

ORIGINAL

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CRIMINAL DIVISION - FELONY BRANCH

UNITED STATES OF AMERICA	)	CRIMINAL NOS. 2008-CF1-27068
	)	2008-CF1-26997
v.	)	2008-CF1-26996
	)	
JOSEPH PRICE	)	JUDGE LEIBOVITZ
VICTOR ZABORSKY	)	
DYLAN WARD	)	STATUS HEARING DATE: 4/23/10

**GOVERNMENT'S OMNIBUS MOTION IN LIMINE REGARDING CERTAIN  
DESIGNATED DEFENSE EXPERTS**

The United States, by and through its attorney, the United States Attorney for the District of Columbia, hereby files this Omnibus Motion in Limine Regarding Certain Designated Defense Experts (the "Motion"). As grounds for its Motion, the United States relies on the following points and authorities and such other points and authorities as may be cited at a hearing on the defendants' various motions in limine and the government's opposition thereto:

**FACTUAL AND PROCEDURAL BACKGROUND**

1. On August 2, 2006, Robert Wone was murdered while inside 1509 Swann Street, N.W., Washington, D.C. The known occupants of the residence at the time of the murder were defendants Joseph Price, Victor Zaborsky, and Dylan Ward.

2. In this case, the defendants are charged with the following counts: (1) Conspiracy to Obstruct Justice (in connection with the criminal investigation into the homicide of Robert Wone); (2) Obstructing Justice; and (3) Tampering with Evidence.

3. Trial is scheduled to begin on May 10, 2010.



4. The defendants have designated and provided notice of a number of defense experts, including the following:

a. **Dr. Farzad Najam**. Defendant Ward has designated Dr. Najam, an Associate Director of Cardiac Surgery at George Washington University (“GWU”) Hospital to testify effectively: “(1) that the stab wound to Mr. Wone’s heart would have caused immediate incapacitation;” and “(2) that the stab wounds in this case would have been characterized by a large amount of internal bleeding and a lesser amount of external bleeding” (see April 2, and April 9, 2010 letters (with attachments) from David Schertler at Attachment A).

b. **Dr. Al Yonovitz**. Defendant Zabrosky has designated Dr. Yonovitz, an Associate Professor in the Speech and Hearing Department at the University of Montana to testify, among other things, that: (1) he is familiar with the “scientific basis and mechanics of awakening noise levels”; (2) he conducted certain experiments to “measur[e] the sound level in the third floor bedroom [of 1509 Swann Street, N.W.] that is audible when a sound is created in the crime scene bedroom, for a range of sounds”; (3) he recorded the decibels for the “noise level for a 213 pound person walking on the stairs from the first floor to the second floor and the second floor to third floor”; (4) the “research on the subject of noise disruption of sleep has found that a person’s sleep can be interrupted or disturbed by sound levels between 60 and 84 [decibels], however, rarely is a person awakened by those sounds” (and, presumably, such levels are higher than the recorded decibel noise level for a 213 pound person using the stairs in the home (see expert opinion (3))); and (5) “if the sound levels in the bedrooms in 1509 Swann Street, as a result of the attenuation produced by distance and door position, were below 85 [decibels], then actual awakening would be unlikely to occur. Therefore, if the source sound was 90 [decibels] or lower in the crime scene bedroom, it would be inefficiently transmitted throughout the house and would not reach awakening levels in the other bedrooms at 1509 Swann Street” (see February 26, 2010 letter (with attachments) from Amy Richardson at Attachment B).

c. **Dr. Jeff Smith**. Defendant Zabrosky has designated Dr. Jeffrey Smith, an Associate Professor in the Department of Emergency Medicine at George Washington University Medical Center in Washington, D.C. to testify, among other things, that: (1) he has reviewed GWU’s ER records for the treatment provided to Mr. Wone; (2) “Mr. Wone could not have been stabbed more than moments before the 11:49 call to 9-1-1 was made”; (2) “the injuries sustained by Mr. Wone could have caused immediate incapacitation”; (3) “District of Columbia EMS protocols; the method by which responders attempt to gain intravenous access on a patient; other procedures performed in responders cannot gain intravenous access; and the effects of the CPR performed by the EMS responders” (see February 26, 2010 letter (with attachments) from Amy Richardson at Attachment C).

