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2. Victim Impact Evidence. The defendant caused injury, harm, and loss to the victim's family because of the victim's personal characteristics as an individual human being and the impact of the death upon the victim's family. Payne v. Tennessee, 111 S.Ct. 2597, 2608-09 (1991). The victim's characteristics as an individual included one or more of the following: Kandi Duncan was age 10 at the time of her death. She frequently played with her cousins and was part of a very close family. She visited her father every other weekend and on holidays. Although she had initially struggled academically with reading, math, and language skills, she had an individual educational plan and was integrated into the regular class on other classes in the fourth grade. She enjoyed reading orally and was good at math when she applied herself. She enjoyed drawing and sometimes would draw in her journal instead of writing in the journal as required by the school.

The family of the victim has suffered injury harm, and loss, as a result of the victim's death, including but not limited to one or more of the following: Kandi Duncan's murder was part of a murder of an entire generation of the Duncan family. The survivors, consisting of grandparents, uncles, aunts, and cousins, each feel the pain at every holiday. They have missed her first date, her graduation, and all of the future



joyful events she would have had. Kandi Duncan's grandmother, Mrs. Milbrath, has taken a leave of absence due from her job to the stress of having her daughter and granddaughters murdered and their bodies hidden for seven years. Kandi's father was in a coma when Kandi was murdered. After coming out of the coma and learning of his children's murders, he could not sleep for weeks and describes the murder of his children like having a body part removed.

3. Obstruction of Justice. The defendant committed the offense with the intent to prevent the victim from or retaliate against the victim for providing information and assistance to law enforcement authorities in regard to the investigation or prosecution of the commission or possible commission of another offense. See 18 U.S.C. §§ 1521(a)(2), 1510, 1512(a)(1), 1513(a)(1); USSG § 3C1.1.

4. Multiple Killings or Attempted Killings. The defendant intentionally killed or attempted to kill more than one person. See 18 U.S.C. § 3592(c)(16).

#### **COUNTS 12 AND 17 - INTENTIONAL KILLING OF TERRY DEGEUS**

##### **A. Alternative Statutory Aggravating Factors Enumerated under 21 U.S.C. §§ 848(n)(1)(A) through (D)**

1. Intentional Killing. The defendant intentionally killed the victim.  
§ 848(n)(1)(A).

2. Intentional Infliction of Serious Bodily Injury. The defendant intentionally inflicted serious bodily injury which resulted in the death of the victim. § 848(n)(1)(B).

3. Intentional Acts to Take Life or Use Lethal Force. The defendant intentionally engaged in conduct intending that the victim be killed and that lethal force be employed against the victim, which resulted in the death of the victim. § 848(n)(1)(C).

**B. Statutory Aggravating Factors Enumerated under 21 U.S.C. §§ 848(n)(2) through (12)**

1. Substantial Planning and Premeditation. The defendant committed the offense after substantial planning and premeditation. § 848(n)(8).

2. Heinous, Cruel, or Depraved. The defendant committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to the victim. § 848(n)(12).

**C. Other Non-Statutory, Aggravating Factors Identified under 21 U.S.C. §§ 848(h)(1)(B) and 848(k)**

1. Future Dangerousness of the Defendant. The defendant is likely to commit criminal acts of violence in the future which would be a continuing and serious threat to the lives and safety of others. Simmons v. South Carolina, 114 S.Ct. 2187, 2193 (1994). In addition to committing the murders charged in this case, the defendant has 1) engaged in a continuing pattern of violent conduct, 2) threatened others with violence, 3) demonstrated low rehabilitative potential, 4) a high custody classification, and 5) demonstrated lack of remorse, and committed one or more of the following: On various occasions, the defendant has threatened to kill Daniel Cobeen, Timothy Cutkomp, agents, investigators, chemists and prosecutors involved in the prosecution of this case. The defendant has made plans and threatened to kill guards and escape from custody. The defendant has threatened to harm other individuals who cooperate.

