

**ADDENDUM TO THE PRESENTENCE REPORT**

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA  
UNITED STATES V. FRANCIS SCHAEFFER COX  
CASE NO. 3:11-cr-00022-RJB-1

**OBJECTIONS TO THE PRESENTENCE REPORT**

Based on objections submitted by the government, substantive changes and/or corrections were made to paragraphs 28, 35, 50, 82, 84, 85, 95, 99, 105, 106, 115, 116, 122, and 132; paragraphs 78a and 83a were added; footnotes were added to paragraphs 115, 121, and 164, and the footnote to paragraph 118 was changed and moved to paragraph 119.

Based on objections submitted by defense counsel, changes were made to paragraphs 23, 34, 42, 51, 57, 79, 80, 86, 132, 133, 222, and 223; footnotes were added to paragraphs 29, 31, 34, 38, 42, 51, 57, 68, 69, 72, 78, 84, 86, 97, 102, and 122; and paragraph 222a was added.

Based on an error in the paragraph numbering sequence in the draft presentence report, paragraph 56 under the heading "Criminal Convictions" was changed to 156a.

Based on additional information received after submission of the draft presentence report, changes and/or corrections were made to paragraphs 127, 165, 173, and 181; and paragraphs 176a, 176b, and 203a were added.

**BY THE GOVERNMENT**

1. Paragraph 135: The government submitted the following information: *We agree with application of the four-level enhancement under 2K2.1(b)(6)(B). We would add that the 4-level enhancement also applies under 2K2.1(b)(6)(A) for possession of firearms and ammunition with knowledge, intent, or reason to believe that it would be transported out of the United States. Barney testified that the plan was for Cox to leave Alaska and to flee to the lower 48 via Canada. Barney and Cox went to the Bradway road shed and Barney and CI-1 retrieved Cox's items (including firearms and ammunition), which they placed into Barney's truck and Barney drove them back to Barney's house with Cox for Cox to bring with him when he left the State. [see page 48 of Barney's testimony on 6/7/2012] Cox's firearms (including Sten machinegun, silencer, grenades, Browning) and ammunition ended up in Barney's trailer. Cox had packaged and wrapped some of the items at Barney's house before moving them into the trailer. Barney and Cox drove that trailer to the Ice Park on the day that they were planning on meeting up with the truck driver to get Cox to the lower 48.*

So now you admit I was leaving? I can't be leaving and be conspiring to murder. Either I was running, or fighting.

**Response:** The probation officer agrees with the government's analysis that the enhancement also applied under 2K2.1(b)(6)(A).

**BY THE DEFENSE**

Defense counsel submitted the following **unresolved** objections.

1. Defense counsel objected to the inclusion of paragraphs 23, 58, 59, 65, 67, 69, 77, 80, 81, 83, 87, 89, 96, 99, 102, 104, 106, 113, and 116, arguing that the paragraphs solely concern Lonnie Vernon's case as charged under 3:11-cr-00022-RJB-1, and inclusion of the paragraphs would be inappropriate with regard to the factual matters in Mr. Cox's presentence report.

**Response:** Paragraphs 69, 87, 89, 96, 99, 104, 106, and 113 reflect, in part, Lonnie Vernon's interest in acquiring a silencer and grenades, as well as discussions in which he partook to acquire those items, and his subsequent arrest by authorities. The defendant and Lonnie Vernon were convicted of Conspiracy to Possess Unregistered Silencers and Destructive Devices and Conspiracy to Murder in case 3:11-cr-00022-RJB. Because the defendant and Lonnie Vernon were convicted of a conspiracy to possess the silencer and destructive devices, these paragraphs are appropriately included in the presentence report.

Paragraphs 58, 65, 77, 102, reflect conversations Lonnie Vernon had with others that involved wanting to kill judges, district attorneys, and law enforcement officers. Some of the conversations include Lonnie Vernon discussing that he wanted to kill a Federal judge and his family and an Internal Revenue Service (IRS) Officer. Paragraph 65 reflects that Lonnie Vernon introduced the defendant's plan to CI-2, and CI-2 was particularly resistant to harm being inflicted on the families of any targets. Paragraph 65 also reflects that Lonnie Vernon and CI-2 discussed, to some degree, the defendant's situation. Paragraph 77 reflects that Lonnie Vernon discussed killing a prosecutor and "cop", as well as his troubles with the IRS, while the defendant was present. Paragraph 83 reflects that Lonnie Vernon attempted to get the "target" list from Anderson (it is noted that the "target" list was specific to the defendant's case). Because the defendant and Lonnie Vernon were convicted of Count 12, Conspiracy to Murder, and the objected-to paragraphs reflect Lonnie Vernon's discussions related to that conspiracy, these paragraphs are appropriately included in the presentence report.

Paragraphs 59, 67, 80, and 81 reflect conversations that Lonnie Vernon had with others, to include CI-1, in which Lonnie Vernon discussed his intent to harm a Federal judge and his family and an IRS officer. Paragraph 80 reflects that the defendant was present during at least one such discussion. Paragraph 116 reflects Lonnie Vernon's "suicide letter" which was found by investigators after his acquisition of the illegal weapons. The paragraphs are

included in the defendant's presentence report for mainly two reasons. First, the defendant conspired with Lonnie Vernon to acquire a silencer and grenades, which items could facilitate Lonnie Vernon's plan to murder the Federal judge and his family and the IRS officer, intentions of which the defendant was aware. Secondly, the defendant and Lonnie Vernon were convicted of conspiring to murder government officials. It is the probation officer's assessment that Lonnie Vernon's state of mind and willingness to kill and be killed in the name of his and the defendant's cause was paramount to the defendant's plan and may have influenced the direction of the investigation (defense counsel questions the investigation in some of the following objections).

Paragraph 23 explains Lonnie Vernon's association with the Alaska Peacemaker Militia and the Alaska Assembly Post and explains Lonnie and Karen Vernons' situation with the IRS and the Federal judge involved in their civil case. Because Lonnie Vernon's reaction to the IRS and Federal judge is included in following paragraphs, the information regarding the IRS and the Federal judge was not removed for the above-stated reasons. Defense counsel objected to the description of Lonnie Vernon's association with the Alaska Peacemaker Militia and the Alaska Assembly Post. Changes were made to paragraph 23 regarding Lonnie Vernon's association with those entities.