d. **Ron Englert**. Defendant Zabrosky has designated Mr. Ron Englert, a crime scene reconstruction expert, to testify, among other things, that: (1) “the pattern of the blood

evidence, the position of blood evidence, and qualities of the blood evidence are consistent with Mr. Wone having been repeatedly stabbed on the bed and with blood flowing out of the three wounds on his body”; (2) the blood evidence is consistent with Mr. Wone being repeatedly stabbed with Item No. 13 [the knife on found on the bedstand]” and “the evidence is not consistent with Item No. 13 being wiped with blood or wiped off with another object”; (3) “the evidence on Item 16 [a white bath towel found next to the bed in which the victim was found] is consistent with the towel being used to apply pressure to Mr. Wone’s wounds”; (4) “regarding the absence of blood throughout the house and in the room where Mr. Wone was found”; (5) “the pattern of the blood evidence [on the clothing Mr. Wone was wearing], the position of the blood evidence, and qualities of the blood evidence are also consistent with Mr. Wone having been repeatedly stabbed on the bed and with blood flowing out of the three wounds on his body”; and (6) “regarding the crime scene . . . the possibility that an intruder could have murdered Mr. Wone cannot be excluded” (see undated letters (with attachments) from Amy Richardson, received by the government on March 26, and April 8, 2010, at Attachment D).

e. **Dr. Henry Lee.** Defendant Price has designated Dr. Henry Lee, a Distinguished Professor in Forensic Science at the University of New Haven, CT, to testify, among other things, that: (1) the bloodstain pattern on Item No. 16 (the towel) is not consistent with having been used to transfer blood onto Item No. 13 (the knife), but rather is consistent with having been used to apply pressure to the wounds”; (2) “the absence of blood throughout the house and in the room where Mr. Wone was found, as well as the bloodstain pattern on Item No. 16 (the towel) is consistent with Mr. Wone having been repeatedly stabbed with Item No. 13 (the knife) on the bed in the room where he was found”; (3) “the location, position, and appearance of the bloodstain patterns on the bed, as well as the quantity of blood found, is consistent with Mr. Wone having been stabbed on his back in the bed where his body was found, and that no trace scientific or serological evidence is inconsistent with that finding”; and (4) “regarding the crime scene . . . the possibility that an intruder could have murdered Mr. Wone cannot be excluded” (see February 26, 2010 letter (with attachments) from Bernard Grimm at Attachment F)

5. For purposes of this Motion, the government incorporates by reference the factual background summary set forth in its Omnibus Opposition to Defendants’ Motions in Limine.

### **ARGUMENT**

6. A “trial judge has broad discretion in the matter of the admission or exclusion of expert evidence . . . .” Smith v. United States, 389 A.2d 1356, 1358 (D.C. 1978) (quoting Salem v. United States Lines Co., 370 U.S. 31, 35 (1962) (internal quotation marks omitted)). There is a two-

level analysis in evaluating proposed expert testimony. First, the Court examines admissibility, applying the three-prong test set forth in Dyas v. United States, 376 A.2d 827, 832 (D.C. 1978): (1) The subject matter must be so distinctively related to some science, profession, business or occupation as to be beyond the ken of the average layman; (2) the witness must have sufficient skill, knowledge, or experience in that field or calling as to make it appear that his opinion or inference will probably aid the trier in his search for truth; and (3) expert testimony is inadmissible if the state of the pertinent art or scientific knowledge does not permit a reasonable opinion to be asserted even by an expert. Dyas, 376 A.2d at 832 (quoting McCormick on Evidence, § 13 at 29-31 (E. Cleary, 2d ed. 1972)).

