

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

In re:)
)
JESSE C. TRENTADUE,)
)
Plaintiff,)
)
v.) Case No. 2:08-CV-788CW
)
FEDERAL BUREAU OF INVESTIGATION,)
et al.,)
)
Defendants.)

Transcript of Bench Trial

BEFORE THE HONORABLE CLARK WADDOUPS

July 29, 2014

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8.430 U.S. Courthouse
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1 Salt Lake City, Utah, Tuesday, July 29, 2014

2 * * *

3 MR. TRENTADUE: Your Honor, there's a matter
4 that I need to address with the court before we start
5 this morning.

6 THE COURT: Let me just announce that we are
7 here in the matter of Trentadue v. The FBI, counsel and
8 parties are present.

9 Mr. Trentadue, you may proceed.

10 MR. TRENTADUE: Yes, Your Honor. Concerning
11 my last witness, John Matthews, who was going to testify
12 by video conference, is from Nevada, I've been unable to
13 locate him or respond to my e-mails and phone calls for
14 a number of days. Roger Charles, who has been helping
15 me on the case, got through to John. This morning John
16 said he is not going to testify. John says that the
17 FBI's counsel had informed, he understood, the court and
18 myself last week that he was not going to testify. He
19 was very reticent to say anything more about that. My
20 concern is that he has been approached by the FBI and
21 strongly suggested that he not testify. Now, this is a
22 man who was going to testify about PATCON, which was a
23 government operation, Patriot Conspiracy, during the
24 '90s that infiltrated right-wing groups, and he was
25 going to testify about PATCON's involvement with

1 McVeigh, and a guy named Strassmeir in San Saba, Texas.
2 Now, that would be explosive testimony. And every
3 indication to me, from what Roger tells me, somebody has
4 reached out and touched him. I'm entitled to know if
5 that has occurred, who did it, what was said, were
6 threats directly or indirectly made to
7 Mr. Matthews.

8 THE COURT: Does the FBI have a response?

9 MR. SIPLE: Your Honor, we do not have a
10 response. We have no knowledge of what Mr. Trentadue is
11 now saying. This is the first we've heard of it. I
12 can't confirm anything that he said is true. And, as
13 we've said before, we don't think Mr. Matthews'
14 testimony in any event is relevant to this FOIA case
15 about record searches.

16 THE COURT: Are the FBI lawyers willing to
17 do some investigation to determine if someone that they
18 know of or someone that they were involved with
19 approached this witness and --

20 MR. TRENTADUE: I think they owe that to the
21 court, Your Honor.

22 THE COURT: Yes. I'm requesting that you do
23 that.

24 MR. SIPLE: Yes, Your Honor. Obviously
25 we're in trial now. It might take some time, a recess,

1 or however the court would like us to pursue that. We
2 can make some phone calls. I'm just not sure. Again,
3 this is the first we're hearing of it. I certainly
4 didn't approach, we didn't approach this witness. And
5 he's made a lot of allegations against the FBI. I don't
6 know if he's just lying frankly.

7 THE COURT: Was this witness under subpoena?

8 MR. TRENTADUE: No, sir. It's my
9 understanding I couldn't subpoena him.

10 MR. SIPLE: Your Honor --

11 MR. TRENTADUE: He volunteered to testify.

12 THE COURT: All right.

13 MR. SIPLE: Your Honor, may I add something?

14 THE COURT: Yes.

15 MR. SIPLE: If he's not under subpoena, then
16 I don't think that we should really have any obligation
17 to go and track down his witness for him and investigate
18 allegations, inflammatory allegations he's making
19 against the FBI, which under Rule 403 are just extremely
20 prejudicial and of very limited relevance.

21 THE COURT: If the FBI or someone through
22 its offices have been interfering and tampering with the
23 witness, that's certainly something that is of concern
24 to this court and should be of concern to the FBI.

25 MR. SIPLE: Your Honor, can I just

1 understand that Mr. Trentadue's allegation is that the
2 FBI is tampering with witnesses, is that the allegation
3 against the FBI right now?

4 MR. TRENTADUE: All I know, Your Honor, is
5 Mr. Matthews said that the FBI's counsel, as we
6 understood him, had informed me and the court last week
7 that he wasn't going to testify.

8 THE COURT: And I think this is something
9 that the FBI can choose to disregard the request, but my
10 request is that you determine what you can find out
11 about this and whether or not anyone on behalf of the
12 United States has contacted this witness and made any
13 efforts to persuade him not to testify.

14 MR. SIPLE: I would just like the record to
15 reflect that I will -- we have FBI counsel here, and
16 I'll ask that she make some inquiries into it and we'll
17 see what we find.

18 THE COURT: Thank you.

19 The FBI may proceed with its next witness.

20 MS. WYER: Your Honor, the FBI now calls
21 Karen Thiessen.

22 **KAREN THIESSEN,**
23 called as a witness at the request of the Defendant,
24 having been first duly sworn, was examined
25 and testified as follows:

1 THE CLERK: Please say and spell your full
2 name for the record.

3 THE WITNESS: Karen Ann Thiessen, K-a-r-e-n,
4 A-n-n, T-h-i-e-s-s-e-n.

5 **DIRECT EXAMINATION**

6 **BY MS. WYER:**

7 Q. Good morning Ms. Thiessen.

8 A. Good morning.

9 Q. Could you tell the court where you work?

10 A. I'm employed by the Federal Bureau of
11 Investigation Laboratory in Quantico, Virginia.

12 Q. Is that also known as the FBI's Crime Lab?

13 A. Yes, it is.

14 Q. Could you explain to the court what the
15 laboratory's primary mission is.

16 A. The mission of the FBI Laboratory primarily is to
17 conduct analysis on evidence submitted in criminal cases
18 and that is submitted from duly authorized law
19 enforcement agencies throughout the United States and
20 its territories.

21 Q. Does that mean that the laboratory is involved
22 primarily in current criminal investigations?

23 A. Yes.

24 Q. Could you explain -- give a brief description of
25 your own background and when you first started working

1 at the Crime Lab.

2 A. I have a bachelor of science degree in biology
3 with a chemistry minor from Fort Hays State University
4 in Hays, Kansas.

5 After I graduated I did research at Baylor
6 College of Medicine in Houston, Texas.

7 After that I worked in the Kansas Bureau of
8 Investigation Laboratory, which is headquartered in
9 Topeka, Kansas, as a forensic scientist in the Serology
10 Trace Evidence Unit. In 1995 I was hired by the FBI
11 Laboratory as a trace evidence examiner, and that was in
12 April of 1995.

13 Q. What is your current position at the Crime Lab?

14 A. I am the Chief of the Compliance and Oversight
15 Unit.

16 Q. How long have you been in that position?

17 A. Two weeks.

18 Q. So how did it come about that you've just -- are
19 in a new position since two weeks ago?

20 A. There was a reorganization of the laboratory two
21 weeks ago. Prior to that I was the Chief of the
22 Evidence Control Unit.

23 Q. And after that reorganization is there any longer
24 an Evidence Control Unit at the Crime Lab?

25 A. No, there is not.

1 Q. Now, when there was an Evidence Control Unit up
2 to two weeks ago what did that unit do?

3 A. We administratively managed the evidence that was
4 submitted to the laboratory.

5 Q. And was that the case for all types of matters?

6 A. No. The majority of the cases were managed by
7 the Evidence Control Unit. However, there were cases
8 managed by other case-working units. Bombing cases, for
9 example, were managed by the Explosives Unit, and other
10 chemical, biological, radiological, or the nuclear cases
11 were managed by the CBRNS Sciences Unit.

12 Q. Now, before this recent reorganization had there
13 always been an Evidence Control Unit at the Crime Lab?

14 A. No.

15 Q. When did the Evidence Control Unit come into
16 existence?

17 A. It was 2003 when the laboratory moved from
18 Headquarters down to the current laboratory at Quantico,
19 Virginia.

20 Q. Before 2003 was there any -- was there any
21 similar unit at FBI Headquarters?

22 A. There was an Evidence Control Center, and what
23 they did was they received the evidence and entered it
24 into the database, but then the cases were managed by
25 examiners in the case-working units.

1 Q. And so in 2003 when the Crime Lab moved from
2 Headquarters to Quantico, after that, was there an ECC
3 at FBI Headquarters?

4 A. No, there was not.

5 Q. Before there was an Evidence Control Unit, which
6 unit would be the primary managing unit for major
7 bombing cases?

8 A. The Explosives Unit.

9 Q. So, in other words, that -- was that the case
10 when there was an ECC at Headquarters and also when
11 there was an ECU at Quantico?

12 A. Yes.

13 Q. Now, from your previous role as unit chief of the
14 Evidence Control Unit, or ECU, are you familiar with the
15 general handling of evidence when it is sent to the
16 Crime Lab?

17 A. Yes, I am.

18 Q. Can you briefly describe that process?

19 A. When evidence is received at the laboratory, it
20 went to the Evidence Control Unit, we would enter
21 administrative information into the database regarding
22 the case, we would then inventory the evidence, we would
23 assign it item numbers. These item numbers were either
24 a Q, a K, or an NE, meaning non-evidentiary, up until
25 January of 2014, when we switched management systems.

1 Now, we just use item numbers, such as 1, 2, 3, 4, 5.

2 We would also then create an examination
3 plan, that we would determine what item of evidence went
4 to which case-working unit and in which order for
5 analysis. We were the main point of contact for
6 contributors for questions that we had. And then we
7 would also, after the analyses were done by the
8 case-working units, we would re-inventory the evidence
9 and mail it back to the contributor.

10 Q. Is that a general policy of the lab to return
11 submitted evidence back to the contributor?

12 A. Yes, it is.

13 Q. When a field office, for example, sends evidence
14 to the Crime Lab is there a way to see that in the FBI's
15 Central Records System?

16 A. Yes. The field offices use a collected item
17 database and you can tell what items of evidence were
18 submitted to the laboratory via that system.

19 Q. When you say "collected item database," are you
20 talking about a component of the FBI's Automated Case
21 Support system?

22 A. Yes.

23 Q. And when -- can that information be accessed by
24 the field office at its location?

25 A. Yes.

1 Q. And can it also be accessed at the Crime Lab?

2 A. Yes.

3 Q. And does that system also indicate when evidence
4 is sent from the Crime Lab back to the contributor?

5 A. It doesn't necessarily indicate when it was sent
6 back, but it does indicate that it was received back by
7 the field office.

8 Q. Ms. Thiessen, are you familiar with the Freedom
9 of Information Act?

10 A. Yes.

11 Q. At some point were you contacted -- are you
12 familiar with the Freedom of Information Act at issue in
13 this case that the plaintiff submitted to the FBI?

14 A. I was advised that there was one, but I have not
15 read it.

16 Q. At some point were you contacted in regard to
17 that request?

18 A. Yes.

19 Q. And at that time were you the unit chief of the
20 Evidence Control Unit?

21 A. Yes.

22 Q. At the time you were contacted did you have any
23 preexisting understanding of whether there were any
24 Oklahoma City bombing-related records or materials in
25 your unit?

1 A. I would not have expected any records in our
2 unit, as I was advised in 2007 that everything related
3 to that case was to have been sent back to the Oklahoma
4 City Field Office.

5 Q. And why was it in 2007 that you became aware of
6 that?

7 A. Because that's when I became unit chief of the
8 Evidence Control Unit.

9 Q. You had mentioned that the Evidence Control Unit
10 did not even exist before 2003. Is there -- what is
11 your understanding of whether it would have been likely
12 that any evidence from the Oklahoma City bombing was
13 ever in the Evidence Control Unit?

14 MR. TRENTADUE: Objection, speculation, Your
15 Honor.

16 THE COURT: She's asking for her
17 understanding. She can tell us her understanding.

18 THE WITNESS: My understanding is that there
19 would not be any evidence from the Oklahoma City bombing
20 case in the Evidence Control Unit because any evidence
21 that was at the time removed was actually moved to the
22 case-working unit. It was not moved to the Evidence
23 Control Unit. So, for example, I was in the Trace
24 Evidence Unit. We physically moved that evidence
25 ourselves. We inventoried what we had, we put it in

1 cages, which we locked, we then put those cages onto
2 trucks, which we drove ourselves down to Quantico,
3 unloaded them, and when we opened those cages, we
4 re-inventoried it when we put it into the trace evidence
5 storage room.

6 Q. (By Ms. Wyer) So, in other words, is it your
7 understanding that at the time the Evidence Control Unit
8 was created after the move, it was essentially created
9 on a blank slate, there was no evidence there at that
10 time?

11 A. That's correct.

12 Q. And you mentioned that in 2007 you learned that
13 there -- that all OKBOMB-related material was supposed
14 to be sent to the Oklahoma City Field Office?

