UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES DWIGHT SANDERS **14501 John Tyler Highway** **Charles City, Virginia 23030,** **and** **ELIZABETH ANN SANDERS** **14501 John Tyler Highway** **Charles City, Virginia 23030,** **Plaintiffs,** **v.** **THE UNITED STATES OF AMERICA** **Serve: Wilma A. Lewis, Esquire** **United States Attorney** **555 Fourth Street, NW** **Suite 5806** **Washington, DC 20001,** **and** **Janet Reno, Esquire** **Attorney General of** **the United States** **10th & Pennsylvania** **Avenue, NW** **Washington, DC 20535,** **and** **JAMES T. HALL** **Chairman, National** **Transportation Safety Board,** **490 L'Enfant Plaza, SW** **Washington, DC 20594,** **and**	)	**CA No.00-cv652** **(WBB)**

BERNARD LOEB)
Director of Aviation Safety, National)
Transportation Safety Board)
490 L'Enfant Plaza)
Washington, DC 20594,)
)
and)
)
DR. MERRITT BIRKY)
National Transportation Safety)
Board, retired)
19423 Maggies Court)
Boonesboro, Maryland 21713)
)
and)
)
JAMES K. KALLSTROM)
Assistant FBI)
Director-in-Charge,)
New York Field Office, retired)
MNBA America)
1110 North King Street)
Wilmington, Delaware 19884,)
)
and)
)
JAMES G. KINSLEY,)
Special Agent)
Federal Bureau of Investigation)
New York Field Office)
26 Federal Plaza)
23rd Floor)
New York, New York 10278,)
)
and)
)
VALERIE CAPRONI)
Assistant United States)
Attorney, retired)
5670 Wilshire Boulevard, 11th Floor)
Los Angeles, California 90036)
)
and)
)

BENTON CAMPBELL
Assistant United States Attorney
1 Pierrepont Plaza
Brooklyn, New York 11201,

and

DAVID B. PITOFSKY
Assistant United States Attorney
14195 Montague Street
7th Floor
Brooklyn, New York 11201,

and

JOHN DOE
Identity unknown,

Defendants.

AMENDED COMPLAINT
(Violation of 42 U.S.C. § 2000 et seq., Privacy Protection Act of 1980; Violation of the First, Fourth and Fifth Amendments to the United States Constitution; Intentional Infliction of Emotional Distress; Civil Conspiracy)

COME NOW plaintiffs James Sanders and Elizabeth Sanders, by counsel, and respectfully state:

Jurisdiction

1. This Court has jurisdiction over plaintiffs' claims for relief under 42 U.S.C. §2000aa, et seq., as claims arising under the constitution and laws of the United States, pursuant to 28 U.S.C. §§ 1331, 1343(a)(1) and (a)(2). This Court has supplemental jurisdiction over all of plaintiffs' other claims for relief as state law claims so related to plaintiffs' claim in the action within the original jurisdiction that they form part of the same case or controversy.

Summary

2. On the evening of July 17, 1996, all 230 passengers and crewmembers aboard Trans World Airline ("TWA") Flight 800 lost their lives when the airplane exploded in midair just minutes after departing for Paris from JFK Airport, 12 miles south of Long Island. At least 670 eyewitnesses along the coast of Long Island, and on nearby aircraft and watercraft, observed various stages of the disaster. During the first hours after the crash, numerous news stories related accounts of eyewitnesses having seen a missile streaking up into the air and the plane falling from the sky.

3. This case arises from an illegal conspiracy to obstruct justice in connection with the federal investigation into the downing of TWA Flight 800, and the illegal use of the power of the executive branch to cover up and halt the dissemination of the assertion that a missile punched through Flight 800 and caused it to explode.

4. Overt acts in furtherance of this conspiracy include actions designed to restrict access to facts that would hinder the government's ability to report a cause of the disaster of its own choosing. Defendants shaped the analysis of the disaster by, inter alia, removing debris recovered from the stricken aircraft, reporting debris as having been recovered east of its actual location, altering and withholding relevant radar documentation, altering the mockup of the stricken aircraft, making numerous false statements about forensic analysis and witnesses' accounts, and releasing a CIA-produced animation of the disaster that is false and misleading.

5. This action arises from a unique circumstance in which the threat of indictment expressly functioned as a means of compelling disclosure of a journalist's confidential source.

6. Plaintiff James Sanders is a journalist. James and his wife, Elizabeth, allege violations of their civil rights and the commission of other wrongs committed in furtherance of the conspiracy.

7. Because overt acts directed at plaintiffs were the reasonably foreseeable, necessary or natural consequences of the conspiracy to obstruct justice in connection with the investigation into the downing of Flight 800, each member of the conspiracy is liable for plaintiffs' damages by virtue of his participation in that conspiracy. Thus, the conspiracy issues in this case are:

(a) Whether a conspiracy exists; and

(b) The identity of its members.

8. The adjudication of these conspiracy issues is not dependent on proof that a missile brought down TWA Flight 800, and who fired it. This case alleges that the defendant United States deliberately fired a missile at plaintiffs James and Elizabeth Sanders' constitutional rights to differ with official policy. Sadly, wrongful acts directed at plaintiffs denied the American people their right to hear an interpretation of the facts different from that of the government's. As in other similar events where the government declined to share the facts with the American people, including the Ruby Ridge and Waco tragedies, the assassinations of President Kennedy and Dr. King, as well as the misconduct in the White House of Presidents Nixon and Clinton, the facts can often be ascertained by examining the cover-up. In this case, a substantial portion of that cover-up is compromised of the government's efforts to silence plaintiffs James and Elizabeth Sanders.

Parties

9. Plaintiff James Dwight Sanders ("JAMES SANDERS") is an individual residing at 14501 John Tyler Highway, Charles City, Virginia. JAMES SANDERS is and was at all times material hereto a journalist. From the period of June 1966 through November 1976, JAMES SANDERS was employed as a police officer at the Seal Beach, California, police department.

10. Plaintiff Elizabeth Ann Sanders ("ELIZABETH SANDERS") is an individual residing at 14501 John Tyler Highway, Charles City, Virginia. Plaintiffs ("JAMES and ELIZABETH SANDERS") are husband and wife.

11. Defendant United States of America ("UNITED STATES") is sued herein for violations of 42 U.S.C. §2000aa, et seq., the Privacy Protection Act, by its officers

and employees while acting within the scope or under color of their office or employment.

12. Defendant James T. Hall ("HALL") is and was at all times material to this cause, Chairman, National Transportation Safety Board ("NTSB"). HALL's business address is 490 L'Enfant Plaza, SW, Washington, DC, and his residence address is unknown to plaintiffs. HALL is sued herein in his individual capacity.

13. Defendant Bernard Loeb ("LOEB") is and was at all times material herein employed by the NTSB, 490 L'Enfant Plaza, Washington, DC, holding the position of Director of Aviation Safety. Plaintiffs do not know LOEB's residence address. LOEB is sued herein in his individual capacity.

14. Defendant Dr. Merritt Birky ("BIRKY") was at all times relevant to this suit employed by the NTSB as head of the NTSB's TWA Flight 800 Fire & Explosion Team. He has since left his employment at the NTSB. BIRKY resides at 19423 Maggies Court, Boonesboro, Maryland. BIRKY is sued herein in his individual capacity.

15. Defendant James K. Kallstrom ("KALLSTROM") was at all times material hereto employed as Assistant Director-in-Charge of the Federal Bureau of Investigation's ("FBI") New York field office. KALLSTROM is currently employed as Senior Executive Vice President of MNBA America, a banking institution located at 1110 North King Street, Wilmington, Delaware. KALLSTROM is also employed by CBS News as a commentator on law enforcement matters. Defendant KALLSTROM's residence address is unknown to plaintiffs. KALLSTROM is sued herein in his individual capacity.

16. Defendant James G. Kinsley ("KINSLEY"), is an individual employed as Special Agent of the FBI. KINSLEY is now and was at all times material hereto detailed to the FBI's New York Field Office, 26 Federal Plaza, 23rd Floor, New York, New York. Defendant KINSLEY's residence address is unknown to plaintiffs. KINSLEY is sued herein in his individual capacity.

17. Defendant Valerie Caproni ("CAPRONI") was at all times relevant to this cause employed by the United States Department of Justice, Criminal Division. CAPRONI is currently employed by the Securities & Exchange Commission, 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California. Plaintiffs do not know CAPRONI's residence address. CAPRONI is sued herein in her individual capacity.

18. Defendant Benton Campbell ("CAMPBELL") is and was at all times material herein employed by the Department of Justice as Assistant United States Attorney. CAMPBELL's business address is 1 Pierrepont Plaza, Brooklyn, New York. Defendant CAMPBELL's residence address is unknown to plaintiffs. CAMPBELL is sued herein in his individual capacity.

19. Defendant David B. Pitofsky ("PITOFSKY") is and was at all times relevant to this cause employed by the United States Justice Department as Assistant United States Attorney, 14195 Montague Street, 7th Floor, Brooklyn, New York. Plaintiffs do not know PITOFSKY's residence address. PITOFSKY is sued herein in his individual capacity.

20. The captioned Defendant referred to as John Doe is one or more individuals employed by the United States Department of Justice, or other agencies of the United States. Because plaintiffs do not yet know whether all overt acts identified below

as having been committed by John Doe were committed by the same individual, nor his or their identities, this person or persons are hereinafter referred to in the singular as "DOE." Plaintiffs will seek leave of Court to amend their Complaint by substituting his or their true names and capacities instead of the fictitious name DOE when the same have been ascertained.

21. All allegations of overt acts in furtherance of the conspiracy that are not attributed to a designated defendant should by read to be made against defendant DOE.

22. Some of the conspirators joined the conspiracy at different times by pursuit of the common goal or overall conspiratorial objective, the particulars of which are not presently known to plaintiffs. As all conspirators are not presently known, plaintiffs will, should it become appropriate, seek leave to amend this Complaint to name other defendants and to plead the particulars of their functions in pursuing the conspiracy.

Facts

23. On July 17, 1996, the military activated National Defense Operating Area zone W-105 ("W-105"), consisting of thousands of square miles of ocean located south and east of Long Island. National Defense Operating Area zones are designed to warn general and commercial aviation traffic not to be in the zone. At approximately 8:30 p.m., and moments before the disaster, dozens of unidentified aircraft and surface vessels on coordinated courses were heading into W-105.

24. Also on July 17, 1996, at 8:19 p.m., TWA Flight 800 lifted off from runway 22R of JFK International Airport with 230 persons onboard, 18 crewmembers and 212 passengers. The airplane was bound for Charles DeGaulle Airport, Paris, an eight-hour

flight. Captain Steven E. Snyder was the captain. Ralph G. Kevorkian was the first officer.

25. Flight 800's path brought it about ten miles from the northwest corner of W-105. About eleven minutes after Flight 800 departed, at approximately 8:31 p.m., as the airplane reached an altitude of 13,700 feet, 2.6 miles above sea level, approximately 12 miles east of Center Moriches, Long Island, it exploded violently after colliding with -- according to witnesses -- a "much faster" "flare-like object" or "streak of light." The aircraft immediately began to break up and descend to the ocean surface in a fiery blaze.

26. All 230 passengers and crew were killed. Thirty-eight of the passengers were under the age of 18.

27. Hundreds of eyewitnesses saw a streak of light, consistent with a missile, moments before Flight 800 crashed. Several of these witnesses saw the missile and plane separately and later recounted the mid-air break up in detail -- reporting that the front section of the aircraft fell away from the main fuselage and wings.

28. Witnesses surrounding the tragedy described the streak of light as ascending at a high rate of speed. Of the 102 eyewitnesses who reported to the FBI the origin of the streak of light, 96 said that it rose from the surface.

29. The FAA's radar:

(a) Reveals the presence of a surface ship in the same area as where witnesses heard and saw a missile launch;

(b) May have captured a missile in its early stage of flight, in the immediate area of a ship, less than twenty seconds before a missile impacted Flight 800 -- coinciding with the precise time required to launch and impact Flight 800, ten miles away;

(c) Shows over 30 surface targets moving in an organized fashion into zone W-105;

(d) Saw multiple 300-plus knot blips, without transponders, before and after the 747 crashed; and

(e) Reflects debris being blasted from Flight 800 at Mach 2 (over 1,200 mph).

30. The FAA air traffic controller responsible for monitoring Flight 800 observed on the radar screen what he believed was a high-speed object intersect Flight 800's path. He then saw an increasing number of radar hits as parts of the plane fell toward the ocean. FAA personnel were so concerned that a missile had brought the plane down, they notified the White House Situation Room of their observations.

31. The Navy's Riverhead, New York, radar reflects the existence of two primary radar targets (without a transponder), and two secondary radar targets (with a transponder). The two secondary targets correspond to a US-Air plane and Flight 800. One primary target corresponds to a Navy P3-Orion aircraft, and the other primary target, unidentified, is consistent with its being a missile. The exact coordinates of each of these four targets have vanished from naval radar records, upon information and belief, at DOE's direction, in furtherance of the conspiracy.

32. The Navy's Riverhead, New York, radar also reveals that one unidentified target may have been in close proximity to Flight 800 moments before its destruction, and that DOE may have concealed radar evidence of a missile strike.

