

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

- 1 -

FEDERAL BUREAU OF INVESTIGATION

EXHIBIT
tabbies
/

RECORDED

Issued, Printed & Mailed
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.

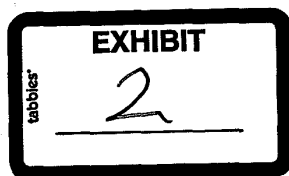
Investigation on 7/15/96

File # 174A-OC-561

Date dictated 07/18/96

by [redacted] WLF/bjc

040063



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8 East Broadway,
Suite 200
Salt Lake City, UT 8411
Telephone: (801) 532-7300
Facsimile: (801) 532-7355
E-mail: jesse32@sautah.com

Pro Se Plaintiff

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

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

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,

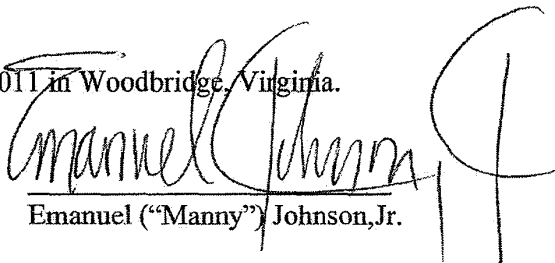
radio tapes and reports relating to the bombing of the ALFRED P. MURRAH Building, on April 19, 1995, were received and placed in evidence storage.”

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 15th day of August, 2011 in Woodbridge, Virginia.



Emanuel (“Manny”) Johnson, Jr.

FD-597 (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 [redacted] 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 PP D-12468

by INSPECTOR [redacted] OCPD: brk ^{b6} _{b7C} Date dictated 01/17/96

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FD-597 (Rev. 2-8-92)

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 SA [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
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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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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 4/26/95

[redacted] Executive Producer, KOCO-Channel 5, 1300 East Britton Road, Oklahoma City, Oklahoma 73113, telephone 405/478-3000, provided a copy of a video tape obtained by KOCO 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 -D-106
by SA [redacted] /tas Date dictated 4/25/95

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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 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

EXHIBIT

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11

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 ^{b6} _{b7C} 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.^{1/}

^{1/} 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.^{2/} Records that have not been uploaded in the

^{2/} 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.^{3/}

(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.

^{3/} 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."^{4/} 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).^{5/} 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

^{4/} 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.

^{5/} 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.[§]

(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

[§] 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.

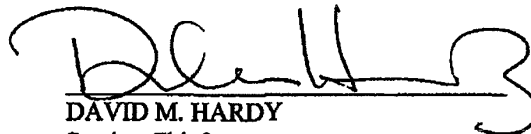
Case 2:04-cv-00772-DAK Document 44 Filed 06/10/05 Page 24 of 29

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.⁷

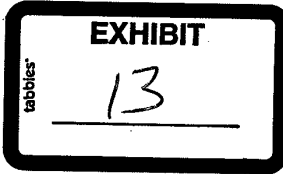
Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this ^{9th} day of June, 2005.



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

⁷ 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.



- - -
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>	

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.

174A-OC-56120

Continuation of FD-302 of Cooperating Witness, On 3/26/96, Page

Oklahoma City, was disclosed to right-wing groups and/or the news media. Attached to the letterhead memorandum was the complete listing of McVeigh's telephone toll records, reflected on his spotlight pre-paid card. These records span the period December 7, 1993, through April 17, 1995 (30 pages).

CI advised these documents were obtained by Richard Rienna, a private investigator from Houston, Texas. Rienna is alleged to be the former Deputy Police Chief in Houston, Texas. Rienna is employed by Attorney Steven Jones, court-appointed attorney for Timothy McVeigh. CI alleged another individual, Glenn Wilburn, obtained the documents from Rienna. Wilburn is alleged to be providing the documents and information to various right-wing groups, as well as the news media. CI was unable to provide more information on Wilburn. CI advised these documents may have been disclosed to defense attorneys and then used by Rienna to promote the government cover-up theory.

CI next advised of learning of Grand Jury information regarding the OKBOMB case having been "smuggled" out of the Grand Jury. CI advised the source of this Grand Jury information was Hoppy Heidleberg, who was a Grand juror on the Timothy McVeigh Grand Jury investigation. CI advised Heidleberg had earlier been admonished by the court for attempting to remove written documents and/or notes from the Grand Jury. CI added that much of the information and/or documents provided to defense attorneys, various right-wing groups and/or the news media may go beyond discoverable material.

CI next advised that an individual, J. D. Cash, also known as John Cash, who is anti-government, is somewhat of a coordinator responsible for the organized distribution of documents and information. CI advised Cash is a close associate of Heidleberg and Glenn Wilburn. CI advised Cash may have been responsible or involved in the acquisition of McVeigh's pen and toll record information. CI advised J. D. Cash has alleged in general terms that various right-wing groups are promoting future terrorist activities. CI advised (April 19) is a significant date as a result of the incidents in Waco, Texas, and Oklahoma City, Oklahoma. CI advised J. D. Cash is promoting his anti-government rhetoric and the government conspiracy theory regarding the Oklahoma City bombing to right-wing groups and various news media organizations.

CI next advised Roger Moore, of Ft. Smith, Arkansas, is a gun dealer and associate of McVeigh. Moore is alleged to be involved in "information brokerage activity". Moore is alleged to have traveled with McVeigh and attended gun shows together

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Continuation of FD-302 of Cooperating Witness , On 3/26/96 , Page

until such time as they had a "falling out". CI advised Moore was alleged to be the target of a contract killing. Allegedly, McVeigh voiced disappointment that Moore has not been killed.

CI advised McVeigh used the alias of Darrell Bridges.

CI next advised Andy Strausmier is alleged to have conspired with Timothy McVeigh regarding the Oklahoma City bombing. He, Strausmier, is alleged to have fled to Europe. J. D. Cash is alleged to know Strausmier's whereabouts. CI advised some right-wing group supporters believe Strausmier is an FBI informant.

CI next advised a Lawrence Meyers is a leader of an ultra right-wing group called "Media-by-Pass", which is associated with the "New American Publication". CI further advised Meyers is alleged to promote the belief that key witnesses in the OKBOMB investigation have been assassinated by the government.

CI next advised several individuals of interest to those wishing to promote the conspiracy theory regarding the government "cover-up" are as follows:

Jeff Davis, who delivered food for a Chinese Restaurant in Junction City, Kansas, allegedly delivered food to the hotel room where McVeigh and a second person (unknown male) were staying. Another individual, Kyle Hunt, a bank vice-president from Broken Arrow, Oklahoma, has alleged he saw, on the morning of the Oklahoma City bombing, Timothy McVeigh in an automobile with two or three others. That automobile was following a Ryder truck. Hunt is alleged to have seen McVeigh in the automobile in heavy traffic prior to the Federal Building bombing. CI next advised of a Tom Kessinger, employed by Elliot's Body Shop, Junction City, Kansas, who is purported to have rented the Ryder truck to McVeigh and an unknown subject (John Doe #2). Additionally, Kessinger is alleged to have provided the description of the two males which were used to formulate the composite drawings.

CI advised much of the information provided is somewhat singular in nature; therefore, requested any potential interviews be conducted in such a manner as not to single out the source of this information.

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PROCEEDINGS

THE COURT: United States of America versus
Viefhaus and Howe. Would counsel state their appearances,
please?

MR, KIRKPATRICK: Good afternoon, Your Honor. Neil
Kirkpatrick, Assistant U.S. Attorney on behalf of the United
States.

MR. BREWSTER: Your Honor, Clark O. Brewster for
Carol Howe.

MR. BRYANT: Craig Bryant appearing with
Mr. Viefhaus.

THE COURT: I appreciate y'all coming over here
today. There was delivered to my chambers submitted
in-camera under seal these files, the ATF files. I guess
that's how they are documented, but, anyway, there are three
files. And then later in the afternoon I received
Mr. Brewster's grounds and contentions in support of
delivery of Government files relating to Carol E. Howe.
So what I did is I took the files and started going through
them looking at the documents that are in the files. I
didn't listen to any of the tapes yet, but it appears from
going through the files that there is -- or there may very
well be some Brady material in the files. I noticed in one
document where there was a reference that Ms. Howe didn't want
the last part of the tape put on there about the buildings or

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UNITED STATES COURT REPORTER

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1 something, and there are other documents in there, but I don't
2 know under 16, Rule 16, what part of the files may relate to
3 an on-going investigation. So it's difficult for me to know
4 unless I'm advised some way as to what information is not
5 subject to disclosure that relates to an investigation or
6 prosecution of a case under 16(2).