7. Second, relevant evidence may be nonetheless excluded if its probative value is substantially outweighed by the risk of unfair prejudice. Johnson v. United States, 683 A.2d 1087, 1100 (D.C. 1996) (en banc). Such prejudice may arise from the potential of specific testimony “for distracting the jury or supplanting its customary role in evaluating credibility.” Cf. Green v. United States, 718 A.2d 1042, 1051 (D.C. 1998). Indeed, “[b]ecause of the authoritative quality which surrounds expert opinion, courts must reject testimony which might be given undue deference by jurors and which could thereby usurp the truthseeking function of the jury.” Smith, 389 A.2d at 1359.

8. Here, the government submits that the proffered expert testimony of Dr. Najam and Dr. Yonovitz should be excluded because it fails to qualify as permissible expert testimony under the third prong of Dyas. Moreover, Dr. Yonovitz’s proffered opinions would essentially usurp the role of the jury. As for Dr. Smith, Mr. Englert, and Dr. Lee, the government submits that the expert notice provided by the defendants to date concerning their proffered expert testimony is largely

insufficient such that, barring substantive supplemental notice, the Court should preclude their proffered expert testimony as well.

Dr. Farzad Najam

9. As set forth above, in part, Dr. Najam will opine that the stab wound to Mr. Wone's heart would have "immediately incapacitated" him and rendered him unconscious within seconds such that he would not have moved had this been the first blow received from his attacker. On April, 11, 2010, government counsel requested additional information from defense counsel concerning the basis upon which Dr. Najam rendered this opinion. Specifically, government counsel inquired as to whether Dr. Najam has observed this occurrence as part of his work experience or upon what "scientific methodology generally accepted in the cardiology or emergency medical care community" the opinion was based (see April 11, 2010 e-mail from AUSA Pat Martin to Ms. Veronica Jennings at Attachment F). The government has not received a response from the defendants to its request for additional information concerning whether Dr. Najam is basing his opinion on his work experience or a particular scientific methodology.

10. Moreover, the government has not been able to identify a scientific methodology generally accepted in the relevant scientific community upon which Dr. Najam's opinion is based. As such, the government submits that the defendants, as proponents of Dr. Najam's testimony, have failed to establish that his "expert testimony" that the stab wound to Mr. Wone's heart would have "immediately incapacitated" him and rendered him unconscious within seconds is properly admissible expert testimony at trial.

**Dr. Yonovitz**

11. As set forth above, it appears that Dr. Yonovitz will generally opine that persons occupying the same bedrooms in 1509 Swann Street that the defendants allege to have been occupying at the time Mr. Wone was stabbed would not have heard the stabbing incident (or portions thereof) while it was occurring in the guestroom (a.k.a. the “crime scene bedroom”). While the defendants have indicated that Dr. Yonovitz conducted certain experimental tests with a speaker, a 213 pound man walking up and down stairs, and a recording device to register the “noise level” in the various rooms (without specifying when and under what conditions), they have not identified the “scientific methodology generally accepted in the relevant community” upon which Dr. Yonovitz’s opinions are based.

12. The government is not aware of the “scientific methodology generally accepted in the relevant community” upon which Dr. Yonovitz’s opinions are based. As such, the government submits that the defendants, as proponents of Dr. Yonovitz’s proffered expert testimony, have failed to establish that his “expert opinions” are properly admissible at trial.

13. In addition, given the fact that Dr. Yonovitz could not replicate the “noise level” conditions under which the stabbing of Mr. Wone occurred on August 2, 2006, his testimony suggesting whether one of the defendants could or could not have heard the stabbing (assuming, *arguendo*, that they were, in fact, occupying their rooms at the time), would be pure speculation and would be more prejudicial than probative in that it would seek to “usurp the truthseeking function of the jury.” See Smith, 389 A.2d at 1359.

⋮

14. Accordingly, because the opinions of Dr. Yonovitz are not based on a scientific methodology generally accepted in the relevant community, are speculative, and would effectively usurp the function of the jury, they should be precluded altogether.