15 A. That's correct.

16 Q. And did you verify that that had been the case in
17 your unit?

18 A. I looked through the files room, which was
19 also -- I did the liaison with the file room, who was
20 actually under our records management division at the
21 time, and there were records that were found, these were
22 paper documents, and we shipped those to the Oklahoma
23 City Field Office.

24 Q. So at the time that you -- that you learned of
25 the FOIA request, did you perform any additional search

1 in connection with that request?

2 A. I rechecked the file room, and anything that was
3 found was then sent to the Oklahoma City Field Office.

4 Q. Did you find anything at that time when you were
5 checking in regard to this FOIA request?

6 A. There was -- if I can remember correctly, there
7 was one 1A envelope, which a 1A envelope is what the
8 examiners place their case notes in, and that was since
9 submitted.

10 Q. Do you actually remember clearly whether that
11 happened at the time you were doing the search in
12 connection with this request or previously when you
13 became unit chief in 2007?

14 A. Previously I did that, and then also I redid a
15 check, and there was one that was found in the end of
16 2013, and that was mailed back. It was just paper
17 documents.

18 Q. Do you remember whether -- can you explain to the
19 court whether -- where evidence is stored within the
20 Evidence Control Unit?

21 A. In the Evidence Control Unit it is stored in
22 evidence bays, and there's also another evidence room
23 that we store evidence in.

24 Q. And do you remember whether you also conducted a
25 search of those areas in connection with this FOIA

1 request?

2 A. No, I do not recall doing that.

3 Q. Are you aware whether -- or have you supervised
4 or conducted other searches of those areas?

5 A. Yes.

6 Q. And based on those searches, how confident are
7 you regarding whether there is any Oklahoma City
8 bombing-related evidence in the Evidence Control Unit?

9 A. I'm confident that we do not have any evidence
10 related to the Oklahoma City bombing case in the
11 evidence room.

12 MS. WYER: I have no further questions.

13 THE COURT: Cross-examination?

14 MR. TRENTADUE: No, sir.

15 THE COURT: Thank you. You may step down.

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: The United States may call --
18 the FBI may call its next witness.

19 MS. WYER: The FBI now calls Agent Mark
20 Whitworth.

21 **WILLIAM MARK WHITWORTH,**
22 called as a witness at the request of the Defendant,
23 having been first duly sworn, was examined
24 and testified as follows:

25 THE CLERK: Please say your full name and

1 spell it for the record.

2 THE WITNESS: My name is William Mark
3 Whitworth, W-i-l-l-i-a-m, M-a-r-k, W-h-i-t-w-o-r-t-h.

4 **DIRECT EXAMINATION**

5 **BY MS. WYER:**

6 Q. Good morning Agent Whitworth.

7 A. Good morning.

8 Q. Could you explain to the court where you work.

9 A. I'm currently assigned as the Unit Chief of the
10 Explosives Unit in the FBI Laboratory.

11 Q. Could you explain to the court what the
12 Explosives Unit does.

13 A. The Explosives Unit does forensic examinations in
14 bombing matters for the FBI.

15 Q. Can you give any examples of the kinds of matters
16 in which your unit and you, as unit chief, have been
17 involved.

18 A. Obviously, the Oklahoma City bombing, the World
19 Trade Center bombing in 1993, the African Embassy
20 bombings in 1998, the bombing of the USS Cole in 2000,
21 and we're currently working on the Boston bombing.

22 Q. When you're -- is your unit involved in matters
23 that are ongoing and current? When your unit is
24 involved is it an ongoing investigation?

25 A. Correct. We are involved in cases that are

1 currently being adjudicated or un-sub's at this time.

2 Q. Can you explain what your role as unit chief
3 involves.

4 A. The Explosives Unit is comprised of hazardous
5 device examiners, which is my background, and chemists,
6 and when a case is brought into the FBI Laboratory
7 that's related to explosive matters or bombings, we make
8 a decision on which examinations are going to be done on
9 it and which units will be involved in those
10 examinations.

11 Q. How long have you been the unit chief?

12 A. A year and-a-half.

13 Q. Can you briefly describe for the court your
14 background in the FBI prior to becoming the unit chief
15 of the explosives unit.

16 A. I've been a special agent in the FBI for
17 26 years. I was assigned to the Roanoke RA out of
18 Richmond Division for three and-a-half as the first
19 office agent.

20 In 1995 I was -- I'm sorry, in 1992 I was
21 transferred to the Washington Field Office. I worked
22 terrorism matters there. I was on the Terrorism Task
23 Force and was a special agent bomb technician.

24 In 1997, because I have a technical degree,
25 I was recruited into the FBI Laboratory as a hazardous

1 devices and explosives examiner in the Explosives Unit.

2 Q. Now, we heard from the previous witness,
3 Ms. Thiessen, that the Explosives Unit acts as the
4 primary coordinating unit in a major bombing case. Do
5 you know whether your unit was the primary coordinating
6 unit for the Oklahoma City bombing investigation?

7 A. Yes, we would have been the Request Coordinator,
8 at that time it was called Coordinating Examiner, for
9 the Oklahoma City bombing case.

10 Q. Why is the Explosives Unit the Coordinating
11 Examiner for major bombing cases?

12 A. There's two reasons. The first reason is safety.
13 We have to analyze all the evidence as it comes into the
14 laboratory to make sure that it's in a safe condition
15 for examination. We do bring live explosives and
16 components into the laboratory for traditional forensic
17 work like latent fingerprints and DNA.

18 A second reason is because bombing evidence
19 in bombing cases can be unique in the fact that
20 examinations downstream from the original entry, like
21 trace evidence, latent fingerprints, and DNA, are going
22 to alter the evidence because tape is removed, chemical
23 processes are applied to the evidence, so we need to see
24 it when it's in its most pristine condition and
25 photograph it, if possible.

1 Q. Are you familiar with the Freedom of Information
2 Act?

3 A. Yes, I am.

4 Q. Are you familiar with the FOIA request that the
5 plaintiff in this case submitted to the FBI?

6 A. I'm familiar that there was one and that I was
7 asked to look at -- for certain items from that FOIA
8 request.

9 Q. So are you saying that you were contacted at some
10 point in regard to this FOIA request?

11 A. Yes, I was.

12 Q. At the time that you were contacted, did you have
13 any preexisting understanding of whether any videotapes
14 from the Oklahoma City bombing investigation were in the
15 Explosives Unit?

16 A. I was not aware of there being any evidence from
17 Oklahoma City still in the Explosives Unit.

18 Q. And why -- would you have expected to find any
19 such material if you looked for it?

20 A. I would not have expected to find any if I looked
21 for it.

22 Q. And why is that?

23 A. Because of the discovery request for the Oklahoma
24 City trial and the fact that it was requested that all
25 evidence be returned to Oklahoma City for that trial.

1 Q. Do you remember any -- the dates of when that
2 happened?

3 A. I do not recall the exact dates. It was prior to
4 my arrival at the Explosives Unit.

5 Q. Do you recall whether there was such a discovery
6 call immediately before Timothy McVeigh's execution?

7 A. Yes. I remember, as being part of the FBI, that
8 there was a large discovery call right before Timothy
9 McVeigh's execution for all documents and items in
10 regard to Oklahoma City.

11 Q. Did you also participate in the move from
12 Headquarters to Quantico?

13 A. Yes, I did.

14 Q. Were you in the Explosives Unit at that time?

15 A. Yes, I was.

16 Q. And do you have -- can you explain whether all of
17 the evidence at that time was known -- that was located
18 in the Explosives Unit was known and accounted for?

19 A. Yes. All evidence at the Explosives Unit was
20 accounted for by examiner that it was assigned to, it
21 was placed into locked storage containers, placed on
22 moving trucks, escorted to the FBI Laboratory at
23 Quantico, and then re-inventoried as it was offloaded
24 into the individual examiner's storage bays.

25 Q. So based on that, would you expect there to be

1 any stray evidentiary item from the Oklahoma City
2 bombing lying around somewhere in the Explosives Unit?

3 A. No. It would have been located during that
4 inventory.

5 Q. When you were contacted regarding the plaintiff's
6 FOIA request did you do any search in relation to that
7 request?

8 A. Yes. I did a computer search of Murrah and video
9 in our Explosives Unit database for any reports
10 regarding videos connected with Oklahoma City.

11 Q. You mentioned the Explosives Unit database, can
12 you explain what you mean by that?

13 A. The Explosives Unit has a database that contains
14 all the reports that the Explosives Unit has written
15 since 1972 in digitized form, and explosive reference
16 material documents about the manufacture of explosives,
17 manufacture information on the manufacture -- on the
18 explosives, and that type of thing.

19 Q. What is the purpose of the Explosives Unit
20 maintaining reports of that kind?

21 A. So that we can reference them to be used in
22 upcoming reports or look for particular bomber
23 signatures or the fact that we may have an un-sub case
24 from a previous bombing that might be related to
25 something that we're examining at this time.

1 Q. Are the reports that are in -- what is that
2 system called?

3 A. Expert.

4 Q. Okay. Are the reports that are in Expert also in
5 the FBI's Central Records System?

6 A. Yes. They were first uploaded into the FBI
7 Central Records System and then they are uploaded into
8 Expert.

9 Q. So the reports that are in Expert are duplicates
10 of reports that are already in the Central Records
11 System?

12 A. Yes, ma'am.

13 Q. When you did the search that you described what
14 were the results?

15 A. I located four Explosives Unit reports that
16 reference videos and to the Murrah Building Oklahoma
17 City bombing.

18 Q. Did you locate any other documents?

19 A. At another time we did locate the Master Specimen
20 List for Oklahoma City.

21 THE COURT: Pull the microphone down a
22 little bit.

23 THE WITNESS: Yes, sir. But that was not
24 part of the original search.

25 Q. (By Ms. Wyer) Could you look at this binder to

1 the left -- to the right of you, could you look at
2 Defendant's Exhibits 238 and 239.

3 A. Yes, ma'am.

4 Q. Do you recognize what those documents are?

5 A. Specimen 238 is the Q Master Listing of specimens
6 in the Oklahoma City bombing case, and 239 are the K
7 Specimen List and the also Submitted Specimen List.

8 Q. Do you recognize those as official versions of
9 the document that you had located, or did you locate a
10 previous version or copy of that document?

11 A. I located a, what I believe, is a previous
12 version of this document.

13 MS. WYER: And let the record reflect that,
14 as indicated in Defendant's Exhibit 242, the Declaration
15 of Dorris Reed, these documents were found in the
16 official Oklahoma City bombing case file in the field
17 office. The defendant moves to admit those Exhibits 238
18 and 239 into evidence.

19 MR. TRENTADUE: Objection, Your Honor.
20 These documents -- on relevance. These documents were
21 never provided to me as part of my FOIA response.
22 They're offering it for suggestions of proof of
23 nonexistence of the tapes. That's not an issue. We're
24 talking about the reasonableness of the search.

25 THE COURT: What is the purpose for offering

1 these two documents?

2 MS. WYER: These documents are items that
3 were found in connection with the plaintiff's FOIA
4 request, and they do shed light on certain aspects of
5 the search.

6 THE COURT: What light do you think they may
7 shed?

8 MS. WYER: I can continue questioning the
9 witness in that regard.

10 THE COURT: What do you claim for these
11 documents?

12 MS. WYER: The Master Q List for a bombing
13 investigation or any Crime Lab matter is a comprehensive
14 list of the items submitted to the Crime Lab into
15 evidence. These items are given a specific Q number or
16 K number, which is the lab's identification number for
17 that evidence. That Q or K number is a unique number
18 for a piece of evidence. The plaintiff has admitted
19 into the record in this case at trial certain documents
20 that reference items by their Q number, and it is
21 relevant to explain what those items are and discount
22 the plaintiff's arguments that those documents are at
23 all relevant to the search that the FBI conducted.

24 THE COURT: Anything further, Mr. Trentadue?

25 MR. TRENTADUE: Yes, Your Honor.

1 Exhibit 213 is their own photocopies of the tapes
2 produced to me. They have the Q numbers on them, so I
3 mean they've identified, and the copies I received have
4 the Q number on them that identify --

5 THE COURT: What is your objection to 238
6 and 239?

7 MR. TRENTADUE: Relevance, because it goes
8 into -- I mean it's -- they're going to try to argue,
9 well, since the tapes I've asked for about the explosion
10 aren't mentioned on here, then therefore they must not
11 exist. This was never given to me. The only relevance
12 to this is to try to establish the nonexistence of the
13 tapes. This document has never been provided to me. If
14 it's the Q number they want to establish, they've
15 already done that in their own exhibits.

16 THE COURT: Do you claim some relevance to
17 these documents other than arguing that there's no
18 evidence the tapes exist?