7 MR. KIRKPATRICK: Your Honor, if I might, we are
8 prepared today to present testimony of the ATF agent involved
9 who would testify as to the length and the nature of the
10 ATF's relationship with Ms. Howe. I think this would answer
11 a number of the Court's question in this regard. Essentially,
12 Agent Gram, formerly Finley, now Agent Gram, is here and can
13 testify that as -- first of all, as to how she began her
14 relationship with Ms. Howe, how long that initial relationship
15 continued, she can testify as to why it ended in 1985 --
16 pardon me, 1995, I believe, for the first time, how it was
17 reactivated following the Oklahoma City bombing, and how it
18 for all practical purposes ended shortly thereafter.

19 Ms. Howe will also explain that Ms. -- or, pardon me,
20 Ms. Gram will also explain that Ms. Howe was kept on the books
21 as an active informant simply because of at least her initial
22 statements made to the ATF and the FBI following the Oklahoma
23 City bombing, but that nothing ever came of that.

24 THE COURT: She was actually kept on the books up
25 through '96, wasn't she?

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1 BY MR. KIRKPATRICK:

2 Q Ma'am, would you please tell the Court your name and
3 occupation?

4 A Yes. My name is Angela Gram. I'm a special agent with
5 the Bureau of Alcohol, Tobacco and Firearms.

6 Q How long have you been a special agent, Ms. Gram?

7 A Approximately five and a half years.

8 Q Were you formerly known as Angela Finley?

9 A Yes, I was.

10 Q When did you become Angela Gram?

11 A December of 1995.

12 Q Now, Ms. Gram, do you know the defendants in this case,
13 or do you know Ms. Carol Howe? And if you do, can you point
14 to her, please?

15 A Yes, I do. She is sitting at the table over there.

16 Q Are you referring to the lady in the -- what appears
17 to be a brown checkered skirt and a black blouse?

18 A Yes.

19 MR. KIRKPATRICK: May the record reflect that the
20 witness has correctly identified the defendant, Your Honor?

21 THE COURT: The record may reflect that she has
22 identified the defendant Howe.

23 BY MR. KIRKPATRICK:

24 Q How did you come to know Ms. Howe?

25 A I had received a police report from a Tulsa police

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1 Q To your knowledge, does that organization have contacts
2 with Nazis?

3 A Yes.

4 Q Okay. So it's your testimony, ma'am, that your -- that
5 your conversation with Ms. Howe dealt with her relationship
6 with Mr. Mahon and with the white supremacist movement in the
7 Tulsa area in general?

8 A Yes.

9 Q What, if any, other contact did you have with Ms. Howe
10 following that?

11 A I documented her as an informant and we were going to
12 use her with her information she had in regard to Elhoim City.

13 Q Would that be Elhoim City?

14 A Yes.

15 Q That's E-L-H-O-I-M. Is that correct?

16 A Yes.

17 Q When you say "documented her as an informant," what did
18 you mean by that?

19 A We had her come to the ATF office and I believe first we
20 had a polygraph where we check her for her credibility and
21 she passed the polygraph, so I had the informant agreement,
22 which is a contract between ATF and the informant, stating
23 responsibilities. Also, I take down her personal information
24 and we photograph them and that is sent to Dallas, our
25 division office.

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UNITED STATES COURT REPORTER

- 1 A Yes.
- 2 Q And those were turned over by you to me. Is that right?
- 3 A Yes.
- 4 Q Now, were there any more videotapes other than those
- 5 two?
- 6 A We had two air surveillance tapes that we took of Elhoim
- 7 City.
- 8 Q So a total of four videotapes?
- 9 A Correct.
- 10 Q Now, the two videotapes involved conferences or meetings
- 11 between Ms. Howe and various persons. Is that correct?
- 12 A That's correct.
- 13 Q Who were the persons she met with in those videotapes?
- 14 A One was exclusively Howe and Tom Metsker, and then the
- 15 other one was Howe and Andreas Strassmeir and a couple of
- 16 other guys from Elhoim City, and I can't recall their names.
- 17 Q Now, who is Tom Metsker?
- 18 A He is a very well-known white supremacist leader.
- 19 Q If California?
- 20 A Yes.
- 21 Q Who is Andreas Strassmeir, if you know?
- 22 A He is a German national living at Elhoim City.
- 23 Q At the time that this meeting took place?
- 24 A Correct.
- 25 Q Now, I'll ask you again, Ms. Howe, were there -- pardon

1 Q And was the body of the grenade empty at the time you
2 gave it to Ms. Howe?

3 A Yes.

4 Q It had a hole in the bottom?

5 A Correct.

6 Q Now she painted those, and then what?

7 A They were going to try to get Dennis Mahon to construct
8 a device from those and be able to identify them from the --
9 from painting them and he wouldn't do it.

10 Q So if Mahon then had constructed a grenade and exploded
11 it, then you would have had orange fragments --

12 A At least I could identify the fragments that came back.

13 Q Okay. I take it then, Mr. Mahon never did that?

14 A No.

15 Q Okay. And what, if anything, happened to those grenades?

16 A I got them back.

17 Q Okay. And were they maintained in your office?

18 A Yes.

19 Q Do you recall when the videotapes of Metsker and
20 Strassmeir were made?

21 A Fall of '94.

22 Q Is it your testimony, ma'am, that the last active
23 mission that Ms. Howe undertook for you was in May of 1995?

24 A Correct.

25 Q Now, was she ever at that point -- after that point

1 deactivated as an informant?

2 A We had deactivated her prior to May of '94.

3 Q That's right. I beg your pardon.

4 A And --

5 Q When was it that you deactivated her?

6 A March of '95, we deactivated her for several reasons.

7 Q What were the reasons that you deactivated her?

8 A Basically, the main reason was instability. I received
9 a phone call from her landlord stating that she was unstable
10 and had been put in Parkside, which is a mental facility here
11 in Tulsa, and I had also received a call that she had -- I
12 might have received a police report too, where she had gone to
13 St. Francis with several cuts which were believed to be self-
14 inflicted. And I think I also had reason to believe that she
15 was associating with skin heads, which was kind of a
16 contradiction at the time to what should be supposed to be
17 doing working for the Government. So for those several
18 reasons, I requested an emergency removal of her as an
19 informant.

20 Q How is that done?

21 A We submit or FAX down to our divisional a request form
22 just saying the specific reasons why she needed to be removed
23 and it's approved.

24 Q Okay. And that, in fact, was approved?

25 A Yes, it was.

1 Q Are those documents also contained in the various
2 ATF files?

3 A Yes.

4 Q Does that reflect your deactivation or emergency
5 deactivation?

6 A That's correct.

7 Q Now, I take it in May of 1995 she was reactivated?

8 A Yes.

9 Q How?

10 A I had received a call from her the day after the
11 bombing. I was in Oklahoma City and she said she thought she
12 could identify John Doe Number 2. So we put in an emergency
13 request for reactivation, which is seldom done, but
14 considering the nature of what had happened they reactivated
15 her and that was based on an emergency situation that she was
16 reactivated.

17 Q Was that immediately after the bombing, the day after
18 the bombing?

19 A Absolutely.

20 Q Why was it necessary to reactivate her? Why couldn't
21 you just go talk to her?

22 A Because she had been determined unstable, you know we
23 had all of these reasons why we had deactivated her, so we
24 had to have approval to use her or, you know, see if our
25 division would allow us to use her.

1 a 45 automatic?