**Dr. Smith, Mr. Englert, and Dr. Lee**

15. Rule 16(b)(1)(c) requires the defense to set forth the substance of each proffered expert opinion and the basis therefore. Even a cursory review of the attached notices of Dr. Smith, Mr. Englert, and Dr. Lee reveals that the defendants have not satisfied their disclosure obligations under the rule in that: (1) many of the proffered expert opinions are overly vague and conclusory; and (2) there is no basis whatsoever provided for the vast majority of the proffered opinions. Moreover, none of the above experts has issued an expert report that has been produced to the government.

16. In short, because the defendants' expert notices for Dr. Smith, Mr. Englert, and Dr. Lee consist of "a list of topics that fails to summarize the expert's expected testimony, fails to describe the expert's actual opinions, and fails to describe the bases for those opinions," see *Murphy-Bey v. United States*, 982 A.2d 682, 688 (D.C. 2009) (affirming trial court's exclusion of "inadequately disclosed" expert testimony under Rule 16 by the defendant), those proffered expert opinions should be precluded.<sup>1</sup>

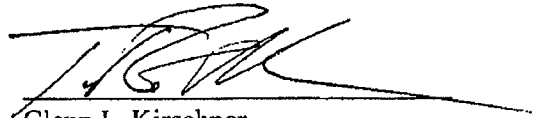
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<sup>1</sup> In the alternative, as to Dr. Smith, Mr. Englert, and Dr. Lee, the government asks that the Court compel the defendants to supplement their expert notice in accordance with the requirements of Rule(b)(1)(c) immediately, but no later than April 26, 2010. Should the Court choose this alternative, the government respectfully reserves the right to renew its motion in limine with respect to these expert opinions if, upon review, the government believes the expert notice is inadequate.

WHEREFORE the government respectfully submits that the government's Omnibus Motion in Limine Regarding Certain Designated Defense Experts should be granted and the designated defense experts' proffered testimony be excluded.

Respectfully submitted,  
RONALD C. MACHEN JR.  
United States Attorney


By:



Glenn L. Kirschner  
Rachel Carlson Lieber  
T. Patrick Martin  
Assistant United States Attorneys  
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Washington, DC 20530  
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**CERTIFICATE OF SERVICE**

I hereby certify that I caused a copy of this pleading (without attachments) to be served by e-mail on April 19, 2010, and a copy (with attachments) to be made available for pick-up on April 19, 2010, upon Bernard Grimm, Esq., The Army and Navy Building, 1627 I Street, NW, Suite 1100, Washington, DC 20006, counsel for defendant Price, Thomas G. Connolly, Esq., Harris, Wiltshire & Grannis, LLP, 1200 Eighteenth Street, N.W., 12th Floor, Washington, DC 20036-2506, counsel for defendant Zaborsky, and David Schertler, Esq., Schertler & Onorato, LLP, 601 Pennsylvania Avenue NW, North Building, 9th Floor, Washington, DC 20004-2601, counsel for defendant Ward.



T. Patrick Martin  
Assistant United States Attorney



# **ATTACHMENT A**



SCHERTLER & ONORATO, L.L.P.

David Schertler  
DC & IL Bars

Danny C. Onorato  
DC & CA Bars

Vincent H. Cohen, Jr.  
DC, MD & NJ Bars

David H. Dickleson  
DC, MD, VA & PA Bars

Lisa Fishberg  
DC, MD & NY Bars

Mark E. Schamel  
DC, MD & NY Bars

Robert J. Spagnoletti  
DC, NJ, NY & TX Bars

Claire Morris Clark  
VA Bar

Veronica Renzi Jennings  
MD Bar

Habib F. Ilahi  
DC & TX Bars

Michael Starr  
DC Bar

Peter V. Taylor  
DC Bar

April 2, 2010

**VIA ELECTRONIC AND FIRST CLASS MAIL**

Glenn L. Kirschner, Esq.  
T. Patrick Martin, Esq.  
Rachel Carlson-Lieber, Esq.  
United States Attorney's Office  
for the District of Columbia  
Homicide Section  
555 4<sup>th</sup> Street, NW  
Washington, DC 20530

Re: **United States v. Dylan Ward, et al., Case No. 2008 CF1 26997**

Dear Glenn, Pat and Rachel:

We are writing on behalf of Defendant Dylan Ward in the above-captioned case to provide you with expert disclosure pursuant to Superior Court Criminal Rule 16(b)(1)(C).