19 MS. WYER: Yes, Your Honor. As I mentioned,
20 the plaintiff has already submitted into evidence
21 documents that reference Q numbers. He is making an
22 argument that those documents are somehow responsive to
23 his request, and these documents both show that in fact
24 they are not responsive to his request.

25 MR. TRENTADUE: Your Honor, unless I

1 misunderstood the witness's testimony, Q numbers go to
2 physical evidence, not documents. I don't recall
3 document evidence.

4 MS. WYER: Your Honor, can I refer the court
5 to Plaintiff's Exhibit 40, which mentions specific Q
6 numbers on it. The plaintiff admitted that document
7 into evidence yesterday.

8 THE COURT: I don't understand what the
9 issue is about the Q numbers. It's clear that we have
10 certain videotapes that are identified in other
11 documents by Q numbers. What do these two documents
12 add?

13 MS. WYER: These documents actually identify
14 the items that are referred to in documents with their
15 Q numbers.

16 THE COURT: I'm looking at page 1 of 238 and
17 I see Q7, which is a document in which a reference that
18 we have used before, has been referred to before, and
19 just says videotape.

20 MS. WYER: Your Honor, let me refer the
21 court to Plaintiff's Exhibit 40, which refers to Q9 and
22 Q10, plaintiff admitted this document into evidence
23 yesterday. You can see on that same page that you're
24 looking at on Exhibit 238 that Q9 and Q10 are identified
25 by titles that make clear that they would not be

1 responsive to the plaintiff's request, and that shows
2 that this Plaintiff's Exhibit 40 is irrelevant to the
3 FBI's search and was not responsive to his request.

4 THE COURT: I'll receive Exhibits 238 and
5 239.

6 (Whereupon, Defendant's Exhibits 238 and 239
7 were received into evidence.)

8 Q. (By Ms. Wyer) Now, are the Q and K lists, such as
9 we see in Exhibits 238 and 239, standard documents that
10 the Crime Lab prepares in connection with its
11 participation in an investigation?

12 A. In major cases, yes, it is.

13 Q. And does the Master Specimen Listing identify
14 evidence submitted to the lab by the file number that
15 the lab assigns?

16 A. Yes, it identifies it by the file number and the
17 laboratory number that is assigned to the evidence.

18 Q. Does that -- and when you say that, does that
19 mean the Q or the K number?

20 A. Both of them, the Q and the K, are identified by
21 the file number and by the laboratory number that they
22 are submitted under.

23 Q. If another document in the same investigation
24 refers to pieces of evidence using a particular Q
25 number, would those documents be referencing the same

1 item that is listed in the Master Specimen Listing for
2 that investigation by that Q number?

3 A. Yes, it would.

4 Q. Now, can you look at Plaintiff's Exhibit 40.

5 A. Yes, ma'am.

6 Q. Can you identify Plaintiff's Exhibit 40 as a
7 document from the Oklahoma City bombing investigation?

8 A. Yes. It has the Oklahoma City file number at the
9 top of it and also written in writing on the front of
10 the document.

11 Q. Do you see Q numbers identified or referenced in
12 this document?

13 A. Yes, Q9 and Q10 are referenced in the document.

14 Q. So, based on your understanding of laboratory
15 documents and procedures, are you able to use the Master
16 Specimen Listing to identify what Q9 and Q10 are?

17 A. Yes. Q9 and Q10, and that document would refer
18 to the Q9 and Q10 that are listed on the Master Specimen
19 List.

20 Q. Could you look back at Defendant's Exhibit 238
21 and explain to the court what your understanding is of
22 what items Q9 and Q10 are.

23 A. Q9 is listed as One PAL standard videotape
24 marked, quotes, "Longest Hatred (Anti-Semitism)
25 Crossfire U.S.A. Strike (Iraq) Moslem fundamentalist.

1 6/26/93."

2 Q. And Q10?

3 A. Q10 is listed as One PAL standard videotape
4 marked "Martial Art, Brazil plus Russia, Morocco,
5 Mexico."

6 Q. And are you able to understand from those
7 descriptions whether Q9 and Q10 consist of surveillance
8 footage from the surroundings of the Murrah Building in
9 Oklahoma City?

10 A. No, I do not believe they do.

11 Q. Now, could you look at Defendant's Exhibits 240
12 and 241.

13 A. Yes, ma'am.

14 MS. WYER: Let the record reflect that
15 Defendant's Exhibit 240 has the letterhead of FBI
16 Laboratory at the top and is dated July 3rd, 1995. And
17 Exhibit 241 also has FBI Laboratory letterhead and is
18 dated September 5, 1995.

19 Q. (By Ms. Wyer) Agent Whitworth, do you recognize
20 these documents?

21 A. Yes, I would recognize them as FBI Laboratory
22 reports.

23 Q. And are these documents the same -- let the
24 record reflect that these documents were also found by
25 Dorris Reed from the official Oklahoma City case file,

1 as indicated in her declaration. Are these official
2 copies of two of the reports that you found in the
3 search that you conducted?

4 A. Yes, ma'am, they are.

5 Q. Now, are lab reports like this prepared in the
6 regular course of laboratory business as part of the
7 laboratory's participation in an investigation?

8 A. Yes, ma'am.

9 MS. WYER: Defendant moves to admit 240 and
10 241 into evidence.

11 MR. TRENTADUE: Your Honor, 240 I believe is
12 in.

13 THE COURT: I believe 240 has been received.

14 MR. TRENTADUE: 241 is --

15 MS. WYER: Okay.

16 MR. TRENTADUE: -- because it was never
17 given to me as part of a FOIA production, so I think the
18 fact that he found it may be great, but it's produced as
19 an exhibit at trial not in response to a FOIA request.

20 THE COURT: What does the FBI claim for 241?

21 MS. WYER: Again, Your Honor, these
22 documents were found in the search that Agent Whitworth
23 conducted. These are the results of his search. The
24 content of the documents are relevant in regard to the
25 plaintiff's argument. The plaintiff has admitted, for

1 example, testimony from Special Agent Hersley, he is
2 making arguments regarding the -- what Agent Hersley is
3 referring to when he's describing photographs and what
4 footage those photographs come from. These documents
5 shed light on that matter.

6 MR. TRENTADUE: Your Honor, this goes to
7 proof of the existence or nonexistence of the tapes,
8 which is irrelevant for purposes of this trial,
9 especially when I have no access to evidence to dispute.
10 As I recall, the Hersley testimony was offered not for
11 the truth, but just for the fact of knowledge on behalf
12 of the FOIA people, including Mr. Hardy.

13 THE COURT: Is it the FBI's position that
14 Exhibit 241 was discovered during the course of
15 searching for the FOIA information?

16 MS. WYER: Yes, Your Honor.

17 THE COURT: It will be received to show the
18 extent of the search.

19 (Whereupon, Defendant's Exhibit 241 was
20 received into evidence.)

21 Q. (By Ms. Wyer) Agent Whitworth, looking at
22 Exhibit 241 can you tell me what kind of report
23 Exhibit 241 is.

24 A. 241 would be a Device Examiner Report written by
25 the lead device examiner in the case and would have been

1 compiled into any master reports at the end of the case.

2 Q. If the FBI had a videotape that showed the
3 detonation of the Ryder truck in the Oklahoma City
4 bombing, would you expect, based on your experience as
5 Unit Chief of the Explosives Unit, that that tape would
6 be mentioned in a report of this kind?

7 MR. TRENTADUE: Objection, foundation,
8 objection, speculation, objection, relevance, Your
9 Honor.

10 THE COURT: Sustained on the grounds of
11 speculation.

12 MS. WYER: Your Honor, we would like to
13 proffer Agent Whitworth's response on that issue.

14 THE COURT: You can attempt to lay some
15 foundation that he has some basis to give this
16 testimony, but so far you've not established it.

17 Q. (By Ms. Wyer) Agent Whitworth, are you familiar
18 with the kind of information that is considered when the
19 Explosives Unit prepares a detonation report of this
20 kind?

21 A. Yes, ma'am.

22 Q. And are you aware of what kinds of videotape
23 footage might be relevant to the Explosives Unit when
24 analyzing the detonation?

25 A. Yes, ma'am.

1 Q. And the -- could you explain the purpose of a
2 report of this kind?

3 A. A report of this kind is to provide lead value to
4 the field office or the submitting agency so that they
5 can either pursue potential subjects in the case and
6 determine how the device functioned.

7 Q. So does this report attempt to compile all the
8 evidence that would be relevant to how the device
9 functions and how the detonation occurred?

10 A. Yes, ma'am.

11 Q. And are you familiar with the kinds of videotape
12 footage that would be relevant to that analysis?

13 A. Yes, ma'am.

14 Q. And based on your knowledge and experience, would
15 a videotape that actually showed the detonation be
16 relevant to the analysis that is contained in a
17 detonation report?

18 A. Yes, it would be very important.

19 Q. So if the FBI had a videotape that actually
20 showed the detonation of the Ryder truck in the Oklahoma
21 City bombing, would you expect that videotape to be
22 referenced in a report of this kind?

23 MR. TRENTADUE: Objection to speculation,
24 Your Honor.

25 THE COURT: What relevance is it that the

1 tape is not listed in this document?

2 MS. WYER: Your Honor, this shows that the
3 FBI has considered the content of these reports in
4 connection with the plaintiff's request and that
5 plaintiff -- that there are no leads contained in these
6 reports regarding the location of tapes responsive to
7 the plaintiff's request.

8 MR. TRENTADUE: Your Honor, they're still
9 trying to go in the back door and to prove that they
10 don't exist when I don't have -- as I understand the
11 purpose of this trial, if I'm successful, will be an
12 opportunity to pursue proof the tapes exist. And what
13 they're doing is trying to prove they don't exist, when
14 I have no proof that is basically admissible to the
15 contrary, and it's not relevant to the issue set out in
16 the Pretrial Order.

17 THE COURT: I'm going to receive it for the
18 limited purpose of showing that it's part of the
19 information the FBI looked at. I'm not receiving it on
20 the issue as to the absence of a reference to the tapes
21 to indicate that the tapes don't exist.

22 MS. WYER: So, Agent Whitworth, if the FBI
23 had a videotape that actually showed the detonation of
24 the Ryder truck in the Oklahoma City bombing would you
25 expect that tape to be mentioned in a report of this

1 kind?

2 MR. TRENTADUE: Objection, speculation and
3 relevance.

4 THE COURT: Sustained.

5 MS. WYER: Your Honor, I don't understand
6 your previous ruling when you said you would receive the
7 answer to that question.

8 THE COURT: It seems to me that question
9 only goes to the question of whether the tapes exist or
10 not, and it's the FBI's position that that's not a
11 relevant inquiry. I've accepted that position. I don't
12 see any other significance to him giving this opinion,
13 other than the fact that you're going to argue from it
14 that the tapes don't exist.

15 MS. WYER: Agent Whitworth, let me rephrase
16 the question. Based on -- if this report does not
17 mention a videotape showing the actual detonation of the
18 Ryder truck, would this document be -- would the FBI be
19 justified in relying on this document as indicating that
20 there is no reason to expect such a videotape to be
21 located at the Crime Lab?

22 MR. TRENTADUE: Objection, relevance, Your
23 Honor, again it goes -- and it is speculation.

24 THE COURT: It is speculation. I'm going to
25 sustain the objection.

1 MS. WYER: Agent Whitworth, based on your
2 knowledge and experience, what conclusion would you draw
3 from the fact that -- well, let's now look at
4 Exhibit 241, if you could just flip through this
5 document, could you look at the page marked D-367 in
6 this document.

7 MR. TRENTADUE: I'm sorry, I couldn't hear
8 you.

9 MS. WYER: D-367.

10 THE WITNESS: Yes, ma'am.

11 MS. WYER: Can you look at the last
12 paragraph on this page going to the next page and
13 explain your understanding of what that paragraph
14 indicates.

15 MR. TRENTADUE: The paragraph and line?

16 MS. WYER: The last paragraph on D-367.

17 Q. (By Ms. Wyer) Agent Whitworth, could you look at
18 that paragraph and explain what that paragraph
19 indicates.

20 A. Specimen Q5 is talked about in it, which is a
21 videotape, a VHS videotape, recovered from the security
22 surveillance camera located in the lobby of the Regency
23 Tower building on the corner of 5th Street and North
24 Hudson Avenue in Oklahoma City.

25 Q. Could you now look at Exhibit 240 and page D-356,

1 which is the second page of that report.

2 A. Yes, ma'am.

3 Q. Looking at page 2 of this report, are you able to
4 understand whether the Q5 mentioned here is the same
5 specimen Q5 that was referenced in the other report in
6 Exhibit 241 that we were just looking at?