33. At approximately 8:31 p.m., numerous military personnel and hundreds of civilian witnesses forming a 360-degree circle around TWA Flight 800 reported seeing an object consistent with a missile streaking into the sky and a falling, fiery blaze falling into the ocean. These witnesses, in boats, on the ground, and in the air, include:

(a) Dwight Brumley, a Navy non-commissioned officer with more than ten-years of service, aboard U.S. Air Flight 217 at 20,000 feet headed north toward Long Island, saw from a window on the right side of the airplane what appeared to be a missile rising into the air. The missile was headed in the same approximate direction as Flight 217 but traveling at a much higher rate of speed. The missile, then approximately 4,000 feet below Flight 217, streaked northward past his airplane and, about ten seconds later, Brumley witnessed an explosion.

(b) Major Fred Meyer and Captain Christian Bauer, then on active duty with the New York Air National guard, were airborne in a helicopter near Gabreski Airport, Long Island, facing south over the airport runway. They observed a streak of light followed by a series of explosions as TWA Flight 800 began its terminal descent;

(c) Paul Angelides, about ten miles west of Gabreski Airport, facing south, observed a flare-like object accelerate to what he estimated to be about mach 3 plus. The object was headed in a south-southwest direct for about ten-miles, whereupon Angelides observed a series of explosive events on the horizon and heard a loud rumbling noise that shook the house. The description and timing of this event is consistent with a missile launch about 4-5 miles offshore;

(d) William Gallagher, a commercial fishing boat captain trawling about 5 miles south of Long Island approximately eight to ten miles west of TWA Flight 800, while facing east, observed a reddish-orange flare-like object streak into the air at about a 45-degree angle. This object "corkscrewed upward," and, in a last second corrected course before slamming into the right side of TWA Flight 800; and

(e) A cluster of witnesses about one mile from Angelides' location saw the same object, initially in a slow vertical ascent, then gradually go horizontal and accelerate toward the south horizon. These witnesses also saw a series of explosive events on the horizon.

34. FAA and Navy radar also tracked a large number of apparent surface vessels and non-transponder planes in the area of Flight 800. Navy documents reflect that, at the time of the disaster, significant Naval units were in the area. Documentation of the identities of these military crafts was later withheld on the grounds that it was exempt from disclosure on "national security" grounds.

35. The FBI and the NTSB began an investigation into the disaster. Defendant James T. HALL, Chairman, National Transportation Safety Board, was, and still is, in command of the NTSB's probe. Defendant James K. KALLSTROM, then Assistant Director-in-Charge of the FBI's New York field office, was in command of the FBI's probe.

36. At least 18 groups were formed to look at different aspects of the disaster. Because the FBI/NTSB investigation was highly compartmentalized, only NTSB and FBI personnel at the senior management levels gained a comprehensive picture of the evidence pointing toward a missile as having caused the disaster.

37. From the earliest moments of the Flight 800 investigation, defendants employed several methods in covering up the true cause of the disaster. The conspirators segmented the aviation experts into compartmentalized working groups, unable to examine and evaluate the larger picture, and segregated investigators from free access to all the evidence. Defendants then controlled the cover-up by, inter alia:

(a) Withholding photographic evidence that debris from Flight 800 had been altered;

(b) Misrepresenting the reddish-orange residue found on seats in rows 17-18-19, claiming it was 3M 1357 HP Adhesive;

(c) Changing original positions of debris to support the conclusion that a "mechanical" failure caused the disaster;

(d) Withholding radar data, thereby hiding documentation of the major military presence in the area of TWA Flight 800 when it was shot down; and

(e) Withholding or altering radar data of the first 12 seconds after the first explosion.

38. 49 U.S.C. 1131(a)(2), mandates that "[a]n investigation by the [National Transportation Safety] Board... has priority over any investigation by another department, agency or instrumentality of the United States Government." The Flight 800 investigation was never declared a crime scene. It was a "crash scene." Thus, the FBI's position in the probe at all times remained inferior to that of the lead agency, the NTSB.

39. The night of the disaster, the Navy provided a DC-9 in Washington, D.C. to transport investigators to Long Island. DOE loaded up the aircraft with FBI and the Navy personnel and, although there were seats available, DOE would not allow the NTSB "Go-Team" to board the aircraft. Thus, these NTSB investigators had to wait until the next day to travel to the scene of the crash, by which time the FBI had taken over control of the probe.

40. Within 72 hours of the disaster, defendant Valerie CAPRONI, of the United States Department of Justice's Criminal Division, was dispatched to Calverton hangar.

41. On July 21, 1996, CAPRONI informed the NTSB personnel, including NTSB Operations Group Chairman Wiemeyer, that no interviews were to be conducted by the NTSB, but that the NTSB could review FBI supplied documents if no notes were taken and no copies were made. The FBI informed NTSB personnel that the reason for this action was "because the FBI did not want conflicting information." CAPRONI'S actions, relegating the NTSB to an inferior position in the probe, were in violation of 49 U.S.C. § 1131(a)(2) et seq.

42. Within 48 hours of the disaster, Navy divers began diving in the area south of Long Island where the first pieces of the stricken aircraft had fallen into the water.

43. At defendant DOE's direction, the Navy divers prohibited New York Police Department divers from searching in certain areas of the ocean where the first debris to exit the aircraft had been deposited.

44. Upon information and belief, DOE concealed that divers recovered, and removed, missile parts from the ocean floor in the first days after Flight 800 went down.

45. In late August 1996, defendant KALLSTROM announced that he believed that the FBI would have sufficient evidence within 48 hours of a bomb having been responsible for the loss of Flight 800.

46. KALLSTROM's announcement of his intent to declare a crime being responsible for the crash was to facilitate the FBI's taking control of the crash investigation, to aid in the FBI's exclusive control over witnesses' accounts and forensic testing.

47. Defendant KALLSTROM and CAPRONI's decision to prevent NTSB personnel from interviewing witnesses hid eyewitness accounts from public scrutiny -- for nearly four years -- and facilitated NTSB personnel to conclude that the accounts of the plethora of witnesses were "of little use" in their probe.

48. In connection with the investigation, recovered pieces of the wreckage were transported to a hangar located in Calverton, Long Island, and incorporated into a partial reconstruction of the airplane's fuselage and passenger compartment.

49. Overt acts in furtherance of the conspiracy during the course of the partial reconstruction of the aircraft in the Calverton, Long Island, hangar, committed by or at the behest of DOE, include:

(a) Altering the Calverton mockup by failing to include in it the forward area of the 747 that had received tremendous external blast damage consistent with a missile strike, including the forward right, lower cargo bay door, a few feet from the lower right cockpit, which had suffered exterior-to-interior blast damage;

(b) Disassembling the reconstructed left wing because it showed that damage to it could not be explained by any mechanical hypothesis;

(c) Dismantling the right wing which had been recovered from the ocean floor -- largely intact except for damage adjacent to the fuselage;

(d) Removing seats from the right side of the passenger cabin, directly above a 3' x 4' hole in the right side of the center-wing-tank;

(e) Stripping the residue that had been located on other seats; and

(f) Altering:

(1) The front spar of the center-wing-tank;

(2) A significant portion of span-wise beam 3, debris piece CW-601;

(3) The center-wing-tank mid-spar;

(4) The floor of the center-wing-tank; and

(5) The center-wing-tank ceiling.

50. A five-foot piece of debris from the right wing had blast-type holes in it. When this debris tested positive for explosives, DOE confiscated it and caused Major Fritz Meyer of the New York Air National Guard to fly it to Washington, D.C. It vanished, in furtherance of the cover-up.

51. Early in the investigation, Captain James Spear, a conscientious crash investigator representing the Airline Pilots Association, complained to Special Agent George Andrews, an assistant to defendant KALLSTROM, about crash debris showing

up at the hangar not being tagged. Soon thereafter, defendant KALLSTROM ordered that Spear be removed from the investigation.

52. After NTSB personnel complained to the FBI that debris was vanishing from the Calverton hanger, authorities set up surveillance and thereafter caught two FBI agents, DOE, removing debris from the hanger.

53. Upon information and belief, plaintiffs aver that the purpose of the removal of the debris from the mockup was to prevent analysis that would show that a missile had caused Flight 800's demise.

54. Debris entering the Calverton hangar from the area of the right wing, just outboard of the fuselage, with apparent blast damage, field-tested positive for the presence of explosive residue.

55. Additional explosive residue was found inside the fuselage, on the right side at approximately rows 17-27, where investigators observed extensive localized burn and blast damage. In late August 1996, a reddish orange residue path was also observed on the upper seatbacks, rows 17-19.

56. The last week of August or first part of September 1996, the FBI removed foam rubber samples from this narrow area on the back of seats in the aircraft, containing the reddish-orange residue, and had it tested for explosive residue. In furtherance of the conspiracy, DOE refused to share the test results.

57. In late December or early January, the FBI told NTSB investigators that the test results would not be shared because they evidenced the commission of a crime.

58. The FBI's refusal to divulge to NTSB personnel the results of these tests was in violation of 49 U.S.C. § 1131(a)(2) et seq., mandating that the NTSB have priority

over any investigation by another department, agency or instrumentality of the United States Government. This action was made to facilitate the secrecy of the conspiracy.

59. Over the course of the probe, defendants took numerous actions designed to hide from public view the existence of forensic evidence corroborating that a missile had caused the disaster, including withhold forensic test results, prohibiting further forensic testing, and misrepresenting the results of testing contradicting its stated conclusion of the cause of the disaster, including:

(1) Prohibiting forensic testing:

(a) Testing by NASA Chemist Charles Bassett of debris from inside the center-fuel-tank, CW-504, found nitrate, a possible signature for explosives, requiring additional testing to determine the source of the nitrate. When Bassett advised the NTSB of this discovery, defendant BIRKY, the senior NTSB scientist at Calverton Hangar, ordered Bassett to cease further testing.

(b) JAMES SANDERS had given a sample of residue to CBS news in New York pursuant to CBS's agreement to have further independent testing conducted, and to announce the results. Thereafter, in compliance with DOE's demand, CBS turned the sample over to the NTSB. The sample was not tested.

(c) The FBI seized an untested sample of the residue that plaintiff JAMES SANDERS had provided to the West Coast Analytical Service. Defendant DOE failed to test this sample.

(d) The Flight 800 Cockpit Voice Recorder revealed a vibration traveling through the frame of the plane at over 2,000 feet per second. Defendants had data establishing that the vibration from a bomb would have traveled through the aircraft frame at about 340 feet per second, and that a low-order overpressure/explosion caused by the kerosene-like jet fuel would have resulted in a similar vibration of less than 340 feet per second. Despite these facts, defendant DOE decided against retaining one of two firms with the expertise to analyze the vibration and pinpoint its origin.

(2) Withholding forensic test results:

(a) DOE withheld the information that more than 98% by volume of the reddish-orange residue found in the narrow corridor of the cabin is commonly found in incendiary warheads and solid missile fuel.

(b) DOE failed to disseminate the results of tests conducted by Florida State University which eliminated the 3M glue used by TWA to refurbish the seats as a possible source of the residue.

(3) Misrepresenting the results of forensic tests:

(a) After JAMES SANDERS' publication that the red residue was evidence of a missile strike, defendant Dr. Merritt BIRKY had a test performed at NASA. Thereafter, in his capacity as Chairman of the Flight 800 Fire & Explosion Group, BIRKY wrote in the NTSB's Fire & Explosion Group Factual Report that the "brown to reddish-brown colored material" was "consistent with a polychloroprene 3M Scotch-Grip 1357 High Performance contact adhesive." BIRKY'S statement was misleading because he made no attempt to discern whether the residue he sent to NASA was consistent with the residue tested by plaintiff JAMES SANDERS, and false because later testing excluded the 3M glue as the source of the residue that plaintiff JAMES SANDERS had tested.

(b) Chemical sniffer processing teams identified at least a dozen pieces of debris from both inside and outside the aircraft with explosive residue contamination, with possibility of a false positive reading on the bare metal being approximately 1 in 10,000. After subsequent FBI lab testing, DOE and KALLSTROM represented that all but two of these samples had tested negative for the presence of explosive residue -- a near statistical impossibility.

60. Defendant BIRKY told NASA Chemist Dr. Bassett that a "plausible" explanation for the presence of nitrate on the sample of inside of the center-fuel-tank was that it was deposited from cigarette smoke from the air conditioning ducts. Yet, BIRKY failed to conduct any testing to confirm this hypothesis.

61. Named defendants, and DOE, also withheld from public view other opinions of experts supporting the missile theory, including:

(a) The conclusion of the FBI's two-man missile team, who opined that the disaster was caused by a missile; and

(b) The conclusion of military experts, brought in early in the probe, who, after identifying and interviewing 36 of the most credible witnesses, believed that a missile had shot down Flight 800.

62. In furtherance of the conspiracy, defendants publicized only the data on the narrow 20-nautical-mile circle surrounding the disaster, concealing data showing that the level of surface vessels and aircraft activity significantly increased between the perimeters of a 22-nautical-mile circle and a 35-nautical-mile circle of the disaster. DOE failed to include in the radar images released to the press and public in the NTSB's "factual report" that, on the evening of July 17, 1996, W-105 was activated, as were several other warning areas along the Atlantic Coast, for military exercises, and that:

(a) Before the tragedy, approximately 30 surface vessels and at least one aircraft were just outside the narrow 20-nautical-mile perimeter, all without transponders, heading in a parallel movement toward W-105;

(b) After Flight 800's demise, more than a dozen ships were inside military warning zone W-105, about twenty-miles from the crash site, all headed in the same direction, away from the scene of the disaster;

(c) The position of one ship traveling south at a rate of 30 knots (30-knot target) within 2.9 miles of the airliner when it was hit -- consistent with the origin of a streak of light, which, according to eyewitnesses, rose from the surface and caused the aircraft to crash;

(d) The 30-knot target continued moving south until it approached the armada of thirty ships and aircraft -– failing to slow or turn toward the scene to search for survivors, despite Flight 800's having broken up in a brilliant series of explosions and fireballs just 2.9 miles away from the 30-knot target; and

(e) A second aircraft that, in a span of approximately 30 minutes, flew into and out of W-105 on two separate occasions. Radar data indicates that this aircraft was performing high precision maneuvers while entering and exiting the military warning zone W-105.

