

FD-302 (Rev. 10-6-95)

- 1 -

FEDERAL BUREAU OF INVESTIGATION

EXHIBIT

tabbies

1

RECEIVED

07/22/1996

Date of transcription

Lead Number

Based on a request for contact, Special Agents (SA) [redacted] contacted [redacted]

[redacted] (protect identity by request). At this time, [redacted] provided a two-page document which bore obvious indications of being faxed. [redacted] stated that [redacted] contributed a considerable amount of knowledge and information to this article.

[redacted] related that this document contained information which would remove all doubt that the Alcohol, Tobacco and Firearms (ATF) and the Federal Bureau of Investigation (FBI) had prior knowledge of the bomb which destroyed the Alford P. Murrah Federal Building in Oklahoma City on April 19, 1995. [redacted] stated that these agencies attempted to develop a "sting" operation and did not take the bomb threat seriously.

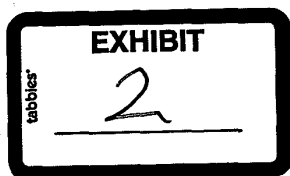
Investigation on 7/15/96

File # 174A-OC-561

Date dictated 07/18/96

by [redacted] WLF/bjc

040063



Jesse C. Trentadue (#4961)  
8 East Broadway,  
Suite 200  
Salt Lake City, UT 8411  
Telephone: (801) 532-7300  
Facsimile: (801) 532-7355  
E-mail: [jesse32@sautah.com](mailto:jesse32@sautah.com)

*Pro Se Plaintiff*

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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JESSE C. TRENTADUE,  
Plaintiff,

vs.

FEDERAL BUREAU OF  
INVESTIGATION, *et al.*,

Defendants,

SUPPLEMENTAL DECLARATION OF  
EMANUEL  
("MANNY") JOHNSON, JR.

Case No.: 2:08CV788 CW

Judge Clark Waddoups  
Magistrate Samuel Alba

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Pursuant to 28 U.S.C. § 1746, I am submitting this *Supplemental Declaration* based upon my personal knowledge and experience:

1. I was sworn in as a Special Agent of the FBI on January 15, 1973 and worked for the FBI until my retirement on May 3, 1999. I am hereby supplementing the *Declaration* (Doc. 70-1) that I previously submitted in this case.

2. In preparing this Declaration I have reviewed the "*Third Supplemental Declaration of David M. Hardy*" (Doc. 83-1) and the DVD of the speech given by former FBI Special Agent (SA) Bomb Technician Barry Black at the Oklahoma City *National Memorial & Museum* on July 1, 2011 (Doc. 87).

3. During his speech, former SA Black stated that there were 15,600 pieces of physical evidence in the Oklahoma City (OKC) bombing case.

4. Former SA Black also stated that these 15,600 pieces of evidence were kept in three databases.

5. Former SA Black also stated that the FBI's ability to track evidence through its established system allowed it to find a single photograph of a Ford key out of 238,000 photographs from the OKC bombing.

6. He stated that by utilizing evidence logs and photo logs, the FBI was able to identify who collected what evidence in a warehouse full of evidence.

7. Attached hereto as Exhibit A is a receipt for property *received/returned/released* with the "received from" box checked.

8. This document reflects that on 4/27/95, Charles Hanger, Oklahoma Highway Patrol, Badge 598 was given a receipt for several items, among which was a videotape, by a representative of the FBI (name redacted).

9. Significantly, Exhibit "A" indicates that the videotape received was an original. If it had been a copy, it would have been so noted.
10. This document is the first step, as required by FBI policy of establishing a "chain of custody" for evidence.
11. The FBI representative is then required to prepare a FD-302 (required for anything that may be of a testimonial nature) and a FD-192, commonly known as a "green sheet" or "bulky sheet" (required for entry into the Evidence Control Center (ECC)).
12. The FD-192 is a multi-copy document. One copy is always maintained with the physical evidence. Another copy is placed in the Sub-file "1B" or bulky sub-file.
13. The ECC maintains an ECC log, reflecting the status of any evidence.
14. If the videotape from Trooper Hanger left the ECC, it would be noted in the ECC log.
15. If the Hanger videotape had been returned to Trooper Hanger or anyone else, the "returned to" box on the *receipt for property received/returned/released*, would have been executed, with the initials of the person returning the videotape and the date noted.