7 A. Yes, ma'am. It's listed as Q5 and talks about
8 the Ryder truck.

9 Q. And could you explain what the third paragraph on
10 this page indicates about Q5.

11 A. It gives the timestamps for when the Ryder truck
12 first appears in the video, it gives the last frame of
13 the truck as it's viewed from the video, and it gives
14 the last frame that is recorded by the video.

15 Q. Does it indicate anything about photographs being
16 created from that video?

17 A. Yes. It states that Q5 contained 18 Kodak
18 electronic prints and 41 8X10 inch photographic prints
19 that were obtained from that video. It also states that
20 video frames were enhanced in an attempt to render more
21 detail in the photographic prints.

22 Q. So is it -- are you able to conclude, based on
23 those reports, that photographs were made from the
24 videotape that was recovered from the lobby of the
25 Regency Tower?

1 MR. TRENTADUE: Objection, relevance, Your
2 Honor, and objection, speculation, since he apparently
3 didn't do --

4 THE COURT: It seems to me all you're asking
5 him to do is to interpret the document. I don't see any
6 particular expertise or knowledge that would make his
7 interpretation of this more than what the attorneys can
8 argue from the evidence itself. I'll sustain the
9 objection.

10 MS. WYER: Your Honor, Agent Whitworth, as
11 someone who works with these reports and understands the
12 content of them, would be more -- would have -- be in a
13 better position to interpret the documents than a lay
14 person.

15 THE COURT: I don't see anything difficult
16 to interpret. It says photographic prints were made.
17 What can he add to my understanding of that fact beyond
18 that statement?

19 MS. WYER: I would just like his conclusion
20 on that point on the record, Your Honor.

21 THE COURT: Why? I mean what relevance is
22 his conclusion? His independent conclusion has no
23 significance in resolving the issues at trial.

24 MS. WYER: Well, for the record, I would
25 like to proffer his response.

1 THE COURT: You can make a proffer.

2 MS. WYER: Can I proffer it by asking him to
3 respond to the question?

4 THE COURT: No, that's not the way proffers
5 work.

6 MS. WYER: In that case, Your Honor, I would
7 proffer that he would respond that these two reports
8 indicate that photographs were made from the videotape
9 that is identified as Q5 and that --

10 THE COURT: I can read the document and
11 reach that same conclusion myself. I don't need a
12 separate statement about that. It's not helpful.

13 MS. WYER: In any case, Your Honor, that
14 would be --

15 THE COURT: He doesn't have any separate
16 independence. He doesn't say he saw these photographs.
17 All he's doing is reading the document and then you're
18 asking him to tell me what I should conclude from the
19 document. I can reach my own conclusions about that.

20 MS. WYER: Your Honor, I would also like to
21 proffer Agent Whitworth's response to the question that
22 I had asked previously for the record regarding the
23 expectation that a tape would -- if there were a tape --
24 if the FBI had a tape of the detonation, that it would
25 be referenced in a detonation report prepared by the

1 Crime Lab.

2 THE COURT: I've already rejected that
3 argument.

4 MS. WYER: I know, Your Honor. I'm simply
5 wanting to proffer for the record his response to that
6 question.

7 THE COURT: Why would that be helpful?

8 MS. WYER: I'm doing this in order to
9 preserve the defendant's desire to present this evidence
10 at trial for appeal, Your Honor. That's all that I want
11 to do.

12 THE COURT: You may make the proffer.

13 MS. WYER: For the record, I had asked Agent
14 Whitworth if the FBI had a videotape that actually
15 showed the detonation of the Ryder truck in the Oklahoma
16 City bombing, would you expect, based on your experience
17 as Unit Chief of the Explosives Unit, that that tape
18 would be mentioned in a report of this kind. I proffer
19 that Agent Whitworth's response to that question would
20 be yes.

21 Now, Agent Whitworth, are you able, looking
22 at Exhibit 240, Bates page D-356, and at Exhibit 241,
23 Bates page D-368, are you able to understand the
24 information about timestamps that is referenced in
25 this -- these documents and how -- whether the --

1 basically, what do you understand these documents to
2 indicate about the timestamps on the tape?

3 MR. TRENTADUE: Objection, relevance, Your
4 Honor. They state what they state.

5 THE COURT: I don't understand what the
6 question is.

7 MS. WYER: Your Honor, yesterday --

8 THE COURT: My understanding of the
9 timestamps is the documents say what the documents say.
10 What can his understanding add to that?

11 MS. WYER: Your Honor --

12 THE COURT: I assume he would say, well,
13 they mean what they say. We can reach that conclusion
14 without his testimony.

15 MS. WYER: I think someone who has
16 experience with lab reports and technical issues
17 involved in explosives investigations may be in a better
18 position to explain how timestamps on a videotape might
19 be analyzed than a general member of the public, Your
20 Honor.

21 THE COURT: I don't understand why that
22 would be so.

23 MR. TRENTADUE: Renew the objection, Your
24 Honor.

25 THE COURT: I sustain the objection.

1 MS. WYER: Your Honor, yesterday the
2 plaintiff -- the plaintiff questioned another witness
3 regarding these timestamps.

4 THE COURT: I understand the timestamps, as
5 reflected in the document, may have some significance,
6 but this witness's understanding of what the timestamps
7 mean I can see that it has no -- it adds nothing to
8 what's already in the document. He's going to say the
9 timestamps mean what the timestamps mean, and I already
10 know that.

11 MS. WYER: Agent Whitworth, based on your
12 experience as Unit Chief of the Explosives Unit, are
13 you -- do you have an understanding of how the
14 timestamps in a video might be calibrated based on an
15 indication in the video of the time at which an event
16 such as a detonation occurred?

17 MR. TRENTADUE: Objection, relevance,
18 objection, leading, and compound.

19 THE COURT: Sustained. There's no basis for
20 him to have any other understanding than any other
21 reader of this document. He didn't create the document,
22 he didn't look at the videotapes, timestamps. You
23 haven't laid any foundation as to how he can add
24 anything beyond what it says in this document. It's
25 simply speculation.

1 MS. WYER: Agent Whitworth, have you ever
2 engaged in any analysis of the timing of a bombing based
3 on --

4 MR. TRENTADUE: Objection, relevance, Your
5 Honor.

6 MS. WYER: Your Honor, if I'm not allowed to
7 ask a question to lay a foundation --

8 THE COURT: Well, if your question is did he
9 review these tapes to determine whether or not these
10 timestamps are accurate or not, I'll let you ask him
11 that question. But if he's done it with some other
12 tapes, I don't see that that's helpful.

13 MS. WYER: Well, Your Honor, someone who has
14 experience in those matters would have insights into how
15 that would be done.

16 THE COURT: It could not possibly add any
17 information about how this particular document was
18 created. I'll sustain the objection.

19 Q. (By Ms. Wyer) Agent Whitworth, based on your
20 knowledge and experience at the FBI Crime Lab, can you
21 think of any other location within the Crime Lab where
22 videotapes from the Oklahoma City bombing investigation
23 would be likely to be found?

24 A. No, ma'am.

25 Q. Can you think of any other method of searching

1 the Crime Lab that would be likely to identify
2 videotapes from the Oklahoma City bombing investigation?

3 A. No, ma'am.

4 MS. WYER: No further questions.

5 THE COURT: Cross-examination?

6 **CROSS-EXAMINATION**

7 **BY MR. TRENTADUE:**

8 Q. Agent Whitworth, you said at one time you worked
9 in the -- or were assigned to the Washington
10 Metropolitan Field Office?

11 A. Yes, sir.

12 Q. What years were that, sir?

13 A. I was assigned there from 1992, April of 1992,
14 until May of 1997.

15 Q. If you would look at Exhibit 40, please. You
16 were asked a lot of questions about that. Now, this
17 exhibit refers to tapes being maintained at the
18 Washington Metropolitan Field Office?

19 A. Yes, sir.

20 Q. That's the Washington, D.C. Field Office for the
21 FBI?

22 A. Yes, sir.

23 Q. Would they be in the Evidence Control Room there?

24 A. That's where they would have been returned to,
25 yes. I'm not sure if they're still there.

1 Q. Did the Washington Metropolitan Field Office
2 serve as the Evidence Control Room for FBI Headquarters?

3 MS. WYER: Objection, Your Honor, relevance.
4 It's already claimed from the record in this case that
5 the videotapes referenced in this document have nothing
6 to do with plaintiff's FOIA request.

7 MR. TRENTADUE: It doesn't go to the --
8 indirectly, Your Honor, not these particular tapes. I'm
9 not saying they should have given me these, but the
10 question is did they keep tapes from Headquarters in the
11 field office.

12 THE COURT: Overruled.

13 Q. (By Mr. Trentadue) The question, I'll restate it
14 for you, sir. Headquarters used the Washington
15 Metropolitan Field Office as its Evidence Control Room,
16 didn't it?

17 A. No, sir.

18 Q. Okay. They didn't store evidence there.

19 A. No, sir.

20 Q. Do you know if they had an Evidence Control Room
21 at the Headquarters?

22 A. There is an FBI Laboratory, there is an Evidence
23 Control Room, and then each unit maintains evidence
24 storage areas.

25 Q. Headquarters itself did have an Evidence Control

1 Room at that time?

2 A. I'm not aware of one. I was not assigned to
3 Headquarters as an agent who would be collecting
4 evidence at Headquarters, only as part of the
5 laboratory.

6 Q. So if records reflect that Headquarters was
7 retaining a videotape and 300 pages of OKBOMB documents,
8 you don't know where they would be kept.

9 MS. WYER: Objection, Your Honor. The
10 record is also clear at this point that the videotape
11 that the plaintiff is referring to on the document is a
12 tape from Channel 4 News and is not responsive to the
13 plaintiff's FOIA request.

14 THE COURT: Overruled.

15 Q. (By Mr. Trentadue) So you don't know where they
16 would be kept.

17 A. No, sir. I'm not aware of that videotape.

18 Q. Now, if you would look at Exhibit 45. Now, you
19 talked about the Explosives Unit's database.

20 A. Yes, sir.

21 Q. And you talked about the other databases you
22 looked at.

23 A. Yes, sir.

24 Q. If evidence is not -- if a physical object or a
25 videotape is gathered as potential evidence and never

1 entered into evidence, then they wouldn't be in your
2 databases, would they, sir?

3 A. They wouldn't be in the Explosives Unit. If they
4 were submitted to the Explosives Unit, they would be in
5 there.

6 Q. If they weren't submitted to you, they wouldn't
7 be in your database.

8 A. No, sir.

9 Q. Now, you talked about Exhibits 240 and 241.

10 A. Yes, sir.

11 Q. You say you did that search in response to the
12 FOIA request?

13 A. Yes, sir.

14 Q. How long ago was that search done?

15 A. It was last October, I believe, 2013.

16 Q. After the trial had been set in this case?

17 A. I'm not sure when the trial was set, sir.

18 Q. Would it have been -- so you had not done a
19 search for that before that time.

20 A. No, sir.

21 Q. And who told you to search for them?

22 A. I believe it was Mr. Miller, Joel Miller, who was
23 at that time at Headquarters in the Office of General
24 Counsel.

25 Q. And did he say it was for purposes of this trial?

1 A. He said it was a FOIA request in regard to -- I
2 believe your name was listed in it, but I'm not sure
3 that it was -- a trial was mentioned.

4 Q. So Joel Miller, as General Counsel, said get this
5 for us?

6 A. He asked me to search to see if we had any
7 information on videotapes in regard to the Oklahoma City
8 bombing.

9 Q. And this didn't come from Mr. Hardy's office, the
10 FOIA folks.

11 MS. WYER: Objection, Your Honor. A
12 previous witness has already testified about the
13 relationship between Mr. Hardy's office and the FOIA
14 litigation unit of the General Counsel's Office.

15 THE COURT: Overruled.

16 THE WITNESS: No, sir.

17 Q. (By Mr. Trentadue) This didn't come from the
18 Freedom of Information Section of the FBI to you, did
19 it, sir?

20 A. No, sir.

21 Q. It came from Mr. Miller?

22 A. Yes, sir.

23 Q. Mr. Miller oversees litigation for the Bureau?

24 MS. WYER: Objection, Your Honor, lack of
25 foundation.

1 THE COURT: Sustained. You can ask him
2 whether he knows.

3 Q. (By Mr. Trentadue) Do understand what
4 Mr. Miller's role is within the Bureau?

5 A. I'm not sure at all, sir. I know he's with the
6 Office of General Counsel, but other than that, this was
7 my first dealing with him.

8 Q. He's pretty high up in the Office of General
9 Counsel, too, isn't he?

10 A. I tend not to be aware of all the higher-ups in
11 the FBI.

12 Q. He's a bit above your pay grade, though.

13 A. Yes.

14 MS. WYER: Objection, Your Honor, calls for
15 speculation.

16 THE COURT: Sustained.

17 Q. (By Mr. Trentadue) Now, if you look at Exhibit
18 40, assume for me -- you recognize it as a 302, don't
19 you?

20 A. Yes, sir.

21 Q. And it's been identified, authenticated, as being
22 out of the OKBOMB file. And you're familiar with the
23 acronym OKBOMB, aren't you?