63. KALLSTROM maintained that, when the disaster occurred, the closest naval vessel was the U.S.S. Normandy, almost 200 miles to the south. In fact, an entire armada had been just miles from Flight 800, and, according to the Navy, US submarines were much closer to Flight 800 than the U.S.S. Normandy.

64. Debris was initially assigned "A-TAGS," denoting the location of where it was found. DOE assigned longitude and latitude tags to many pieces of the aircraft east of their actual recovery location, further away from JFK Airport than they were recovered because these pieces that had exited the stricken aircraft had landed too early to fit the hypothesis that a missile had not caused the crash.

65. Of the first 100 pieces of debris, with A-TAGS affixed, recovered from the ocean floor between July 18 and August 2, 1996, DOE:

(a) Failed to log into the NTSB computer 53 debris pieces, including 13 pieces of the center-wing-tank right side, and the forward right, lower cargo bay door which had suffered exterior to interior blast damage; and

(b) Failed to enter into the Supervisor of Salvage database the first three pieces of debris, including the nose gear, B-TAG 001, and the nose wheel, B-TAG 002.

66. DOE logged into the NTSB database the following as having been found 3,000 feet east of its actual recovery location:

(a) A-TAG 004, issued to one of the four forward cargo containers, AKN7415;

(b) A-TAG 051, issued to the DME, located in the electronics bay underneath the forward part of the 747; and

(c) A-TAG 068, Row 11, Seat six.

67. Additional overt acts in furtherance of the conspiracy committed by DOE include:

(a) Altering the reported location of two major pieces of the center-wing-tank right side, adjacent to a 3' x 4' hole;

(b) Failing to enter pieces of the potable water bottle (1,000 pound, six-foot tall water bottle, attached to the front of the center wing tank) into the NTSB database and the Supervisor of Salvage database;

(c) Falsifying the location of seats 8 & 10, Row 18; and

(d) Maintaining a "classified" debris field database.

68. This logging of debris as having been recovered east of their actual location, and the failure to declassify the debris field database, was made with specific intent to obstruct justice by hiding the true cause of the disaster.

69. Because of the alteration of the locations of where the seats were found, TWA employee Linda Kunz, detailed to the Cabin Reconstruction Group, along with two New York police officers, photographed cabin mock-up seats. Soon thereafter, TWA personnel forwarded to the NTSB, as well as the FBI, Kunz' account, along with photographs corroborating that account. Soon thereafter, Linda Kunz went out on medical leave.

70. Other overt acts in furtherance of the conspiracy to cover up the true cause of the disaster include misrepresentations of the damage to the aircraft by:

(a) Altering the mockup by cutting the right front of the center-wing-tank floor (CW-201), from where it was attached to the bottom of the right wing in the area that attaches to the center-wing-tank (RW-3). CW-201 had been blown upward at an approximate 60-degree angle. RW-3 had been bent upward 81 inches by the force of a missile penetrating the right front of the center-wing-tank floor.

(b) As the force of the missile blew CW-201 upward into the center-wing-tank, numerous small, medium and large shrapnel penetrated CW-601, immediately above CW-201. Plaintiff JAMES SANDERS photographed CW-601 on December 22, 1998. These photographs, when compared to 1997 photographs of this same area, reveal that DOE had replaced the original CW-601 with a piece of aluminum without the small, medium and large holes.

(c) DOE further altered the center-wing-tank to remove evidence of the missile penetration by altering:

(i) The right portion of the front spar;

(ii) The right portion of the mid-spar; and

(iii) The ceiling of the center-wing-tank, right side.

(d) Falsely reporting that damage to the forward right-side area of the 747 was inconsistent with causes other than water impact, ignoring that the force which obliterated the lower-front right-side of the airplane had originated outside the aircraft slightly to the starboard side of the cockpit.

(e) The NTSB Metallurgy/Structures Sequencing Group Chairman's Factual Report falsely concluded that an external blast could not have caused the early loss of the Nose Landing Gear doors, ignoring that the inward forces which destroying them could have occurred by a powerful force external to the aircraft.

(f) DOE falsified diagrams and disseminated these fraudulent diagrams of the damage to the:

(i) Center-wing-tank;

(ii) Spanwise beams, and

(iii) Front spar.

(g) Falsely describing damage to the potable water bottles (two, 1,000 pound, six-foot tall water bottles, attached to the front of the center-wing-tank).

71. Misleading statements made to discount witnesses' accounts of having seen the missile include, inter alia, the NTSB Witness Group Factual Report having reported that "visibility was... limited" from the "south shore of Long Island" unless the "aircraft was visually tracked from shortly after departure."

72. An FBI agent, or DOE, was at each autopsy, and, immediately after the coroner removed a piece of shrapnel, the FBI took possession of it and thereafter removed it from the premises. Upon information and belief, plaintiffs aver that some of those pieces of the shrapnel were consistent with the theory that Flight 800's demise had been the result of a missile having impacted it.

73. PETN is a chemical in plastic explosives and found in some missile warheads. RDX and PETN may be combined to create explosives such as Symtex, and RDX/PETN combinations are used in military warheads. Five days after the Flight 800 crash, investigators found a trace of PETN on a piece of the exterior of the right wing near the fuselage. Later, FBI crime lab chemists found additional traces of PETN and RDX between Rows 17 and 27 on the right side of the cabin area, in the same area where the red residue had been found.

74. In September 1996, defendant DOE disseminated the story that explosive residue present in the aircraft was deposited there during a June 1996 Airport Police canine training exercise at the Lambert, Saint Louis, Airport. This account appeared in, inter alia, a September 20, 1996, CNN news service story, *FBI: TWA jet used in bomb-detection drill before crash:*

> Several packages of explosives were used to train bomb-sniffing dogs in St. Louis six weeks before the July 17 crash of TWA Flight 800... The fact that the packages were aboard the jet may explain the traces of explosives investigators found in the wreckage, the FBI said.

75. In fact, that training exercise took place on 747 No. 17116, not the Flight 800 747, No. 17119. When defendant DOE disseminated this account, he knew it to be false. Its purpose was to further the conspiracy by giving the public an innocent explanation for the presence of explosive residue in the debris recovered from the ocean -- consistent with the theory that Flight 800's demise had not been the result of a missile having impacted it.

76. By letter of September 5, 1997 to U.S. House of Representatives Aviation Subcommittee member Congressman James A. Trafficant, defendant KALLSTROM continued this effort to provide an innocent explanation for the presence of explosive residue in the debris recovered from the ocean. In that letter, KALLSTROM represented that the facts were consistent with the conclusion that the training exercise took place on the Flight 800 747, No. 17119.

77. KALLSTROM's representations were false. At the exact time of the training exercise, TWA personnel were on the 747 No. 17119, preparing for the flight, loading passengers and food, and conducting the extensive pre-flight checks. The 747 at

the adjacent gate was empty during this timeframe, and was the plane on which the canine exercise had been conducted.

78. As national attention focused on questions about the cause of the tragic event, defendants disseminated inaccurate information regarding the probe to the news media, which acted as a conduit for official announcements and conclusions. In late September or early October 1996, defendants at the NTSB began leaking inaccurate information to NBC News and Newsweek Magazine of the existence of a preliminary conclusion that a "mechanical" failure had caused the disaster.

79. In late November 1996, defendants allowed NTSB investigators to access some eyewitness summaries, but, in furtherance of the conspiracy, DOE prohibited NTSB personnel from re-contacting these witnesses for further information, in furtherance of the conspiracy, and in violation of 49 U.S.C. § 1131(a)(2) et seq. The NTSB's role was reduced to compiling statistics about information contained within each statement. The NTSB learned that over 90% of the witnesses reporting the origin of the flare-like object to the FBI said that it rose from the surface.

80. On November 19, 1996 defendant KALLSTROM appeared on a nationally broadcast on-air interview with Jim Lehrer, wherein the following exchange took place:

> JIM LEHRER: Now, the latest new public report was that of a Pakistan airlines pilot who said he saw "something with lights in the sky" near where this TWA plane went down that night. Have you determined what that might have been?
>
> JAMES KALLSTROM: We think it was a meteorite shower, Jim. We're not absolutely sure. We've interviewed the pilot. He's a highly experienced pilot, appears to be very competent, has a good memory of what he saw. We have no doubt that he saw what he described, an object he thought ascending from his left to his right.

81. At the time KALLSTROM made this statement, he knew that the "object" that the "highly experienced pilot" saw "ascending from his left to his right" was a missile, not a "meteorite shower."

82. On December 26, 1996, defendant Bernard LOEB, the NTSB's Director of Aviation Safety, sent a letter to David Thomas, Director, FAA Office of Accident Investigation, requesting that FAA personnel recant their analysis communicated to the White House wherein they concluded that the "conflicting radar tracks" indicated that a missile had struck Flight 800. By return letter, Thomas refused:

> Your letter asks the FAA to "verify that all specialists and/or managers involved in the preliminary radar analyses fully agree that there is no evidence within the FAA ATC radar data of a track that would suggest a high speed target merged with TWA 800." Although we understand and share your desire to allay public concern over this issue, we cannot comply with your request...
>
> Regarding the notification of the White House and other Government officials, you will recall that immediately after the event there was speculation within the media and other organizations of possible terrorist activity. By alerting law enforcement agencies, air traffic control personnel simply did what was prudent at the time and reported what appeared to them to be a suspicious event. To do less would have been irresponsible.

83. Another act to conceal radar evidence of the missile's having stricken the aircraft is DOE's having partially expunged the four lines of the printout of the Riverhead radar database corresponding to the 2.8 seconds before the event that initiated the Flight 800 crash. DOE did so before the printout's public release.

84. From April 1986 through June 1998, plaintiff ELIZABETH SANDERS was employed by TWA as a flight attendant. From 1992 through 1994, ELIZABETH SANDERS was detailed to New York, where she taught safety procedures to TWA

personnel. During this period, ELIZABETH SANDERS and Captain Terrell Stacey became friends.

85. In the fall of 1996, plaintiff ELIZABETH SANDERS telephoned Captain Stacey, a senior TWA pilot and flight manager who, because of his expertise in the operation of 747's, had been assigned to participate in the official investigation at Calverton, New York. Stacey himself had flown that very plane from Europe the day before the disaster, and had assigned the crew that staffed the fatal flight.

86. Before the Justice Department had prohibited the NTSB Witness Team from interviewing witnesses to a missile, Stacey had served as part of that team. In that capacity, Stacey had personally participated in the interview of Major Fred Meyer and Captain Christian Bauer, two Air National Guard pilots, then on active duty with the New York Air National Guard. Meyer and Bauer were airborne in a helicopter near Gabreski Airport, Long Island. They both observed a streak of light followed by a series of explosions as TWA Flight 800 began its terminal descent.

87. At the behest of defendant DOE, Meyer and Bauer were later instructed to stop using the word "missile" in their descriptions of the disaster.

88. Stacey observed and heard the defendant Dr. Merritt BIRKY, head of the NTSB's Fire & Explosion Team, hypothesize about possible mechanical events that may have brought down TWA Flight 800. Stacey believed that none of those hypotheses had a factual basis.

89. ELIZABETH SANDERS asked Stacey if he would speak to her husband, plaintiff JAMES SANDERS, regarding JAMES SANDERS' efforts to learn the truth of the downing of Flight 800 -- in furtherance of JAMES SANDERS' efforts to inform the

American public of the facts and the conclusions which might be discovered from those facts. At the time, Stacey had never met JAMES SANDERS, but, having read JAMES SANDERS' book about American prisoners of war, *Soldiers of Misfortune,* knew him to be an investigative journalist.

90. On October 30, 1996, plaintiff JAMES SANDERS met Captain Stacey at Newark Airport, at which time the two men began a journalist-to-whistleblower relationship. Stacey discussed with JAMES SANDERS his observations of the investigation, including:

(a) The FBI's practice of removing pieces of the aircraft from the hangar without documentation or any method of tracking what was removed, by whom or when;

(b) The FBI's practice of failing to share the results of its testing with the NTSB;

(c) The absence of the FBI's sharing of information with the NTSB and the concurrent divergence of the two agencies, particularly regarding the chain of events leading to the explosions;

(d) The failure to analyze the relationships of evidentiary items to one another, and the lack of cumulative review of the individual items of evidence in aid of an explanation;

(e) That defendant Dr. Merritt BIRKY, head of the Fire and Explosion Group, was the leader of an NTSB unit that periodically met on the hangar floor to discuss various hypotheses -- and shortly thereafter heard them broadcast on NBC news;

(f) The absence of tracking, or maintaining chain-of-custody, of evidence prior to its arrival at the hangar;

(g) That, had the center-wing-tank exploded, it would have been a low-level explosion incapable of producing enough energy to simultaneously disable both the cockpit voice recorder and the flight data recorder;

(h) That FBI teams identified all missile witnesses thought to be credible, and that each witness' point of observation was established and that thereafter surveyor equipment was used to establish the flight path of the missile; and

(i) That a senior-level FAA official who had been at the Flight 800 crash scene shortly after the event remarked the next day to another senior-level FAA official, "You won't believe what brought down Flight 800."