16. If the Hanger videotape had been released to anyone, the "released to" box on the *receipt for property/received/returned/released*, would have been checked, with the initials of the person and the date.
17. This tracking system is required by FBI policy.
18. FBI policy also requires that all physical evidence (where possible) be kept in the ECC.
19. Whether kept in the ECC or some other necessary location, all evidence is entered into the ECC log.
20. Thereafter, the *ECC Log* shows the chain of custody for that evidence.
21. The *ECC Log* is used to record everyone who had possession of that evidence, including date and time of removal from the ECC, purpose for removing the evidence from the ECC and return of the evidence to the ECC or original owner.
22. The second document prepared as part of the chain of custody process is an "FD-302." Attached hereto as Exhibit B is the FD-302 apparently prepared in conjunction with the FBI having taken possession of the Hanger videotape.
23. Attached hereto as Exhibit C, is an FD-302 dated January 17, 1996. This documents reflects, among other things, that on this date "copies of photographs, video's,

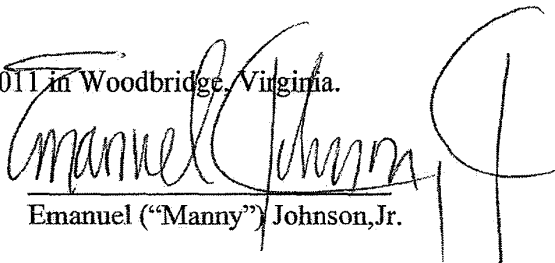
radio tapes and reports relating to the bombing of the ALFRED P. MURRAH Building, on April 19, 1995, were received and placed in evidence storage.”

24. Exhibit C also reflects that these items were labeled 1B2554 were the two thousand, five hundred and fifty fourth entry (or item) placed into the “1B” file.

25. Any evidence sought in the OKC bombing investigation could be located by simply reviewing the “1B” file, the three databases to which former SA Black referred and or the ECC log. The “1B” is so labeled as is the ECC log.

I declare under penalty of perjury that the information stated above is true and correct to the best of my knowledge.

EXECUTED this 15<sup>th</sup> day of August, 2011 in Woodbridge, Virginia.

  
Emanuel (“Manny”) Johnson, Jr.

FD-507 (Rev. 2-8-82)

EXHIBIT  
A

UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION  
Receipt for Property Received/Returned/Released

(date) 4.27.95

Item(s) listed below were:  
 Received From  
 Returned To  
 Released To

(Name) Charles Hanger / OHP Badge 598

(Street Address) 3600 N ML King

(City) OKC, OK 73136

Description of Item(s):

- 1. Video tape
- 4. Uniform Violations Complaints B-760862/34/5
- Confiscated property receipt
- Affidavit of probable cause
- 2. teletypes
- 1. memo dated 4.22.95 re: evidence S.A. [redacted]
- Copy of Michigan drivers license of McVeigh b6
- 3 pages of jail booking information b7C
- 1 evidence inventory sheet

b6  
b7C

Received by

SA [redacted]

Received from

thru [redacted] - Glogy

FD-302 (Rev. 3-10-82)

EXHIBIT  
B

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 5/3/95

Supervisor Special Agent (SSA) [redacted] furnished the following items from Trooper CHARLES HANGER, through [redacted] General Council, Oklahoma Department of Public Safety:

1. One video tape;
2. Four Uniform Violations Complaints, B-76082/3/4/5;
3. Confiscated property receipt;
4. Affidavit of probable cause;
5. Two teletypes;
6. One memorandum, dated April 22, 1995, regarding evidence S.A. [redacted];
7. Copy of Michigan driver's license of MCVEIGH;
8. Three pages of jail/booking information;
9. One evidence inventory sheet.

b6  
b7C

[redacted] acquired this evidence at 8:56 p.m. on April 27, 1995, from [redacted]

b6  
b7C

Investigation on 4/28/95 at Oklahoma City, Oklahoma File # 174A-OC-56120 SUB D-  
by SA [redacted] /lvk Date dictated 4/28/95  
b6  
b7C 3337

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

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FEDERAL BUREAU OF INVESTIGATION

**EXHIBIT**

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C

Date of transcription 01/17/96

On 1/17/96 copies of photographs, video's, radio tapes and reports relating to the bombing of the ALFRED P. MURRAH Building, on April 19, 1995, were received and placed in evidence storage.

These items have been labeled 1B2554, in the evidence file.