24 A. Yes, sir.

25 Q. This says, blank related that this document

1 contained information which would remove all doubt that
2 the Alcohol, Tobacco, and Firearms, ATF, and the Federal
3 Bureau of Investigation, the FBI, had prior knowledge of
4 the bomb which destroyed the Alfred P. Murrah Building,
5 Federal Building in Oklahoma City, on April 19, 1995.
6 Blank stated that these agencies attempted to develop a
7 sting operation and did not take the bomb threat
8 seriously. Assume for a minute that's true. If that's
9 true, then the videotape showing the perpetrators of the
10 bombing is certainly not going to find it's way into
11 evidence, is it, sir?

12 MS. WYER: Objection, Your Honor. An
13 assumption that it is true is pure speculation.

14 THE COURT: Sustained.

15 MR. TRENTADUE: If you would look then,
16 sir --

17 I think that's all the questions I have.
18 Thank you.

19 THE COURT: Any recross -- or redirect, I
20 should say?

21 **REDIRECT EXAMINATION**

22 **BY MS. WYER:**

23 Q. Agent Whitworth, could you clarify again when you
24 began in your position as Unit Chief of the Explosives
25 Unit?

1 A. A year and-a-half ago.

2 Q. Could you just help me figure out when exactly,
3 what month and year would that be?

4 A. It would have been in March of 2013.

5 Q. So is it true that you were not Unit Chief of the
6 Explosives Unit in 2011?

7 A. Yes, that is correct.

8 Q. And another person was unit chief at that time.

9 A. Yes, ma'am.

10 Q. Do you know whether the prior unit chief had been
11 made aware of this FOIA request in 2011?

12 MR. TRENTADUE: Objection, foundation.

13 THE COURT: Sustained.

14 MS. WYER: I'm asking whether this witness
15 is aware of that, Your Honor.

16 THE COURT: You can answer yes or no.

17 THE WITNESS: No, I would not be aware of
18 that.

19 Q. (By Ms. Wyer) Do you know whether the prior unit
20 chief had done any search in connection with the
21 plaintiff's FOIA request?

22 A. No, ma'am, I do not.

23 MS. WYER: Nothing further, Your Honor.

24 THE COURT: Anything further, Mr. Trentadue?

25 MR. TRENTADUE: No, sir.

1 THE COURT: Thank you, sir. You may step
2 down.

3 May this witness be excused?

4 MS. WYER: Yes.

5 MR. TRENTADUE: Yes, sir.

6 THE COURT: You're excused.

7 The FBI may call its next witness.

8 MS. WYER: The FBI calls Diane Lang.

9 **DIANE LANG,**

10 called as a witness at the request of the Defendant,

11 having been first duly sworn, was examined

12 and testified as follows:

13 THE CLERK: Please say and spell your full
14 name for the record.

15 THE WITNESS: Diane Lang, D-i-a-n-e,
16 L-a-n-g.

17 **DIRECT EXAMINATION**

18 **BY MS. WYER:**

19 Q. Good morning Ms. Lang.

20 A. Good morning.

21 Q. Ms. Lang, can you tell the court where you work?

22 A. Oklahoma City Division of the FBI.

23 Q. And what is your current position there?

24 A. Evidence technician.

25 Q. And could you pull the microphone. How long have

1 you been an evidence technician in Oklahoma City?

2 A. 13 years.

3 Q. And could you explain to the court your duties as
4 evidence technician.

5 A. I assist with any searches that -- to go out on
6 searches with agents, help with crime scenes, package
7 evidence, store evidence, and enter it into the
8 database.

9 Q. Are you saying that your job involves working
10 with agents on current investigations that they are
11 working on?

12 A. Yes, ma'am.

13 Q. And do you also have duties related to the
14 maintenance of the evidence that is collected at a
15 scene?

16 A. Yes, we maintain all the evidence.

17 Q. Could you explain how you -- are you familiar
18 with the FBI's procedures in regard to maintaining and
19 entering evidence?

20 A. Yes, ma'am.

21 Q. So when you are involved in -- when evidence is
22 collected at a crime scene, what happens to that
23 evidence when it is brought back to the field office?

24 A. We ensure that it is properly packaged and
25 labeled and then we take it and enter it into the

1 database. When we enter it into the database, we're
2 putting in the information such as when it was acquired,
3 the date and time it was acquired, who acquired it, and
4 the description.

5 Q. And you mentioned that you enter evidence into a
6 database, could you explain what that database is that
7 you're talking about.

8 MR. TRENTADUE: Objection, Your Honor. May
9 I voir dire in aid of an objection?

10 THE COURT: Well, I'm going to ask you to
11 lay additional foundation as to what period of time
12 you're inquiring about as to when these procedures were
13 followed so that we know whether they're relevant to the
14 appropriate time period. She's talking about apparently
15 current procedures. The only thing that would be
16 relevant to this case would be the procedures that were
17 followed in 1995. You need to lay foundation for that.

18 MS. WYER: Actually, Your Honor, I believe
19 that the systems that are -- were in existence at the
20 time of the FOIA request are the systems that would be
21 relevant to the search that was done prior to the --

22 THE COURT: How would that be relevant?

23 MS. WYER: Because the search was done on
24 the systems that existed at the time of the FOIA
25 request, Your Honor.

1 THE COURT: You were asking questions about
2 how the evidence was entered into the system.

3 MS. WYER: I'm simply trying to provide a
4 picture of how -- of what those systems are and what
5 information they contain. I can lay a foundation about
6 whether the information --

7 THE COURT: Lay a foundation so we know the
8 timeframe she's referencing.

9 MS. WYER: Ms. Lang, could you explain
10 whether you are familiar with -- I simply need to
11 identify what systems she's talking about when she's
12 talking about entering evidence into a system, Your
13 Honor, and then I will ask whether that system would
14 reflect information from evidence collected during the
15 time of the Oklahoma City bombing.

16 THE COURT: You can proceed however you
17 think best to lay the foundation.

18 Q. (By Ms. Wyer) Ms. Lang, when you mention a
19 database in which information about evidence is entered,
20 could you explain what database you're talking about.

21 A. ACS was used up until 2012.

22 Q. What part of ACS are you talking about?

23 A. ICM, collected items.

24 Q. You have a binder there on that end. Could you
25 look at Defendant's Exhibit -- it's marked in your

1 binder as ACS Diagram, but it's Defendant's Exhibit 248.
2 Looking at this diagram, could you explain which part of
3 ICM you mean.

4 A. It's under the Investigative Case Management with
5 the list collected items.

6 Q. So it's the collected items portion of ACS?

7 A. Yes, ma'am.

8 Q. Now, do you know whether the collected items
9 portion of ACS has information about evidence that was
10 collected during the Oklahoma City bombing?

11 A. Yes, it does.

12 Q. And how do you know that?

13 A. Because I work in ACS all the time, I have to
14 deal with OKBOMB evidence, and I have to search for
15 things.

16 Q. Now, are you aware that ACS was not put into
17 place until sometime in the fall of 1995?

18 A. Yes.

19 Q. Do you know whether ACS, and in particular, the
20 collected items portion of it has information about
21 evidence from the Oklahoma City bombing that was
22 collected prior to the fall of 1995?

23 MR. TRENTADUE: Objection, foundation on
24 that one.

25 THE COURT: She can answer the question yes

1 or no.

2 THE WITNESS: Yes.

3 Q. (By Ms. Wyer) And how do you know that?

4 A. The evidence tech that trained me worked OKBOMB
5 and she just retired in 2010, I believe, she refreshed
6 me and kept me updated on the OKBOMB procedures and how
7 it was -- things were entered.

8 Q. And have you personally looked for information
9 regarding evidence that was collected, for example, in
10 April of 1995?

11 A. I'm sorry, could you repeat that again.

12 MS. WYER: Have you personally done
13 searches -- and we'll get to this later, I mean the
14 substance of this witness's testimony, Your Honor, is
15 that she has conducted searches in this database and has
16 located information regarding evidence that was
17 collected during that period, and that by itself
18 establishes her knowledge that there is information in
19 the database regarding that evidence. So in order to
20 present the testimony in an organized fashion, I would
21 like to proceed.

22 THE COURT: You can ask her those questions.
23 We don't have an objection so far until we have a
24 question.

25 Q. (By Ms. Wyer) Based on your knowledge, if I am

1 asking you to explain how information is entered in
2 collected items and the kinds of information that
3 appears there, can you give answers that would cover
4 evidence that was collected during the Oklahoma City
5 bombing?

6 A. Yes.

7 MR. TRENTADUE: I would object on
8 speculation, Your Honor. We're going back 20 years.

9 THE COURT: She's only been in this position
10 for 13 years. You're going to have to lay more
11 foundation if you want to use this witness to establish
12 what the practice was in April of 1995 for entering
13 evidence in the system and how that got into the ACS
14 system.

15 MS. WYER: Your Honor, I'm not trying to
16 establish the practice at that time. I'm simply trying
17 to establish how the collected items system works, so I
18 can asked Ms. Lang --

19 Is collected items, as far as you know, a
20 system that has changed the way it works over time, or
21 is it something that was set up and has been the same
22 all along?

23 MR. TRENTADUE: Objection.

24 THE COURT: How would she know that? She
25 can only possibly testify to the last 13 years.

1 MS. WYER: Well, she knows how collected
2 items works now and she knows based on searches that she
3 has done whether the same information is in that system
4 for evidence that was collected at prior periods. I
5 would first like to ask how the system works now and
6 then I will proceed to address prior periods.

7 MR. TRENTADUE: Again, how it works now,
8 Your Honor, is irrelevant, and I don't think she's
9 established the foundation for this witness to say what
10 took place 20 years ago about the introduction of
11 evidence in the FBI system in the OKBOMB case in
12 Oklahoma City.

13 THE COURT: Sustained.

14 Q. (By Wyer) Ms. Lang, does the collected items
15 database contain -- is that a system where you can go in
16 and look up -- conduct searches for Oklahoma City
17 bombing evidence?

18 A. Yes.

19 Q. Are you able to use the collected items system to
20 view chain of custody information for Oklahoma City
21 bombing evidence?

22 A. Yes, ma'am.

23 MR. TRENTADUE: Your Honor, I'm going to
24 object to this entire line of questioning. This witness
25 was designated as a witness -- excuse me. I withdraw

1 that. It's a different witness. This witness was
2 designated as to who did the actual search. This
3 witness was designated as the person who did the manual
4 search of the warehouse, then I think this would be
5 irrelevant.

6 MS. WYER: Your Honor, the questioning that
7 I'm going to ask will show that this is not irrelevant
8 to that issue at all, Your Honor.

9 THE COURT: You may proceed.

10 Q. (By Ms. Wyer) Does the -- do you have duties
11 relating to maintaining and storing evidence?

12 A. Yes, ma'am.

13 Q. Are you familiar with the FBI's procedures for
14 storing evidence?

15 A. Yes, ma'am.

16 Q. Does the FBI store evidence in a secure area?

17 A. Yes, they do.

18 Q. What is that area called?

19 A. The Evidence Control Center.

20 Q. And is it also called Evidence Control Room?

21 A. Yes.

22 Q. Is there an Evidence Control Room on site at the
23 Oklahoma City Field Office?

24 A. Yes.

25 Q. And is the evidence from the Oklahoma City

1 bombing investigation onsite at the field office?

2 A. No, it is not. It's at a warehouse.

3 Q. And is that warehouse connected to the field
4 office geographically?

5 A. No, ma'am.

6 Q. Can you explain -- how far away from the field
7 office is that warehouse?

8 A. It's approximately ten miles.

9 Q. So is that warehouse separate from any Evidence
10 Control Room that is onsite at the field office?

11 A. Yes, it is.

12 Q. Now, why is the Oklahoma City bombing evidence
13 kept in a warehouse?

14 A. Because there was so much evidence that we didn't
15 have enough room in our control room at the division to
16 house it all.

17 Q. Has the Oklahoma City bombing evidence ever been
18 in the Evidence Control Room at the Oklahoma City Field
19 Office onsite?

20 A. No, ma'am.

21 THE COURT: "Ever," is that your question?

22 MS. WYER: Ever.

23 MR. TRENTADUE: Object, foundation.

24 THE COURT: How would she know that?

25 Q. (By Ms. Wyer) Ms. Lang, from -- when did you

1 start working in the Oklahoma City Field Office?