91. On November 14, 1996, Stacey provided JAMES SANDERS with a 33-page computer printout listing the various pieces of airplane found in two of the debris fields, documenting the apparent cause of the disaster, and of authorities' efforts to hide those facts. The printout contained the NTSB's list of debris recovered in the area closest to JFK Airport.

92. Shortly thereafter, plaintiff JAMES SANDERS also obtained the Navy Supervisor of Salvage version of the debris field.

93. JAMES SANDERS' analysis of these documents revealed that the documentation of the debris fields had been altered and that officials charged with determining the sequence of the plane's breakup ignored the debris falling first from the stricken 747.

94. JAMES SANDERS learned, through analysis of the debris field, that the first seats to leave the 747 were concentrated in rows 17-19, just in front of the center-wing-tank.

95. On November 24, 1996, Stacey told JAMES SANDERS that a reddish-orange residue was present on the upper backs of these seats, that the FBI had lifted several samples in late August 1996, and that the FBI had tested these samples but had refused to share the results of these tests.

96. Stacey believed that the official crash investigators, under the supervision of defendants KALLSTROM and HALL, were willfully failing to conduct other tests to examine the residue that appeared in a section of the reconstructed airplane's cabin.

97. Stacey knew that, should he remove a minute sample of the residue, it would in no way compromise the ability of the NTSB or the FBI to conduct their investigations -- enough residue remained for hundreds of samples to be analyzed, should defendants KALLSTROM or HALL agree to further testing.

98. Stacey believed that his removal of the samples was lawful. Stacey later testified why he decided to take a sampling of the residue:

> Again, there was a heavy burden with the investigation, frustration with the investigation, the lack of sharing the information by the NTSB and, of course, the FBI... I thought this would be a means of me obtaining some more information, more analysis to find out the cause of the accident of Flight 800.

99. Stacey advised JAMES SANDERS that he could scrape off flakes of the residue if Sanders could have them tested. Stacey assured JAMES SANDERS that an ample quantity of residue-bearing material remained behind for additional samples.

100. On January 9, 1997, Stacey attempted to scrape a sample into a plastic bag, whereupon he realized that the residue would not scrape. So, Stacey decided to break off two, small, foam-rubber samples.

101. Stacey took the two small pieces of residue-bearing seat-backing material on his own volition.

102. Stacey then Federal Expressed the samples to JAMES SANDERS' Williamsburg, Virginia, residence, where they arrived on January 10, 1997.

103. JAMES SANDERS received the samples for the sole purpose of discovering the cause of the accident, and acted in a manner that he was certain would in no way interfere with the work of other investigators.

104. The Justice Department later conceded that JAMES SANDERS' actions did not constitute obstruction of justice.

105. In late January 1997, JAMES SANDERS personally delivered one of the samples to West Coast Analytical Services ("WCAS"), where WCAS conducted elemental testing. Because WCAS was a commercial lab with no prior experience providing analysis of possible solid fuel elemental testing, WCAS personnel advised JAMES SANDERS that they were not competent to interpret the elemental test.

106. Thereafter, personnel from two U.S. missile manufacturers stated that the elements were consistent with residue from a solid fuel missile. A retired missile scientist stated that the residue would be consistent with an incendiary warhead atop a solid fuel missile and that this is consistent with current generation U.S. missile technology.

107. Additional residue with elements consistent with a solid fuel missile were found within the center-wing-tank.

108. On March 10, 1997, the Riverside, California *Press-Enterprise* newspaper published a front-page article about Flight 800, reporting that "author and investigative reporter" JAMES SANDERS had gathered and reviewed evidence from which he had concluded that the crash was the result of a collision with a missile. The *Press-Enterprise* newspaper article:

(a) Reported that JAMES SANDERS, through a confidential source, had obtained fabric from a section of the passenger seats of the cabin in which a trail of red residue appeared;

(b) Revealed that chemical analysis of the residue was consistent with the presence of solid rocket fuel;

(c) Reported that, based on the test results on the residue, coupled with analysis of the pattern of debris retrieved from the crash site, led JAMES SANDERS to conclude that a missile punched through Flight 800 and caused it to explode; and

(d) Extensively quoted JAMES SANDERS, including critical comments about the FBI/NTSB investigation.

109. The article, entitled, "New Data Show Missile May Have Nailed TWA 800," subtitled "Debris Pattern Provides Key to Mystery," states in part:

> The pattern of the first wreckage to hit the water, combined with the evidence of missile-propellant residue in the Boeing 747, clearly indicates that a missile carrying an inert warhead smashed through the airliner, author and investigative reporter James Sanders has concluded...
>
> "We will be testifying before Congress on Tuesday that as of today there is no physical evidence of a bomb or a missile in any of the records (evidence) that we have recovered," NTSB spokesman Peter Goelz said Sunday.
>
> Sanders and reporter Mark Sauter co-authored two books, *Soldiers of Misfortune* and *The Men We Left Behind*, about America's prisoners of war form World War I, World War II, Korea, the Cold War and Vietnam...
>
> "As for TWA Flight 800, analysis of the wreckage also disproves the most widespread version of the cause of the tragedy, an explosion of the airliner's center wing tank," Sanders said.
>
> He used classified documents obtained from confidential sources inside the official investigation to reconstruct the planes' final moments and called on his own skills as a former auto accident investigator and officer in the Seal Beach [California] Police Department.

Sanders said he believes high officials at the FBI and National Transportation Safety Board, the two principal agencies investigating the crash, must have already reached the conclusion that a missile caused the crash.

James Kallstrom, the FBI's assistant director in charge of the investigation, bristled at the suggestion he or his agents were covering up anything...

"[A]ny accident investigator in the United States would take this same information and come up with the same answer in two to three weeks," Sanders said.
A Federal Aviation Administration crash analyst who reviewed the NTSB Flight 800 crash documents said they made him believe some outside object pierced the jumbo jet right to left and started the catastrophic sequence that eventually dismembered the plane. The analyst spoke on the condition his name not be used...

About 150 eyewitnesses from the ground reported seeing what they thought to be a missile, climbing to meet the 747 seconds before seeing the jet erupt into flames...

Sanders said his quest for the answer to the fate of TWA Flight 800 got off to a real start last November. Someone whom Sanders declined to identify passed him a 104-page printout of the FBI-NTSB catalog of every article to be recovered from the undersea crash site...

"It's like skid marks on the bottom of the ocean," Sanders said. "The diagram tells you a story of what happened."...

The area between the door and the wing fragment corresponds exactly to a "gouge" that investigators discovered on the right side of the fuselage, Sanders said. That hole, Sanders said, was where a speeding missile punched into the airliner...

Sanders said the official government statements and news reports on theories into the cause of the crash have given short shrift to that first, critical 4,700-foot portion of the crash site. Instead, the government has focused its analysis on the far-less revealing wreckage that fell into the ocean afterward, he said.

> More missile evidence reached Sanders in a December conversation with an investigator who had access to the facility in Suffolk County, Long Island, where the National Transportation Safety Board was identifying and piecing together the recovered parts of the aircraft, Sanders said. The investigator, who Sanders declined to identify, said some of the passenger seats were coated with an orange-red residue, Sanders said.
>
> Sanders said he later obtained samples of the residue and sent one to a commercial laboratory for analysis.
>
> The analysis by West Coast Analytical Service, Inc., in Santa Fe Springs, California, found the residue contained, among other elements, silicon, calcium and aluminum. Those elements, Sanders said, are consistent with emissions from the burning of solid rocket fuel.
>
> Sanders dismissed a different theory for what caused the crash.
>
> NBC news, citing sources at the National Transportation Safety Board, has reported that the most likely cause of the disaster was an explosion of the aircraft's center wing tank. Sanders said analysis of the undersea wreckage "completely eliminates" that theory...
>
> The tank exploded 4,700 feet after the missile impact, causing the already weakened forward cabin to break free from the rest of the airplane, Sanders said...
>
> ...[A]lmost all of the center wing tank ended up on the ocean floor, 12,000 feet east of the first fall of debris. It defies the science of accident reconstruction, Sanders said, that something located virtually at the end of such a
> long debris trail could have caused a disaster like the TWA Flight 800.
>
> "Things fall generally in the order in which they are impacted," Sanders said. "The center wing tank, if it were the initiating event (of the crash), would be among the first debris, not the last."

110. Another article in that March 10, 1997, *Press-Enterprise* newspaper disclosed that JAMES SANDERS' wife, ELIZABETH SANDERS, was a TWA employee.

111. Shortly after the publication of the March 10, 1997, *Press-Enterprise* newspaper article, defendant DOE removed the balance of the reddish-orange residue trail across the upper seatbacks, rows 17-19.

112. On March 11, 1997, defendant Bernard LOEB testified before the U.S. House of Representatives Subcommittee of the Committee on Appropriations.

> Congressman Wolf: ...These articles report that a trail of reddish brown residue was found embedded in seats [sic] 17 through 19, which contained chemical elements consistent with solid fuel missile. Although your accident investigation into this crash is still ongoing, can you give us some explanation for the residue?
>
> Dr. Bernard Loeb: ...There is a reddish-orange substance that is on virtually all of the seats in the forward part of the airplane. For that matter, I am sure it is on all of the seats in the airplane because we believe that that red residue material is an adhesive... Adhesive is the only substance that we know of that is reddish or orange in that airplane.

113. LOEB's statements, false and known to be so when made, constituted obstruction of Congress, and were overt acts in furtherance of the conspiracy. Contrary to LOEB's statements, "a reddish-orange substance" was not "on all of the seats in the airplane," and LOEB knew that the reddish-orange residue was not "an adhesive."

114. Also on March 11, 1997, President Clinton signed Executive Order 13039. That Order removed the personnel in the Navy units assigned to the recovery mission from the protection afforded by Chapter 71, Title 5 of the United States Code, commonly known as the "Whistle Blower Protection Act." It also removed from the protection of the Whistle Blower Protection Act personnel working for the armed forces assigned to Dam Neck, Virginia, who monitored the Navy exercise south of Long Island the evening of July 17, 1996.

115. Soon after the publication of the March 10, 1997 *Press-Enterprise* articles, defendants HALL, LOEB, KINSLEY, KALLSTROM, CAPRONI, CAMPBELL, and DOE entered into a conspiracy whose object was to suppress plaintiff JAMES SANDERS' exercise of rights guaranteed under the Constitution, and to retaliate against him for his dissemination of facts at variance with the government's stance on the cause of the disaster. Defendants knew that JAMES SANDERS' investigation exposed them to criminal sanctions.

116. Justice Department lawyer defendant Valerie CAPRONI and Justice Department lawyer defendant Benton CAMPBELL, along with defendant FBI Agent James KALLSTROM and defendant FBI Agent James KINSLEY conducted the Department of Justice's investigation of JAMES and ELIZABETH SANDERS.

117. Defendants CAPRONI, CAMPBELL, KALLSTROM, KINSLEY, and DOE targeted JAMES and ELIZABETH SANDERS to retaliate against JAMES SANDERS because of his journalistic investigation into defendants' wrongdoing, and for the purpose of chilling JAMES SANDERS' further exercise of his First Amendment rights.

118. Within hours of the March 10, 1997, publication of the *Press-Enterprise* article, the FBI began aggressive efforts to interrogate ELIZABETH SANDERS, and continued those efforts despite her having informed the agents that she did not want to speak to any FBI agents.

119. JAMES and ELIZABETH SANDERS retained Jeffrey Schlanger, Esquire, as counsel to communicate with the FBI on their behalf. By March 13, 1997, letter, Schlanger advised defendant Assistant United States Attorney Benton CAMPBELL:

(a) That he represented JAMES and ELIZABETH SANDERS;

(b) To cease and desist attempts to contact ELIZABETH SANDERS; and

(c) Of Schlanger's authority to act on JAMES and ELIZABETH SANDERS' behalf, including the receipt of communications and service of process.

120. KINSLEY learned from TWA the identities of plaintiff ELIZABETH SANDERS' friends and co-workers at TWA. He then interrogated a number of these individuals, attempting to learn where ELIZABETH SANDERS resided when in St. Louis, as well as what type of car she drove in commuting to work. Thereafter, DOE ordered these individuals to fly to New York to submit to interrogation. KINSLEY also traveled to Williamsburg, Virginia, where KINSLEY performed surveillance of plaintiffs' Williamsburg, Virginia, residence, and interrogated plaintiff ELIZABETH SANDERS' Williamsburg friends and neighbors. And KINSLEY traveled to the Norfolk Airport in an apparent attempt to intercept ELIZABETH SANDERS as she returned there from St. Louis.

121. To avoid further harassment, ELIZABETH SANDERS was forced to seek refuge where she could reside free of the FBI's efforts to pursue her, and to abandon her employment at TWA and to leave her home. ELIZABETH SANDERS was forced to reside away from her husband, son, and friends.

122. ELIZABETH SANDERS endured the stress associated with defendants' persecution of her for eight months in 1997, resulting in the onset of depression, which continues to the present day.

123. As a direct and proximate cause of defendants' wrongful conduct, much of which was in violation of defendants' obligation to contact plaintiff only through counsel, ELIZABETH SANDERS became so distraught that she sought and underwent psychiatric care, which continues to the present day.

124. Later in March 1997, following the publication of the *Press-Enterprise* newspaper articles, JAMES SANDERS spent approximately two weeks in Kansas City, Missouri, at Ms. Lee Taylor's apartment, a colleague of ELIZABETH SANDERS' at TWA. Simultaneously, Taylor resided at ELIZABETH SANDERS' hotel residence in St. Louis.