2 A I think so.

3 Q And that he was an illegal alien?

4 A I don't know if it said that or not.

5 Q And that Angie Finley was to be contacted upon his
6 arrest?

7 A It probably -- no, we never asked for his arrest.

8 Q Did it say that Angie Finley was to be contacted upon
9 his arrest?

10 A I don't remember what it said. I did not put the
11 bulletin out.

12 Q Now, you were interested in knowing as much as you could
13 about Mr. Strassmeir, weren't you?

14 A Yes.

15 Q And what kind of guns he had?

16 A Yes.

17 Q And the kind of threats he made about -- to blow up
18 Federal buildings? You were interested in that, weren't you?

19 A I was interested in anything I could find out about any
20 violation.

21 Q And Ms. Howe told you about Mr. Strassmeir's threats to
22 blow up Federal buildings, didn't she?

23 A In general, yes.

24 Q And that was before the Oklahoma City bombing?

25 A Yes.

1 Q Now, Ms. Howe actually took some of these people from
2 Elhoim City at your direction to Oklahoma City, didn't she?

3 A She went with them. I don't know if she -- she probably
4 did drive.

5 Q She called you before and said, "These folks from
6 Elhoim City want to go over and look at Oklahoma City."

7 A She had specific places they were going.

8 Q As a matter of fact, she --

9 A It did not include the Federal building.

10 Q You asked her to take them, didn't you?

11 A I asked her to do whatever they were doing, and
12 apparently they were going to visit some relatives in
13 Oklahoma City and a church and that is what they were doing;
14 so she was going along with the group.

15 Q And you told her to go over to Elhoim City from Tulsa,
16 Oklahoma, pick up some of those folks and take them over to
17 Oklahoma City and tell you where they wanted to look.

18 A No, I didn't give her specific instructions to go to
19 Oklahoma City. It was already determined by the people at
20 Elhoim City that they were going to go visit their relatives
21 and a church in Oklahoma City. I didn't know what they were
22 going to do.

23 Q The fact is she called you and told you that, that
24 Elhoim City individuals wanted to go to Oklahoma City?

25 A Yes.

1 Q And she told you before that and asked you, "Should I
2 take them?"

3 A I don't remember that. All I know is that I knew she
4 took the people over there and went with them.

5 Q And this was the place that Mr. Strassmier was living,
6 Elhoim City?

7 A Yes.

8 Q And this is the gentleman that she told you about that
9 had intentions to blow up Federal buildings?

10 A That is the general militia rhetoric. Everyone out
11 there is saying the same thing.

12 Q And this trip to Oklahoma City by these Elhoim City
13 residents occurred before the bombing in Oklahoma City
14 actually just by about a few weeks, didn't it?

15 A No, it would be months.

16 Q Oh, would it? When did that occur?

17 A The fall of 1994.

18 Q Are you sure about that?

19 A Yes.

20 Q It wasn't --

21 A The last time Carol went out to Elhoim City was December
22 of 1994 for my investigation, and then we sent her again out
23 after the bombing.

24 Q So it wasn't the third week of February of 1995, ma'am?

25 A We did -- I'm sorry. We did send her back out. That

1 you learned that she had been, quote, "compromised," close
2 quote?

3 A One more time.

4 Q I don't understand what you mean by the term "that she
5 had been compromised."

6 A That her identity had been compromised. That's just a
7 word I use meaning that she had been disclosed and she could
8 be in danger.

9 Q Disclosed in what fashion?

10 A That apparently due to the fact her name was not
11 withheld from certain FBI reports and it was given to the
12 defense in discovery, that her name had been -- had come out.

13 Q Well, had you heard Government statements that there
14 was never an informant at Elhoim City in the fall of 1994?

15 A I haven't heard that.

16 Q You have never seen those reports that the Government
17 took the position in connection with the McVeigh trial --

18 A No, I haven't.

19 Q You would know that to be untrue though, that
20 statement?

21 A Yes, I would know that.

22 Q Was there a period of time when Carol actually stayed
23 about a month in Elhoim City?

24 A She said she had stayed one extended time.


25 Q In her trip to Elhoim City in 1995, I believe perhaps

1 MR. BRYANT: Thank you.

2 MR. KIRKPATRICK: Okay. None based on those, Your
3 Honor.

4 THE COURT: All right. Thank you. You may step
5 down. Let me ask a question. If these files have been closed
6 out and there is no -- there is no on-going investigation, is
7 there any necessity for sealing them?
8 What is in there that is secret?

9 MR. KIRKPATRICK: Judge, the files contain
10 information relating to how the BATF does its investigations,
11 how informants are documented. In this case the file also
12 contains the names of other persons who were not suspects,
13 but were involved in the investigation, none of which is
14 relevant to this case and a lot of which may very well prove
15 to be damaging to those individuals that are involved. It's
16 just simply, as far as we are concerned, that -- it's just
17 not necessary to disclose that information. I'm frankly
18 concerned, and I expressed this to your clerk, that any
19 information that Mr. Brewster and Mr. Bryant receive as a
20 result of this not go anywhere else, and I'm sorely afraid
21 that they may be acting consciously or unconsciously as a
22 stalking horse for the defense in the trial in Denver.

 23 Now, it would be our request that if the Court determines
24 that parts of the file are necessary for the defendants, that
25 the defendants be directed not to disclose that information to

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1 anyone else prior to the trial of this case.

2 THE COURT: Well, I'm not sure that there is much,
3 if anything, in the files that relate to this case, but --

4 MR. KIRKPATRICK: There aren't, and that is the
5 essence of my objection here, Judge, is that there is just
6 simply no reason. What Ms. Howe did on behalf of the BATF
7 over a period of several months in 1994 and 1995, and then
8 again for a very short time following the Oklahoma City
9 bombing simply is not relevant to this case. The
10 investigative agency is not the same. This case is an FBI
11 case, it's a complete FBI case, it's not an BATF case. The
12 parties are not the same, the allegations, the offenses
13 alleged are not the same. It just simply has no relation
14 whatever to this particular case. It's just not necessary,
15 first, that the information be disclosed or, second, that it
16 come into trial in any way.

17 THE COURT: There was one document in here that
18 relates to the tape that is talked about in this indictment,
19 or I believe it talks about that tape.

20 MR. KIRKPATRICK: Yes, Judge. There is a copy of
21 the FBI 302 that was generated as a result of this case that
22 was furnished to the BATF in December of 1996, but not before
23 then. In other words, it was only after the arrest of
24 Viefhaus that the ATF was informed of the FBI investigation.

25 MR. BREWSTER: Your Honor, we would have n

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1 be possible just to obtain copies of the entire files and --
2 with an understanding or a protective order for a period of
3 time and -- I mean, that would allow at least counsel to have
4 an opportunity to go through them in a little more leisurely
5 fashion rather than --

6 THE COURT: Well, let me just ask you this,
7 Mr. Brewster. A lot of this makes for good conversation,
8 like the trip to Oklahoma City, you know, before the bombing
9 and so forth and it makes for sensationalism, and I don't know
10 that it really has anything to do with the Oklahoma City
11 bombing, but I saw where you were coming from. With that
12 McVeigh trial going on, I don't want anything getting out of
13 here that would compromise that trial in any way.

14 MR. BREWSTER: What do you mean by compromise? Do
15 you mean shared with the McVeigh lawyers?

16 THE COURT: Yes, or something that would come up --
17 you know, we have got evidence that the ATF took a trip with
18 somebody that said buildings were going to be blown up in
19 Oklahoma City before it was blown up or something of that
20 nature, and try to connect it to McVeigh in some way or
21 something.

22 MR. BREWSTER: That would be up to their
23 representation of their client in some regard, Your Honor.
24 If you are asking me not to share any documentation from
25 these files with those lawyers, then I won't.

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1 MR. KIRKPATRICK: The best way is to have us make
2 them, Your Honor.

3 THE COURT: Well, here they are.

4 MR. KIRKPATRICK: This is one set, Judge. These are
5 copies of some of the tapes that were maintained in Denver.
6 The other with the yellow bags is the -- is the -- right,
7 that's the one.

8 THE COURT: Okay. Then if you will furnish Rosanne
9 a copy of the return on the inventory on the search warrant.

10 MR. KIRKPATRICK: Yes, Judge. Is there anything
11 else we need to take up today?

12 MR. BREWSTER: I don't think so, Your Honor.

13 MR. KIRKPATRICK: No, Your Honor.

14 MR. BRYANT: No, sir.

15 THE COURT: Okay. Thanks.

16 (END OF PROCEEDINGS)

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A TRUE AND ACCURATE TRANSCRIPT

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Karla S. McWhorter
United States Court Reporter
Certificate No. 6
Expires: December 31, 2000

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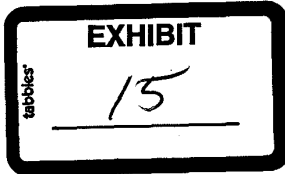
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KARLA S. MCWHORTER

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UNITED STATES COURT REPORTER



IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

DAVID HOFFMAN,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF JUSTICE,

Defendant.