2 A. 1997.

3 Q. What was your position at that time?

4 A. Clerk.

5 Q. Did you have any involvement in the Oklahoma City
6 bombing investigation?

7 A. I went on a TDY for two weeks to Denver.

8 Q. Now, in the course of working in the field office
9 since 1997, are you familiar with -- you were at the
10 field office at time that the Oklahoma City bombing
11 evidence went to Denver?

12 A. No, ma'am.

13 Q. Are you familiar -- were you at the field office
14 at the time that the Oklahoma City bombing returned --
15 evidence returned from Denver?

16 A. Yes, I was.

17 Q. Were you in the field office at the time -- was
18 there some point in the time that you've worked at the
19 field office when the field office location changed?

20 A. Yes.

21 Q. So based on what you know personally, are you
22 able to explain whether any Oklahoma bombing evidence
23 was ever kept in the current onsite Evidence Control
24 Rooms at the Oklahoma City Field Office?

25 A. Yes.

1 MR. TRENTADUE: Objection, foundation.

2 THE COURT: Can we establish when the
3 current site was established and what involvement she
4 had in that as foundation for this testimony.

5 MS. WYER: I just asked the witness whether
6 she was working at the field office at the time that it
7 changed locations.

8 THE COURT: Establish a timeframe.

9 Q. (By Ms. Wyer) Ms. Lang, could you explain when
10 the field office moved to its current location.

11 A. In 1999.

12 Q. And, at that time, where was the Oklahoma City
13 bombing evidence?

14 A. I believe it was still in Denver.

15 Q. So when the move happened at the field office was
16 there any Oklahoma City bombing evidence that was moved
17 to the field office?

18 A. No, ma'am.

19 Q. Why is that?

20 A. Because there's so much.

21 MR. TRENTADUE: Objection, foundation.

22 THE COURT: Sustained.

23 Q. (By Ms. Wyer) Well, when the Oklahoma City
24 bombing evidence was in Denver was it also in Oklahoma
25 City?

1 A. No.

2 Q. So when the Oklahoma City bombing evidence was in
3 Denver was there any Oklahoma City bombing evidence in
4 Oklahoma City?

5 THE COURT: How would she know that. We
6 don't have any basis whether she was involved, whether
7 she looked for it, somehow she had personal knowledge
8 that there wasn't any evidence there at that time from
9 the Oklahoma City bombing. We don't even have any
10 testimony from her whether she was involved in shipping
11 the evidence to Denver or shipping it back from Denver.
12 All we know is that she worked in the Evidence Control
13 Room for the last 13 years as a technician. You've got
14 to give us some more foundation as to how she knows the
15 information you're asking her about.

16 Q. (By Ms. Wyer) Ms. Lang, what -- after you did the
17 TDY what -- does that refer to temporary assignment?

18 A. Yes, ma'am.

19 Q. So you were on temporary assignment in Denver for
20 the Oklahoma City bombing matter.

21 A. Yes.

22 Q. For two weeks.

23 A. Yes.

24 Q. What did you -- when you returned to -- did you
25 return to the field office after that?

1 THE COURT: Establish when she was in
2 Denver.

3 Q. (By Ms. Wyer) Could you explain the time period
4 when you were in Denver.

5 A. I believe it was in January of '98.

6 Q. When did you return to -- did you return to the
7 field office after that?

8 A. Yes, ma'am.

9 Q. What did you do when you were in Denver for those
10 two weeks?

11 A. Just clerk-position-type duties.

12 Q. When you returned to the field office could you
13 explain what your position was between that time and the
14 time that you became an evidence technician.

15 A. I was a -- what we call a rotor, a secretary-type
16 position.

17 Q. What kind of matters do rotors work on?

18 A. Case files.

19 Q. Do they work with agents?

20 A. Absolutely, yes.

21 Q. And when did you become a rotor?

22 A. Um, 1998, '99.

23 Q. And then could you just clarify, did you have any
24 other position before you became an evidence technician?

25 A. Just a rotor.

1 Q. What year did you become an evidence technician?

2 A. 2001.

3 Q. Were you -- were you an evidence technician at
4 the time that the Oklahoma City bombing evidence
5 returned to Oklahoma City from Denver?

6 A. I don't think I was. If I was, I was brand new.
7 I can't remember exactly the year that it came back.

8 Q. Did you have any awareness at the time that the
9 Oklahoma -- that the evidence came back, what was
10 happening to it, and where it was put?

11 A. Yes.

12 Q. Simply -- is that simply by being an employee at
13 the field office?

14 MR. TRENTADUE: Objection, leading.

15 Q. (By Ms. Wyer) How would you know that?

16 A. It was a big deal at the field office that the
17 evidence was coming back.

18 Q. And did you have knowledge at the time of where
19 the evidence would be sent?

20 A. No.

21 Q. Did you know whether it would be coming to the
22 field office itself?

23 A. I knew that it was not coming to the field
24 office. I knew that they had established a warehouse
25 somewhere.

1 Q. So if I -- what is your understanding based on
2 what you actually knew at the time of whether the
3 Oklahoma City bombing evidence has been in the -- could
4 you explain again when the move happened to the new
5 site, new field office.

6 A. It happened in 1999.

7 Q. '99?

8 A. Yes, ma'am.

9 Q. Were you an employee at the field office at that
10 time?

11 A. Yes.

12 Q. So the field office changed locations in 1999,
13 you were an employee then. The evidence came back from
14 Denver in -- do you know the year?

15 A. I don't know the year exactly.

16 Q. Was it after that?

17 A. Yes.

18 Q. So after the field office changed locations the
19 evidence returned from Denver. Are you able to explain
20 whether any of the evidence that returned from Denver
21 has ever been in the Oklahoma City Field Office Evidence
22 Control Rooms?

23 MR. TRENTADUE: Objection, foundation, Your
24 Honor.

25 THE COURT: Sustained. All that she could

1 testify is that she's not aware of any. We don't --
2 she's not in a position to say that she supervised the
3 move, that she had any involvement in inventorying the
4 materials, that she has any way to know whether some
5 particular item was brought to that office. She can
6 testify that -- she simply wasn't involved in moving the
7 materials, so how would she know whether some of it was
8 brought to the office?

9 MS. WYER: Based on what you are aware of,
10 Ms. Lang, is it your understanding that any of the
11 Oklahoma City bombing evidence that returned to Oklahoma
12 City came into the field office --

13 MR. TRENTADUE: Objection, foundation.

14 MS. WYER: -- at that time?

15 THE COURT: She can testify whether she
16 personally was aware of any.

17 Q. (By Ms. Wyer) Were you personally aware of any
18 Oklahoma City bombing evidence being stored in the
19 Oklahoma City Evidence Control Rooms when it returned
20 from Denver?

21 A. Since I have become an evidence tech since 2001,
22 the only thing that we have ever stored in the field
23 office is the valuable evidence of OKBOMB. Everything
24 else is stored out in the warehouse.

25 Q. And how do you know that?

1 A. Because we do inventories every year on evidence
2 and on every evidence room that we maintain. And that
3 is a regulation of the FBI that we do that.

4 Q. So how confident are you that there -- are you
5 confident that there is no stray videotape in the
6 Evidence Control Room that is onsite at the field
7 office?

8 A. I'm very confident.

9 MR. TRENTADUE: Objection, foundation. She
10 just said the only evidence was the valuable evidence,
11 and there's been no foundation that she ever searched
12 the Evidence Control Room.

13 THE COURT: Sustained.

14 MS. WYER: I'm asking what her level of
15 confidence is based on what she knows as an evidence
16 technician.

17 THE COURT: I'm not sure her level of
18 confidence is of any particular help to this issue. She
19 can be 100 percent confident about something she knows
20 nothing about.

21 Q. (By Ms. Wyer) Ms. Lang, are you involved in the
22 inventories that occur in the onsite Evidence Control
23 Rooms?

24 A. Yes, I have to be there.

25 Q. Does that involvement give you some understanding

1 of what -- whether there are -- is any misplaced
2 evidence in the Evidence Control Room onsite at the
3 field office?

4 A. Yes, ma'am.

5 Q. And based on that experience, are you confident
6 that there is no misplaced videotape from the Oklahoma
7 City bombing investigation in the onsite Evidence
8 Control Room?

9 A. Yes.

10 MR. TRENTADUE: I'm going to object to this,
11 Your Honor, move the answer be stricken. Up until this
12 very moment the FBI's position is, despite the court's
13 order, we did not search the Evidence Control Room in
14 the Oklahoma City Field Office because we don't think --
15 we know there to be nothing there. And now they're
16 saying -- they've put on no proof like this before, it
17 was just a flat out we didn't do it.

18 MS. WYER: Well, Your Honor, that is exactly
19 what she is about to say, she doesn't think it would be
20 there.

21 THE COURT: Well, her level of confidence is
22 of no significance to this issue, so I'm going to strike
23 the answer. If her testimony is, as I understand it to
24 be, that an inventory was done, you need to establish
25 whether or not she reviewed the inventory and in the

1 course of reviewing the inventory made any attempt to
2 find any materials with respect to the Oklahoma City
3 bombing. That would be useful information. But you've
4 not asked her that question.

5 Q. (By Ms. Wyer) Ms. Lang, so you're an evidence
6 technician. Do you have responsibilities regarding the
7 evidence in the onsite Evidence Control Rooms in
8 Oklahoma City?

9 A. Yes.

10 Q. Do you also have responsibilities regarding the
11 evidence that is stored in the Oklahoma City bombing
12 warehouse?

13 A. Yes.

14 Q. And based on those responsibilities, can you
15 explain whether any evidence from the Oklahoma City
16 bombing investigation is supposed to be in the Evidence
17 Control Room onsite at the field office?

18 MR. TRENTADUE: Objection, asked and
19 answered. I believe she testified there is valuable
20 evidence in the control room.

21 MS. WYER: Well, I can go ahead and ask
22 Ms. Lang about the valuable evidence vault.

23 Q. (By Ms. Wyer) Ms. Lang, what kinds of evidence is
24 stored in the valuable evidence vault in the Oklahoma
25 City Field Office?

1 A. Only evidence that we consider valuable, such as
2 money, jewelry, priceless antiques, things like that.

3 Q. Would you consider a videotape to be something
4 that would be stored in the valuable evidence vault?

5 A. No.

6 Q. And are inventories done of the valuable evidence
7 vault?

8 A. Yes, they are.

9 Q. Have you reviewed those inventories?

10 A. Yes, I have.

11 Q. Is there any videotape listed on those
12 inventories?

13 A. No, there's not.

14 Q. So based on that, are you confident that there is
15 no videotape in the valuable evidence vault?

16 A. I'm very confident.

17 Q. Now, putting aside the valuable evidence vault,
18 is there any other evidence from the Oklahoma City
19 bombing that is supposed to be on the inventory in the
20 onsite Evidence Control Room in Oklahoma City?

21 A. No.

22 Q. So all of the Oklahoma City bombing evidence --
23 is it accurate to say that all of the Oklahoma City
24 bombing evidence that is in the FBI's possession is
25 supposed to be in the warehouse?

1 A. Yes.

2 Q. So does that mean that if --

3 THE COURT: Could you explore what she means
4 when she says "supposed to be." Is there a policy
5 that's been established, has she been directed by some
6 supervisor in this regard, is it just some understanding
7 that she has based on her experience? I mean when she
8 says it's supposed to be there, what does that mean?

9 Q. (By Ms. Wyer) How is the location of an item of
10 evidence designated?

11 A. We give it a location in ACS, and in that
12 location we keep -- maintain all of the OKBOMB evidence
13 together. So we don't misplace any pieces of the
14 evidence, we keep it all at the OKBOMB warehouse. When
15 somebody needs to see a piece of evidence, we go out
16 there, retrieve it, bring it back for them to review,
17 they give it back to us, we take it back out to the
18 warehouse.

19 Q. Is that part of your responsibility as evidence
20 technician to keep track of the evidence?

21 A. Yes, it is.

22 THE COURT: Are there other technicians who
23 have the same responsibilities that you have?

24 THE WITNESS: Yes, sir.

25 THE COURT: Are you in any position to know

1 what evidence other technicians may or may not have
2 removed from the Oklahoma bombing warehouse?

3 THE WITNESS: Yes, sir, because we work
4 right next to each other, so we are very well informed
5 of what each of us go out there for.

6 THE COURT: Have you made any inquiry of the
7 other technicians as to whether or not they are aware of
8 any piece of evidence from the Oklahoma bombing site
9 being removed from the warehouse and brought to the
10 field office?

11 THE WITNESS: Yes, sir.

12 THE COURT: And have they done that on
13 occasion?

14 THE WITNESS: Just for review of -- for some
15 reason, and then we would take it right back out.

16 THE COURT: Is there a log made of every
17 time evidence is removed from the warehouse and brought
18 to the field office?

19 THE WITNESS: There is a log of when we
20 enter the evidence room at the warehouse, but not for
21 evidence that we take out.