Investigation on 01/17/96 at OKLAHOMA CITY, OKLAHOMA File # 174A-OC-56120 SUB FF D-12468

by INSPECTOR  OCPD: brk <sup>b6</sup> <sub>b7C</sub> Date dictated 01/17/96

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FD-597 (Rev. 2-8-82)

EXHIBIT  
3

UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION  
Receipt for Property Received/Returned/Released

(date) 4.27.95

Item(s) listed below, were:  
 Received From  
 Returned To  
 Released To

(Name) Charles Hanger / OHP Badge 598  
(Street Address) 3600 N ML King  
(City) OKC, OK 73136

Description of Item(s):

- 1 Video tape
- 4 Uniform Violations Complaints B-760862/34/5
- Confiscated property receipt
- Attachment of probable cause
- 2 Teletypes
- 1 memo dated 4.22.95 re: evidence S.A. [redacted]
- 1 copy of Michigan drivers license of McVeigh b6
- 3 pages of jail booking information b7C
- 1 evidence inventory sheet

Received by: SA [redacted] Received from: [redacted] thru [redacted] -6627

b6  
b7C

FD-302 (Rev. 3-10-82)

EXHIBIT  
4

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 5/3/95

Supervisor Special Agent (SSA) [redacted] furnished the following items from Trooper CHARLES HANGER, through [redacted] General Council, Oklahoma Department of Public Safety:

- 1. One video tape;
- 2. Four Uniform Violations Complaints, B-76082/3/4/5;
- 3. Confiscated property receipt;
- 4. Affidavit of probable cause;
- 5. Two teletypes;
- 6. One memorandum, dated April 22, 1995, regarding evidence S.A. [redacted];
- 7. Copy of Michigan driver's license of MCVEIGH;
- 8. Three pages of jail/booking information;
- 9. One evidence inventory sheet.

b6  
b7C

[redacted] acquired this evidence at 8:56 p.m. on April 27, 1995, from [redacted]

b6  
b7C

Investigation on 4/28/95 at Oklahoma City, Oklahoma File # 174A-OC-56120 SUB D-  
by SA [redacted] /lvk Date dictated 4/28/95 3337

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EXHIBIT  
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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 4/26/95

[redacted] Managing Editor, KFOR-Channel 4, 444 East Britton Road, Oklahoma City, Oklahoma 73113, telephone 405/478-1212, provided a copy of a video tape obtained by KFOR on April 19, 1995, just after the bombing at the Alfred P. Murrah, 5th and Robinson, Oklahoma City, Oklahoma.

b6  
b7C

Investigation on 4/25/95 at Oklahoma City, Oklahoma File # 174A-OC-56120  
by SA [redacted] <sup>DW</sup>tas Date dictated 4/25/95

Control # DW 451275.202

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EXHIBIT  
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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 4/30/95

The following investigation was conducted on April 19, 1995, at Oklahoma City, Oklahoma.

At approximately 1945 hours, Special Agent [redacted] contacted the OKLAHOMA CITY COMMAND POST, concerning the SOUTHWESTERN BELL Surveillance Tape, that had footage on it from the time of the explosion. Captain [redacted] Oklahoma City Police Department provided SA [redacted] with the tape. [redacted] advised that the tape had been recovered from [redacted] of SOUTHWESTERN BELL.

b6  
b7C

Investigation on 4/19/95 at Oklahoma City, Oklahoma File # 174A-OC-56120 SUB D-140  
by SA [redacted] /lvk Date dictated 4/23/95

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 5/5/95

LEAD #8452

[redacted] Hall Security, was contacted at the Security Control Center, LIBERTY BANK, 100 North Broadway, Oklahoma City, Oklahoma.

[redacted] provided an original VHS video tape, designated V6, #13. This video tape recorded various camera views from the LIBERTY CLARK drive-up facility at 320 North Broadway. The tape covers several days' taping including April 19, 1995.

b6  
b7C

[redacted] was furnished with a receipt for the tape.