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No. CIV-98-1733-A

FILED
DEC 15 1999
FRANK J. WILKINSON, CLERK
U.S. DIST. COURT / WESTERN DIST. OF OKLA.
BY _____ DEPUTY

DOCKETED

ORDER

Before the Court are cross-motions for summary judgment filed by plaintiff on September 21, 1999, and defendant on October 6, 1999. Supporting and opposition briefs have been filed regarding both motions. Each party seeks judgment as a matter of law pursuant to Fed. R. Civ. P. 56 on plaintiff's claim under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, for access to records concerning the April 19, 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City. For reasons that follow, the Court denies summary judgment to either party.

Undisputed Facts

From July 1997 through March 1998, plaintiff made seven FOIA requests seeking materials gathered by the FBI during its investigation of the Oklahoma City bombing. The first five requests were submitted to FBI headquarters in Washington, D.C.; the last two were submitted to the Oklahoma City Field Office. Plaintiff requested access to the following:

_____ 30

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1. "[A]ll reports, memos, notes, transcripts, and other material regarding the debriefing meeting held at the Department of Justice; and White House Situation room, on 4/19/95, following the bombing" (Def.'s Mot. Summ. J., Hodes Decl. at Ex. A.)

2. "All memos, notes, meeting transcripts, and other interagency memorandum [sic] (between FBI and ATF, FBI and CIA, FBI and NSA, FBI and NSC, FBI and State Dept., FBI and OK Sheriff's office, FBI and OCPD), regarding the bombing" (Def.'s Mot. Summ. J., Hodes Decl. at Ex. B.)

3. "[T]he videotape taken from OHP Officer Charlie Hanger's patrol car upon the arrest of Timothy James McVeigh on 4/19/95." (Def.'s Mot. Summ. J., Hodes Decl. at Ex. D.)

4. "Surveillance videos taken from the area surrounding the Alfred P. Murrah Building on 4/19/95." (Def.'s Mot. Summ. J., Hodes Decl. at Ex. E.)

5. "All reports regarding the examination and analysis of all vehicles damaged in the bombing" (Def.'s Mot. Summ. J., Hodes Decl. at Ex. F.)

6. "All videotapes collected by the FBI in Oklahoma from April 15, 1995 through April 19, 1995, particularly those with footage of the Alfred P. Murrah Federal Building . . . [;] all reports, memoranda, transcripts, notes, case files and any other documents concerning these tapes[; and] documentation of all bombs, explosives, ordnance or similar materials removed from the Murrah Building from April 1, 1995, through May 31, 1995, including any inventory lists and each item's ultimate destination and disposal." (Def.'s Mot. Summ. J., Hodes Decl. at Ex. H.)

Adequacy of the FBI's Search for Materials

Plaintiff's second attack on the FBI's declaration is the adequacy of the described search to satisfy the agency's obligation to locate requested materials. The standards governing this issue have been expressed as follows:

To win summary judgment on the adequacy of a search, the agency must demonstrate beyond material doubt that its search was reasonably calculated to uncover all relevant documents. The agency must make a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested To show reasonableness at the summary judgment phase, an agency must set forth sufficient information in its affidavits for a court to determine if the search was adequate. The affidavits must be reasonably detailed, setting forth the search terms and the type of search performed, and averring that all files likely to contain responsive materials (if such records exist) were searched.

Nation Magazine v. United States Customs Serv., 71 F.3d 885, 890 (D.C. Cir. 1995) (internal quotations and citations omitted); see *Schwarz v. FBI*, No. 98-4036, 1998 WL 667643 at *1 (10th Cir. Sept. 17, 1998) (quoting *Nation Magazine*).

Mr. Hodes describes in his declaration the FBI's recordkeeping and filing system, which consists of a central records system (CRS) that can be accessed through general indices that denote the subject matter of files in it. The FBI also has an automated case support system, which includes investigative case management, electronic case files, and an universal index. The investigative case management function permits the office that originates an investigation to open a case and assign it a universal case file number that indicates the type of investigation, the office of origin, and the particular investigation involved. The pertinent case file is "174A-OC-56120." The 174A prefix indicates an

investigation of "Actual and Attempted Bombings and Explosives Violation;" OC is the office of origin, Oklahoma City; and 56120 signifies the investigation into the bombing of the Alfred P. Murrah Federal Building. (Def.'s Mot. Summ. J., Hodes Decl. at 10.)

Concerning the searches for records requested by plaintiff, Mr. Hodes states in full:

The records responsive to plaintiff's seven requests pertaining to the Oklahoma City bombing were identified by searches of FBIHQ and the OCFO CRS indices. This search revealed the existence of one main file, 174A-OC-56120 at both FBIHQ and the OCFO. This file houses all FBIHQ and OCFO investigative records concerning the bombing of the Alfred P. Murrah Federal Building. The OCFO is the "OO" [Office of Origin] for this investigation and its file, 174A-OC-56120 is the larger of the two files. Therefore, FBIHQ file 174A-OC-56120, in all likelihood, will be mostly duplicative of the OCFO file. Both FBIHQ and OCFO files have been reviewed for the purpose of identifying documents which are responsive to plaintiff's seven requests . . . Pursuant to those reviews, the following is a summary of the documents/pages/videotapes (approximate figures) determined to be responsive to plaintiff's requests at the offices indicated:

FBIHQ

300 documents totaling 1,500 pages
one videotape

OCFO

147 documents totaling 450 pages
22 videotapes

Until an actual review of this material could be undertaken for processing, it is estimated that there are approximately 447 documents totaling approximately 1,950 pages, as well as 23 videotapes that are responsive to plaintiff's requests.

(Def.'s Mot. Summ. J., Hodes Decl. at 11-13 (footnotes omitted).) This explanation is followed by a "summary of the records determined responsive," which simply lists the number of documents (sometimes qualified by "approximately") and the approximate number of pages that fit each request. As to Request #3, Mr. Hodes states that one videotape "was

the release of any material in these categories could hinder future proceedings.⁵ Under the unique circumstances presented by serial prosecutions for the same alleged criminal conduct, the FBI has failed to group the responsive documents into categories that can be linked to cogent reasons for nondisclosure.

This conclusion leads to the difficult question of how to proceed from here. Inadequate agency explanations have led other courts to call for supplemental affidavits or to undertake *in camera* review of withheld documents or representative samples. *See In re Department of Justice*, 999 F.2d at 1310; *see also Solar Sources*, 142 F.3d at 1036 (district court conducted *in camera* review of specified selections of documents, that is, ones from each identified category "selected from randomly-chosen specified locations" in the agency's files). Neither party here has proposed an *in camera* review of withheld documents, and the Court will not volunteer for the task due to the volume of materials at issue. Also, until the FBI identifies workable categories linked to adequately articulated concerns of possible interference, such review would serve no purpose. Thus, the Court directs defendant to disaggregate its current categories so as to provide a supplemental declaration that states:

- (1) For each current category in which the FBI expresses concern about premature disclosure to Nichols or McVeigh, whether the information was produced to these individuals in the federal case and, if so, why these previous productions do not negate the alleged risk of harm.

⁵ The FBI has made no effort to show that it cannot reasonably segregate records or portions of records subject to disclosure from ones properly withheld. *See* 5 U.S.C. § 552(b) ("Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.")

Case 5:98-cv-01733-WEA Document 30 Filed 12/15/99 Page 19 of 19

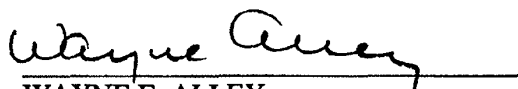
(2) For each current category in which the FBI expresses concern about public disclosure to nonparties to the state case, whether the information was previously aired in a public federal trial proceeding and, if so, why the prior disclosure does not negate the alleged risk of harm.