125. Plaintiff JAMES SANDERS resided in Taylor's apartment during this approximate two-week period in part to avoid being harassed by the FBI while he continued his journalistic endeavors to expose defendants' wrongdoing. During that time, JAMES SANDERS used his personal desktop computer to work on his manuscript and other matters concerning Flight 800.

126. JAMES SANDERS moved from Taylor's apartment sometime in April 1997. At the time of this move, JAMES and ELIZABETH SANDERS were traveling in a two-seat sports car, which was not large enough to hold all of their belongings, so JAMES SANDERS stored the computer and other personal items in Taylor's apartment. JAMES SANDERS left the belongings at the Taylor apartment with the understanding that he would retrieve them at a later date.

127. On March 24, 1997, plaintiff JAMES SANDERS received a notice by Bell Atlantic telephone company of its receipt of a subpoena for plaintiff's telephone records.

128. On March 25, 1997, Schlanger telephoned defendant CAMPBELL and informed him that:

(a) Plaintiff JAMES SANDERS had been notified by Bell Atlantic of its receipt of a subpoena for plaintiff's telephone records; and

(b) Defendants' use of their subpoena power in this way was in violation of Justice Department guidelines and plaintiff's rights under the First Amendment to the Constitution.

129. On March 26, 1997, Schlanger wrote to defendant CAMPBELL, asking that the letter "serve as a formal complaint with respect to the action which the government has taken in issuing a subpoena for toll records of" plaintiff JAMES SANDERS. Schlanger also wrote that:

(a) Plaintiff JAMES SANDERS "was incontrovertibly a member of the media;"

(b) "Issuing of such a subpoena... [was] in direct contravention of Justice Department Guidelines as enunciated in 28 CFR § 50.10, as well as applicable First Amendment privileges and immunities delineated in *Branzburg v. Hayes*, 408 U.S. 665, 33 L.Ed.2d 626 and its progeny;" and

(c) "It is clear that there has been no express authorization by the Attorney General in granting such authorization."

130. "In light of the above," Schlangler's letter concluded, "we respectfully demand that the subpoena... be recalled immediately and that records which have, according to Bell Atlantic, already been sent to the Federal Bureau of Investigation, be sealed and held by an appropriate Court, pending the taking of those steps necessary in order to obtain proper approval from the Attorney General."

131. By letter dated April 1, 1997, defendants CAPRONI and CAMPBELL wrote to Schlanger that they could "find no support for the assertion that Mr. Sanders is a member of the media."

132. This statement was known by defendants CAPRONI and CAMPBELL to be false because:

(a) The *Press-Enterprise*'s article first reference to plaintiff, in the second paragraph of the front-page far-left column, above the fold, is "author and investigative reporter;"

(b) Three paragraphs later, the *Press-Enterprise* article recounted that plaintiff "and reporter Mark Sauter [had] co-authored two books, *Soldiers of Misfortune* and *The Men We Left Behind*, about America's prisoners of war from World War I, World War II, Korea, the Cold War and Vietnam...";

(c) Counsel expressly advised defendants:

(i) That plaintiff had acted as a reporter and writer in connection with the March 10th article, as well as of

(ii) A number of other publications that had carried articles written by plaintiff;

(d) Database checks on plaintiff's name reveal that he is listed as author of:

(i) The two non-fiction books; and

(ii) Articles appearing in Newspapers and periodicals.

133. Thus, CAPRONI and CAMPBELL's claim was false, known to be false, and was made with the intent to disregard the Justice Department's mandatory procedural requirements in obtaining information gathered during journalistic endeavors.

134. Defendants knew JAMES SANDERS was a journalist.

135. Defendants abused the government's power of subpoena by using it to accomplish an improper purpose –- to obtain information from which they might discover the identity of a journalist's confidential source.

136. Defendants abused the government's power for the express purpose harassing, intimidating and retaliating against a journalist who had uncovered evidence of defendants' participation in a conspiracy to obstruct justice.

137. In April 1997, federal prosecutors requested to meet with JAMES SANDERS and his counsel, Mr. Schlanger. During the subsequent April 14, 1997, face-to-face meeting with JAMES SANDERS and counsel, CAMPBELL, together with the then-Chief of the Criminal Division, defendant Valerie CAPRONI and defendant FBI Agent James KINSLEY, advised JAMES SANDERS that, if he did not agree to disclose his source, he would not be subpoenaed to appear before the grand jury, but rather would find himself "on the wrong side of an indictment."

138. CAMPBELL and CAPRONI also announced that, if JAMES SANDERS did not disclose his source, they would treat ELIZABETH SANDERS as a "target" of the investigation and would attempt to obtain an indictment against her as well. CAMPBELL and CAPRONI also advised counsel that they sought information directly from ELIZABETH SANDERS regarding the identity of JAMES SANDERS' source.

139. Defendant CAMPBELL and CAPRONI's use of the threat of indictment as a means of compelling revelation of a journalist's confidential source was intended to serve the impermissible purposes of penalizing acts that are protected under the First Amendment.

140. This threat of indictment to compel revelation of the identity of a journalist's confidential source reflects defendant CAMPBELL and CAPRONI's malicious motive.

141. Defendant CAMPBELL proposed that the government enter into a non-prosecution agreement with JAMES SANDERS, whereby, in exchange for disclosure of his confidential source within the official investigation, the government would agree not to prosecute JAMES and ELIZABETH SANDERS.

142. From its inception, the government's threat of prosecution functioned as a means to attempt to compel an investigative reporter to disclose a confidential source, to compromise the vital relationship between a journalist and his source.

143. CAMPBELL and CAPRONI's threat was intended to circumvent the procedural safeguards afforded by New York's "Shield Law," N.Y. Civ. Rights Law § 79-h(b), designed to protect the First Amendment rights associated with newsgathering by protecting journalists from contempt charges for refusing to disclose a journalistic source. CAMPBELL and CAPRONI ignored the paramount public interest underlying the Shield Law of maintaining a vigorous, aggressive, and independent press capable of participating in robust, unfettered debate over controversial matters.

144. Mr. Schlanger advised CAMPBELL that JAMES SANDERS did not believe that he had committed any crime, and that, as a journalist, he believed that he had a right and an obligation to maintain the confidentiality of his source, and that his journalistic endeavor fell within the protection of the First Amendment, as well as New York's Shield Law. JAMES SANDERS refused to disclose his confidential source within the Flight 800 investigation.

145. When the prosecutors CAMPBELL and CAPRONI announced their intention of declaring ELIZABETH SANDERS a "target" of their investigation, they had

not learned the identity of Terrell Stacey, the only individual who even remotely connected ELIZABETH SANDERS to the removal of the residue.

146. Thus, they were not informing ELIZABETH SANDERS of the options she faced as a result of a realistic assessment of incriminating evidence known to the government. Rather, CAMPBELL and CAPRONI were engaged in a calculated effort to use the specter of indictment, notwithstanding the absence of any indication of culpability, solely as a means of pressuring JAMES and ELIZABETH SANDERS to betray the identity of a confidential source.

147. The primary purpose and effect of the threat to enforce an obscure statute was to penalize and retaliate against journalist JAMES SANDERS and his wife ELIZABETH SANDERS for refusing to abandon their principles. Had they done so, they would have undermined JAMES SANDERS' ability to gather news, and would have adversely impacted upon the credibility of all journalists seeking to obtain information in confidence, thus chilling the media's ability to gather facts which may temporarily be inconvenient in the judgment of the government and its agents.

148. The purpose served by the government's invocation of its power to prosecute was to exact such an abandonment, and to penalize and retaliate against JAMES SANDERS for investigating defendants' wrongdoing.

149. On March 24, 1997, defendant CAMPBELL issued a subpoena to by Kensington Publishing Corp., d/b/a Zebra Books, requiring that company to produce, on April 7, 1997, before the grand jury sitting in the United States District Court for the Eastern District of New York:

> [A]ny all documents relating to any book or publishing contract for James Sanders for "The Downing of TWA Flight 800" including but not limited

to any contracts, drafts contracts, correspondence, offer letters, payment records, cancelled checks or check stubs, telephone or e-mail messages, and documents reflecting that date negotiations began and when the contract was signed, finalized or concluded.

YOU MAY COMPLY WITH THIS SUBPOENA BY PROVIDING THE REQUESTED DOCUMENTS TO SPECIAL AGENT JIM KINSLEY OR ANTHONY JACKSON OR THE FEDERAL BUREAU OF INVESTIGATION AT (516) 753-0130.

150. These subpoenaed materials are subject to First Amendment protections, and were known to have been so when defendants issued the subpoena. Defendants' use of the government's power of subpoena for the improper purpose of obtaining materials protected by the First Amendment was an abuse the federal court process.

151. In late April 1997, Kensington Publishing Corp. published a book written by JAMES SANDERS entitled The Downing of TWA Flight 800. This book detailed:

(a) The information that JAMES SANDERS had gathered to support his conclusion that a missile was responsible for the fatal midair explosion; including:

(i) That FAA radar technicians saw a missile in their scopes and immediately notified the White House;

(ii) Damage to the recovered debris was consistent with a missile having caused the explosion in the center-wing-tank;

(iii) That there was an initial, narrow, area of damage that crossed the 747 in the area immediately in front of the center-wing-tank, generally in a right-to-left direction;

(iv) The existence of a reddish-orange residue trail in this exact area; and

(v) That JAMES SANDERS had obtained samples of this residue, and that testing by an independent laboratory demonstrated that the residue was consistent with solid missile fuel;

(b) That government officials had concealed this information from the American public.

152. In the book's "Acknowledgements" section, JAMES SANDERS wrote: "Thanks to Liz's support system, Lee Taylor, Lucille Collins and TWA Norfolk agents." Shortly after the publication of the book, FBI agents in New York demanded that Mrs. Collins, who was ELIZABETH SANDERS' immediate supervisor at TWA, and Taylor, a close friend and colleague, appear in New York to submit to interrogation. Taylor refused, whereupon defendants subpoenaed her to be questioned before a federal grand jury in Brooklyn, New York.

153. Thereafter, Taylor agreed to be questioned, and, in exchange therefore, was released from her obligation to appear and testify before the grand jury. Both Taylor and Collins were subjected to FBI questioning. Many of the questions were of a highly personal nature concerning plaintiffs JAMES and ELIZABETH SANDERS' marriage and private lives.

154. On July 10, 1997, defendant James KALLSTROM testified before the Committee on Transportation & Infrastructure Subcommittee on Aviation:

> Let me again reiterate something I told the Committee in the briefing several months ago and what I have also stated publicly -- Flight 800 was definitely not brought down by "friendly fire", that is, no missile or any other action by the military and naval forces of the United States caused this tragedy.

155. Defendant KALLSTROM knew the falsity of the testimony when made.

156. On July 10, 1997, defendant James HALL testified before the Subcommittee on Aviation Committee on Transportation and Infrastructure:

> There is no evidence of a bomb or a missile impact in the wreckage. Based on evaluation of the recovered wreckage and a detailed evaluation of the sequence of events, we have determined that the fuel/air vapor in the center-fuel-tank exploded and that the explosion of the tank initiated the breakup of the airplane.

157. Defendant HALL's testimony was false, and he knew of its falsity when given.

158. In August 1997, defendant DOE caused Hollywood movie producer Neil Russell to be visited and encouraged to decline to exercise his option with JAMES SANDERS to make a movie for The Downing of TWA Flight 800. Russell succumbed to defendants' pressure, and agreed.

159. Defendants' exercise of influence over Russell prevented plaintiff JAMES SANDERS from utilizing a significant vehicle for disseminating the truth of the disaster to the American people.

160. Upon information and belief, plaintiffs aver that at this time defendants caused the illegal seizure of JAMES SANDERS' journalistic work product in Russell's possession.

161. In September 1997, when FBI agents interviewed Taylor, she told the FBI that JAMES and ELIZABETH SANDERS had stored a number of items at her home, including JAMES SANDERS' computer and numerous items of clothing. After learning about the computer, FBI agents seized the computer at the direction of defendants KINSLEY and DOE.

162. At no time did defendants KINSLEY or DOE seek or obtain a warrant to seize JAMES SANDERS' computer.

163. Defendants' seizure of JAMES SANDERS' computer was unlawful, and known to be unlawful.

164. At the time of the seizure of the computer, stored in the home of a trusted friend, JAMES SANDERS had a legitimate expectation of privacy in its contents.

Defendants' unlawful seizure of his computer without a warrant or other proper authorization violated JAMES SANDERS' constitutional rights as guaranteed by the First and Fourth Amendments. Defendant UNITED STATES' unlawful seizure is especially egregious in light of the fact that JAMES SANDERS is a journalist.

165. Defendants' seizure of JAMES SANDERS' computer was in violation of the Privacy Protection Act of 1980, 42 U.S.C. § 2000aa et seq., which prohibits, inter alia, government officers or employees, in connection with the investigation or prosecution of a criminal offense, to search for or seize any work product materials possessed by a person reasonably believed to have a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication.

166. By letter of September 5, 1997, defendant KALLSTROM wrote to Congressman James Trafficant that "[t]he NTSB did not participate in most of these [witness] interviews because they did not have the personnel resources available. However, all interview/witness statements have been shared with the NTSB..." When KALLSTROM made these representations, he knew that the defendants had prohibited NTSB personnel from participating in the interviews and that reports of witness statements had not been shared with the NTSB.