After the search of his residence in 1996, the defendant developed a plan to obstruct justice and destroy evidence by locating cooperating individuals, purchasing a gun, destroying evidence, locating officers and other public officials in his case and harming them, while using the electronic monitoring device as an alibi. While incarcerated in the Woodbury County Jail, pending trial and sentencing, the defendant attempted to escape and assisted in the planned escape of Dennis Putzier. While incarcerated in the Woodbury County Jail, pending trial and sentencing, the defendant solicited others to bond out of county jail with the purpose of those individuals killing Timothy Cutkomp and Daniel Cobeen, cooperating individuals. On February 25, 1998, defendant was sentenced for one count of conspiracy to distribute and manufacture 100 grams or more of methamphetamine or 1,000 grams or more of a mixture or substance containing a detectable amount of methamphetamine and one count of attempt to manufacture 100 grams or more of methamphetamine on February 7, 1996. While incarcerated in the United States Penitentiary in Florence, Colorado, following sentencing the defendant identified cooperating individuals and disseminated information in the form of "snitch packets" in an effort to assist others in identifying and harming cooperating individuals. While incarcerated in the United States Penitentiary in Florence, Colorado, the defendant developed a plan and solicited individuals to join in his plan to escape from custody by overpowering and killing guards, stealing weapons, and amassing cash by committing crimes for the purpose of killing cooperating individuals and law enforcement officials involved in the investigation and prosecution of the defendant and Angela Johnson. The defendant has demonstrated a lack of

remorse by boasting about killing his "rats" (cooperating individuals), encouraging others to kill cooperating individuals, and, in one or more conversations, indicating that the killings of the victims did not bother him. The defendant has had a number of disciplinary reports and has been placed in segregation as punishment for misconduct while incarcerated. The defendant's custody classification within the Bureau of Prisons is high and the defendant is incarcerated in a high-level institution, that is a United States Penitentiary.

2. Victim Impact Evidence. The defendant caused injury, harm, and loss to the victim's family because of the victim's personal characteristics as an individual human being and the impact of the death upon the victim's family. Payne v. Tennessee, 111 S.Ct. 2597, 2608-09 (1991). The victim's characteristics as an individual included one or more of the following: prior to his murder, Terry DeGeus was a heavy equipment operator, working for his father. Terry DeGeus maintained a close relationship with his ex-wife and shared custody of his daughter, Ashley. Mr. DeGeus was with Ashley each weekend and was actively involved with his nieces and nephews. Mr. DeGeus enjoyed playing pool in his spare time.

The family of the victim has suffered injury harm, and loss, as a result of the victim's death, including but not limited to one or more of the following: One or more of Mr. DeGeus' siblings and parents, have suffered from depression due to Mr. DeGeus' disappearance and murder. His daughter, Ashley DeGeus, was teased at school due to the absence of her father and the fact that his remains were never recovered. The teasing resulted in Ashley being depressed, anxious, and at times, acting out in violent

behavior. Ashley misses the close emotional and financial support her father would have given her during her years growing up. Prior to Terry DeGeus' murder, Ashley stayed with the DeGeus family and was close to them and her father. Since that time, she has grown distant from the DeGeus family. Ashley has seen a family counselor and other professionals to assist her. Ashley feels sorrow that she will never know whether her father would have been proud of her and the way she has turned out as a young woman.

3. Obstruction of Justice. The defendant committed the offense with the intent to prevent the victim from or retaliate against the victim for providing information and assistance to law enforcement authorities in regard to the investigation or prosecution of the commission or possible commission of another offense. See 18 U.S.C. §§ 1521(a)(2), 1510, 1512(a)(1), 1513(a)(1); USSG § 3C1.1.

Respectfully submitted,

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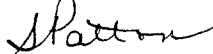
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CERTIFICATE OF SERVICE

I certify that I mailed/hand delivered a copy of the foregoing document to which this certificate is attached to the parties or attorneys of record, shown below, on

6-10-03.

UNITED STATES ATTORNEY

BY:  \_\_\_\_\_

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Attorneys of Record