22 THE COURT: So there was no record of
23 whether an item was in fact brought to the field office
24 and then returned to the warehouse.

25 THE WITNESS: When we bring evidence out of

1 the warehouse and we let somebody review it, then they
2 have to sign the chain of custody.

3 THE COURT: And have you made any review of
4 the logs to see if there was any evidence removed from
5 the warehouse and brought to the field office?

6 THE WITNESS: There has been evidence
7 removed and brought back to the warehouse, yes, sir.

8 THE COURT: My question was did you review
9 those logs?

10 THE WITNESS: Yes.

11 THE COURT: All right. Can you tell us on
12 how many incidents evidence was removed from the
13 warehouse and brought to the field office?

14 THE WITNESS: A timeframe I mean for how --

15 THE COURT: Since this FOIA request was made
16 in two thousand --

17 MS. WYER: Eight, Your Honor. But I think
18 if we go forward and explain the search that Ms. Lang
19 did, that would answer this question about what she
20 knows about the locations of potentially responsive
21 items.

22 MR. TRENTADUE: I would like the witness to
23 answer the court's question.

24 THE COURT: Yes, I would like to have it.
25 Since the request was made in 2008, how many different

1 times have items of evidence been brought from the
2 warehouse to the field office?

3 THE WITNESS: There was a -- the evidence
4 tech that retired in 2010, her sole responsibility was
5 OKBOMB. So since 2010 that's the timeframe that I
6 can --

7 THE COURT: Since 2010 how many times?

8 THE WITNESS: I can only approximate, maybe
9 five.

10 THE COURT: Have you made any attempt to
11 determine -- well, as I understand it, the log doesn't
12 report when the evidence was returned to the warehouse,
13 do I understand that correctly?

14 THE WITNESS: The log that we sign when we
15 enter the room we have to sign it every time we enter
16 and every time we leave.

17 THE COURT: So if I wanted to know whether a
18 particular item that was removed from the warehouse and
19 brought to the field office was returned to the
20 warehouse how would I determine that?

21 THE WITNESS: We would have to find -- we
22 would have to check the chain of custody for that to see
23 if somebody had checked it out.

24 THE COURT: And have you done that with
25 respect to any of the items from the warehouse, followed

1 the chain of custody to see if it in fact was returned
2 to the warehouse?

3 THE WITNESS: I have done that with a few of
4 the items, one of the items that have been in question,
5 yes, sir.

6 THE COURT: You may proceed.

7 Q. (By Ms. Wyer) Ms. Lang, I was asking you about
8 how the location of evidence is designated. Could you
9 continue explaining what -- where is the location of
10 evidence identified? Is there a system of records where
11 the location of evidence is identified?

12 A. Yes. It is in the collected items database.

13 Q. And is -- where in the collected items database
14 would that be identified?

15 A. In the list collected items.

16 Q. And when the location of a piece of evidence
17 changes, where is that also identified in collected
18 items?

19 A. In the listed -- list collected items.

20 Q. When someone takes possession of the item and
21 moves it somewhere else, where is that identified?

22 A. Are you talking about the storage locations, or
23 are you just talking about moving it from OKBOMB
24 warehouse to field division?

25 Q. So when you say the location of evidence, am I

1 understanding, based on what you're saying, that there
2 is a storage location that is designated for a
3 particular piece of evidence?

4 A. Yes.

5 Q. And is that what you mean -- if I say is evidence
6 supposed to be in a place, would you understand that to
7 mean the designated location that would be identified in
8 collected items for that piece of evidence?

9 A. Yes, ma'am.

10 Q. So if I -- could you explain to the court, based
11 on your experience as evidence technician, are you
12 familiar with the storage locations of Oklahoma City
13 bombing -- the current storage location of Oklahoma City
14 bombing evidence?

15 A. Yes, I am.

16 Q. And do you know, based on your duties and
17 responsibilities in regard to the Oklahoma City bombing
18 evidence and in regard to the evidence that is stored in
19 the onsite Evidence Control Room at the field office,
20 whether any piece of Oklahoma City bombing evidence has
21 a designated storage location at the onsite Evidence
22 Control Room?

23 A. The only thing that we have designated in the
24 field office is the valuable evidence of OKBOMB. And
25 all the general evidence is stored out at the warehouse.

1 Q. And so that means that's where its designated
2 storage location is?

3 A. Yes, ma'am.

4 Q. And you already said that there are no videotapes
5 that have a designated storage location in the valuable
6 evidence vault; is that right?

7 A. That is correct.

8 Q. So does that -- am I understanding correctly that
9 in that case that would mean that the only way in which
10 a piece of Oklahoma City bombing evidence might be in
11 the warehouse -- I mean what might be in the onsite
12 Evidence Control Room would be if it were not in its
13 designated storage location?

14 MR. TRENTADUE: Objection, leading.

15 THE COURT: Overruled.

16 MS. WYER: You can answer.

17 THE WITNESS: Yes. If we were to do an
18 inventory of the OKBOMB warehouse, which we do every
19 year, each piece of evidence has its own storage
20 location in the warehouse. When we would upload our
21 scanners and it would compare what was -- it's supposed
22 to be at the warehouse and what was actually scanned, if
23 there was a piece of evidence that was not in the
24 warehouse, there would be a discrepancy and we would
25 have to go and figure out what the discrepancy was and

1 if the evidence was missing. We have not had any
2 discrepancies.

3 Q. (By Ms. Wyer) So you seem to be describing a kind
4 of automated system. Could you explain how that works
5 when you're talking about scanning.

6 A. It's our inventory system. We have these
7 scanners, they're like guns, and we have barcodes on
8 every piece of evidence, on every 1B evidence, and the
9 auditor has to go and scan each 1B, and then she would
10 upload the gun into the system, and it would compare
11 what was in ACS against what was uploaded into the
12 system from the gun.

13 Q. So in this process everything in ACS collected
14 items that has a designated storage location in the
15 warehouse, does the inventory somehow catalog that, and
16 could you explain more how the process of comparing
17 those two results were --

18 A. The computer actually compares the results. The
19 computer will spit out a discrepancy report and it will
20 show if an item was maybe put on a different shelf than
21 ACS is showing, it will show that, it will show if a
22 piece of evidence was not in its specific location and
23 if it was not scanned at all, or if it was scanned on a
24 different shelf, it would show that. But that is a
25 report that the computer actually generates. It's not

1 something that we generate.

2 Q. So every piece of evidence in the -- and is the
3 same true for the onsite Evidence Control Room?

4 A. Yes. That is an FBI policy, an inventory is done
5 every year.

6 Q. And so if there were a piece of evidence in the
7 Oklahoma -- in the onsite Evidence Control Room that did
8 not belong there, would that be picked up by the
9 scanner?

10 A. Yes.

11 Q. And would you get a report of that?

12 A. Yes, we would, and it would come out on the same
13 discrepancy report that there was a piece of evidence
14 there that did not belong there.

15 Q. And has it occurred that the inventory process
16 has identified any Oklahoma City bombing evidence in the
17 onsite Evidence Control Room?

18 A. Nothing, other than the valuable evidence.

19 Q. And let me back up. So if a piece of Oklahoma
20 City bombing evidence were in the Oklahoma onsite
21 Evidence Control Room, would that result in a
22 discrepancy in the inventory process?

23 A. Yes, it would. If we had a piece of OKBOMB
24 evidence in the field --

25 MR. TRENTADUE: Objection.

1 THE COURT: Overruled. You may proceed.

2 THE WITNESS: If there was a piece of OKBOMB
3 evidence in the field office and we scanned it there, a
4 discrepancy report would come out on our inventory for
5 the field office that there was a piece of evidence
6 there that did not belong there.

7 Q. (By Ms. Wyer) And has that happened?

8 A. Has that happened --

9 Q. Has there been a discrepancy like that?

10 A. No, ma'am.

11 Q. So based on that, can you explain whether you're
12 confident that there is no Oklahoma City bombing
13 evidence other than what is in the valuable evidence
14 vault in the onsite Evidence Control Rooms at the field
15 office?

16 MR. TRENTADUE: Objection, speculation.

17 THE COURT: Again, her confidence level is
18 irrelevant. I'm going to sustain the objection on that
19 ground. If you can tell me why her personal confidence
20 level is relevant to this decision, I'll be happy to
21 reconsider my ruling.

22 MS. WYER: Your Honor, she is the evidence
23 technician. It was her opinion on that issue that the
24 FBI considered when considering whether the onsite
25 Evidence Control Room would be a likely location for

1 videotapes responsive to the request.

2 THE COURT: There is no evidence that
3 anybody consulted her in connection with this FOIA
4 search.

5 MS. WYER: Your Honor, this witness was
6 identified by title in the declarations that Mr. Hardy
7 submitted to the court.

8 THE COURT: You've not established that
9 through this witness that anybody asked her.

10 MS. WYER: It's also -- it is relevant to
11 the court's analysis in this case that the
12 reasonableness of the search and whether there are any
13 other likely locations. This witness is the witness who
14 is most qualified to speak to whether the Evidence
15 Control Room onsite at the field office is a likely
16 location for an additional search.

17 THE COURT: You're missing my point. If the
18 evidence were they contacted me, asked me if there was
19 any likelihood that there would be evidence in the
20 onsite Evidence Control Room, and I told them, no, I'm
21 confident that it's not here for these reasons, that
22 would be relevant. But that's not the testimony.

23 MS. WYER: Your Honor, the standard for
24 reasonableness is what the situation actually is, not
25 what the FBI knew at a particular point in time. The

1 fact that it is not likely now, based on this witness's
2 knowledge right here in court, is just as relevant as
3 whether she informed the FBI at some earlier point about
4 how likely it would be.

5 MR. TRENTADUE: I disagree, Your Honor. The
6 relevance is whether or not she was specifically asked
7 to do it and whether or not Mr. Hardy signed all those
8 declarations without having asked.

9 THE COURT: Sustained. I mean, absent the
10 testimony I've described, I don't think her confidence
11 level today has any relevance to the issue.

12 MS. WYER: Your Honor, the type of relief
13 that this court may provide is to order an additional
14 search. The court may order an additional search if it
15 determines, based on the current situation as it exists
16 right now, whether there is a location that would be
17 likely to contain additional evidence, and so the
18 situation right now, right here in court, and based on
19 Ms. Lang's opinion, is certainly relevant to the court's
20 analysis.

21 THE COURT: Well, I'm going to sustain the
22 objection.

23 MS. WYER: I would like to give a proffer of
24 Ms. Lang's answer on that point.

25 THE COURT: You may.

1 MS. WYER: So in response, I would ask
2 Ms. Lang how confident are you that there is no evidence
3 from the Oklahoma City bombing investigation in the
4 Evidence Control Room onsite at the field office, other
5 than what might be in the valuable evidence vault; and
6 the proffer is that Ms. Lang would respond that she is
7 highly confident that there is no Oklahoma City bombing
8 evidence in the onsite Evidence Control Room.

9 Q. (By Ms. Wyer) Ms. Lang, were you contacted
10 previously by the FBI and asked how likely you thought
11 it was that there would be Oklahoma City bombing
12 material in the Evidence Control Room onsite at the
13 field office?

14 A. By my supervisor, yes.

15 Q. And what did you explain?

16 THE COURT: Do you have a timeframe?

17 MS. WYER: Do you remember when that was?

18 THE WITNESS: Maybe a year ago.

19 THE COURT: Can we have the name of the
20 supervisor?

21 THE WITNESS: She is retired.

22 THE COURT: What's her name?

23 THE WITNESS: Vicky Wright.

24 Q. (By Ms. Wyer) What was your response?

25 A. I told her that there was no evidence other than

1 the valuable evidence in our Evidence Control Room that
2 belonged to OKBOMB.

3 Q. What was Ms. Wright's position at the time?

4 A. She's -- her title's SAS, was an SAS.

5 Q. Regarding the Oklahoma City bombing warehouse,
6 can you explain why Oklahoma City bombing evidence is
7 kept in a warehouse?

8 A. Because there is so much evidence that we do not
9 have room for it in our field office.

10 Q. Is the entire warehouse devoted to evidence?

11 A. No, ma'am. Part of the warehouse is devoted for
12 the record side of the file and then the other half is
13 devoted for evidence.

14 Q. And so are your responsibilities exclusively
15 related to the evidence side of the warehouse?

16 A. Yes, ma'am.

17 Q. So let me ask you specifically about the evidence
18 side of the warehouse. Are you familiar with the nature
19 of material in the evidence side of the warehouse?

20 A. Yes.

21 Q. And are you aware whether there are videotapes
22 among the evidence --

23 THE COURT: Can you establish how she is
24 aware of this.

25 Q. (By Ms. Wyer) How are you familiar with the

1 nature of the material in the evidence side of the
2 warehouse?

