

**DECLARATION OF DARRYL CHERNEY
IN SUPPORT OF PLAINTIFF'S OBJECTION
TO DESTRUCTION OF EVIDENCE**

Case No. C-91-1057 CW (JL)

1. If called as a witness in this matter, I, Darryl Cherney, would testify as follows:

2. I was Judi Bari's passenger when a pipe bomb exploded under Judi's car seat while we were driving in Oakland on May 24, 1990, and I was a plaintiff in the above-entitled action. I am submitting this declaration in support of my motion to preserve evidence in the case from destruction by the FBI, and to gain access to this evidence for examination and testing, including DNA testing.

3. Specifically, I request preservation of and access to the remnants of both the Cloverdale and Oakland bombs, which detonated on or about May 9 and on May 24, 1990, respectively, as well as the "LP Screws Millworkers" sign which was apparently left with the Cloverdale bomb.

4. I am informed and believe that the FBI has custody and control of these items.

5. I am informed and believe that there is nothing dangerous or contraband about the bomb remains, save possibly for any residual explosive powder, which I am not requesting possession of or access to. I am informed and believe that the FBI would have stored the powder separately, for safety reasons.

6. As to the rest of the components, I am informed and believe that they are comprised of harmless household items, and that many of them exploded into fragments anyway, such that this material cannot be considered 'contraband'.

7. While I am not requesting access to any explosive powder or residue, if any remains, I request that the FBI be ordered to preserve such material, in case it yet affords some marker or clue into the identity of the bomber(s).

8. If the Court is not willing to grant me possession of the items in question, I request that they be transferred to a trustworthy third-party designee for inspection,

examination, and testing.

9. I intend to pursue any clues or leads which the physical bomb remains might yield, based on their material and design. I am particularly interested in pursuing DNA testing of these items.

10. I am informed and believe that when the bombs detonated in 1990, DNA testing ability was embryonic, whereas today it has evolved to the point that DNA forensics often solves “cold” cases. To my knowledge, the FBI has never DNA tested the material in question. Or, if it has, it has never made those results available.

11. I am prepared to undertake the arrangements and expense of conducting DNA and other tests and examinations of the Cloverdale and Oakland bomb remains, and the sign.

12. I and others have made a sustained effort over the years, before and after the trial in 2002, to develop information bearing on the burning question left unresolved in the case: *Who bombed Judi Bari?* To this end we have conducted interviews, investigation and research regarding several aspects of the case, including particularly the series of threats Judi received in the months before she was attacked, a letter to law enforcement proposing to set up Judi Bari for selling marijuana, and several disruptive, fake press releases sent out in the name Earth First! I and others have already expended considerable sums of money in the course of such investigation, and we have made progress, impelling us forward. For example, our investigation has yielded DNA matches among several of these items, and a high percentage DNA match between the setup letter and an as yet unknown male relative of a known individual in the case. In addition, investigation I supervised helped trace the setup letter, and an earlier threat letter, to a specific typewriter which the same individual had access to. Finally, we have discovered a significant number of similar characteristics between the addressing of these two letters, and the addressing of the infamous “Lord's Avenger” letter, which claimed credit for both the Cloverdale and Oakland bombs.

13. Notwithstanding this progress, I believe that the bomb remnants themselves, and the sign, contain critical evidence in the case. I have never had access to these materials, but I long wanted an opportunity to examine and test them—particularly the Cloverdale bomb, since it was apparently rigged as a dud and its components therefore remained mostly intact—to discover any possible DNA traces which might be found. The fragments of the Oakland car bomb may also contain crucial clues.

14. Even though the FBI's investigation is apparently closed, and has been for a long time, there is still, obviously, the possibility that the bomber(s) can be identified and brought to justice (since to my knowledge there is no statute of limitations for the crime of attempted murder). Therefore, the materials in question may still be important, and perhaps indispensable evidence in a major criminal case.

15. Similarly, if and when the bomber(s) are identified, my lawyers inform me that I might yet be able to pursue a civil case against them, despite any statute of limitations, because of the bomber(s) concealment of their deeds.

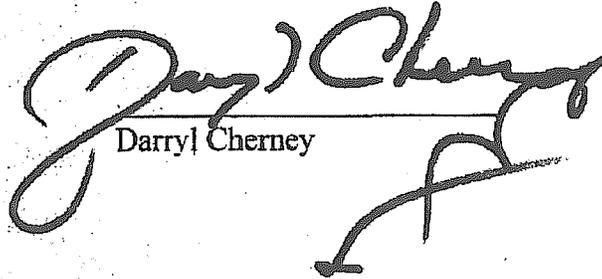
16. It strikes me as odd, and somewhat tell-tale, that officials would desire to destroy important evidence in a case which obviously remains rather glaringly open, however reluctant the two agencies remain to investigate it.

17. Apart from our interest in furthering the investigation by examining the material in question, the bomb remnants also have archival value in this historical case, and should be seen as part of a larger collection of material from the case which comprises a museum exhibit in Willits, CA of abiding interest to people who study, write about, and make films about the Judi Bari case.

18. The main goal, however, is to examine this evidence for the possible detectable presence of DNA, and to avail ourselves of any other clues which the physical materials might afford. Therefore, while I request that the bomb evidence be made available to us (as the entire balance of physical material from the case already has been), I urgently ask the Court also to order the FBI to preserve it, intact, and uncontaminated.

19. I swear under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge, except as to those matters stated on information or belief, and as to those matters, I believe them to be true.

Sworn and subscribed to at Garberville, CA on August 4, 2010.


Darryl Cherney