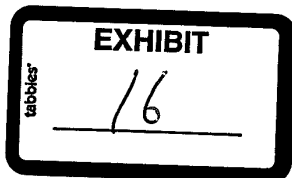
(3) For each category in which the FBI states a general concern about damaging its cooperative relationship with other agencies or its role in the criminal justice system, greater specificity about what damage is apprehended and how a FOIA-compelled disclosure of information could cause it.

Nothing in this call for more information should be interpreted to prevent the FBI from refining or reformulating its previously stated categories or to supplement in other respects its asserted justification for nondisclosure of the records at issue.

Conclusion

Defendant DOJ's Motion for Summary Judgment and Plaintiff's Motion for Summary Judgment are both DENIED because neither party has established its entitlement to a judgment as a matter of law. Defendant shall file a renewed motion, supplemented in conformity with this Order, not later than January 10, 2000. Plaintiff may respond to defendant's submission within twenty days after it is filed.


WAYNE E. ALLEY
United States District Judge



Remove

OKLAHOMA CITY, OK BOMBING
TIMELINE

PREPARED: May 1, 1995, AS OF 3:39pm

WEDNESDAY, APRIL 19, 1995

1014 This date it was reported there was an explosion at the Federal Building in Oklahoma City, OK. Injuries were reported.

Contact was attempted to be made with the Oklahoma City FO with no response.

Tulsa RA was contacted at 1025. Contact by Tulsa RA to the Oklahoma City FO was met with negative results.

SA Bob Bray from Tulsa is enroute to Oklahoma City. Arrival is scheduled for two hours.

1025 ATF OKC contact attempted with negative results.

1027 ADPA Judy Sullivan was contacted

1032 ASAIC Investigations - Jim Murphy was contacted

1032 Inspection - John Sullivan was contacted

1032 AD INV Hackenberry contacted

1033 SA Bob Clifford FBI HQ - believes car bomb w/injuries.

1037 SATS Cockell was contacted

1037 DAD PR Sergek was contacted

1040 FBI established command post in Washington, DC.

SA Mackin is enroute to establish liaison with FBI.

Contact with other federal agencies in OKC were met with negative results.

1042 AD ADM Moore was contacted

1045 ASAIC PO John Enright was contacted

1046 Rick Carlson is requesting donations of blood. (CNN)

1053 FBI DC reported that today is the anniversary date for the WACO tragedy/assault.

1055 Dozens of casualties are being reported by CNN.

1055 SAIC's (OKC) wife Mrs. Gallo was contacted and stated the SAIC

needed enough to fill 200 ziplock bags. One of the subjects left a name of Terry Tuttle (known alias of Terry Nichols) and a phone number that was one digit off the telephone number at the residence of James Nichols.

Jennifer McVeigh returned to Buffalo, NY tonight, and has been convinced by her father to talk to the FBI. She is being interviewed at this time.

Paulsen was interviewed on this date for 3 hours. He reaffirmed his statements from yesterday. When shown the toll records showing that McVeigh called him over 30 times, Paulsen was visibly shaken and admitted to speaking with McVeigh on a more frequent basis than he reported earlier. When questioned about a long conversation dated 12/18/94, on the toll records, Paulsen advised that McVeigh was arranging a meeting with him to obtain dynamite from him. He advised that McVeigh wanted to meet him in a Denny's restaurant in Chicago, IL. Paulsen advised that he did not actually have the dynamite, and that he did not make the meeting. Paulsen agreed to be polygraphed.

An MCI operator accidentally retrieved James Nichols' phone records and noted that numerous calls were made to a John Broker with a 605 area code (South Dakota).

It was initially reported that the two calls made by Timothy McVeigh from jail were to Prairie, OK. Those calls were actually made to the residence of James Nichols.

A witness to the explosion named Grossman claimed to have seen a pale yellow Mercury car with a Ryder truck behind it pulling up to the Federal Building. Mr. Grossman further claimed to have seen a woman on the corner waving to the truck. ATSAIC McNally noted that this fact is significant due to the fact that the security video shows the Ryder truck pulling up to the Federal Building and then pausing (7-10 seconds) before resuming into a slot in front of the building. It is speculated that the woman was signaling the truck when a slot became available.

A catering truck driver who was traveling east just prior to the explosion noticed the Ryder truck in front of the Federal Building and saw two men leaving the vicinity of the truck and crossing the street heading for a brown pickup truck. The catering truck driver positively ID McVeigh. When questioned about his accuracy in detail, the driver admitted that he was gay and that he was "checking out" McVeigh.

2034 ATSAIC McNally advised that Paulsen failed his polygraph. He will be polygraphed again on 04-25-95.

that Paulsen provided McVeigh with the high explosives required to boost the ANFO to a detonation velocity. However, this is not conclusive. Did Paulsen provide McVeigh with further information on making ANFO even more efficient? By adding aluminum powder or glass beads to the ANFO mixture, this would generate a greater heat within the explosive mixture, producing a better consumption and yield with less residue remaining after the blast.

The initiation device is still unknown at this time. However, based on their military training, the simplest and most reliable initiation system would be TIME FUSE. Security video tapes from the area show the truck detonation 3 minutes and 6 seconds after the suspects exited the truck. A radio controlled (R/C) activation device is possible, if the suspects constructed or purchased such a system. One possible lead could be directed at "Ballisticorp" which stated that they sold three blowguns to the suspect, which normally cost \$20.00 each, however, the COD bill was \$600.00. The company may also sell R/C equipment. (GLOD)

- 1928 ATSAIC McNally reported that at this time, a fax was received from Topeka, KS stating that a Marsha Morgan an employee of Hypermart located in Topeka, KS had identified McVeigh as having bought a full flatbed truck load of fertilizer (NFI).

Hotel guests of the Dreamland Hotel who had a room next to McVeigh's room have identified McVeigh as an occupant at the Dreamland Hotel. ATSAIC McNally advised these guests also identified a flatbed truck located in the hotel parking lot. McNally's phone call was terminated, however, it is believed that the Ryder truck was also identified by these guests as also having been parked in the Dreamland Hotel parking lot. Attempts are being made to recontact McNally to confirm concerning the Ryder Truck. (HERRON)

- 1935 SA AU, Lexington, KY advised he had been contacted by Anna LNU, telephone 606-663-5214, who claimed that about one year ago, she dated a person who resembled the composite sketch of John Doe #2. Anna LNU stated that she knows this person Dennis Motowiak (NRID), 5'07", dark complected, black hair, stocky build, early to mid 20's. Anna LNU claimed that Motowiak is originally from North Carolina and had to return there due to his status as a parolee. She stated he has military experience and is part American Indian. Anna LNU provided that Motowiak has a cousin, Avery Crabtree (NRID), and uncle, Chester Crabtree (NRID), 2690 Paint Creek Rd, Stanton, KY, telephone 606-663-9308, who may be able to provide a current address for subject Motowiak.

- 2010 The individuals in the room next to McVeigh's at the Dreamland Hotel reported seeing the Ryder rental truck, as well as, a

EXHIBIT

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MCVEIGH
INVESTIGATIVE REPORT
PAGE #000080 through PAGE #000085

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WITNESS [REDACTED]

DATE CONDUCTED: 2/16/96

[REDACTED] WAS PERSONALLY INTERVIEWED AND STATED
THE FOLLOWING:

[REDACTED] WAS AT 83RD AND WALKER WHEN THE BLAST OCCURRED, SAYING HE HAD JUST COME OUT OF THE DENTIST'S OFFICE. HE AND HIS MEN HAD MET THE GSA INSPECTOR IN THE ALLEY BEHIND THE FEDERAL COURTHOUSE AROUND 9:00 A.M. AND THEY WERE WALKING THROUGH THE TUNNEL WHEN THE MURRAH BUILDING BLEW UP. THEY WENT IN IMMEDIATELY TO DETERMINE IF ANYONE WAS TRAPPED IN THE ELEVATORS AND WERE AMAZED THAT NO ONE WAS. [REDACTED] SAID HE DIDN'T GO DOWN TO THE SITE UNTIL THE SECOND DAY BUT HE HAD TWO MEN ONSITE AND, WITHIN TEN MINUTES, HAD ANOTHER SIX MEN THERE. [REDACTED] REMAINED AT THE OFFICE TO MAN THEIR RADIO COMMUNICATION CENTER FOR THE EFFORT. HE STATED THAT HIS CREWS ALSO WENT IN WITH THE FIRE COMMAND TO ASSIST IF THE ELEVATOR HAD A PROBLEM AND THEY ALSO ASSISTED IN BRINGING OUT THE BABIES FROM THE NURSERY. HE SAID WHEN THE MEN ARRIVED, THE POWER DISTRIBUTION BOXES WERE DOWN ON THE FIRST FLOOR AND THAT, WHEN THE ELEVATORS HAVE NO POWER, THEY STOP WHERE THEY ARE; HOWEVER, THE SMOKE WOULD HAVE CAUSED THEM TO GO ON THE FIRE RECALL AND THEY WOULD RETURN TO THE LOBBY. HE SAID THERE IS AN ATF PERSON AND A DEA PERSON WHO SAID THE ELEVATOR FELL WITH THEM; THAT HE HASN'T GOTTEN TO TALK TO THE MEN, BUT THE ELEVATORS WOULD NOT HAVE FALLEN. HE SAID THE SENSATION ONE WOULD GET ON FIRE RECALL IS THAT IT STOPS, DOESN'T OPEN THE DOORS; THEN TURNS AND GOES BACK DOWN.

[REDACTED] SAID THAT [REDACTED] AND OTHER GUYS WORKED THROUGH UNTIL ABOUT 2:00 P.M. WHEN THEY WERE PULLED OUT BECAUSE THEY WERE DOING ANOTHER BOMB SEARCH. HE STATED THAT HE DIDN'T KNOW UNTIL THIS AFTERNOON (DATE OF THIS INTERVIEW) THAT [REDACTED] WAS BEING INTERVIEWED AGAIN BY THE GOVERNMENT BECAUSE HE HAD SEEN THEM PULL A BOMB FROM SOMEWHERE ON THE SOUTH SIDE OF THE BUILDING. HE SAID HE PERSONALLY DIDN'T SEE ANYTHING THAT WAS STORED IN THE BUILDING, BUT THE OTHER GUYS HAD OBSERVED THE ATF TAKING OUT AUTOMATIC WEAPONS, RIFLES, AMMUNITION, AND UNKNOWN THINGS IN CASES FROM THE ATF STORAGE AREA. HE SAID ATF WAS ONE OF THE MOST DAMAGED SECTION OF THE BUILDING. HE SAID ON THURSDAY NIGHT THEY CLEARED

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THE BUILDING AND TOOK SOMETHING OUT OF THE ATF VAULT THAT THEY HANDLED LIKE A "LAND MINE OR SOMETHING". HE SAID IT WAS AT LEAST FORTY-FIVE MINUTES BEFORE THEY COULD RETURN TO THE BUILDING. HE SAID THAT [REDACTED] HAS BEEN VERY CAUTIOUS AS TO WHAT HE SAYS ABOUT WHAT HE SAW, SAYING THAT ALL HE ([REDACTED]) KNOWS IS THAT HE SAW WHAT THEY CARRIED OUT. [REDACTED] COMMENTED THAT IT WAS COMICAL IN A WAY BECAUSE THE ATF DIDN'T WANT SECRET SERVICE TO SEE THEM REMOVE THINGS AND DEA DIDN'T WANT THE OTHERS TO KNOW WHAT THEY WERE DOING AND SO ON, SAYING THEY ALL ACTED LIKE LITTLE KIDS HIDING STUFF FROM EACH OTHER. HE STATED HE WAS THERE EVERY DAY AFTER THE SECOND DAY AND MAINLY SUPERVISED AND TOOK PICTURES; THAT THE OTHER GUYS WENT IN FOR THREE EIGHT-HOUR SHIFTS BECAUSE IT WAS TOO ROUGH ON THEM TO BE THERE MORE THAN THAT. THEY HAD TO SHORE UP THE WALLS OF TWO FLOORS IN ORDER TO GET THE ELEVATORS OPERATIONAL. HE STATED THAT THE ELEVATORS WERE ALL AT DIFFERENT LEVELS; THAT #1 WAS ON THE THIRD FLOOR; #4 WAS ON THE FOURTH LANDING; #2 WAS AT BASEMENT LEVEL AND #5 WAS BETWEEN THREE AND FOUR AND #6 WAS ON FIRST. HE SAID THEY LITERALLY TOOK PARTS FROM FOUR ELEVATORS AND PIECED TOGETHER ONE REGULAR ELEVATOR, #1 ELEVATOR, AND THE FREIGHT ELEVATOR; THAT THEY WOULD RUN FROM C LEVEL TO THE TOP AND THE FREIGHT ELEVATOR WAS THE MOST IMPORTANT BECAUSE THEY COULD GET THE BIG EQUIPMENT UP AND TAKE LITTERS IN. THEY WORKED TWO CREWS ON FRIDAY AND GOT THE FREIGHT ELEVATOR OPERATIONAL BY SATURDAY MORNING. THEY WERE ASKED TO STAY ONSITE IN CASE SOMETHING WENT WRONG WITH THE ELEVATORS, WHICH THEY DID. A LIFT WAS ALSO PUT UP ON THE OUTSIDE, WHICH WASN'T USED MUCH.

[REDACTED] COMMENTED WHAT A SHAME IT WAS THAT THE SURVEILLANCE CAMERAS WERE NEVER HOOKED UP AGAIN AFTER THEY PUT IN A NEW SECURITY SYSTEM APPROXIMATELY TWO YEARS AGO. HE IS UNAWARE OF ANY OUTSIDE SURVEILLANCE CAMERAS THAT MAY HAVE BEEN ON THE JOURNAL RECORD BUILDING.

[REDACTED] EXPLAINED THAT SOCIAL SECURITY WENT FROM THE EAST END OF THE BUILDING WEST TO THE FIFTH COLUMN; THAT THE FRONT OF THE TRUCK WAS OBVIOUSLY SLIGHTLY FORWARD, EAST OF THE FRONT DOOR AND THE CRATER WAS EXACTLY AT THE FRONT DOOR. ASKED IF HE HAD ANY SPECULATION AS TO WHY THE MAIN PART OF THE DAMAGE WAS TO THE EAST OF THE CRATER, HE STATED THAT HE HAS HEARD A LOT OF THEORIES, INCLUDING GENERAL PARTON, BUT HE CANNOT EXPLAIN WHY AND STATED HE WAS EVEN MORE PUZZLED OVER THE AMOUNT OF DEBRIS FROM UPPER FLOORS WAS ACTUALLY BLOWN BACK INTO THE BACK OF THE BUILDING. HE COMMENTED THAT THERE ARE PHOTOS WHICH SHOW ALL THE SHEET ROCK OFF ON THE BACK OR SOUTH SIDE AND STILL ON THE FRONT OR NORTH SIDE OF THE COLUMNS, SAYING THIS WAS INCONSISTENT

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WITH ALL THE GOVERNMENTS FINDINGS.

HE STATED THE BUILDING WAS CONSIDERED VERY UNSTABLE AND THAT SURVEYORS EQUIPMENT WAS USED TO MEASURE THE MOVEMENT AND WHEN THE WIND BLEW, THE BUILDING MOVED; THAT SEVERAL TIMES THEY HAD TO ABANDON THE BUILDING BECAUSE OF TOO MUCH MOVEMENT. HE BELIEVES THE FIRST BUILDING TO COLLAPSE AFTER THE BOMBING WAS AN AUTO REPAIR SHOP THAT WAS WEST OF BROADWAY, JUST OFF HARVEY.