2. In his objections to the presentence report, defense counsel included a number of email communications between those involved in the investigation and prosecution of the defendant's case, which emails were provided in discovery. With regard to June 2010, defense counsel provided the following statement, *In June of 2010 Mr. Cox attended a meeting which included CI-2 Bill Fulton. At this meeting Fulton pressured Mr. Cox to come up with a plan to arrest judges. Mr. Cox said he had no plan. Here is the FBI's take on that meeting:*

From: Espelandr Derek D.  
Sent: Monday, June 14, 2010 8:10 PM  
To: Locascio Lisa A.; Klein Sandra L.; Milner Bruce W.; Johnson Sam L.  
Subject: Re: SC-Fairbanks  
SC was exposed as a self aggrandizing fraud. He did not have a "plan" at all. Even if he had a plan there were allegedly other plans to off SC 48 hrs after the revolution began. SC has gone from a cadre of 24 down to 2 (Him and his #2 Les Derby).

**Response:** The presentence report indicates that in October 2010, Cox asked Anderson to find information related to Alaska State Trooper M.J., and by February 2011, Cox developed the "241" plan. The defendant's objection appears to re-introduce the defense strategy that

CI-2 initiated the 241 plan, a defense strategy which was rejected by the jury during the trial. No changes were made to the presentence report as a result of this objection.

3. Paragraph 57: Defense counsel wrote, *Mr. Cox also denies that he asked them to "get C-4". Rather, Mr. Cox said he had a guy who worked for him who knew a guy who knew a guy who could make C-4 (Govt. Ex. 3 p.13,14).*

**Response:** The presentence report, in paragraph 57, reflects that the defendant discussed wanting to get C-4 explosive. The exact quote by the defendant and referenced by defense counsel is "...(inaudible) from...I had a guy that works for me that has a guy he knows who knew a guy who knew a guy who is a bomb maker over in Iraq. And he said he'd make us some C-4." Cox then continued by saying, "I asked him, how much? You know, and I didn't get a price back. So he said, how much would you spend and I'll send it on down the line. I don't know, \$1,500 bucks, maybe? What's...depends on the shelf life." The defendant, CI-1, and Lonnie Vernon continue discussing the prospect of getting C-4, and the defendant stated, "You know what I thought we'd do? Make little Hershey bar-sized ones and...and put them in salmon-filet packers." The discussion continued and the defendant stated, "And that you don't talk about. But what do you need that for? You know? Who knows....I don't know. Why do you have a gun in your nightstand?" No changes were made to the presentence report as a result of this objection.

4. Footnote at paragraph 57: Defense counsel wrote, *Mr. Cox maintains that Mr. Brakefield had his years confused. Mr. Cox saw Brakefield at the event held in 2009-before Mr. Cox became fearful of Fulton and Bennett. Mr. Cox fear of Mr. Fulton and Mr. Bennett occurred after the Blondie's meeting in which Fulton pulled a knife and threatened to kill Les Zerbe when Fulton was told that Mr. Cox did not have a plan to arrest judges. From that point forward Mr. Cox was fearful of and tried to avoid Fulton. Evidence of this includes the fact that Mr. Cox did not want Fulton to know that he was still in town in February of 2011 and that Mr. Cox refused to meet with Fulton.*

*Evidence of Mr. Cox fear of Fulton is also contained in an FBI e-mail where the agents note that Mr. Cox refused to meet with Fulton and even told Olson (CI-1) that he did not want Fulton to even know he was still in Fairbanks. Why would he refuse to meet with Fulton and not want Fulton to know he was in Fairbanks if he was on good terms with Fulton?*

Sutherland, Richard A. Jr.

Klein, Sandra L.; Locascio, Lisa A.

Plan

Friday, March 04, 2011 5:33:00 PM

SC is not willing to meet with CHS-2. Does not want him to know he is still in Fairbanks.

W/ trucker to leave  
Wants CHS-1 to broker deal.  
SC willing to meet "trucker" to discuss transport.  
Rick Sutherland

During the February 4th meeting Mr. Cox told Olson and Vernon to stay away from Bill Fulton and Aaron Bennett as they were going to get them in trouble.

**Response:** The defendant's objection appears to re-introduce the defense strategy that Cox only participated in the offense because he was afraid of CI-2, a defense strategy which was rejected by the jury during the trial. No changes were made to the presentence report as a result of this objection

5. Paragraph 68: Defense counsel wrote, *Mr. Cox denies that he made this statement. There is no recording for the February 6, 2011 meeting and thus the only evidence comes from CI-1. In an e-mail dated February 18, 2011, the FBI acknowledged that CI-1 had not always been accurate with them.*

Locascio, Lisa A.  
Sutherland, Richard A. Jr.  
Re: Tapes from last night  
Friday, February 18, 2011 8:57:55 AM  
We need to listen to audio before we tell Skrocki ... chs info has not  
been 100 perc accurate before ..  
SSA Lisa A. Lo Cascio  
Federal Bureau of Investigation  
Counterterrorism Program-JTIF  
(CHS refers to the confidential human source)

**Response:** The defendant's objection appears to re-introduce the defendant strategy that CI-1 was not credible, a defense strategy which was rejected by the jury during the trial. A footnote was added to this paragraph to note the defendant's denial of the reported statements.

6. Paragraphs 70 through 74: Defense counsel wrote, As to the February 12, 2011 meeting FBI Special Agent Sutherland wrote in an e-mail dated February 13, 2011: "Listened to most of audio, great quality CHS info validated. DO NOT feel it will support prosecution." (emphasis in original)

**Response:** The objection is noted for the record but no response appears warranted other than to note that several events involving the defendant and others unfolded after the

conversations noted in paragraphs 70 through 74. No changes were made to the presentence report as a result of this objection.

7. Paragraph 85: Defense counsel wrote, *February 19, 2011 recording: The recording of the February 19 meeting reveals that Mr. Cox ultimately rejected the 2-4-1 plan.*

MR. BARNEY: Yeah, we're all in this together. But I know right now, the atmosphere, I don't feel it's right to -- if we -- if we take up arms, it's going to be -- I -- I wonder if anything would really even come out of it other than we'll be dead and our wives and children will be left to themselves. I don't think that any -- that people around us won't see us as martyrs.