167. In late August or early September of 1996, the FBI had taken several samples of the reddish-orange residue that was deposited immediately after the initiating event in a narrow area of the passenger cabin, from Seats 6-8 of Row 18, Seat 7 of Row 19, and Seat 2 of Row 27. These samples tested for the telltale signs of a missile penetrating the aircraft. DOE ordered that these test results not be shared with NTSB investigators, despite repeated requests therefore.

168. DOE's order that the results of these tests not be shared with NTSB investigators, in violation of 49 U.S.C. § 1131(a)(2) et seq., was given to facilitate hiding defendants' illegal conduct from public view.

169. Months after the FBI had taken the samples, in December 1996, FBI personnel told NTSB investigators that, because the results of this testing evidenced a crime, the FBI would not share the results.

170. On November 18, 1997, the FBI put its criminal investigation into the disaster on "inactive pending" status. On that day, defendant KALLSTROM participated in a press conference where he remarked:

> The seat cushion residue, reported in the Riverside, California press, of the red residue that someone said was rocket fuel. The truth is the material is contact adhesive. We know the manufactured formula, which is patented, and we know without a doubt –- without any doubt whatsoever –- that it's the adhesive that holds the back of the seats together. It's not rocket fuel. It's not residue of a rocket, never was, never will be.

KALLSTROM knew that his statements were false.

171. On that same day, November 18, 1997, the FBI played a video animation of the flight path that had been produced by the CIA. This CIA video was produced for public dissemination, and network news broadcast it to millions of Americans. The video posited that all witnesses to the disaster who had reported seeing objects ascending were incorrect –- that what they reported as an ascending object was in fact burning parts of the aircraft descending. The video contains a number of patent falsehoods, including reporting (1) an impossible rate of climb after the explosion, (2) a time for the aircraft to fall that is longer than the time that it took for it to disappear from radar, and (3) a zoom climb which did not slow the aircraft. More specifically:

(a) The video reports that witness Brumley said that the streak he saw was heading east-northeast, when, in fact, he stated that the streak was heading north-northeast.

(b) The CIA claims that no known eyewitness saw the initial explosion. In truth, many witnesses saw the entire event.

(c) The video reported that the nearest eyewitness was 8.8 miles away. A number of witnesses were in boats within three to five miles of the disaster. The best eyewitness was on US Air Flight 217, 8,000 feet above, and three miles south-southwest, of the explosion.

(d) The Eyewitness Factual Report 4A contained no information about whether the 100 witnesses who heard something did so before or after they saw the streak. Yet, the CIA, without ever having talked to any eyewitnesses, claims that everyone who saw the streak was drawn to it by the sound.

172. On April 30, 1999, CIA personnel told senior NTSB investigators:

(a) That CIA analyses was confined to developing a hypothesis for an animation depicting all witnesses having seen Flight 800 climb more than 3,000 feet before descending into the ocean;

(b) That the CIA relied on the account of witness Mike Wire to develop its hypothesis that Flight 800 climbed after it was stricken – but that Wire's statement does not represent the demise of Flight 800 as depicted in the video;

(c) That the CIA had no satellite imagery or any other evidence that Flight 800 climbed after the initiating event; and

(d) Before it analysts began production of the video, the CIA relied on the FBI's assurance that there was no evidence on the cockpit voice recorder, data recorder, or Calverton mockup that would suggest that a missile was the cause of the initiating event.

173. Upon reinterview of some of the witnesses to events surrounding the disaster, FBI agents tried to obtain an admission from these witnesses that their earlier accounts of having seen objects ascending was incorrect.

174. After two of the FAA's radar tapes of the evening of the disaster were leaked in March 1997, defendant James KALLSTROM acknowledged that there was an anomalous, unidentified "blip" detected by radar, but asserted that it was caused by a Navy plane that was more than 7,000 feet away from Flight 800 at the time of the explosion. On November 18, 1997, KALLSTROM changed this story, asserting that the object detected by radar "is and was and always will be a commercial flight, not a missile." KALLSTROM's statement that the blip was a commercial flight was known by him to be false when made.

175. In June 1997, based on its review of telephone records that were subpoenaed in violation of the Privacy Protection Act of 1980, Department of Justice Guidelines, and the Fourth Amendment to the Constitution, defendants located Captain Terrell Stacey, the senior TWA pilot who had, on his own volition, removed the small residue sample from the Calverton hangar, whereupon defendants KINSLEY, CAPRONI and CAMPBELL subsequently secured his cooperation against JAMES and ELIZABETH SANDERS by means of an agreement that permitted him to plead guilty to a misdemeanor.

176. In August 1997, defendants issued a second subpoena for plaintiff JAMES SANDERS' telephone records. Attorney General Janet Reno authorized this subpoena, in violation of the Privacy Protection Act of 1980, 42 U.S.C. § 2000aa et seq.

177. Defendants' issuance of the subpoena was an abuse of their power of subpoena.

178. Upon information and belief, plaintiffs aver that on November 17, 1997, Attorney General Janet Reno authorized the issuance of warrants for the arrests of plaintiffs JAMES and ELIZABETH SANDERS.

179. The next day, November 18, defendant KALLSTROM held a press conference, wherein he stated:

> The seat cushion residue, reported in the Riverside, California press, of the red residue that someone said was rocket fuel. The truth is the material is contact adhesive. We know that for a fact. We know the manufactured formula, which is patented, and we know without a doubt –- without any doubt whatsoever -– that it's the adhesive that holds the back of the seats together. It's not rocket fuel. It's not residue of a rocket, never was, never will be.

180. As KALLSTOM knew that the material was not "contact adhesive," these statements by KALLSTROM were known by him to be false when made.

181. By December 3, 1997 letter, defendant KALLSTROM wrote a letter to defendant HALL regarding the upcoming public hearings in Baltimore on the issue:

> [T]he FBI... objects to requests to disclose or include in the public docket of any FBI FD-302s or summaries of FD-302s prepared by the NTSB that report the results of any interviews or reinterviews of the 244 eyewitnesses... and to calling any eyewitnesses to testify at the public hearing..."

KALLSTROM's purpose requesting that eyewitness not testify, and that their accounts be kept out of the record of the hearings, was to keep the existence of the true cause of the disaster, and of the cover-up, from public view.

182. On December 5, 1997, a complaint and arrest warrant issued, charging JAMES and ELIZABETH SANDERS with unauthorized removal of property that had been on an aircraft involved in an accident, in violation of 49 U.S.C. § 1155(b), for which

the maximum penalty is ten years, as well as conspiracy to commit that offense in violation of 18 U.S.C. § 371.

183. Defendant KINSLEY's affidavit in support of the arrest warrants states in part:

> From Row 17 to Row 28 of the seating area there is a reddish residue on the metallic frame and backs of the passenger seats. The residue is manifested most strongly on seats from Rows 17 through 19. According to TWA maintenance records, the seats on which the residue can be seen had been refurbished, and glue was used to affix fabric and plastic to the metallic frames of the seats. Other rows of the airplane were not similarly refurbished, or were made by different manufacturers, and a similar residue cannot be seen on them...
>
> On March 10, 1997, the Press-Enterprise, a newspaper in Riverside, California, published a series of articles asserting that a U.S. Navy missile was responsible for the crash of TWA 800. In those articles, the newspaper extensively quoted the defendant JAMES SANDERS. SANDERS was identified in the articles as a former police officer, accident investigator, and Virginia-based writer. The articles indicated that the defendant JAMES SANDERS was conducting an independent investigation into the cause of the crash and had concluded that a U.S. Navy missile had shot down the plane...
>
> In support of his claim, the newspaper reported that the defendant JAMES SANDERS had obtained fabric from passenger seats from TWA 800 from a source connected to the NTSB/FBI investigation. According to the articles, the defendant JAMES SANDERS told reporters from the Press-Enterprise that, after he received the parts in January 1997, he took them to a laboratory for analysis. The defendant JAMES SANDERS stated that the seat parts from TWA 800 were covered with a "red residue" and that chemical analysis of the residue was consistent with solid rocket fuel. The defendant JAMES SANDERS concluded that the test results, coupled with a "residue trail" which his source allegedly told him traveled from one side of the cabin to the other along the seats inside the aircraft, confirmed that a missile had punched through TWA 800 and caused it to explode.

184. These excerpts contain false statements of fact, known by KINSLEY to be false. Contrary to KINSLEY's sworn Affidavit:

(a) The Press-Enterprise article identified Plaintiff JAMES SANDERS "author and investigative reporter," not as a "Virginia-based writer" – a difference of some consequence in this matter;

(b) The article did not assign responsibility for the downing of the aircraft to any person or entity, did not mention the United States Navy, and in no way implied that plaintiff "had concluded that a U.S. Navy missile had shot down the plane;" and

(c) The article reported that plaintiff relied on "[t]he pattern of the first wreckage to it the water, combined with evidence of missile-propellant residue in the Boeing 747" in concluding that "a missile carrying an inert warhead smashed through the airliner" -- KINSLEY averred that plaintiff relied exclusively on the "test results" and "residue trail" to conclude that "a missile had punched through TWA 800 and caused it to explode."

185. KINSLEY's sworn statements that, "[a]ccording to TWA maintenance records, the seats on which the residue can be seen had been refurbished, and glue was used...." but that "[o]ther rows of the airplane were not similarly refurbished, or were made by different manufacturers..." was false.

186. On December 5, 1997, the New York Justice Department/FBI web site displayed a moving banner across its homepage: "Conspiracy theorist and wife charged with theft of parts from airplane." This banner was designed to vilify JAMES and ELIZABETH SANDERS.

187. The banner's characterization of JAMES SANDERS as a "conspiracy theorist" was made in violation of Justice Department *Guidelines to criminal actions*, 28 CFR, 50.2 (3), which mandate that such "[d]isclosures should include only incontrovertible, factual matters, and should not include subjective observations."

188. Also on December 5, 1997, defendant KALLSTROM and Zachary Carter, the United States Attorney for the Eastern District of New York, issued a joint press

release to announce the initiation of criminal charges against plaintiffs JAMES and ELIZABETH SANDERS.

189. A substantial portion of that release recounted hearsay that had been included in JAMES and ELIZABETH SANDERS' criminal complaint even though it had no bearing on any alleged criminal conduct, but served only as a means of discrediting JAMES SANDERS' reporting of views and conclusions that were at odds with the government's own conclusions:

> The criminal complaint outlines efforts by JAMES SANDERS to have laboratory tests done on portions of the TWA 800 wreckage which he unlawfully possessed. An individual employed at the laboratory has informed the FBI that SANDERS emphasized his desire for the tests to identify the presence of solid rocket propellant. The tests were conducted and provided no conclusive evidence of the presence of solid rocket fuel. These results were communicated to SANDERS.
>
> According to the criminal complaint, despite the laboratory test results, JAMES SANDERS misrepresented those results in media reports for which he was a source.

190. The allegation that JAMES SANDERS had "misrepresented those [lab] results in media reports for which he was a source" was false and known to be false, and violated 28 CFR 50.2(3).

191. Quoting a statement by defendant KALLSTROM, the release went on to indicate that the charges against JAMES and ELIZABETH SANDERS were intended to hold them accountable for the effects of such "media reports."

> KALLSTROM stated: This criminal investigation is far from over. These defendants are charged with not only committing a serious crime, they have also increased the pain already inflicted on the victims' families. This investigation will continue in an effort to identify any other individuals who may have played a role in this scheme.

192. KALLSTROM's announcement to the press affirmatively declares that the purpose underlying this prosecution goes beyond simply enforcing a criminal statute. KALLSTROM makes clear that the prosecution was meant to serve as a means of holding JAMES and ELIZABETH SANDERS accountable for the effects of the "media reports" to which JAMES SANDERS contributed.

193. The "pain... inflicted on the victims' families" plainly does not refer to the removal of a scrap of material from the airplane wreckage, but rather refers to JAMES SANDERS' advocacy of the view that a missile caused the crash, and to the corollary suggestion that the victims' families, as well the public, could not take comfort in the belief that the official investigation headed by KALLSTROM thoroughly and conclusively laid the missile theory to rest.

194. This statement of a high-ranking official of the agency that referred this case for criminal charges, issued by the Department of Justice in a joint press release from the FBI and the United States Attorney, evidences the speech-based animus underlying the prosecution of JAMES and ELIZABETH SANDERS.

195. An additional statement attributed to the FBI in connection with the JAMES and ELIZABETH SANDERS' arrest further attests the government's improper motive in prosecuting JAMES and ELIZABETH SANDERS for the exercise of First Amendment rights. On the same day that the government's press release was issued, NBC Nightly News, in a broadcast by correspondent Robert Hager that included on-air statements by KALLSTOM, reported, "[t]onight, the FBI says its investigation isn't finished, says still more may have been involved in what it calls a plot to rewrite the history of TWA 800."

196. This remark lays bare the constitutionally intolerable, speech-based motivation underlying the investigation and prosecution of JAMES and ELIZABETH SANDERS. By using its law enforcement authority for the purpose of retaliating against those who would dare to offer facts which dispute the official version of the history of Flight 800, the government violated the fundamental guarantee of the First Amendment.

197. The acts and statements of the government reflect an impermissible intention to penalize and retaliate against JAMES and ELIZABETH SANDERS for the exercise of rights protected under the First Amendment, and to chill the exercise of those rights.

198. Defendants were aware of the identities of plaintiffs JAMES and ELIZABETH SANDERS, Captain Stacey, and their roles in the incident, seven months before the announcement of their indictment. Yet, the arrest warrants appear to have been delayed to coincide with the beginning of NTSB Public Hearings on the matter in Baltimore on December 8, 1997.