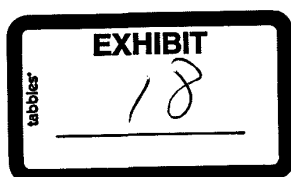
A SET OF PHOTOS WERE PURCHASED FROM [REDACTED] AND WILL BE SUBMITTED WITH THIS REPORT. HE SAID GENERAL PARTON WAS PARTICULARLY INTERESTED IN THE FOLLOWING: 17-11; 12-23; 12-15; 8-19; 12-22; 3-10A; 11-7A; 12-13; 8-15A; 19-23A; 3-12A; 1-19A; 1-18A; 3-8A; 3-13A; 3-19A; and 3-9A. HE SAID THERE WAS AN EXCELLENT PICTURE OF THE CRATER TAKEN BY [REDACTED] THAT IT WAS TAKEN IMMEDIATELY AFTER THE CRATER WAS UNCOVERED. THE MEN WHO WORKED ON THE SCENE WERE [REDACTED] WHO CAME ON SATURDAY [REDACTED]

[REDACTED] AND [REDACTED] HE STATED ALL WOULD BE HAPPY TO SPEAK WITH US; HOWEVER, HE TOOK ENOUGH CARDS FROM INVESTIGATORS FOR ALL THE MEN AND NO ONE MADE CONTACT EXCEPT [REDACTED] HIS TELEPHONE CONVERSATION WITH [REDACTED] WAS TRANSCRIBED IN WHICH HE SAID HE WAS STILL BEING QUESTIONED CONCERNING A SEPARATE INVESTIGATION INVOLVING WHAT WAS STORED IN THE MURRAH BUILDING AND "OTHER THINGS" [REDACTED] REITERATED THAT HE HAD NOT KNOWN [REDACTED] HAD SEEN THEM REMOVE A BOMB UNTIL THIS DATE; THAT [REDACTED] HAD BEEN OFF WORK SINCE THE BOMBING WITH [REDACTED]

[REDACTED] STATED THAT THE FBI TOOK COPIES OF ALL THE PICTURES TAKEN ONSITE. HE SAID HE BELIEVES THEY SENT ALL THE CONTENTS OF THE CRATER TO QUANTICO, VA. HE SAID HE WAS AWARE WHEN ATF WAS TRYING TO OPEN THEIR SAFE AND WAS TREATING THE CONTENTS WITH KID GLOVES, BUT HE NEVER KNEW WHAT WAS IN IT.

SINCE THERE HAD BEEN SOME QUESTION AS TO WHETHER THE ALLEYWAY SOUTH OF THE JOURNAL RECORD BUILDING WAS OPEN OR CLOSED OFF, IT WAS CLARIFIED BY [REDACTED] THAT IT HAD BEEN AN OPEN ALLEYWAY WITH COMPLETE ACCESS FROM END TO END; THAT THE FENCE WAS PLACED THERE AFTER THE BOMBING.

[REDACTED] MIDWESTERN ELEVATOR IN JANUARY 1995 AND IT WAS MADE A PART OF UNITEC SERVICES WHICH IS OWNED BY [REDACTED]

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174A-OC-56120

JAW:gl

Following investigation was conducted by Special Agent JOHN A. WILSON JR. on May 8 and 9, 1995, and details telephonic conversation with cooperating witness (CW) 2899-CW-C who voluntarily provided the following information.

An individual identified as WILMA SPARKS is a private investigator currently assigned to work for the attorney who is representing TIMOTHY MCVEIGH in Oklahoma City, Oklahoma. The CW advised that WILMA SPARKS is a close associate of the CW and that SPARKS is taking on the responsibility of investigating certain aspects of the investigation for MCVEIGH's attorney. SPARKS advised the CW that although this was a distasteful assignment, she was willing to accept the assignment to ensure that the case against MCVEIGH will not be overturned due to incompetent counsel.

CW advised that a company identified as CAPITOL CORP., Newport Beach, California, is advertising "loan programs" wherein CAPITOL CORP. will provide capital or collateral for business loans. CW believes that CAPITOL CORP. may be a scam and has maintained correspondence with CAPITOL CORP.

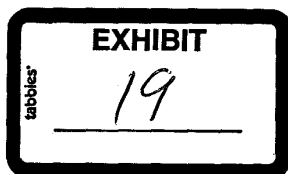
CW advised that recent contact with various members of the Special Forces Community revealed that certain former members of the Special Forces may have splintered off into militant factions. The CW advised that these individuals have yet to be identified along with their cause.

CW advised that the Special Forces National Convention will be held in Las Vegas at the UNION PLAZA HOTEL/CASINO, Las Vegas, Nevada, June 20-25, 1995. CW advised that he will be attending the convention and will attempt to identify certain splinter groups that may have emanated from the Special Forces Community.

000002

JUN 21 '96 12:57PM US ATTORNEY WDO 485 231 4576

P. 3/5



Serial # 14838

**Contains "Classified" material not
associated with this case.**

**Any pertinent information related
to this case will be provided in a
suitable format for dissemination.**

14838

PROTECT IDENTITY

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

- 1 -

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 4/17/96**SECRET**

The evening of April 19, 1995, Supervisory Special Agent (SSA) THOMAS E. NICOLETTI was contacted by NY 29000-SI-DT. (S)

NY 29000-SI-DT, who had provided highly accurate and reliable information in the past, advised that a source within the Saudi Arabian Intelligence Service advised that the Oklahoma City bombing was sponsored by the Iraqi Special Services who contracted seven (7) former Afghani Freedom Fighters out of Pakistan. His source further advised that the sponsor was concealed and that the contractors may not be aware of the real sponsor. This source advised that, in addition to, the Oklahoma City incident there were two other bombing incidents planned. The second incident planned was to occur at the Immigration and Naturalization Service, Houston Field Office and the third was to occur at the Los Angeles Field Office of the FBI. His source further advised that the time frame would be "soon". (S)

Very early on April 20, 1995, SSA NICOLETTI recontacted NY 29000-SI-DT to solicit any additional information. SSA NICOLETTI then attended a Supervisory Conference of the New York Counter-Terrorism Branch Assistant Special Agent in Charge (ASAC) and Supervisors, personally coordinated by the SAC THOMAS J. PICKARD. (S)

SAC PICKARD was advised of the information and the source's identity. SAC PICKARD immediately made appropriate notification telephone calls to the other potential "targets" and inquired if the source would be amenable to being interviewed again in the presence of Counter-Terrorism ASAC GEORGE H. ANDREW. (S)

SECRETClassify by G-3Declassified by X1

Investigation on 4/19-20/95 at New York, New York
 File # 174A-OC-56120 ^{4/16/96} *-D 14838*
 by SSA THOMAS E. NICOLETTI/emf *J. E. Nicoletti* Date dictated 4/20/95
4/17/96

FD-302a (Rev. 11-15-83)

SECRET

174A-OC-56120

4/16/96

Continuation of FD-302 of NY 29000-SI-DT . On 4/19-20/95. Page 2

Late morning, on April 20, NY 29000-SI-DT met with ASAC ANDREW, SSA THOMAS LANG, and SSA NICOLETTI. The same information was related to the ASAC. Upon return to the field office, ASAC ANDREW instructed Case Agent JOHN FLOOD to prepare a teletype to FBIHQ containing the information supplied by NY 29000-SI-DT. (S)

NY 29000-SI-DT is a senior official employed by ABC News for over fifteen years. When questioned on April 20, 1995, NY 29000-SI-DT would not reveal the identity of his source; but, advised that this information was also being provided to FBIHQ or WMFO by someone connected to ABC News. NY 29000-SI-DT was concerned that this information not appear to be coming from two independent sources. (S)

On April 16, 1996, NY 29000-SI-DT was re-interviewed by SSA THOMAS NICOLETTI regarding the source of questioned information. NY 29000-SI-DT advised that the source was VINCENT CANNISTRARO, former Counter-Terrorism Chief of the Central Intelligence Agency (CIA). He further advised that CANNISTRARO was a paid consultant to ABC News, at that time, due to his previous position as a Senior U.S. Government Official. (S)

NY 29000-SI-DT further advised that, when questioned regarding his source of this information, CANNISTRARO confirmed that it was a "General within the Saudi Arabian Intelligence Service". (S)

The source advised that he believed the information to have validity citing CANNISTRARO's former senior position within the CIA and his legitimate concern for public safety; NY 29000-SI-DT passed this information on to representatives of the FBI. (S)

SECRET

FEDERAL BUREAU OF INVESTIGATION

EXHIBIT

tabbies

20Date 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 an account of that information provided.