MS. VERNON: Mm-mm.

SPEAKER #: No.

MR. COX: It'll be a fruitless gesture.

*After the February 19, 2011 meeting FBI Special Agent Sutherland wrote in an e-mail dated February 19th "meeting is over. No immediate threat to LEO or judicial official identified by chs."*

*This e-mail supports the contention by Mr. Cox that there was no agreement to implement 2-4-1.*

**Response:** The defendant's objection appears to re-introduce the defendant strategy that the defendant rejected the 241 plan, a defense strategy which was rejected by the jury during the trial. No changes were made to the presentence report as a result of this objection.

8. Paragraph 86: Defense counsel wrote, *There were no real grenades in Mr. Cox possession. None were found. The only basis for the claim that actual grenades were present was a statement by CI-1 that was uncorroborated by any recording or any search or any other witness. Moreover, in an e-mail by AUSA Skrocki dated March 5, 2011 Mr. Skrocki states:*

Additionally, I am trying to verify source reporting. For example, this morning I asked the question about how we know grenades are on the Barney property. I've received info that source reporting says there's grenades on Cox's property. I am listening to that recording now. It is four hours long. There first few minutes, Barney and CS are talking about grenades, but talking about a rumor that Cox has grenades off Wainright. Nobody, and I mean up to now, nobody says there are grenades on the property. So, unless somebody can verify they've listened this, I have no choice but to plow thru it to see if I can verify that it exist later. It might be there, it'd be great if it was, but we have to verify. While the source is doing scary and thorough work

I think it fair to say his verbal reporting is not 100% accurate and that is understandable...(emphasis added)

**Response:** This paragraph was slightly modified and a footnote was added to reflect the defendant's objection. It is noted that these alleged grenades were not used in any guideline calculations.

9. Paragraph 115: Defense counsel wrote, *The Sten Machine gun mentioned in this paragraph was determined NOT to be fully automatic by the crime lab. This Sten was a different firearm than the one Mr. Cox admittedly possessed which was fully automatic.*

**Response:** This paragraphs reflects that a Sten machine gun was found at the Vernons' residence. According to the government, the gun was found to be fully automatic, but the information had not been presented in trial.

10. With regard to the 241 plan, defense counsel wrote, *The 2-4-1 plan is referenced at paragraphs 70, 73, 79,80 and 85 of the draft PSR.*

February 12, 2011

*During this conversation CI-1 suggested 5-4-1 which was rejected. ( Govt. Ex 14-5)  
The government introduced only a portion of this conversation in Govt. Ex 14. Some portions that were not introduced included Mr. Cox stating:*

*So we're all on the same page, um, the plan as far as 241 is to bluff it, pray, and work towards it not being a bluff and then at the moment my plan is to hide, to avoid, if I get busted—if I get captured, I'm not going to do a Rambo, I'm going to do a Gandhi..."  
(Transcript 2/12/11 p 127-128)*

*Mr. Cox did state:*

*MR. COX: All right, well, let me give you guys my thoughts. I really appreciate your thoughts on that. My thoughts on 241 is that we're not in a strong enough position to execute more than once, we're not in a strong enough position to follow through, and so at this point what we should do is do everything we can to avoid it, but that what we should do is we should bluff it for all it's worth and pray for God's protection and shielding hand and, uh, work and train and get ready to where we can turn that 241 into a real ability instead of just (inaudible).*

*MR. COX: So, that -- that sums up 241 and my position is*

*He also stated:*

MR. COX: *Maybe it's good that we've got a mutual standoff, but I'd say from my -- from my part on -- on Order 241, bluff it, pray, and train so that it can become real. And in the meantime, total Gandhi.*

*The government attorney interpreted Mr. Cox's many different statements at this meeting as just kicking around ideas and speculating. In a February 13th e-mail Mr. Skrocki stated:*

From: Skrocki, Steven (USAAC)  
Sent: Sunday, February 13, 2011 4:13 PM  
To: Loeffler, Karen (USAAC)  
Subject: Cox-(long email--sorry)

Listened to conversation from last night. In summary, they are kicking around ideas. My advice, do not arrest if he doesn't show, but issue the warrant and let it sit. With the source in place, we'll have the best idea of what's going on, and it won't agitate Cox's followers---you might want to give Mike Grey and the SAC a call tonight too. The SAC can verify with Rick what I'm saying--

"241" stands for, if they take one of us, we take two of them. But they discuss not being strong enough to impose their views on the rule of law. They discuss everything from 241, to fleeing, to the rapture coming and waiting for that. In my view, the FBI source is pushing Cox a bit too hard on not getting arrested, and the source agrees too much in moving their plans forward which would generate a response, whether violent or not. The source adds, "why don't we make it 541" (not a good idea, FBI has to fix this)

After some discussion of "241", Cox says, "we're just speculating here and I want to hear where you stand". Cox does say he would be morally correct in shooting a judge, but adds that he doesn't want to do that. So he makes the big pronouncement, then backs off. The typical, "I will ..... but not just yet" type stuff.

This is all about him. He spent almost two hours reading and explaining his paperwork, in my view, just to layout that he's smarter and in charge. It's clear he doesn't understand it and is getting it from somebody else. He reads it to be the leader of the group, which he really is. Cox's stated thoughts are "we are not strong enough to execute or follow through" and says they should do everything we can to avoid it. He says they need to work and train and get ready for when they might have to respond. In response, the source says, "we can get other militia's to support us"-another example of pushing. Cox says, "we want to bluff them, and play and train". (he claims the



police are afraid of all of them) And asks, "what do you guys think about this then" and after getting various responses, none saying let's go grab or harm people tomorrow-he ends it with "bluff it, play and dream but adds, something that sounds like and "pull guns"". He says, "at the moment his plan tomorrow is to lay low, and if he gets caught to play Ghandi, not Rambo" .... (again, he qualifies almost everything-it's very obvious he wants wiggle room.)

Agent Sutherland wrote the following regarding CI-1 meeting with Mr. Cox on this date:

Cox discussed Operation 241. Cox said that there would not be a 241 response if Vernon's house was seized. Cox said that he had lost his business and his residence and that Vernon needed to be prepared to lose his. Cox said that they did not have enough support to pull off a 241 operation and survive.