Investigation on 5/3/95 at Oklahoma City, Oklahoma File # 174A-OC-56120 Sub D-419  
 by SA [redacted] mlf b6 b7C Date dictated 5/3/95

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EXHIBIT  
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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 5/4/95

On May 2, 1995, [redacted] Oklahoma State Highway Patrol Trooper, Badge Number [redacted] Troop M Altus, 901 North Kellwood, Altus, Oklahoma (OK) 73521, telephone number (405) 477-2765, provided Special Agent (SA) [redacted] with one JVC VHS video cassette tape. Upon receipt of the video cassette tape, SA [redacted] initialed and dated the tape.

b6  
b7C

Trooper [redacted] advised the video tape was recorded from a video camera located inside of his OK state highway patrol vehicle. The tape was recorded on April 19, 1995 beginning at approximately 9:09 a.m. as Trooper [redacted] proceeded south on Interstate 235 toward the downtown Oklahoma City area. Trooper [redacted] vehicle was parked in an area near Fifth and Broadway with the video recorder still running.

b6  
b7C

SA [redacted] copied and reviewed the video tape and thereafter placed the cassette into the FBI evidence control system.

b6  
b7C

Investigation on 5/2/95 at Oklahoma City, Oklahoma File # 174A-OC-56120 SUB D-655

by SA [redacted] vhc Date dictated 5/3/95

b6  
b7C

WL 302040.124  
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FEDERAL BUREAU OF INVESTIGATION

EXHIBIT

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Date of transcription 5/7/95

On May 1, 1995, [redacted] FIRST NATIONAL BANK,  
 Perry, Oklahoma, provided Special Agent (SA) [redacted]  
 with an ATM video tape for the period April 18, 1995 to April 21,  
 1995.

b6  
b7C

Investigation on 5/1/95 at Oklahoma City, Oklahoma File # 174A-OC-56120 Sub D-117  
 by SA [redacted] psr [redacted] Date dictated 5/5/95

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FEDERAL BUREAU OF INVESTIGATION

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	//

Date of transcription 01/17/96

On 1/17/96 copies of photographs, video's, radio tapes and reports relating to the bombing of the ALFRED P. MURRAH Building, on April 19, 1995, were received and placed in evidence storage.

These items have been labeled 1B2554, in the evidence file.

Investigation on 01/17/96 at OKLAHOMA CITY, OKLAHOMA File # 174A-OC-56120 SUB FF D-12468  
 by INSPECTOR [redacted] OCPD: brk <sup>b6</sup> <sub>b7C</sub> Date dictated 01/17/96

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

_____	)
JESSE CARL TRENTADUE,	)
	)
Plaintiff,	)
	)
v.	)
	)
FEDERAL BUREAU OF INVESTIGATION,	)
	)
Defendant.	)
_____	)



Civ. A. No. 04-CV- 00772 DAK

**FOURTH DECLARATION OF DAVID M. HARDY**

I, David M. Hardy, declare as follows:

(1) I am currently the Section Chief of the Record/Information Dissemination Section ("RIDS"), Records Management Division ("RMD"), at Federal Bureau of Investigation Headquarters ("FBIHQ") in Washington, D.C. I have held this position since August 1, 2002. Prior to my joining the FBI, from May 1, 2001 to July 31, 2002, I was the Assistant Judge Advocate General of the Navy for Civil Law. In that capacity, I had direct oversight of Freedom of Information Act ("FOIA") policy, procedures, appeals, and litigation for the Navy. From October 1, 1980 to April 30, 2001, I served as a Navy Judge Advocate at various commands and routinely worked with FOIA matters. I am also an attorney who has been licensed to practice law in the State of Texas since 1980.

(2) In my current capacity as Section Chief, I supervise the Freedom of Information/Privacy Acts Litigation Support Unit ("FOIPA LSU"). The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my

official capacity, and upon conclusions and determinations reached and made in accordance therewith.

(3) Due to the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to requests for information from its files pursuant to the provisions of the FOIA, 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a. Specifically, I am aware of the treatment which has been afforded the multi-subject FOIA requests of Jesse Trentadue ("Plaintiff") for investigative records concerning Morris Dees' and/or the Southern Poverty Law Center's ("SPLC") involvement with and/or connection to: Elohim City, OKBOMB, BOMBROB, Timothy McVeigh, Richard Guthrie, Terry Nichols, Dennis Mahon, Robert Millar, Michael Brescia, Peter Langan and/or Andreas Strassmeir. Likewise, I am familiar with his FOIA request for a copy of a FD-302 which, according to Plaintiff, documents a meeting between Plaintiff, the FBI and two DOJ attorneys. I have reviewed the Second Declaration prepared by former Supervisory Special Agent Emanuel ("Manny") Johnson, Jr., (hereinafter "The Second Johnson Declaration") and submitted by Plaintiff in support of his case, and I find that it contains a somewhat accurate description of the contents of the FBI communication known as a teletype dated January 4, 1996.<sup>1/</sup>

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<sup>1/</sup> Paragraph 28 of Johnson's Second Declaration indicates that "56120" denotes that the file is the fifty-sixth thousandth, one hundred and twentieth file within the bombing classification. On May 2 and 3, 1989, the Oklahoma City field office ("OC") implemented its Universal Case File numbering system, which assigns file numbers sequentially in a manner independent of the file classification. As a result, the OKBOMB investigation was not the 56,120th bombing matter investigated by the OC field office.

