he has helped me. He understands
2 that I was not about to lose a house that I purchased on my
3 own.

4 The only thing that I ask of you, Judge, is I ask
5 that you can look deep into your heart and consider probation
6 for him. Thank you.

7 THE COURT: Thank you.

8 MS. RUSK: Your Honor, T.C. Pritchett was
9 Mr. Jenson's third-party custodian in Washington.

10 MR. PRITCHETT: Your Honor, I'll just speak to the
11 last two-and-a-half years that I've spent with Zach and watched
12 Zach.

13 Zach has integrated himself as part of our community.
14 He has become a brother, a son, boyfriend, a friend. And a lot
15 of us have invested a lot of time, money, and emotion in Zach,
16 and we've gotten a lot back. We've gotten the thrill of seeing
17 a young man turn around. We've gotten a lot of good
18 conversation and support from Zach.

19 So I ask the Court to please consider not only the
20 impact on Zach and the rest of society, but the impact on the
21 community that's close to Zach. We'd like to continue to care
22 for Zach. And whatever you decide, I'd ask please help us to
23 continue to care for Zach and help Zach to continue to care for
24 him community and his family.

25 THE COURT: Thank you.

1 MS. RUSK: And finally, Zach Jenson's girlfriend,
2 Sarah Elser.

3 MS. ELSER: I met Zach last year in November working
4 at Round Table, and we spent every day together since -- in the
5 last year, every day. When I left my apartment, you know, I
6 didn't have any place to go, so he let me stay with him. We
7 decided to get a place together. And, you know, he paid the
8 deposit because he had the money saved up, so he paid the
9 deposit. Of course I paid him back. He has been nothing -- he
10 is so wonderful. His family is wonderful. And it's been
11 nothing but he is the best thing that's ever come into my life,
12 and he has taught me so much. You know, just the littlest
13 things. So many things. He is so good and so good natured,
14 and he is just wonderful, absolutely wonderful.

15 And you know I -- he deserves to be with all of us.
16 We at least deserve to have him because he is so -- he is such
17 a good guy. And there's -- I'd like him to, you know, stick
18 around and so.

19 THE COURT: Thank you.

20 MS. RUSK: Thank you, Your Honor.

21 THE COURT: Before I go to Mr. Jenson, did you want
22 to respond to any of this, Mr. Lapham?

23 MR. LAPHAM: No, Your Honor.

24 THE COURT: Mr. Jenson, you have a right known as the
25 right of allocution at this time in your sentencing, which

1 means that you have the right to say something to the Court
2 regarding your sentencing prior to the Court making that
3 determination.

4 Do you wish to say anything at this time?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Go ahead.

7 MR. JENSON: Keep this pretty short since you already
8 have my statement, but I'd just like you to know that I'm very
9 remorseful for my actions. I take responsibility for it. I
10 know that my actions were very immature and naive, and I pretty
11 much want nothing more to do with the life I had three years
12 ago. I would like to move forward on my life and work on my
13 writing. That's it.

14 THE COURT: I may be parsing words here, but you said
15 you pretty much want to have nothing to do with your previous
16 life.

17 THE DEFENDANT: I absolutely want nothing to do with
18 the life I had three years ago.

19 THE COURT: All right. Thank you. Nothing else?

20 MR. LAPHAM: No, Your Honor. Submitted.

21 MS. RUSK: Submitted, Your Honor.

22 THE COURT: As the Court indicated, the factors of 18
23 United States Code, Section 3553(a) require that the Court
24 impose a sentence that reflects the seriousness of the offense,
25 promotes respect for the law, and provides a just punishment.

1 And the sentence must afford enough deterrence to others from
2 involving themselves in criminal conduct, especially of the
3 type that the defendant has been engaged in at this time.

4 And in looking at this case, I've reviewed the
5 memorandum, as I said earlier, and all of the character letters
6 that were submitted and everything else that's been submitted
7 to the Court, as well as what was said here today.

8 I've given this a great deal of thought, and I
9 believe that those of you that are familiar with this Court
10 understand that there is a consequence for your actions, and I
11 believe sincerely in that there be a consequence. And that one
12 does not involve themselves in certain types of conduct without
13 having a responsibility.

14 And that's very important, and that's one of the
15 things that I do believe will be deterrence for others engaging
16 in this type of conduct.

17 That being said, I do believe this is a unique
18 situation to a certain extent -- to a great extent actually.
19 I've been very impressed by the letters I've received regarding
20 Mr. Jenson's conduct since this has been ongoing, the work
21 ethic, which has been outstanding, which is something that is
22 very important that that continue because that shows a certain
23 level of responsibility for doing things within society's
24 boundaries and norms.

25 There are ways to make changes that are appropriate,

1 and there are ways to make changes to society that are
2 inappropriate. And if you are able to understand the
3 difference, which is one of the issues that many who engage in
4 criminal activity don't get at this point in time, I think that
5 there has been a huge step in making changes in your life.

6 It is therefore the judgment and sentence of this
7 Court that the defendant, Zachary Jenson, in accordance with
8 the Sentencing Reform Act of 1984, will be placed on probation
9 for a period of 60 months.

10 As a condition of that probation, I will find that he
11 has served a period of six months in county jail, so I will
12 give him six months and credit for the time that was previously
13 served in the county jail. So that means that you will not
14 have to serve any further period of incarceration.

15 I'm sure Probation is going to be looking at me
16 trying to decide when we need to do, so Ms. Alger, go right
17 ahead.