**Response:** The objection is noted for the record but it does not appear to warrant a response as the defendant presented his case to the jury and was convicted. No changes were made to the presentence report as a result of this objection.

11. With regard to the KJNP security detail, defense counsel wrote, *While the government has alleged that this event was a part of the conspiracy to commit murder it appears that the jury categorically rejected this. A letter from a juror to Judge Bryan in advance of the sentencing of codefendant Barney stated that:*

In particular, I don't think the prosecution understands that the ONLY criminal charge stemming from the KJNP "security detail" that resulted in a conviction was Coleman's possession of an illegal destructive device. The jury categorically rejected the prosecution's allegations that this was a murderous plot to kill federal officials, but was instead a plan to lawfully defend themselves if attacked by non-uniformed agents who began shooting without identifying themselves. (emphasis in original juror letter)

**Response:** The parties are familiar with the entire contents of the juror's letter and believes that the Court and the parties have already examined and discussed the circumstances of the KJNP security detail, as it relates to the conspiracy, at great length. No changes were made to the presentence report as a result of this objection.

12. With regard to the KJNP security detail, defense counsel wrote, *The FBI case agent summarized the meeting where Mr. Cox planned for his KJNP appearance on November 23rd, 2010 in the following e-mail:*

From: Sutherland, Richard A. Jr.

To: Gunty, Matthew P.

Sent: Mon Nov 22 18:50:34 2010

Subject: Cox Update

Here is a super-brief update so you can try to answer some questions if you are asked:

- 1) Cox had a court date for tomorrow for a state weapons charge
  - 2) The Troopers continued his case to Dec 10
  - 3) Cox had a "7 step plan" planned to coincide with this court date
  - 4) He calls the plan "Operation Nehemiah 5"
  - 5) His plan involves civil disobedience, media coverage, and a declaration that the Alaska Court system as void and possessing no authority over him
  - 6) He plans to call on the Troopers and demand a truce
  - 7) He will provide identification to his followers to identify them to Troopers so that the Troopers leave them alone and refer them to Cox
  - 8) He has a TV appearance on live TV scheduled for tonight to kick off his big plan
- FED\_00011344

In a recorded meeting with a CH5, he stated over and over that he did not want violence and that he did not want to see any cops hurt. He has armed a militia security team with CS gas and Homet grenades as a diversion squad if needed.

There is more to the overall plan, but this is a overview.(emphasis added)

**Response:** The objection is noted for the record, but does not appear to warrant a response from the probation officer.

13. With regard to the defendant's belief that the defendant believed a federal hit team was out to kill him, defense counsel wrote, *While the government has denied that there was ever a federal hit team sent to kill Mr. Cox and his family, Mr. Cox repeated this fear to a large number of people to include his wife and his father. He truly, if mistakenly believed this to be the case. In addition Mr. Cox fear was reinforced by comments made to him by an M.P. at Fort Wainwright. Steve Gibson testified at trial as follows: (15-195-196)*

While he was there, he -- I had asked him about Schaeffer Cox and he had told me that Schaeffer Cox was the guy that lived there locally in Fairbanks. He told me that Schaeffer Cox, in his opinion, was crazy, and was currently going through some issues with OCS. He said that Schaeffer Cox, it looked like, was going to lose his son because he hadn't been participating with either a hearing or -- something to do with OCS. I don't know all the details with that.

Q Uh-huh (affirmative).

A And his exact words were that with some of the issues that -- been going on with Schaeffer Cox, that the OCS issue actually may fix -- may resolve the -- the problem that they had, because he could -- he said that Schaeffer Cox had made some threats in reference to OCS. He said that he had said that he was not going to give up his son and that he wouldn't let anybody take his family. And the -- I believe the exact verbiage he had used was that Schaeffer Cox would turn Fairbanks into a bloodbath before he would give up his child. And so the U.S. marshal said based off of that statement, that when OCS would go to Schaeffer Cox's house to get his son, law enforcement would be present. He also stated that they believed, based off of his statement, that Schaeffer Cox would probably use force to prevent them from taking his child, and that if he did so, then he would most likely be shot and killed in this scenario. (emphasis added)

Gibson also testified that he was told by the a U.S. Marshal that:

Whatever the problem was with Schaeffer Cox, if he was killed with OCS attempting to take his son, then obviously anything that had to do with him wouldn't matter anymore.

Gibson went on to say he was so alarmed by this conversation with the FBI that he sought out and contacted Mr. Cox and relayed what he had been told. This information added to Mr. Cox paranoia that the federal government was trying to engage him in a violent confrontation to kill him.

The law enforcement people who were investigating Mr. Cox recognized his paranoia about being the focus of a federal hit squad. The following e-mail is from the Fairbanks District Attorney.

From: Gray, Michael (LAW)

Sent: Tuesday, January 25, 2011 1:28 PM  
To: Mattern, Scott L (LAW); Soldwedel, Arne F (LAW); Dallaire, Joseph B (LAW); Baldock, Andrew P (LAW)  
Subject:  
To follow up on my conversation this morning, we must be careful in responding to Cox to not act like him. He tells his folks that an assassination squad is up from Colorado to kill him, his homies talk about the same among themselves, he hears it from somebody that heard it from him, and all of a sudden it's confirmed.

**Response:** The objection is noted for the record, but does not appear to warrant a response from the probation officer.

14. With regard to the "list," defense counsel wrote, *Anderson testified that he and Mr. Cox discussed the collapse of the U.S. Government and the imposition of "Stalinesque" martial law whereby families were being seized. Anderson testified that he and Mr. Cox discussed:*

Q: Did those conversations evolve into an agreed-upon plan of some type with you and Mr. Cox?  
A: Not a specific plan. It was just generally if it comes to that, you know, we'd have to identify who was doing it and take them out before they could come for us, and -- I mean, kill them before they could come for us.  
Q: Kill them before they came for you?  
A: Yes, that was kind of the subject of the discussion.  
Q: As part of that subject of your discussion with Mr. Cox, did you engage or become someone to do something for him in respect to that conversation?  
A: Yeah, there was an idea of -- of collecting information on who any potential enforcer could be, who could potentially carry out those orders, collecting home address information.  
Q: Is that what you did?  
A: I did some.  
Q: With Mr. Cox's knowledge?  
A: Yes.