199. On December 9, 1997, pursuant to an agreement between the Justice Department and defense counsel, JAMES and ELIZABETH SANDERS voluntarily surrendered at the Melville, New York, FBI field office, at which time defendant Agent KINSLEY was in charge of the arrest detail.

200. After the booking procedure, an FBI agent suggested to defendant KINSLEY that JAMES and ELIZABETH SANDERS not be handcuffed while in the FBI office, nor during their transportation to the federal district courthouse in Uniondale, New York. KINSLEY reject that suggestion and ordered that JAMES and ELIZABETH SANDERS be handcuffed.

201. The agent suggested that the plaintiffs' hands be cuffed in front. Again KINSLEY refused, whereupon, at KINSLEY's direction, JAMES and ELIZABETH SANDERS were handcuffed, hands behind their backs.

202. KINSLEY's handcuffing of plaintiffs, hands behind their backs, was use of force beyond that which was reasonably necessary to accomplish his lawful purpose of ensuring that plaintiffs JAMES and ELIZABETH SANDERS continued to voluntarily remain in custody.

203. An agent suggested to KINSLEY that the cars used to transport plaintiffs to the federal district courthouse in Uniondale, New York, be moved to a ramp to avoid the large media presence that had gathered outside the FBI's Melville, New York, field office. Again KINSLEY refused. JAMES and ELIZABETH SANDERS were then paraded through the crowd of reporters and photographers that had been notified of the arrests by press releases, to FBI cars in the rear of the parking lot. This procedure is commonly referred to as a "perp walk."

204. Defendant KINSLEY's subjecting plaintiffs JAMES and ELIZABETH SANDERS to this "perp walk" was in violation of Justice Department press guidelines, 28 CFR, 50.2, (4)(b)(7) *Guidelines to criminal actions*, which mandate that "personnel of the Department of Justice should take no action to encourage or assist news media in photographing or televising a defendant or accused person held or transported in Federal custody."

205. Upon information and belief, plaintiffs aver that DOE ordered KINSLEY to subject plaintiffs to these "perp walks."

206. Defendant KINSLEY's conduct in willfully subjecting plaintiffs to this "perp walk," handcuffed, hands behind their backs, was extreme, wanton, and oppressive. As a direct and proximate cause of KINSLEY's outrageous conduct, JAMES and ELIZABETH SANDERS suffered severe emotional distress, including feelings of degradation and shame.

207. Upon the cars' arrival at the United States District Court in Uniondale, New York, KINSLEY ordered that the cars stop in front of the courthouse, adjacent to where a large number of camera operators and reporters had gathered. A driver of one of the cars informed KINSLEY that the proper procedure was to use a ramp in the rear of the building. KINSELY refused, intending to subject JAMES and ELIZABETH SANDERS to a second "perp walk." As JAMES and ELIZABETH SANDERS were removed from the cars, a bailiff approached and informed KINSLEY that the proper procedure was to use a ramp in the rear of the building. Again KINSELY refused. After the bailiff three times insisted to KINSLEY that the proper procedure was to use a ramp in the rear of the building, KINSELY reluctantly agreed to follow proper procedure, abandoning for the moment his plan to subject JAMES and ELIZABETH SANDERS to a second "perp walk."

208. Three hours later, JAMES and ELIZABETH SANDERS were removed from their holding cells, again handcuffed with their hands behind their backs, and escorted to the main courthouse hall. At KINSELY's direction, JAMES and ELIZABETH SANDERS were paraded past the designated courtroom and into the main reception area, immediately adjacent to the courthouse front door, to again be viewed by the throng of reporters and photographers. Plaintiffs were then escorted back in front of

the designated courtroom. At that point, another agent took control from KINSLEY and removed the handcuffs prior to JAMES and ELIZABETH SANDERS entering the courtroom.

209. Defendant KINSLEY's extreme conduct in subjecting plaintiffs to this second "perp walk," in violation of Justice Department press guidelines prohibiting such oppressive action, caused plaintiffs JAMES and ELIZABETH SANDERS to suffer further severe emotional distress and feelings of degradation and shame.

210. Also on December 9, 1997, defendant Dr. Merritt BIRKY caused a factually false Fire & Explosion Team "factual report" to be disseminated to members of the news media attending hearings conducted in Baltimore, Maryland, on the Flight 800 disaster. The Fire & Explosion report implied, and BIRKY confirmed, that NASA Chemist Dr. Charles Bassett had tested the residue that JAMES SANDERS had obtained and determined it to be glue. These statements were false and known by BIRKY to be false. BIRKY knew that Dr. Bassett's testing of the residue did not, and could not, determine the source of the residue.

211. Sometime between December 5, 1997, and December 17, 1997, defendant DOE pressured TWA to fire ELIZABETH SANDERS. Defendants did not pressure TWA to engage in similar retaliatory action against Terry Stacey, despite the fact that defendants knew, no later than June 13, 1997, that Stacey had removed residue and documents from the Calverton Hangar.

212. Regarding a hearing to determine disciplinary action against ELIZABETH SANDERS proposed by TWA, at defendants' behest, a letter written by TWA counsel states:

> According to the FBI, your husband's book erroneously reported the results of those lab tests and caused the victims families' additional anguish and grief...
>
> We also suspect that your actions were motivated not out of a desire to seek the truth, but were instead motivated by the financial gain and notoriety you and your husband stood to gain by publication of the book. Accordingly we are holding this hearing to determine what role you played in these events.

213. At the time that one or more defendants informed TWA personnel that JAMES SANDERS' book "erroneously reported the results of those lab tests," defendant(s) knew the falsity of that statement.

214. Sometime prior to defendant KINSLEY'S December 23, 1997 appearance before the grand jury, KINSLEY traveled to Seal Beach, California, and, in violation of State law, perused JAMES SANDERS' personnel files generated during his ten-year tenure as a police officer at the Seal Beach, California, police department.

215. The FBI retained possession of JAMES SANDERS' computer until June 17, 1998**,** when, without a warrant or other authorization, an FBI Computer Analysis Response Team field examiner removed the hard drive from the computer, powering it up in an examination computer, copied files to an optical disk, and, circumventing the password protection, recovered:

(a) Numerous word-processing documents;

(b) Fax documents;

(c) Deleted files;

(d) E-mail correspondence; and

(d) HTML files evidencing web browsing activity.

216. The hard drive contained, inter alia, hundreds of pages of manuscript, confidential notes, correspondence, memoranda and other materials protected by the First Amendment, including confidential correspondence with other journalists regarding ongoing journalistic investigations other than the downing of Flight 800, including JAMES SANDERS' investigation into the United States Department of Defense.

217. Upon information and belief, plaintiffs aver that defendants provided JAMES SANDERS' ongoing work product regarding his investigation into activities of the Department of Defense to that agency.

218. At the time of the search of the computer, which had been stored in the home of a trusted friend, its contents were secured by password and not open to inspection by others. Thus, JAMES SANDERS had a legitimate expectation of privacy in the computer's contents, including the deleted files.

219. Defendants' unlawful seizure of his computer and the accessing of the data contained therein without a warrant or other proper authorization violated JAMES SANDERS' constitutional rights as guaranteed by the First and Fourth Amendments.

220. Defendants' search of JAMES SANDERS' computer, including its password protected contents, was also in violation of the Privacy Protection Act of 1980, 42 U.S.C. § 2000aa et seq., which prohibits, inter alia, government officers or employees, in connection with the investigation or prosecution of a criminal offense, to search any work product materials possessed by a journalist.

221. Following a jury trial, judgments of convictions of JAMES and ELIZABETH SANDERS were entered on July 16, 1999 in the United States District Court for the Eastern District of New York, for violations of 49 U.S.C. § 1155(b),

removing property that was on a civil aircraft at the time of an accident, as well as conspiracy to commit that offense in violation of 18 U.S.C. § 371.

222. At sentencing, the government presented to the district court a letter in which defendant NTSB Chairman James HALL, reprising the theme sounded at the outset of the prosecution of JAMES and ELIZABETH SANDERS, urged the court to punish them for "the release of misinformation." Pointing to his own agency's "statutory responsibility to keep members of families affected by airline tragedies informed," Chairman HALL implied that the NTSB should be viewed as the final and exclusive arbiter of the truth about the tragedy:

> ...the confusion and distress caused by the perpetuation of groundless speculation about criminal destruction of the aircraft, and the even more insidious claims of a federal government cover-up. These defendants have traumatized the families with the release of misinformation...

Chairman HALL closed by asking the court to use the sentences of JAMES and ELIZABETH SANDERS "as a deterrent to those who would contemplate similar destructive behavior in the future."

223. Endorsing Chairman HALL's position, PITOFSKY expressly called the court's attention to his depiction of the "trauma visited upon the bereaved families of those who perished in the crash, whose grief was only exacerbated and prolonged by Mr. Sanders' *dissemination of misinformation*."

224. These pleas to the court had an impermissible, speech-repressing purpose.

225. JAMES SANDERS was sentenced to a three-year term of probation and ELIZABETH SANDERS to a one-year term of probation.

226. On July 21, 1999, pursuant to Rule 4(b) of the Federal Rules of Appellate Procedure, JAMES and ELIZABETH SANDERS timely filed notices of appeal from

final judgments of conviction and sentence to the United States Court of Appeals for the Second Circuit, Docket Nos. 99-1430 and 99-1431.

227. In preparation of the defense of the criminal charges lodged against them, in accordance with the Federal Rules of Criminal Procedure, plaintiffs JAMES and ELIZABETH SANDERS, by counsel, requested to inspect the mockup of the aircraft inside the Calverton hangar. As a condition precedent to allowing plaintiffs to exercise their rights to formal pre-trial discovery, defendant PITOFSKY required plaintiffs to stipulate that they would not divulge any information gleaned from that inspection except for their use in the then-pending criminal proceedings:

> It is hereby stipulated and agreed between the parties that any and all photographs, videotapes, or other recordings made during the visit of the defendants James and Elizabeth Sanders and their attorneys to the NTSB facility at Calverton, Long Island ("The Hangar") will be strictly for the preparation of the defendants defense in the above-captioned criminal matter and will not be reproduced, disclosed, used, published or distributed in any fashion outside of this litigation.

228. On December 22, 1998, during the course of the ensuing inspection of the mockup, JAMES SANDERS learned, and photographed evidence, that defendants had:

(a) Disassembled the left wing to prevent important evidence from being photographed;

(b) Removed the residue path from the aircraft;

(c) Removed from the aircraft seats eight and ten from rows 17 and 18;

(d) Altered the front spar, as well as a significant portion of the span-wise beam number three;

(e) Falsified the description of the potable water bottle damage;

(f) Falsified the debris field in which two major pieces of the center-wing-tank had been recovered;

(g) Failed to log into the computer the recovery of 13 pieces of the aircraft; and

(h) Significantly altered portions of the center-wing-tank and cabin interior.

229. Shortly after the July 16, 1999 sentencing, JAMES SANDERS' counsel wrote a letter to defendant David B. PITOFSKY, requesting that PITOFSKY "release Mr. Sanders from the terms of the [pre-trial] stipulation." Counsel wrote:

> [T]he recent publication of In the Blink of an Eye (Random House, 1999), which is written by Pat Milton, a reporter for Associated Press, with the publicly acknowledged cooperation of the Federal Bureau of Investigation... featured several photographs taken of the wreckage contained inside the Calverton facility that were taken with the FBI's express permission. The book also quotes extensively from James Kallstrom... and specifically attacks the conclusions regarding the plane's crash reached by Mr. Sanders in his book, The Downing of TWA Flight 800 (Zebra Books, 1997).
>
> As no doubt you appreciate, the ongoing debate into the cause of the crash of TWA Flight 800 remains an issue of significant public concern. Moreover, there is no legitimate basis for Mr. Sanders to continue to be prevented from publishing photographs... particularly in light of the FBI's decision to release selective photographs in support of its position to other journalists. Under these circumstances, we view the continued restrictions... implicating serious First Amendment concerns, a view that we note is apparently shared by Mr. Kallstrom, who is quoted in Ms. Milton's book as prizing "the right of [American] citizens to voice opinions and challenge their government."

230. Despite this request, PITOFSKY failed to allow JAMES SANDERS the opportunity to disseminate the photographs, and still refuses to do so.

231. Upon information and belief, plaintiffs aver that these actions were at the behest of DOE. The object of PITOFSKY's actions is to further restrict public access to evidence of defendants' wrongdoing. PITOFSKY's continuing refusal to allow public dissemination of the photographs violates the First Amendment.

232. Despite KALLSTROM's knowledge of plaintiff JAMES SANDERS' possession of this photographic evidence of defendants' wrongdoing, in September 1999 KALLSTROM told a reporter from the *Baltimore Sun* newspaper that his critics have "have seen none of the evidence."

233. Defendants acted to violate statutory rights vested in plaintiffs. Defendants acted with the intent to cause plaintiffs harm or damage.

234. Wrongful acts alleged herein were commenced by agreement, concert of action, a meeting of the minds, or the pursuit of conspiratorial objectives by and between named or unnamed defendants. All defendants save defendant UNITED STATES are conspirators.

235. All allegations of overt acts in furtherance of the conspiracy that are not attributed to a designated defendant should by read to be made against defendant DOE.

236. Each defendant designated herein is responsible in some way for overt acts of his fellow conspirators. Accordingly, each allegation against an individual named defendant, including defendant DOE, should be read to include and be made against all defendants, and all defendants are jointly and severally liable for plaintiffs' compensatory damages.