Similarly, while Mr. Johnson's concludes (¶ 36) that the handwritten word "hot" on the extreme bottom left side of the first page of Exhibit "A" to Johnson's Second Declaration indicates that the teletype is extremely important, the teletype itself reflects that it was sent with "Routine" priority. If the teletype's author had intended for the teletype to be classified as extremely important, the precedence would have been "Immediate" or "Priority," not "Routine."

(4) This declaration is being submitted to address some of the issues in the Second Johnson Declaration and in Plaintiff's Memorandum In Support Of Motion To Strike, In Support Of Motion For Finding of Civil Contempt, in Opposition To Defendant's Motion For Reconsideration and In Opposition To Defendant's Motion To Stay.

**THE CENTRAL RECORDS SYSTEM AND AUTOMATED CASE SUPPORT**

(5) The Central Records System ("CRS") is the system that FBI personnel use in performing their law-enforcement and investigatory functions. It allows agents and support personnel to perform their missions and therefore is designed to accomplish that task by facilitating access to all law-enforcement records maintained by the FBI. The numbering system consists of a numerical sequence of files broken down according to subject matter. When a record is filed in the CRS, it is assigned a unique number (called a "serial") within this numbering system that enables the record to be filed properly and retrieved by FBI personnel.

(6) Access to the CRS is afforded by the General Indices, which are arranged in alphabetical order. The General Indices consist of index cards that contain keywords relevant to the record for which each card is created. These keywords include the name of the subject of the file as well as cross-reference entries selected by FBI personnel to reflect the substantive contents of the record at issue. These keywords are selected to facilitate the record's future recovery by FBI personnel investigating the same or related matters. The keywords in the General Indices may be searched either manually or through the automated indices (discussed below).

(7) An index card with appropriate keywords is created for each law-enforcement record when it is filed in the CRS. Because the keywords are selected by FBI investigative personnel to allow the record to be identified as a relevant record by FBI personnel investigating the same or related matters, the FBI relies on this system to perform its investigatory functions

and to identify pertinent FBI records. The Central Index serves this function well, but, like any system, it does not always yield perfect results.

(8) Approximately six months after the OKBOMB investigation began, the Automated Case Support ("ACS") system was implemented for all field offices, Legal Attaches ("Legats"), and FBIHQ on October 16, 1995. The ACS consists of three functional applications, including the Universal Index ("UNI") and Electronic Case File ("ECF").

(9) The ACS Universal Index provides an electronic index to FBI investigative and administrative cases and enables FBI personnel to conduct an electronic search of the CRS General Indices by computer. While it is somewhat accurate to say that a computerized search for records using the Universal Index is "similar" to a search performed with search engines such as Google, Yahoo, or Jeeves in that both are performed on a computer and both search terms in their relevant databases, see Second Johnson Declaration (¶¶ 45-46, 48), a search using the Universal Index will identify records based only on the keywords associated with records in the General Indices. Because the full text of such records is not recorded in the General Indices or Universal Index, the Universal Index cannot search the full-text of these documents.

(10) The ACS Electronic Case File serves as the central electronic repository for the FBI's official text-based documents. Although every FBI record in the CRS may be identified with appropriate keywords using the ACS Universal Index, only those documents that have been "uploaded" into the Electronic Case File are electronically available as full-text documents to FBI personnel. Many documents are not uploaded for various reasons, including the records' level of classification, security reasons, or privacy concerns.<sup>2/</sup> Records that have not been uploaded in the

<sup>2/</sup> When ACS was implemented in October 1995 and for some time thereafter, the system had the capability to "upload" Electronic Communications (a form of email), but did not have the capability to upload teletypes or telegrams. As a result, the text of the January 4, 1996 teletype at

ECF must be retrieved manually in paper form from FBI files once the appropriate record number (i.e., the serial) has been identified using the Central Indices or Universal Index.