*Thus, this "list" was only to be used if the government collapsed and martial law was imposed and government officials began seizing families. As to various names found on notepads in Mr. Anderson's residence during the search Mr. Anderson testified that Mr. Cox asked him to find out where W.W. lived "so he could go talk to her." (Day 6, p.53) As Anderson was unsure he had*

*the correct W.W. he testified he went by her home and took a photo of her license plate to try to run her name. At a later time Anderson testified that Mr. Cox said he needed to know where she lived because if she hurt his family he might have to put a bullet through her windshield. (6-56). Mr. Cox denies he made this statement. In addition Mr. Cox told Anderson he thought there was a hit team out to get him and wanted to see if Anderson could find the names of the hit team members. (6-59)*

*Anderson testified that Mr. Cox never said he wanted to overthrow the government (Day 6-110) and he never heard Mr. Cox espouse killing people to overthrow the government (Day 6-111). Anderson said that he and Mr. Cox discussed that if the government collapsed there might be the need to protect themselves with deadly force. (6-112). Cox never said to Anderson that he was going to shoot anyone on the list. (6-122). Anderson testified that he had about 15-20 names on his database and of those "a few" of the names came from Mr. Cox (Day 6-147). The only name on the single page document Anderson on his own entitled "federal hit list" was a U.S. Marshal who Anderson looked up on his own-not at the request of Mr. Cox. (Day 6-142).*

*As to the "list" even the government expressed uncertainty as to the intent behind it. Special Agent Sutherland wrote in an e-mail dated March 3, 2011-a mere 7 days before the arrest: Any idea of Cox's intention with the "list", especially in light of the fact that he is leaving? Is this the target list of LE and judges? Yes, the list of LEO's and targets. No known intentions other than more potential deterrents.*

**Response:** The objection is noted for the record, but does not appear to warrant a response from the probation officer.

15. Paragraph 125: Defense counsel objected to the assessment that the defendant made false statements during his testimony and provided the following statements to refute paragraph 125.

*We will address each of the alleged false statements in the order contained in paragraph 125.*

*1. The defendant testified that he did not tell anyone to make a target list.*

*While Mr. Cox admits asking Mr. Anderson to look up names and addresses, he never used the term "target list" to describe this task. There is no recording where Mr. Cox uses the term "target list" and Mr. Anderson did not testify that Mr. Cox used such a term. The actual question to Mr. Cox was: "did you tell somebody to write a list—a target list of people to get killed?" (17-51) Mr. Cox answered: "No."*

*2. That he did not tell Anderson to write down names*

*Mr. Cox fully admitted at trial that he did ask Anderson to look up a number of names and addresses.*

3. That he did not tell Anderson to create a list.

Mr. Anderson described creating a database of names and addresses. Regardless of what it is called-list or database- it was not a material fact.

4. That he never had a TSA employee on a hit list

Mr. Cox has denied that this was a "hit list."

5. That he did not give the names of W.W. or N.C. to Anderson

Mr. Cox did not recall providing Mr. Anderson with these names-his recollection may have been faulty but he did not willfully make a false statement.

6. That he did not know where the names on the list came from.

Mr. Cox admitted providing Mr. Anderson with some names. Mr. Anderson looked up many other names on his own without Mr. Cox knowledge.

7. That he never asked Anderson to conduct surveillance.

Anderson never testified that Mr. Cox asked his to conduct surveillance. Anderson said that on his own he went to the address for W.W to try to confirm she lived at this residence. (See transcript 6-53, Anderson testified that he did not engage in any kind of surveillance other than to get a photo of a license plate. 6-124

8. That he wanted to see Anderson because he was leaving [but not to get the list from Anderson]

Anderson testified that Mr. Cox had come by his house when he wasn't home and left a phone number. Anderson called Mr. Cox. They discussed Mr. Cox court proceedings and other matters. Mr. Cox was on the run at the time. At the end of the call Mr. Cox asked Anderson "do you have something for me" to which Anderson said "uh-huh. Then Anderson "asked him to meet me in town." Anderson testified: "It thought he was coming for the database but by that time I had already gotten rid of it and I was just trying to lure him in to talk to him.(6-105). Anderson testified that when he met with Mr. Cox "at the very end of our meeting I just said "oh, by the way, I destroyed that thing."(6-107) Anderson stated that Mr. Cox said nothing but seemed surprised.

9. That he had no interest in the list.

*CI-1 wanted the "list" and volunteered to contact Anderson to try to get it. By this time, Mr. Cox primary interest was in leaving Alaska.*

*10. That he had not asked Anderson to find out where W.W. lived or to do surveillance*

*Mr. Anderson confirmed that Mr. Cox did not ask him to do surveillance. Mr. Cox did not recall asking Mr. Anderson to find out where W.W. lived.*

*11. That he said W.W. might get a bullet through her windshield*

*While Mr. Anderson testified to this, Mr. Cox denies making this statement.*

*12. That he did not ask Anderson to look for Federal marshals.*

*Mr. Anderson testified that on his own he looked up the names of Federal Marshals. Mr. Cox had asked for Mr. Anderson's help in trying to find out who might be on the hit squad he believed was out to kill him.*

*13. That he went to Lt. R.W.'s house to get help and warn Lt. R.W. about CI-2.*

*Even R.W. testified that Mr. Cox wanted to discuss his ongoing problems with OCS when Mr. Cox and his wife came to R.W.'s house.*

*14. That he did not threaten Lt. R.W.*

*Neither Mr. Cox nor his wife Marti believe that Mr. Cox said anything intended as a threat to R.W. during their visit.*

*15. That the only reason he had Trooper M.J.'s information was so he would know which jail to go to in order to post bail for a friend.*

*Mr. Cox did in fact post bail for his friend. The only reference to M.J. was a yellow sticky note found during a search. See PSR paragraph 56-Mr. Cox did meet trooper M.J. at the precinct. He knew where to go because he had Anderson look up Trooper M.J.*

*16. That the internet searches he conducted on Barney's computer were for the purpose of finding pictures.*

*No evidence was presented to contradict this assertion by Mr. Cox. The photographs were used to create the "Robin Hood" posters.*

17. That CI-1 told him of the 2-4-1 plan and he responded that it was not good.

It was often CI-1 who brought up the 2-4-1 plan and pressed to get Mr. Cox to be more specific.