In this regard, Mr. Ward may call *Farzad Najam, MD, FACS*, to provide expert testimony regarding the heart, diseases of the heart and the great vessels, surgical management of diseases to the heart and great vessels, including trauma to the heart and great vessels. Dr. Najam is a cardiac surgeon. His *Curriculum Vitae* is attached.

We advised you previously that we would be seeking an opinion of a cardiac surgeon. We will have a more complete disclosure of Dr. Najam's opinions and the basis of those opinions on or before April 9, 2010. Dr. Najam just completed his review of the autopsy report and all of the other relevant medical records. In summary, we expect Dr. Najam to testify (1) that the stab wound to Mr. Wone's heart would have caused immediate incapacitation; (2) that the stab wounds in this case would have been characterized by a large amount of internal bleeding and a lesser amount of external bleeding.

Dr. Najam's opinions in this regard will be based on his expertise and experience specializing cardiac surgery and his review of the discovery documents and evidence in this case.

ATTORNEYS AT LAW

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April 2, 2010  
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Mr. Ward reserves the right to present additional expert opinion testimony based upon the future production of documents, materials or the results of any additional testing by the Government, Defendants, or third-parties. If you have any questions, please do not hesitate to contact me at (202) 628-4199.

Very truly yours,



David Schertler  
*Counsel for Dylan Ward*

Enclosures



SCHERTLER & ONORATO, L.L.P.

April 9, 2010

VIA ELECTRONIC AND FIRST CLASS MAIL

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United States Attorney's Office  
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Re: United States v. Dylan Ward, et al., Case No. 2008 CF1 26997

Dear Glenn, Pat and Rachel:

We are writing on behalf of Defendant Dylan Ward in the above-captioned case to provide you with expert disclosure pursuant to Superior Court Criminal Rule 16(b)(1)(C).

In this regard, Mr. Ward may call *Farzad Najam, MD, FACS*, to provide expert testimony regarding the description of the physical parts of the human heart and its surrounding vessels (the Great arteries and veins), how the heart and the vascular system function (including the electrical system that stimulates the heart muscle), his experience as a cardiac surgeon with injuries to the heart and the surrounding great vessels, including trauma to the heart and great vessels. Dr. Najam is an Associate Director of Cardiac Surgery at the George Washington University Hospital. Dr. Najam's *Curriculum Vitae* was previously disclosed to you on April 2, 2010.

1. Dr. Najam will testify regarding the anatomy and physiology of the human heart and human vascular system as it works in conjunction with the heart. He will testify that the heart is a muscular organ responsible for pumping blood throughout the body's vascular system and that the heart accomplishes this through repeated and rhythmic contractions. The average human heart beats about 72 beats per minute. He will explain that the heart is enclosed in a sac called the pericardium. The superficial part of this sac is called the fibrous pericardium. The pericardium protects the heart and anchors its surrounding structures. It is located anterior to the vertebral column and posterior to the sternum. The heart has a mass of between approximately 250 grams and 350 grams. The heart is composed of three layers—the superficial layer, called the

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April 9, 2010  
Page 2 of 3

epicardium, the middle layer, called the myocardium, and the third layer called the endocardium. The heart has four chambers, two atria and two ventricles. The atria are the chambers that receive blood and the ventricles are the chambers that discharge blood. Dr. Najam will explain that the aortic root is located in the ascending aorta beginning at the aortic annulus and extending to the sinotubular junction.