#### **ROUTINE FBI FOIA SEARCHES**

(11) As I noted above, FBI personnel use the CRS and the ACS Universal Index for their everyday law-enforcement functions. Appropriate FBI personnel also use the CRS and Universal Index to perform record searches in response to FOIA and Privacy Act requests.

(12) Because FBI personnel use the General Indices and ACS Universal Index to carry out their law-enforcement functions, we also use these same tools as a reasonable means of identifying responsive FOIA and Privacy Act records. We have continued to process FOIA requests in this manner in light of numerous court decisions concluding that this process is a reasonable and permissible means to locate responsive documents under FOIA.

#### **THE ADDITIONAL, EXTRAORDINARY RECORDS SEARCH IN THIS CASE**

(13) When Plaintiff submitted his FOIA requests, FBI personnel conducted a routine search for records using the ACS Universal Index to search the CRS General Indices. However, in response to the Court's order in this case dated May 5, 2005, FBI personnel have since, among other things, performed an extraordinary additional search for responsive records using specialized off-the-shelf software called ZyIndex, which was used by the OKBOMB Task Force. See Third Decl. of David M. Hardy ¶ 10 (dated May 19, 2005). The ZyIndex allows users to search the full text of documents that have been input into the ZyIndices.<sup>3/</sup>

(14) The additional search initially indicated that approximately 340 documents could be potentially responsive to Plaintiff's FOIA request. *Id.* ¶ 10. That initial assessment was based issue in this case was not uploaded into the ECS.

<sup>3/</sup> All of the documents in the ZyIndices are indexed in the ACS.

on the fact that multiple ZyIndex searches indicated that approximately 340 documents matched the search criteria in the searches. That initial number, however, included numerous multiple matches that actually identified the same document. For example, because our ZyIndex searches simultaneously searched ZyIndex databases maintained by the Oklahoma City, Denver, and Kansas City Field Offices and because those databases each separately indexed documents in the Oklahoma City OKBOMB file, a single document in that file that included the terms "McVeigh" and "Poverty" would appear three or more times in a ZyIndex search for "McVeigh" and "Poverty."<sup>4/</sup> Similarly, a single document that contained the words "McVeigh," "Nichols," "OKBOMB," and "Poverty" would be identified as at least three documents because it would appear as a potentially responsive document in three separate ZyIndex searches (for McVeigh/Poverty, Nichols/Poverty and OKBOMB/Poverty).<sup>5/</sup> Because of the nature of the overlapping searches that were performed and because of the duplicative indexing of records in the ZyIndices, our initial approximation of 340 documents significantly overestimated the actual number of responsive documents.

(15) Once all duplicate documents were eliminated, FBI personnel examined the remaining documents to determine if they were, in fact, responsive to Plaintiff's FOIA request. Although a document containing the search terms "McVeigh" and "Poverty" would be identified as potentially responsive in our ZyIndex search, it would not be responsive if it did not refer to

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<sup>4/</sup> A single ZyIndex maintained by one of the Field Offices sometimes also includes multiple entries for a single document, since documents were sometimes entered into the index both before and after they were given a serial. The result is a considerable amount of duplication not only between the Oklahoma City, Denver, and Kansas City Field Office ZyIndices, but also within the ZyIndex of each field office.

<sup>5/</sup> Moreover, the one document would be identified as more than three documents if it also was included in the ZyIndex for more than one field office.



Case 2:04-cv-00772-DAK Document 44 Filed 06/10/05 Page 23 of 29

the "Southern Poverty Law Center" because it could not satisfy Plaintiff's request for records concerning the Southern Poverty Law Center's involvement with and/or connection to McVeigh.

(16) FBI personnel have now examined the records identified as potentially responsive to Plaintiff's FOIA request and have determined that 17 documents are responsive. The FBI continues to process those documents to evaluate what, if any, FOIA exemptions are applicable to the responsive documents. Although these documents were identified only by conducting an extraordinary search that, in our view, went beyond that required by the FOIA, we plan to effectuate an appropriate release of documents to Plaintiff after our processing is complete.