18. That the 2-4-1 plan was actually CI-2's idea and was relayed by CI-1.

After Mr. Cox tried to downplay 2-4-1 it was CI-1 who kept re-raising the topic. That he had the armed security detail at KJNP because he feared CI-2 was going to kill him. Mr. Cox was fearful both of being harmed by overzealous law enforcement and by CI-2.

19. That his directions to others in the security detail to shoot if he was in danger was in reference to if CI-2 jumps out and starts blazing away.

The KJNP security plan was always intended to be a self-defense measure. The "whiteboard" clearly indicated this to be the case.

20. That he wore body armor "24/7" because he was afraid of CI-2

Mr. Cox did wear body armor nearly 24/7 and had expressed to his wife, father and others his fear of other militia members. Indeed the government confirmed in an e-mail that there was a plan by other militia members to "off" Mr. Cox.

From: Espelandr Derek D.

Sent: Monday, June 14, 2010 8:10 PM

To: Locascio Lisa A.; Klein Sandra L.; Milner Bruce W.; Johnson Sam L.

Subject: Re: SC-Fairbanks

Sc was exposed as a self aggrandizing fraud. He did not have a "plan" at all. Even if he had a plan there were allegedly other plans to off SC 48 hrs after the revolution began. SC has gone from a cadre of 24 down to 2 (Him and his #2r Les Derby).

21. That he did not attend the state court on February 14, 2011 because he was afraid CI-2 would kill people.

Mr. Cox maintains that he believed if he was arrested some militia members would react violently. See paragraph 65 of PSR where CI-2 says that he will react and "rise up" if something happened to Mr. Cox.

There is a good deal of evidence that Mr. Cox was indeed fearful of CI-2 (Bill Fulton). The best evidence of this was when Fulton attacked Les Zerbe and according to some pulled a



knife and threatened to slit his throat after Fulton was told by Zerbe and by Mr. Cox that they did not have any plan to arrest judges.

22. That his statements to the State judge were meant to warn her about CI-2.

Mr. Cox prefaced his statement to the judge with the phrases that "there were a lot of people who would just as soon come to kill you in the night...." Mr. Cox considered this a statement of warning to the judge.

23. That he continued to interact with CI-2 because he felt a duty to try to influence CI-2

This statement was not material to the charged offenses and was simply Mr. Cox belief.

24. That he thought the March 10, 2011 meeting with CI-1 was only to meet the trucker and he had not known of the items being sold until he got into CI-1's vehicle.

Mr. Cox does not deny he discussed purchasing the silencers from CI-2 but on March 10th he believed the purpose of the meeting was to meet the trucker as Mr. Cox was anxious to leave Alaska. It was not until Mr. Cox got into the car that CI-1 told Mr. Cox about the weapons. CI-1 said he had not wanted to mention these things on the telephone.

25. That he thought the purchase was going to be legal

Mr. Cox was repeatedly told by CI-1 that CI-2 was a class III firearm dealer who could sell silencers, however Mr. Cox admitted he was told this sale was to be off the books.

26. That the silencers were represented as being legal,

The silencers were represented as coming from a licensed dealer although Mr. Cox was told these were going to be sold off the books.

27. That he never made arrangements to get real grenades.

The March 10, 2011 recording reveals that when CI-1 said he had grenades, Mr. Cox was surprised.

MR. OLSON: Because I specifically told him what -- what we want. Yeah, yeah, Bill, I've got them. No -- no problem. And then -- you know, because I originally it was just -- just the silencers. And -- and -- oh, yeah, I've -- I've got a bunch of those, but now we know he gets up here and -- and we did a bunch of CIA crazy stuff. You know, driving around and he's sneaking around. You know, meeting up with them, but he does have -- he does have

*grenades. And they're 50 bucks apiece. He'll come down on those and they're the, uh -- what are they? The M74s?*

*MR. COX: I don't know.*

*MR. OLSON: The, uh -- the real military legit straight from -- straight from the Army. So --*

*MR. BARNEY: That's still cool.*

*MR. COX: Yeah, well.*

*MR. OLSON: I know it, it's --*

*MR. COX: Hmm, that's tough. That's a --*

*MR. OLSON: I didn't want to say anything on the phone, I wanted to wait until I talked to you and I said, well, I'll -- I'll -- I'll see what -- see what it looks*

*(Govt. Ex. 38)*

*28. That he was not interested in the grenades.*

*On March 10th, Mr. Cox primary interest was in meeting with the trucker and leaving the state with his family.*

*29. That he had the 37 mm launchers for his business, for sailing and for golf.*

*This is not a material matter, however, Coleman Barney also testified that there was talk about using the Hornets Nest and Launchers for a golf tournament that never took place.*

*30. That the [homemade] silencer was for foxes getting into his chicken shed.*

*Mr. Cox built the homemade silencer in 2008 when he received the "how to " DVD. This was long before the alleged conspiracy commenced.*

*31. That the Sten machine did not work and was just for display.*

*The ATF agent could not tell if the Sten was operable. No powder was found on the firearm. Mr. Cox had been rebuilding this firearm for many years as a World War II relic.*

*32. That based on a conversation with a SA with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) he thought it was okay to have his unregistered silencer and machinegun.*

*Mr. Cox did meet with ATF agent Cohoon and came away from that meeting believing that homemade firearms that did not travel interstate commerce did not have to be registered. AFT agent Cohoon recalled the meeting but did not recall such a discussion. (19-24) Both*

*Mr. Anderson (6-112) and Philip Clark (7-28) were present and did recall a discussion about firearms and interstate commerce.*

33. *That he did not own any illegal weapons.*

*Mr. Cox did not realize the Sten was illegal as he thought of it as a homemade firearm that was also inoperable.*

**Response:** The objection is noted for the Court's consideration. The probation officer maintains that the defendant provided testimony under oath, which testimony contradicted evidence presented and which resulted in guilty verdicts. No changes were made to the presentence report as a result of this objection.