2. Dr. Najam will testify specifically about the stab wound to the chest and heart of Mr. Wone. Based on his review of the autopsy report, photographs, and related medical records, he will say that the stab wound located at Mr. Wone's upper chest, 15" below the top of the head, would have caused unconsciousness and incapacitation instantaneously, within a matter of seconds. Dr. Najam will describe the path of this wound through the skin, muscle, cartilage and other body tissues. He will also explain that the wound perforated the front of the pericardial sac and penetrated into the heart at the aortic root, which is where the heart meets the aorta. Because blood flowing from the heart to the aorta is under such tremendous pressure, the instant the aortic root was pierced by the knife, the blood would have gushed out immediately into the pericardial sac and caused the pericardial sac to fill up with blood within a second (essentially a "heartbeat") and caused what is referred to as pericardial tamponade. Pericardial tamponade (also called cardiac tamponade) is a condition in which fluid or blood accumulates in the pericardium (the sac in which the heart is enclosed) and the compression within the pericardial sac would have compressed and constricted the heart so that it would stop working and pumping blood. In this case massive amounts of blood would have flown into Mr. Wone's pericardium within a second causing pressure on the heart which is not compatible with life. This pressure would have caused the vena cavae to Mr. Wone's heart to collapse immediately, preventing the flow of any blood into the heart. Because of the almost immediate impact of the wound on Mr. Wone's heart, which would have resulted in the lack of any blood to his brain, Mr. Wone would lose consciousness, within seconds after the knife penetrated the aortic root, rendering him unable to respond to any external stimuli or defend himself in any way.
3. Dr. Najam will also testify that the stab wound to the heart would have been characterized by a large amount of internal bleeding and a relatively small amount of external bleeding. Because the knife initially entered the body through the skin and muscle, those tissues would have retracted back after the knife was withdrawn and blood would have flown internally, it would have been prevented to some degree from flowing out of the body. The elasticity of the skin and soft tissues will narrow or even close the slit-like injury created by stabbing, preventing substantial amount of external hemorrhaging.

Glenn L. Kirschner, Esq.  
T. Patrick Martin, Esq.  
Rachel Carlson-Lieber, Esq  
April 9, 2010  
Page 3 of 3

Dr. Najam's opinions in this regard will be based on his expertise and experience specializing in cardiac surgery and his review of the discovery documents and evidence in this case.

Mr. Ward reserves the right to present additional expert opinion testimony based upon the future production of documents, materials or the results of any additional testing by the Government, Defendants, or third-parties. If you have any questions, please do not hesitate to contact me at (202) 628-4199.

Very truly yours,

A handwritten signature in black ink, appearing to read "David Schertler". The signature is fluid and cursive, with a large initial "D" and "S".

David Schertler  
*Counsel for Dylan Ward*

# **ATTACHMENT B**



February 26, 2010

**VIA ELECTRONIC & FIRST CLASS MAIL**

Glenn L. Kirschner, Esq.  
T. Patrick Martin, Esq.  
United States Attorney's Office  
For the District of Columbia  
Homicide Section  
555 4<sup>th</sup> Street, NW  
Washington, DC 20530

Re: **United States v. Victor Zaborsky, et al., Case No. 2008 CF1 26997**

Dear Mr. Kirschner and Mr. Martin:

We are writing on behalf of Mr. Zaborsky in the above-captioned case to provide you with expert disclosure pursuant to Superior Court Criminal Rule 16(b)(1)(C). Mr. Zaborsky reserves the right to present additional expert opinion testimony based upon the future production of documents, materials or results of any additional testing from the Government, the Defendants or by third-parties. In this regard, Mr. Zaborsky may call *Al Yonovitz, PhD, CCC-A*.