18 MS. ALGER: That would be time served with supervised
19 release, and I think the maximum there is three years.

20 THE COURT: Thank you. That will be the order as far
21 as the supervised release period.

22 With respect to certain conditions there, I am going
23 to say that as a condition of this supervised release that you
24 will not commit any other federal, state, or local crimes, nor
25 possess a firearm, nor illegally possess or use any type of a

1 controlled substance.

2 You will submit to the collection of DNA and comply
3 with all standard conditions recommended by the United States
4 Sentencing Commission and adopted by this Court.

5 I am going to order that you do submit to one drug
6 test within a period as determined by the Probation Officer,
7 and at least two periodic drug tests thereafter, not to exceed
8 four drug tests during any one calendar month period of time.

9 You will also submit to the search of your person,
10 property, home, and vehicle by any United States Probation
11 Officer, or any authorized person under the immediate and
12 personal supervision of the Probation Officer, based upon a
13 reasonable suspicion, with or without a search warrant.

14 If you fail to submit to search, that will be grounds
15 for revoking your supervised release.

16 The defendant will warn any other persons, that
17 includes the young lady who spoke here today, that you are
18 subject to searches pursuant to this condition. So that means
19 that at any time if a Probation Officer, or anyone in the
20 direct and personal supervision, desires to search the
21 premises, then you will allow that to happen.

22 If there is any refusal or failure to comply with
23 this condition, I'm going to have Probation make sure that this
24 Court is directly notified of any violations of any of the
25 terms and conditions of the supervised release.

1 You will also participate in any type of a program,
2 as determined by the Probation Officer, for drug or alcohol
3 abuse, and participate in a program of testing for drugs or
4 alcohol as determined by the Probation Officer.

5 You will also participate in any program of mental
6 health treatment as determined by the Probation Officer.

7 You will participate in a co-payment plan of up to
8 \$25 per month.

9 You will also submit and consent to the search by a
10 Probation Officer, or anyone under the direct or personal
11 supervision, of any unannounced examination of any computer or
12 computer-related device, or equipment that has an
13 internal/external modem, which is in the possession or control
14 of the defendant or in his residence. In the residence. Not
15 just under your personal control, but any computer or related
16 item that's in the residence.

17 You will consent to the retrieval and copying of all
18 data from that computer, computer-related device, or equipment
19 as well as any internal or external peripherals to ensure
20 compliance with these conditions.

21 You will consent to the removal of the computer or
22 computer-related device, or equipment for purposes of
23 conducting a more thorough inspection and/or analysis.

24 You will also consent to having installed on any
25 computer or any computer-related device, at your expense, any

1 hardware or software to monitor use of the computer or
2 computer-related device at the direction of the Probation
3 Officer, and you will not tamper with that hardware/software or
4 install any program that is designed to hide, alter or delete
5 your computer activities while that program is installed.

6 And you will consent to not installing any new
7 hardware without the prior approval of the Probation Officer.

8 The defendant will register in any jurisdiction as an
9 arson offender as recommended by the Probation Officer in the
10 Presentencing Report.

11 The actual period of advisory guideline range is -- I
12 believe it was 168 to 210 months. That exceeds 24 months. And
13 the Court in granting probation at this time makes specific
14 finding that there are definitely distinction between the
15 history and characteristics of this defendant and those who are
16 also involved in this case, specifically Mr. McDavid.

17 I find that Mr. Jenson was although involved in a
18 very serious, potentially deadly conspiracy, his actual conduct
19 and actions within it were at the very minor level, and he did
20 at certain parts try to indicate resistance or reluctance to be
21 involved with it.

22 I also look to the factors stated by Mr. Lapham that
23 Mr. McDavid is a number of years older, much more sophisticated
24 in what he was doing. And as I said previously, a great deal
25 of weight has been given to how Mr. Jenson has conducted

1 himself since this has taken place.

2 I do find that there are certain distinctions that
3 this, as Ms. Rusk said, is not an unwarranted sentencing
4 disparity between others charged with similar conduct. In this
5 case, the disparity, if there is one, is in fact warranted
6 based upon the particular characteristics of this defendant.

7 Mr. Jenson, by the terms of your plea agreement you
8 agreed to waive your right to appeal from the sentence that has
9 been imposed. Those waivers are generally enforceable. I will
10 tell you that if you wish to appeal from the sentence that's
11 been imposed upon you, you can do so, but you must do so within
12 ten days of judgment being entered in this case. If you cannot
13 afford the cost of appeal or the cost of the appellate
14 attorney, those costs can be waived. If you so request it, the
15 Clerk of the Court will file the Notice of Appeal on your
16 behalf.

17 Do you understand the rights of appeal as I've given
18 them to you here today?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Ms. Rusk, is there anything further?

21 MS. RUSK: No, Your Honor. Thank you.

22 THE COURT: Mr. Lapham?

23 MR. LAPHAM: No, Your Honor.

24 THE COURT: Ms. Alger?

25 MS. ALGER: He has to pay a \$100 special assessment.

1 THE COURT: Thank you. Also I'm going to order the
2 \$100 special assessment for the conviction of conspiracy.

3 If nothing else, thank you. That will be the orders.

4 Mr. Jenson, you are to report to Probation
5 immediately following this hearing to sign any papers or do
6 anything that needs to be done to comply with this Court's
7 sentencing orders.

8 (End of transcript.)
9

10 CERTIFICATION

11
12 I, Diane J. Shepard, certify that the foregoing is a
13 correct transcript from the record of proceedings in the
14 above-entitled matter.
15

16
17 /s/ DIANE J. SHEPARD
18 DIANE J. SHEPARD, CSR #6331, RPR
19 Official Court Reporter
20 United States District Court
21
22
23
24
25