16. Paragraph 133: Defense counsel wrote, *While Mr. Cox owned numerous firearms, most were completely legal. The illegal firearms included only one machine gun which formed the basis of counts 4 & 5. There were a total of three silencers-the two CI-1 showed to Mr. Cox and Mr. Barney on March 10th and the homemade silencer which formed the basis of count 6. Count 2 involved 4 grenades. Count 13 involved possession a Hornets Nest and launcher.*

**Response:** The draft presentence originally attributed 13 firearms subject to regulation as pertaining to this case; however, the paragraph has been changed to reflect 12 firearms. Defense counsel submits that there are ten firearms subject to regulation in this case. The guideline enhancement at paragraph 133 states that if the offense involved between eight and 24 firearm, the offense level is increased by four levels. It is noted that the parties' disagreement between ten and 12 firearms does not affect the guideline enhancement in this paragraph.

17. Paragraph 135: Defense counsel wrote, *While Mr. Cox was convicted of the aforementioned charges we object to the 4 level enhancement under 2K2.1(b)(6) suggesting that the firearms were to be used in connection with any other felony offense. The government's suggestion that 2K2.1(B)(6)(A)-that the firearm would be transported out of the United States is an inappropriate use of this enhancement as it was the government's own ruse that would have caused the firearms to cross from Alaska through Canada to the lower 48 states.*

**Response:** Pursuant to U.S.S.G. § 2K2.1, Comment. [n.14(A)], the guideline enhancement under U.S.S.G. § 2K2.1(b)(6) applies if the firearm or ammunition facilitated or had the potential of facilitating another felony offense. In this case, there is no evidence that the defendant or Lonnie Vernon attempted to purchase the regulated firearms legally and both individuals made numerous statements about killing others. The probation officer maintains that the defendant and Lonnie Vernon possessed silencers and grenades in furtherance of Count 12, Conspiracy to Commit Murder, for which both the defendant and Vernon were

convicted, and in furtherance of Count 16, Solicitation to Commit a Crime of Violence, for which the defendant was convicted. No changes were made to the presentence report as a result of this objection.

18. Paragraph 142: Defense counsel wrote, *Defendant objects to this enhancement as the status of the intended victims as to counts 12 and 16 are already taken into account in the base offense level. Moreover, as the jury was required, as an element of each of these offenses to find that the intended victims were government employees in order to convict for both counts 12 & 16, the addition of 6 more points amounts to impermissible double counting.*

**Response:** This paragraph assesses a six-level increase for the offense involving official victims. This guideline applies when specified individuals are victims of the offense. U.S.S.G. § 3A1.2, Comment. (n.1). Do not apply this adjustment if the offense guideline specifically incorporates this factor. *The only offense guideline in Chapter Two that specifically incorporates this factor is U.S.S.G. § 2A2.4 (Obstructing or Impeding Officers). U.S.S.G. § 3A1.2, Comment. (n.2). (Emphasis added).*

The guideline for violations of Counts 12 and 16 are found at U.S.S.G. § 2A1.5, Conspiracy or Solicitation to Commit Murder. The application note under U.S.S.G. § 3A1.2 clearly states that the offense level under U.S.S.G. § 2A1.5 does not take into account the victim's status. In this case, the enhancement for official victims was applied because the defendant targeted specific individuals who were government officers or employees and the defendant's offense was motivated by the victims' status as government officers or employees. No changes were made to the presentence report as a result of this objection.

19. Paragraph 144: Defense counsel wrote, *Paragraph 144 suggests the addition of 4 level for use of body armor during the commission of the offenses in counts 12 and 16. However, those particular counts cover very broad time periods rather than discrete events as do substantive counts. Count 12 covers the period between August 2009 and March 10, 2011 while count 16 covers the period between November 15, 2010 and March 10, 2011.*

*USSG 3B1.5(2)(B) which provides for a 4 level enhancement states: the defendant used body armor during the commission of the offense, in preparation for the offense, or in an attempt to avoid apprehension for the offense."*

*USSG 3B1.5(2)(A) which provides for a 2 level enhancement states: the offense involved the use of body armor..*

*"Use" is defined as "active employment in a manner to protect the person from gunfire." U.S.S.G. § 3B1.5 cmt n.1. This guideline requires the active employment of the bulletproof*

vest to protect oneself from gunfire during the commission of the offense or in preparation or in an attempt to escape after the offense.

The rationale for this guideline appears to be that during a violent confrontation a person committing such an offense while wearing body armor may be emboldened. Here there were no violent confrontations and no immediate plan to engage in such a confrontation. The government conceded in closing argument that: " We're not telling you that it was going to happen today, that it was going to happen tomorrow, that it was even going to happen next week. Because the fact of the matter is, this whole case is about when we're going to be strong enough." (22-4)

The wearing of body armor while moving weaponry or while visiting R.W. or even on March 10, 2011 is not sufficient. For example if there had been an actual attempt to commit the murder of a government official, then this enhancement would clearly apply. Moving weaponry is not a crime of violence. The visit to R.W. was for the purpose of Mr. Cox seeking advice about his ongoing criminal case and warning R.W. about the intentions of some militia members. On March 10 although arrested while being shown illegal silencers and grenades, it is clear Mr. Cox believed he was also going to meet with the trucker would transport he and his family out of Alaska. Mr. Cox was not then preparing to imminently execute any murder of government officials. Mr. Cox was acquitted in counts 7 and 15 of carrying a firearm during and in relation to a crime of violence including counts 1 & 12. Given that verdict, and the fact that Mr. Cox routinely carried a firearm when he was wearing body armor it appears that the jury believed that there was no discrete crime of violence that was committed but only a conspiracy to do so at some indeterminate time in the future.

**Response:** The Court's ruling at docket 265 states that Counts 1, 2, and 10 were crimes of violence. The defendant wore body armor numerous times throughout this investigation and during the commission of his offenses. Count 1 involved the defendant wearing body armor and meeting with CI-1 to purchase a silencer and grenades, along with codefendant Coleman Barney who was also wearing body armor in commission of Count 1 (the Court found in favor of the enhancement in Barney's case). No changes were made to the presentence report as a result of this objection.

20. Paragraphs 139 and 145: Defense counsel wrote, *Defendant objects to the suggested enhancement for perjury, as the alleged falsehoods in his trial testimony were not either not material to the counts of conviction or not willful. Even if the aforementioned were in fact willful false statements those representations were not material to the counts of conviction. "Material" Evidence is defined in 3C1.1 application note 6: "Material" evidence, fact, statement, or information, as used in this section, means evidence, fact, statement, or information that, if believed, would tend to influence or effect the issue under*

determination." Moreover, Application Note 2 provides that "the court should be cognizant that inaccurate statements sometimes may result from confusion, mistake or faulty memory and, thus, not all inaccurate testimony or statements necessarily reflect a willful attempt to obstruct justice."