CI advised a white supremacist group operates a compound near Ellohim City on the border of Arkansas and Oklahoma. The compound may be near Ft. Smith, Arkansas. CI advised the compound is composed of approximately eight (80) members. CI advised the compound is secured by guards carrying AK-47's. CI further advised a (First Name Unknown (FNU)) Millar, also known as Pastor, is the leader of the Ellohim compound, while James Ellison runs the day to day operations of the compound. CI advised Ellohim may be affiliated with the Confederate States of America (CSA), which is alleged to have run a CSA training center in Ellohim.

CI provided telephone number 918-427-7739 as belonging to FNU Millar. CI added that the compound is prepared to defend itself if a police action were to occur.

At this point, no additional information was provided.

Investigation on 3/31/96 at St. Louis, Missouri

D04021

File # 174A-OK-56120

by SA Richard R. Robley :dls

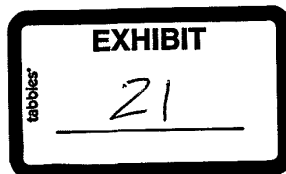
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Date dictated 4/2/96

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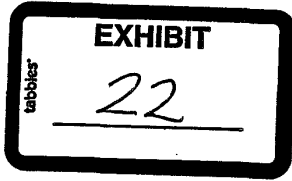
On 9/6/96, OC 4676-D telephonically contacted the Durant RA and advised he/she was contacted by a confidential source who works for a news agency and was advised that ABC NEWS was going to air an expose in the next few days concerning the OKC bombing.

ABC will be interviewing a rescue worker who is going to state that ATF had stored a large amount of explosives in the MURRAH BUILDING, which contributed to the explosion. The rescue worker is also going to advise that evidence of these explosives was found by rescue workers and this particular rescue worker had contacted the FBI with this information and was told by the FBI to keep quiet. This rescue worker is currently upset because nothing has been done with this information and he feels the FBI has attempted to cover up the information.

OC 4676-D feels this will also impact on the Government's case against MCVEIGH and NICHOLS.

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



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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 10/15/95

RONALD E. STAKEM, white, male, date of birth 4/27/47, SSAN
 , home address :

, work address _____

, voluntarily appeared at the office of the United States Attorney in Oklahoma City, Oklahoma. After being advised of the identity of the interviewing Agent and that of Assistant United States Attorney Jerome Holmes who was also present, STAKEM provided the following information:

On the morning of April 19, 1995 STAKEM drove by the ALFRED P. MURRAH Federal Building travelling east on NW 5th Street on his way to work. STAKEM recalled that he had to stop for a red light at the intersection of 5th and Robinson. He was in the far right hand lane. STAKEM did not notice a RYDER truck or anything else unusual as he passed by the Federal Building.

After the light turned green, STAKEM proceeded through the intersection travelling east. As he neared the east side of Robinson, a man stepped off the southeast corner of the intersection walking north in front of STAKEM. STAKEM stated that he had to stop his vehicle to avoid hitting this man. STAKEM estimated that he stopped five or six feet short of the man.

This man did not look at STAKEM as STAKEM stopped and STAKEM only had a left profile view of him. STAKEM had the impression that this man was a transient or homeless person who was not paying attention as he crossed the street. The man was not carrying anything and he was not hurrying. He was walking.

The most distinctive aspect of the man's appearance was a three or four day growth of beard that he had. It was not a trimmed beard. STAKEM further described the man as having a dark complexion, possibly from being weather-beaten. STAKEM does not think this man was a black man, nor does he believe that the man was of middle-eastern descent. His height was 5'9" to 6'1". He was 25-40 years of age and weighed 150-180 pounds. He was wearing a dark-colored shirt and dark-colored pants. These appeared to be work clothes that were not torn or tattered but were not business attire either. The man had medium length, dark-colored hair and wore no hat. STAKEM could not recall the man's shoes. STAKEM estimated that he looked at the man

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 by SA Louis Michalko Date dictated 10/15/95

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for four or five seconds. STAKEM stated that he may have seen the man crossing Robinson Street while he was stopped at the light, but he was not sure if he had or not.

After the man crossed in front of STAKEM, STAKEM continued east on 5th Street to Broadway and the traffic light was red. STAKEM made a right turn on red and drove south on Broadway until it turned into E.K. Gaylord Blvd. STAKEM continued south on Gaylord for three or four blocks and turned right (west) on Robert E. Kerr. STAKEM then entered the parking garage on the corner of Kerr and Gaylord. He spiralled up to the sixth, or top floor of the garage and parked his car. He walked to the elevator and took it to the first floor. Stakem then exited the garage and walked to the corner of Kerr and Broadway. He crossed Broadway walking west. When he reached the west side of Broadway he turned south and began crossing Kerr. He was half way across the street when the explosion occurred. STAKEM estimated that four or five minutes probably elapsed from the time he saw the man crossing the street until the time of the explosion.

The first thing STAKEM did was look at his watch. It was 9:02 am. STAKEM remembered saying to himself that he did not hear a shell come in before the explosion. STAKEM explained that he was familiar with the sound of shells from his experience in the military. He looked up and watched his own office building shaking. He also witnessed sheets of glass cascading down from the GLOBE LIFE BUILDING. STAKEM briefly walked over to Robinson Street to see what had happened, saw that it was not safe to proceed north on Robinson, and then returned to his office to check on the condition of his employees.

At approximately 10:30am STAKEM decided to go to the OKLAHOMA BLOOD INSTITUTE on Lincoln Blvd. to donate blood. He returned to his car in the parking garage and remembered that he had a video camera in the trunk of his car. STAKEM shot some video from the roof of the parking garage and then left the garage headed for the blood institute. STAKEM kept the video camera in the front seat and tried to shoot additional video after he discovered that he could not get in to donate blood. STAKEM does not believe that he still has this video as he probably recorded over it.

From Lincoln Blvd. STAKEM went home and continued his work day there placing telephone calls. In the early afternoon, he was telephonically contacted by an FBI Agent named KEN KAMINSKI who introduced himself, stated that he was calling from Tulsa, Oklahoma,

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and asked STAKEM if he had seen anything unusual in downtown Oklahoma City that morning. STAKEM described to KAMINSKI what he observed that morning. KAMINSKI did not explain to STAKEM how the FBI had known he was downtown and STAKEM assumed that his license plate number had been retrieved from a video camera near the Federal Building.

On August 14, 1995 STAKEM was personally contacted by MARTY REED, an investigator for attorney STEPHEN JONES, and was interviewed concerning his observations that morning. STAKEM described his observations to REED. Near the conclusion of that interview, STAKEM asked REED if REED had tape recorded their interview. REED confirmed that he had and produced a small tape recorder from his shirt pocket. STAKEM then requested that he be provided with a copy of the tape and he was at a later date. STAKEM allowed the interviewing Agent to make a copy of this tape on October 13, 1995.

On September 8, 1995 STAKEM was telephonically contacted by DEMEE CAPORAL, a reporter for KWTN-9 in Oklahoma City. CAPORAL had received STAKEM'S name from a CBS television station in Los Angeles, California and wanted STAKEM to comment on a story concerning his observations that had run that day in the Los Angeles Times. STAKEM could not comment because he had not seen the story, had not been interviewed for a story, and knew nothing about it. Thereafter, CAPORAL faxed him a copy of the story.

STAKEM stated that the story misrepresents what he saw on April 19, 1995. Among these misrepresentations are the following: 1. That he saw a man hurrying. The man STAKEM saw was not hurrying. He was walking. 2. The man was hurrying from the front of the Federal Building. The man STAKEM saw was not in front of the Federal Building but was on the other side of Robinson Street from the Federal Building. 3. That STAKEM observed this man "moments" before the explosion. STAKEM stated that he does not know how the author of the article defines "moments", but that he estimates that his observations of a man crossing the street occurred four to five minutes before the explosion. 4. That the man was Mexican or Native American. STAKEM does not know if the man was Mexican or Native American. He only knows that the man had a dark complexion and he does not believe that the man was black or middle eastern.

STAKEM has no reason to believe that the man he saw crossing the street at NW 5th and Robinson on April 19, 1995 had anything to do with the bombing of the Federal Building on that date.

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During the course of the interview, STAKEM made two sketches describing his movements on April 19, 1995 and also made notations on a copy of the Los Angeles Times article described above. These notes were maintained by the interviewing Agent and have been placed in the 1a section of the file.