#### **THE CONFIDENTIALITY OF FBI COOPERATIVE WITNESSES**

(17) The maintenance of confidentiality surrounding Cooperative Witnesses ("CW"), which includes protecting CWs' identities from disclosure, is essential to effective law enforcement and is reflected in official FBI policy. A copy of relevant portions of the FBI's Manual of Investigative Operations & Guidelines (MIOG), which is attached to this Declaration as Attachment A, reflects this policy.<sup>§</sup>

(18) A CW is any individual who meets the definition of a Confidential Informant ("CI") who has agreed to testify in a proceeding as a defendant or potential witness. MIOG § 270-2(2). As a result, it is FBI policy to protect a CW's true identity from unauthorized disclosure "to the same degree as the true identity of a Confidential Informant." MIOG § 270-4(11)(b). Because a CW will face "the same, or even greater risks from exposure as a CI," it is FBI policy that CWs be provided the "same degree of protection." Id.

(19) While a CW will agree to provide his or her testimony in a proceeding if that

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<sup>§</sup> The attached MIOG pages have been redacted to protect certain information on FBI policies concerning investigations. The redactions do not concern the confidentiality of Cooperative Witnesses or Confidential Informants.

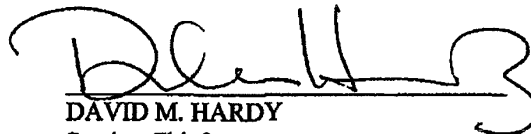
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testimony is required, the testimony ultimately may not be required and the CW may not have to testify. Id. Even if a CW does testify in one proceeding, that testimony may be limited to certain issues such that it will not reveal the CW's role in providing other information to the FBI on related or unrelated investigatory matters. It therefore is essential to protect the confidentiality of CWs both for investigative purposes as well as to protect the CW from potential harm.

(20) I have previously explained that information redacted at pages 2-3 of the January 4, 1996 teletype was provided to the FBI by a CW under an express promise of confidentiality. See Second Decl. of David M. Hardy ¶ 30 (dated Jan. 31, 2005). The FBI continues to protect the confidentiality of the CW and the confidentiality of information he or she provided to the FBI. Because we cannot publicly reveal further details without providing guides to the identity of the CW, we would be willing to provide further details to the Court for its in camera inspection upon the Court's request.<sup>7</sup>

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

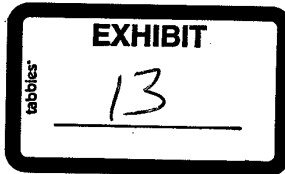
Executed this <sup>9<sup>th</sup></sup> day of June, 2005.



DAVID M. HARDY  
Section Chief  
Record/Information Dissemination Section  
Records Management Division  
Federal Bureau of Investigation  
Washington, D.C.

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<sup>7</sup> For example, revealing whether the CW has or has not testified in a proceeding or revealing the scope of any such testimony would provide information that would assist individuals in identifying the CW and would therefore compromise the confidentiality of the CW.



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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 4/3/96

A former St. Louis confidential informant (CI), hereafter referred to as CI, provided information which CI felt would be of interest to the Federal Bureau of Investigation (FBI). The CI learned of the following information as a result of interviews and contacts made by the ABC News team covering OKBOMB. The following is the account of that information provided.

CI advised of having become aware of information and government documents alleged to have been "leaked" to attorneys representing "OKBOMB" defendants, Timothy McVeigh and Terry Nichols. CI advised Attorney Ron Woods and Attorney Mike Tiger are representing Terry Nichols; and Steven Jones, a former United States Attorney or Assistant United States Attorney from Houston, Texas, is representing Timothy McVeigh. CI advised this information includes telephone records and Grand Jury information. CI advised these documents are being used to fuel belief that a government conspiracy exists to "cover up" government mistakes. CI advised supporters of the defendants have indicated the government had information regarding the alleged bombing ten (10) days prior to the Oklahoma City bombing of the Federal Building. CI advised a letter exists from Cary Gagan, a former FBI/DEA confidential informant, which alleged the Federal Building in Oklahoma City would be bombed in ten days. CI advised the United States Marshal's Service responded that no action would be taken due to Gagan's unreliability. CI advised Gagan currently resides in Denver, Colorado.

CI advised these various documents are also being funneled to various news media agencies. CI advised the purpose for disclosing the documents is to add credence to the government cover-up theory, suggesting the government had a confidential informant next to McVeigh and had prior knowledge of the planned bombing.

CI further advised a letterhead memorandum dated January 17, 1996, from the United States Attorney's Office,

	D04022
Investigation on <u>3/26/96</u> at <u>St. Louis, Missouri</u>	
File # <u>174A-OC-56120</u>	000050
by <u>SA Richard R. Robley</u> :dls	Date dictated <u>4/2/96</u>
<u>094dlr03.302</u>	

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