**Response:** As previously stated, the probation officer maintains that the defendant provided testimony under oath, which testimony contradicted evidence presented and which resulted in guilty verdicts. No changes were made to the presentence report as a result of this objection.

21. Paragraph 127: Defense counsel wrote, *While Mr. Cox did put the government to its burden of proof at trial, he did not deny the essential elements of guilt as to all of the charges. For example he admitted that he had built and possessed the Sten machine gun that was found during the search of the trailer. (Count 4 & 5). He also admitted the possession and manufacture of the homemade silencer that was seized. (Count 6). He also admitted that the Hornets Nest canisters and 37 MM launchers that were located in the trailer were his. (Count 10).*

**Response:** If the defendant had admitted to the counts listed above prior to the jury trial, the probation officer would entertain the notion of recommending partial acceptance of responsibility. However, the defendant took the above-listed counts to trial, and he repeatedly denied responsibility for his actions. No changes were made to the presentence report as a result of this objection.

22. With regard to the Hornets Nest and 37mm launchers, defense counsel wrote, *I believe it should be noted in the body of the PSR that both the Hornets Nest Canisters and the 37 MM Launchers are lawfully sold without any registration requirement. These are lawful items having legitimate uses. The charges in this case were brought because the government argued that the two items together could be used and in this case the government argued were intended to be used as a destructive device. The fact that these items are readily, and legally available distinguishes this case from other cases where the destructive device at issue involves wholly illegal items. The law on this issue is as follows: The definition of a "firearm II includes "a destructive device. See 26 U.S.C. § 5845(a); see also United States v. Johnson, 152 F.3d 618, 623 (7th Cir.1998). If the objective design of the device indicates that the object serves no legitimate social or commercial purpose, subjective intent is not relevant to the analysis. See Johnson, 152 F.3d at 628. However, if the assembled device or unassembled parts may form an object with both a legitimate and a non-legitimate use, then subjective intent must also be shown. See id. Finally, a destructive device includes any explosive or weapon which will "expel a projectile by the action of an explosive or other propellant. See 26 U.S.C. § 5845(f).*

**Response:** The information is noted for the record. No changes were made to the presentence report as a result of this objection.

23. Paragraphs 137 and 143: Defense counsel wrote, *Mr. Cox role in the offenses has been overstated. Lonnie Vernon was off on his own tangent and Mr. Cox had no supervisory role over him. On June 15, 2010 Agent Sutherland wrote:*

Sc was exposed as a self aggrandizing fraud. He did not have a "plan" at all. Even if he had a plan there were allegedly other plans to off SC 48 hrs after the revolution began. SC has gone from a cadre of 24 down to 2 (Him and his #2r Les Derby).

*In a separate debriefing of CI-2 Sutherland wrote that:*

An emergency meeting was called for the evening of Sunday June 13, 2010 to discuss Schaeffer Cox's plans. The meeting was supposed to start at 8:00 p.m. Cox's second-in command, Les Derby, arrived at 8:40 p.m. and Cox did not arrive until 9:30 p.m. By that time, those in attendance had consumed alcohol and discussed Cox's over-controlling character and that many in the movement did not care for him. The general consensus was that if Cox was to start the revolution, the movement have someone kill him after 48 hours.

*In that same report CI-2 told Sutherland:*

Cox is a member/leader of the Alaska Peacekeepers Militia (ACM), however the CHS believes this organization is defunct since Cox was exposed as a fraud during the meeting on Sunday evening.

**Response:** This objections cites information that was dated in June 2010. Numerous events involving the defendant and his leadership over others involved in this offense unfolded over the following nine months. No changes were made to the presentence report as a result of this objection.

24. With regard to the investigation, defense counsel wrote, *The evidence adduced at trial and in discovery suggests that the attempt to induce Mr. Cox to purchase a silencer and hand grenades on March 10, 2011 was intended to enhance Mr. Cox sentence rather than to further an investigation. Indeed Special Agent Sutherland's trial testimony supports this as do e-mails from the AUSA. Agent Sutherland testified that:*

They were going to be arrested on state arrest warrants based on the conspiracy that was alleged regarding the 241 plan and the FBI was asked to effect the arrests based on those state warrants. Then as part of the takedown scenario, they were also going to be offered the opportunity to demonstrate whether they wanted to acquire suppressed weapons and grenades at the same time. ( 14- 95)

*In an e-mail to the FBI case agent AUSA Skrocki talked about the attempt to enhance Mr. Cox's sentence by providing grenades on March 10, 2011:*

Given the short time frame I don't have the time to adequately research whether this would provide additional sentencing enhancement, but it could, but how much is unknown to me at present. On the surface it would provide another charge of 5861 which would, in theory, provide another ten year max sentencing structure since they are distinct from the ones

**Response:** The objection is noted for the record and for the Court's consideration, but does not appear to warrant a response from the probation officer.

25. Paragraph 223: Defense counsel wrote, *While we completely agree with the comments in paragraph 223 that "while defendant's conduct was serious, no actual physical harm to the targeted victims occurred," it is important to include the following facts as well.*

*Mr. Cox planned to leave Alaska*

*By the time of his arrest on March 10, 2011, Mr. Cox was planning to leave the state. He had abandoned his home and his businesses. He was seeking a way for he and his family to leave the state of Alaska. He only stayed until March 10th because of the ruse the government played in delaying the arrival of the fictitious trucker who was supposed to transport Mr. Cox and his family out of Alaska. In addition, Mr. Cox was described by this point in time by CI-1 as: "The CHS said that Cox is trying to grow a beard and that Cox seems fatigued and really ready to leave the state." After a March 4, 2011 meeting with Mr. Cox, CI-1 told Agent Sutherland: "Cox seemed down and the fugitive status seemed to be weighing on him. Cox is ready to leave the state. Cox is ready to meet the trucker who will transport him."*

**Response:** Defense counsel's statement has been incorporated into the presentence report at paragraph 222a. However, it is noted that the probation officer's assessment at paragraph 223 did not take into account the psychological harm the defendant may have had on the victims and their families and the paragraph has been changed to incorporate this factor.