237. The unprecedented prosecution of JAMES and ELIZABETH SANDERS was based on allegations of an effort to acquire an inconsequential and miniscule quantity of residue that had no value or significance apart from the light it might shed on a matter of widespread public concern. It involved no contemplation of harm or loss, but arose solely in the course of a journalistic effort to gather and report information about a matter

of widespread importance and controversy. The Department of Justice conceded that no obstruction of justice occurred.

238. In addition to penalizing JAMES and ELIZABETH SANDERS on the content of JAMES SANDERS' book and other published speech, the indictment served as a means of repressing exercise of the constitutionally protected right to gather and publish news. That right is impaired when reporters are forced to reveal their confidential sources on pain of exposure to criminal prosecution.

239. In this case, the federal government used its awesome police power to suppress a journalistic investigation into its own criminal acts.

240. In his endeavors to discover information about the catastrophic demise of TWA Flight 800, and to root out and disseminate evidence of concealment of the facts in the federal government's probe into that disaster, JAMES SANDERS was serving the purpose that underlies the First Amendment. Defendants illegally targeted JAMES and ELIZABETH SANDERS for JAMES SANDERS' advocating the stance that a missile had caused the tragedy, and its corollary conclusion that the American people, including the victims' families, could not take comfort in the veracity of the official probe headed by KALLSTROM and HALL.

241. The only reasonable inference to be drawn from the conduct charged is that there exists a conspiracy whose object is to obstruct justice in the federal probe into the downing of TWA Flight 800. Defendants have so far spent more than $40,000,000 of the American people's money in pursuit of their conspiracy to defraud the American people, including the families of those killed, of the truth of this tragedy.

Count I
Defendant UNITED STATES
(Violation of the Privacy Protection
Act of 1980, 42 U.S.C. § 2000 et seq.)

242. Plaintiffs incorporate paragraphs one through 241 as if fully repeated here.

243. Defendant UNITED STATES is sued herein for violations of the Privacy Protection Act of 1980, 42 U.S.C. §2000aa, et seq., for acts by officers and employees of the UNITED STATES while acting within the scope of and under color of their office or employment.

244. The Privacy Protection Act of 1980 prohibits, inter alia, government officers or employees, in connection with the investigation or prosecution of a criminal offense, to search for or seize:

(a) Any work product materials possessed by a person reasonably believed to have a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication; and

(b) Documentary materials, other than work product materials, possessed by a person reasonably believed to have a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication, in or affecting interstate or foreign commerce.

245. "Work product" within the meaning of Privacy Protection Act of 1980 encompasses materials whose very creation arises out of a purpose to convey information to the public.

246. Actions in violation of the Privacy Protection Act of 1980 include, but are not limited to:

(a) CAPRONI and CAMPBELL's April 1, 1997, claim that they could find no basis for JAMES SANDERS' claim of being a journalist, which was false and known to be false;

(b) The issuance of grand jury subpoenas to obtain JAMES SANDERS' telephone toll records;

(c) The illegal seizure of JAMES SANDERS' journalistic materials held by Kensington Publishing Corp., including:

(i) Documents received by JAMES SANDERS during the course of his investigation; and

(ii) Ongoing work product;

(d) The August 1997, illegal seizure of JAMES SANDERS' journalistic work product from Hollywood movie producer Neil Russell;

(e) The September, 1997 unlawful seizure of JAMES SANDERS' computer, without a warrant;

(f) The June, 1998 unlawful seizure of password-protected work product and other confidential materials from JAMES SANDERS' computer, without a warrant, including:

(i) Numerous word-processing documents;
(ii) Fax documents;
(iii) Deleted files;
(iv) E-mail correspondence;
(v) Html files evidencing web browsing activity;
(vi) Hundreds of pages of manuscript;
(vii) Notes, correspondence, and memoranda; and
(viii) Correspondence with other journalists regarding ongoing journalistic investigations other than the downing of Flight 800; and

(g) KINSLEY'S perusal of JAMES SANDERS' police personnel files.

247. The purposes underlying the Privacy Protection Act of 1980 include:

(a) Preventing unnecessary search and seizure of journalists' files and papers;

(b) Protecting the First Amendment rights of those reasonably believed to have a purpose of communicating to the public;

(c) Preventing abuse by law enforcement authorities;

(d) Preventing the squelch of criticism by the forceful means of seizure; and

(e) Protecting the creative process represented in work product that is at the heart of the First Amendment.

248. Defendants' wrongful conduct in willful violation of the Privacy Protection Act of 1980 was outrageous, wanton, oppressive, and in reckless disregard of the civil rights of plaintiffs, entitling plaintiffs to an award of punitive damages.

WHEREFORE, plaintiffs JAMES and ELIZABETH SANDERS demand that judgment be entered in their favor against defendant UNITED STATES for:

(1) Actual and compensatory damages in an amount that the jury deems just and proper;

(2) Punitive damages in an amount that the jury deems just and proper; and

(3) An amount equal to reasonable attorneys' fees and other litigation costs associated with the prosecution of this action, pursuant to 42 U.S.C. § 2000aa-6(f).

Count II
All Defendant except UNITED STATES
(Violation of the First, Fourth and Fifth
Amendments to the United States Constitution)

249. Plaintiffs incorporate paragraphs one through 248 as if fully repeated here.

250. In his endeavors to discover and disseminate information about the tragic demise of TWA Flight 800, and the FBI/NTSB inquiry into the disaster, JAMES SANDERS was serving the purpose that underlies the First Amendment.

251. The unprecedented prosecution of JAMES and ELIZABETH SANDERS was based on allegations of an effort to acquire a miniscule, inconsequential quantity of material that had no value or significance apart from the light it might shed on a matter of widespread public concern. It involved no contemplation of harm or loss, but arose solely in the course of a journalistic effort to gather and report information about a matter of widespread importance and controversy. From its inception, the government's

targeting of plaintiffs JAMES and ELIZABETH SANDERS by threat of prosecution, subsequent prosecution, acts committed in preparation of and during that prosecution, and dissemination of false and misleading facts regarding that prosecution, were in violation of the First, Fourth and Fifth Amendments to the United States Constitution.

252. Constitutionally intolerable speech-based animus was at the core of the prosecution of JAMES and ELIZABETH SANDERS.

253. Acts of defendants KINSLEY, KALLSTROM, CAMPBELL, HALL, LOEB, BIRKY, CAPRONI, PITOFSKY and DOE were, inter alia:

(a) In retaliation against plaintiffs JAMES and ELIZABETH SANDERS for JAMES SANDERS' dissemination of facts at variance with the government's stance on the cause of the disaster;

(b) Undertaken to repress and chill JAMES SANDERS' exercise of his rights protected under the First Amendment;

(c) Made with the purpose of penalizing JAMES and ELIZABETH SANDERS for JAMES SANDERS' exercise of rights protected under the Constitution;

(d) Triggered by JAMES SANDERS' journalistic investigation into defendants' wrongdoing;

(e) Done to compromise the vital relationship between JAMES SANDERS and his confidential source;

(f) Made in a calculated effort to use the specter of indictment of ELIZABETH SANDERS, solely as a means of pressuring JAMES and ELIZABETH SANDERS to betray the identity of a confidential source, notwithstanding the absence of any indication of ELIZABETH SANDERS' culpability;

(g) A wanton effort to discredit and malign JAMES SANDERS' reporting of views and conclusions that were at odds with the government's own conclusions, and to vilify JAMES and ELIZABETH SANDERS; and

(h) Done to circumvent the procedural safeguards designed to protect First Amendment rights associated with newsgathering.

254. Acts of defendants in violation of the Fourth Amendment to the United States Constitution included, inter alia, the unlawful seizure of:

(a) JAMES and ELIZABETH SANDERS' telephone toll records;

(b) JAMES SANDERS' journalistic materials held by Kensington Publishing Corp.;

(c) JAMES SANDERS' journalistic work product from Hollywood movie producer Neil Russell;

(d) JAMES SANDERS' computer;

(e) JAMES SANDERS' password-protected work product and other confidential materials in his computer; and

(f) JAMES SANDERS' police personnel files.

255. Representations of defendants KINSLEY, KALLSTROM, CAMPBELL, HALL, LOEB, BIRKY, CAPRONI, PITOFSKY and DOE, in furtherance of the violations of JAMES and ELIZABETH SANDERS' rights under the First, Fourth and Fifth Amendments to the United States Constitution, were false and misleading, and known by defendants to be false when made.

256. KINSLEY's repeatedly subjecting JAMES and ELIZABETH SANDERS to the "perp walks," in violation of Justice Department press guidelines, 28 CFR, 50.2, were outrageous, and in violation of the First, Fourth and Fifth Amendments to the United States Constitution.

257. HALL's and PITOFSKY's pleas to the court at JAMES and ELIZABETH SANDERS' sentencing had an impermissible, speech-repressing purpose.

258. Acts of defendants KINSLEY, KALLSTROM, CAMPBELL, HALL, LOEB, BIRKY, CAPRONI, PITOFSKY and DOE were outrageous and oppressive, and

in wonton, willful disregard of the constitutional and civil rights of plaintiffs, entitling plaintiffs to awards of punitive damages.

WHEREFORE, plaintiffs JAMES and ELIZABETH SANDERS demand that judgment be entered in their favor against defendants KINSLEY, KALLSTROM, CAMPBELL, HALL, LOEB, BIRKY, CAPRONI, PITOFSKY and DOE:

(1) Jointly and severally, compensatory damages in an amount that the jury deems just and proper;

(2) Punitive damages, separately, in an amount that the jury deems just and proper; and

(3) An amount equal to reasonable attorneys' fees and costs associated with the prosecution of this action.

Count III
All Defendant except UNITED STATES
(Intentional Infliction of Emotional Distress)

259. Plaintiffs incorporate paragraphs one through 258 as if fully repeated here.

260. As a further object of the conspiracy, plaintiffs aver that defendants, and each of them, intended to subject plaintiffs to severe emotional distress and harm.

261. By virtue of and as a direct and proximate cause of defendants' intentional, outrageous, wonton, oppressive, wrongful conduct, plaintiffs have suffered, continue to suffer, and probably will suffer in the future, severe emotional distress. As a direct and proximate cause of defendants acts, ELIZABETH SANDERS became so distraught that she took a leave of absence from her employment and sought refuge where she could reside free of the FBI's efforts to harass her, and sought and underwent reasonably required psychiatric care, which continues to the present day. The effects on plaintiff ELIZABETH SANDERS' include but are not limited to:

(a) Depression and anxiety;

(b) Intense fear of personal harm and feelings of being overwhelmed and vulnerable;

(c) Impaired concentration, withdrawal, irritability, preoccupied and tense moods;

(d) Loss of interest in sexual and exercise and other routines;

(e) Stomachaches, headaches, asleep disturbances, and loss of appetite;

(f) Increased blood pressure; and

(g) Loss of confidence and feelings of degradation and shame.

Defendants' wrongful conduct has had significant adverse effects on plaintiff JAMES and ELIZABETH SANDERS' overall well being.

WHEREFORE, plaintiffs JAMES and ELIZABETH SANDERS demand that judgment be entered in their favor against defendants KINSLEY, KALLSTROM, CAMPBELL, HALL, LOEB, BIRKY, CAPRONI, PITOFSKY and DOE:

(1) Jointly and severally, compensatory damages in an amount that the jury deems just and proper;

(2) Punitive damages, separately, in an amount that the jury deems just and proper; and

(3) An amount equal to reasonable attorneys' fees and costs associated with the prosecution of this action.

Count IV
All Defendant except UNITED STATES
(Civil Conspiracy)

262. Plaintiffs incorporate paragraphs one through 261 as if fully repeated here.

263. The continuous and persistent course of defendants' intentional wrongful conduct establishes that the entire course of conduct was a single continuing action.

264. The facts alleged constitute a civil conspiracy. Wrongful acts alleged herein were overt acts of two or more defendants in furtherance of a civil conspiracy.

265. Because overt acts directed at plaintiffs were the reasonably foreseeable, necessary or natural consequences of the conspiracy to obstruct justice in connection with the investigation into the downing of Flight 800, each member of that conspiracy is liable for plaintiffs' damages simply by virtue of his participation in that conspiracy.

266. Each defendant designated herein is responsible in some way for overt acts of his fellow conspirators. Accordingly, each allegation against an individual named defendant should be read to be made against all defendants, and all defendants are jointly and severally liable for plaintiffs' compensatory damages.

267. Acts of defendants KINSLEY, KALLSTROM, CAMPBELL, HALL, LOEB, BIRKY, CAPRONI, PITOFSKY and DOE were outrageous and oppressive, and in wonton, willful disregard of the constitutional and civil rights of plaintiffs, entitling plaintiffs to awards of punitive damages.

WHEREFORE, plaintiffs JAMES and ELIZABETH SANDERS demand that judgment be entered in their favor against defendants KINSLEY, KALLSTROM, CAMPBELL, HALL, LOEB, BIRKY, CAPRONI, PITOFSKY and DOE:

(1) Jointly and severally, compensatory damages in an amount that the jury deems just and proper;

(2) Punitive damages, separately, in an amount that the jury deems just and proper; and

(3) An amount equal to reasonable attorneys' fees and costs associated with the prosecution of this action.

PLAINTIFFS DEMAND TRIAL BY JURY.

Respectfully submitted,

Mark Lane
Bar # 445988
Attorney for Plaintiffs
105 Second Street, NE
Washington, DC 20002
(202) 547-6700

John H. Clarke
Bar # 388599
Attorney for Plaintiffs
1730 K Street, NW
Suite 304
Washington, DC 20006
(202) 332-3030