1. Dr. Yonovitz has a Doctorate Degree in Acoustics and a Masters of Arts in Audiology from the University of Connecticut. He has a Certificate of Clinical Competence in Audiology and over 32 years of teaching experience, including appointments as the Chair and Associate Professor of the Speech and Hearing Department at the University of Montana. Dr. Yonovitz's full curriculum vitae is attached.
2. Dr. Yonovitz will testify regarding the scientific basis and mechanisms of awakening noise levels, including research regarding aircraft/airport noise awakening levels and residential alarm (fire and smoke) awakening levels.
3. Dr. Yonovitz is expected to testify regarding levels of sound attenuation (reduction) at 1509 Swann Street, based on various locations and levels of sounds from within 1509 Swann Street. Specifically, Dr. Yonovitz is expected to testify that forensic analyses were conducted at 1509 Swann Street using a Larson-Davis (Model DSP-83) Sound Pressure Level Meter (Type 2) to record and measure sound levels at various places and with various door configurations in the residence. For example, measuring the sound level in the third floor bedroom that is audible when a sound is created in the crime scene bedroom, for a range of sound levels.
4. Dr. Yonovitz is expected to testify that a sound source (a large speaker) was placed in the second floor crime scene bedroom. The speaker generated white noise levels between 60 and 90 decibels ("dB") in 10 dB increments. Sound level readings were taken in the



crime scene bedroom, the second floor bedroom across the hall, and the third floor bedroom with the door closed, the door mid-open and the door fully open for each of the locations. The ambient levels at the 60 dB level (A) and 90 dB levels (B) were as follows:

- Crime Scene Bedroom 48.2(A), 53.1(C)
- Second Floor Bedroom 46.6(A), 54.2(C)
- Third Floor Bedroom 44.4(A), 51.2(C)

5. Dr. Yonovitz is expected to testify that the noise level for a 213 pound person walking on the stairs from the first floor to the second floor and the second floor to the third floor was recorded. The noise level when tested for the sound of the person on the stairs was 48.2 dB (for the crime scene bedroom), 46.6 dB (for the second floor bedroom) and 44.4 dB (for the third floor bedroom).
6. The levels of reduction based on door position are as follows:
  - Crime Scene Room: 16.9 dB (open), 17.1 dB (mid), 24.0 dB (close)
  - Second Floor Room: 18.3 dB (open), 18.9 dB (mid), 22.9 dB (close)
  - Third Floor Room: 18.0 dB (open), 18.4 dB (mid), 22.6 dB (close)
7. Dr. Yonovitz will testify that research on the subject of noise disruption of sleep has found that a person's sleep can be interrupted or disturbed by sound levels between 60 and 84 dB, however, rarely is a person awakened by those sounds. Only where the highest level of sound source (85-90 dB) occurs is an awakening likely to occur. The noise level of a motorcycle when measured from a distance of 25 feet away is approximately 90 decibels. The noise level of an air conditioning unit when measured from 100 feet away is approximately 60 decibels. Dr. Yonovitz may opine that the general scientific consensus is that the nature and the source of the sounds have as much effect on a sleeping subject as the decibel level. A natural sound, similar to ambient noise in the sleeping area, is unlikely to awaken a subject even at high decibel levels. A high decibel level generated from outside a room is less likely to awaken a subject, and closing the bedroom door significantly decreases the dB level of the noise.
8. Therefore, Dr. Yonovitz is expected to testify that, in his opinion, if the sound levels in the bedrooms in 1509 Swann Street, as a result of the attenuation produced by distance and door position, were below 85 dB, then actual awakening would be unlikely to occur. Therefore, if the source sound was 90 dB or lower in the crime scene bedroom, it would be inefficiently transmitted throughout the house and would not reach awakening levels in the other bedrooms at 1509 Swann Street.

Dr. Yonovitz's opinions in this regard will be based on his expertise and experience specializing in acoustics and audiology, the forensic tests conducted at 1509 Swann Street, and his review of the discovery documents and evidence in this case.

The Defendants reserve the right to present additional expert opinion testimony based upon the future production of documents from the Government or by third-parties. If you have any questions, please do not hesitate to contact me at (202) 730-1339.

Sincerely,



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Thomas G. Connolly  
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*Attorneys for Victor Zaborsky*