3 A. The OKBOMB warehouse is my responsibility to
4 maintain.

5 Q. Do you become -- for example, when an inventory
6 is conducted, do you get any sense of the type of
7 material that is contained in the warehouse?

8 A. Absolutely, yes.

9 THE COURT: Let me be a little more
10 specific. Have you been to the warehouse?

11 THE WITNESS: Many times, sir.

12 THE COURT: And have you gone up and down
13 the aisles looking at the information?

14 THE WITNESS: Many times, sir.

15 Q. (By Ms. Wyer) And are you familiar with whether
16 there are videotapes in the warehouse?

17 A. Yes, I am.

18 Q. And how are you familiar with that?

19 A. Actually we had a little project out there once
20 that -- the videotapes were housed in envelopes which
21 were kept in filing cabinets, and we took them out of
22 the filing cabinets and put them in banker boxes and put
23 them on shelves.

24 Q. Do you know how many videotapes there are at the
25 warehouse?

1 A. There are over 700.

2 MR. TRENTADUE: Objection, foundation.

3 THE COURT: Sustained. You need to tell us
4 how you know.

5 THE WITNESS: I have counted them, sir.

6 Q. (By Ms. Wyer) Do you know how many videotapes are
7 at the warehouse?

8 A. There's over 700.

9 Q. And are all of the videotapes in the evidence
10 side of the warehouse known and accounted for?

11 A. Yes.

12 Q. How do you know that?

13 A. Because I have went through each box and made
14 sure that the videotapes were where they were supposed
15 to be as opposed to what the FD-192 says.

16 Q. Can you go back and explain exactly what an
17 FD-192 is.

18 A. Yes. An FD-192 is a cover sheet of our chain of
19 custody and it describes each piece of evidence. The
20 FD-192 and the chain of custody is kept through the life
21 of the evidence, it is kept with the evidence. So the
22 cover sheet shows the date of acquisition, the time, who
23 collected it, where it was collected, the description,
24 the barcode, the 1B number, and the storage location of
25 that piece of evidence.

1 Q. And how is a 192 created? Does someone fill out
2 a form?

3 A. When somebody brings in a piece of evidence, they
4 complete what we call a draft form of the FD-192, then
5 we, as evidence techs, enter that into the database and
6 ACS creates the 1B number, and then it will -- we can
7 print out the FD-192, and it will show all the
8 information on there.

9 Q. Can you explain what you mean by a 1B number.

10 A. A 1B number is a symbol for each piece of
11 evidence that we maintain.

12 Q. So is there one 192 for one 1B number, is there a
13 correspondence?

14 A. Yes, ma'am.

15 Q. So every 1B -- every piece of evidence identified
16 by a 1B number would have a corresponding 192?

17 A. Yes.

18 Q. And is there -- and would it also have a
19 corresponding barcode?

20 A. Yes, ma'am.

21 Q. Is this -- and, again, what part of ACS -- is all
22 of this information in some part of ACS?

23 A. Yes. It is in the collected items section.

24 Q. Now, you mentioned that when -- that a 192 is
25 actually kept with a piece of evidence.

1 A. Yes.

2 Q. And you said it was a cover sheet that was
3 attached to a chain of custody form?

4 A. Yes.

5 Q. And that the -- so when -- who makes entries on
6 the chain of custody form?

7 A. If somebody was to need to review the item of
8 evidence, then we would have them sign the chain of
9 custody and for what reason they are taking it out for
10 review.

11 Q. And is that kept with the -- does that continue
12 to be kept -- does that travel with the evidence?

13 A. It travels with the evidence. The only time the
14 chain of custody does not and the cover sheet does not
15 go with the evidence is when we send it to the lab.

16 Q. And is it -- where is it kept while evidence is
17 at the lab?

18 A. We have a binder in our -- at the evidence room
19 that states Laboratory on it, and that's where we keep
20 all of our FD-192s that are at the lab.

21 Q. Is the information about whether evidence is at
22 the lab also in any computer system?

23 A. Yes. It is in ACS also in collected items
24 database in the chain of custody section.

25 Q. So when the -- you said the chain of custody is

1 attached to the 192 travels with the evidence. At the
2 same time that that is happening, is the chain of
3 custody also recorded in collected items?

4 A. Yes. When we sign it out to the lab, we sign the
5 chain of custody that we sent it to the lab, and the
6 date and time that we sent it, and then we enter that
7 information into the chain of custody in ACS.

8 Q. Is that also the case for other -- other events
9 in the life of a piece of evidence, even if it's not
10 going to the Crime Lab? If it's going somewhere else,
11 is that also recorded on that chain of custody part of
12 collected items?

13 A. Yes. Whatever happens on that chain of custody,
14 whatever happens to that piece of evidence is also
15 notated in ACS.

16 Q. Now, as evidence technician, are you -- as part
17 of your -- do your responsibilities include being tasked
18 to retrieve evidence from the Oklahoma City bombing
19 warehouse?

20 A. Yes, ma'am.

21 Q. When you are asked to retrieve a particular item
22 of evidence in general would you ever simply go out to
23 the warehouse and start looking around the warehouse for
24 that piece of evidence?

25 A. No, ma'am.

1 Q. Why not?

2 A. There's so much evidence out there that it would
3 take too much time.

4 Q. So what would be the step -- what step would you
5 take in order to be able to actually locate a piece of
6 evidence in the warehouse?

7 A. If I did not know the 1B number, I would do a
8 search in ACS in the collected items section of it.

9 Q. So if you do know the 1B number would you also
10 check ACS?

11 A. Yes, to find out the specific location of that
12 piece of evidence.

13 Q. Now, are you aware that the plaintiff in this
14 case submitted a request to the FBI under the Freedom of
15 Information Act?

16 A. Yes, ma'am.

17 Q. And are you familiar with the content of that
18 request?

19 A. Yes, ma'am.

20 Q. Could you look at what is marked as Defendant's
21 Exhibit 203, do you recognize that document?

22 A. Yes, ma'am.

23 MS. WYER: Let the record reflect this is
24 the document from plaintiff to myself, dated April 13,
25 2009.

1 Is this the -- have you seen this --

2 MR. TRENTADUE: Objection to the foundation.
3 Ask when she -- how she recognizes this document, when
4 she first saw it.

5 THE COURT: That would be helpful. If you
6 would lay foundation as to when she saw this document.

7 Q. (By Ms. Wyer) Do you recall when you first saw
8 this document?

9 A. I saw parts of this document approximately a year
10 ago.

11 Q. Have you seen the document in its entirety more
12 recently?

13 A. Yes, I have.

14 Q. What is your understanding of what this document
15 is?

16 A. It is a FOIA request.

17 Q. Is this what you understand to be the plaintiff's
18 FOIA request?

19 A. Yes, ma'am.

20 Q. And have you done a search in connection with
21 this request?

22 A. I have.

23 Q. Can you explain to the court how you went about
24 conducting the search that you did.

25 A. I first went into ICM and ACS and did a search in

1 the collected item database section of it on the key
2 words Murrah, jail records, Regency Tower, the rest
3 of -- the main words of those for any tapes. I also
4 searched for tapes, video, anything that I could think
5 of to try to bring up anything that he was requesting.

6 Q. Did you compile some results from that search?

7 A. I did.

8 Q. What did you do next?

9 A. I compared them to the spreadsheet that Linda
10 Vernon had given me recently and I marked off the ones
11 that I did not -- that were duplicates of what she had
12 already turned over.

13 Q. And by Linda Vernon's spreadsheet, could you look
14 at Exhibit 211.

15 A. Yes.

16 Q. Is that the spreadsheet that you mean?

17 A. Yes, ma'am.

18 Q. And then what did you do after that?

19 A. For the ones that were not on this spreadsheet I
20 went out to the warehouse and looked at those videos to
21 see who the contributor was, the date, if it was our
22 field division or another division that had turned them
23 over to us.

24 Q. And so what were you looking for when you did
25 that?

1 A. For anything that would be within these
2 parameters of his request.

3 Q. And what if you could not tell -- where did you
4 look for that information?

5 A. Either on the FD-192 or on the actual tape
6 itself.

7 Q. Do tapes have labels on them that provide
8 information?

9 A. The majority of them did.

10 Q. What if you were not able to tell by looking at
11 the 192 or the exterior of the tape whether the tape was
12 within the parameters of the plaintiff's request?

13 A. I would watch the tape.

14 Q. And how many tapes did you end up watching?

15 A. Um, approximately 15 to 20.

16 Q. And if you -- and how long did it take you total
17 to do the search that you are describing?

18 A. From the time I searched them in ACS until I
19 reviewed all the tapes I would say approximately
20 90 hours.

21 Q. So just to clarify, even though you were -- would
22 you consider this a manual review of the tapes that you
23 did?

24 A. Yes.

25 Q. Just to clarify, even though it was -- you

1 consider it a manual review, you started with the
2 collected items database?

3 A. Yes, ma'am.

4 Q. And if you had not done that would you even be
5 able to know when you enter the warehouse which boxes in
6 the warehouse might have a videotape inside?

7 A. I would know the majority of them, but there are
8 a few boxes that there's a videotape mixed in with other
9 pieces of evidence.

10 Q. Did you find those boxes through the search that
11 you did?

12 A. Yes, ma'am, I did.

13 Q. Are you aware whether there was a previous manual
14 search of the evidence side of the warehouse?

15 A. Yes.

16 Q. So why did you do the search -- when did you do
17 the search that you just described?

18 A. It's been over the last three weeks.

19 Q. Why did you decide that you would do the search?

20 A. So I would feel more confident in my testimony.

21 Q. Why did you feel that you could not testify here
22 in court based on the search that was previously done?

23 A. Because other people were involved in the search
24 and I did not get to lay hands on every tape that was in
25 there at that time. At this time, I was able to do

1 that, and I know for my own self that there was no
2 tapes, other than the ones that were already turned
3 over.

4 MR. TRENTADUE: Objection, relevance, Your
5 Honor. Move to strike the testimony. The issue's not
6 the existence or nonexistence of the tape, but the
7 search that was made in response to my FOIA request, and
8 this was a search in preparation for trial.

9 THE COURT: I'm going to overrule the
10 objection. I think it goes to the strength of the
11 testimony in terms of the original search that was done.

12 Q. (By Ms. Wyer) Ms. Lang, could you look at
13 Defendant's Exhibit 237.

14 A. Yes.

15 Q. Do you recognize this document?

16 A. I do.

17 Q. Could you explain what this is?

18 A. This is the FD-192 for the evidence that we
19 obtained from the Highway Patrol, Charley Hanger.

20 Q. How do you recognize it as that?

21 A. The source of which the property was acquired is
22 the State of Oklahoma Department of Public Safety, and
23 also the FD-597, the receipt of when it was obtained on
24 4/27/95.

25 Q. Could you identify the number in the bottom

1 right-hand corner of the page you're looking at when
2 you're talking about the 597.

3 A. It is D-00120.

4 MS. WYER: Let the record reflect that this
5 is a document dated 4/27/95, the name on the name field
6 is Charles Hanger, OHP.

7 Q. (By Ms. Wyer) Now, looking at the first page of
8 this document, what does the term Package Copy mean
9 that's in the lower left-hand corner of this document?

10 A. That is the copy that is kept with the evidence
11 itself.

12 Q. And were you asked to look for this document?

13 A. Yes.

14 Q. And where did you find this document?

15 MR. TRENTADUE: Objection, foundation. I
16 would like to know when the witness was asked.

17 THE COURT: Can you establish when she did
18 this.

19 Q. (By Ms. Wyer) Do you recall when you looked for
20 this document?

21 A. Approximately a month ago, a month and-a-half.

22 Q. Do you recall looking for it on a previous
23 occasion?

24 A. To tell you the truth, I've seen so many
25 documents and searched for so many documents, I could

1 have found this one last year in my initial search.

2 Q. Do you recall where you found this document?

3 A. In the 1A section of the file.

4 Q. In the 1A section?

5 A. Yes, ma'am.

6 Q. How did you find it there?

7 A. I did a search on -- I believe I did a search on
8 Charley Hanger -- no, ma'am. I looked at the chain of
9 custody and seen where our previous CDC had released it,
10 and then I went to the 1A section and searched for -- in
11 ACS when we do a disposition of a piece of evidence we
12 are able to put a document number, a serial number, and
13 the 1A in which references what happened to that piece
14 of evidence. And when I searched that this was returned
15 by our CDC, I looked for that serial number and the 1A
16 number, and that's where I found this.

17 Q. Okay. So just to back up, what do you mean by
18 disposition or release, what are you saying happened to
19 this evidence?

20 A. When we return a piece of evidence we always call
21 it a disposition, it's just what we call that. So when
22 we returned -- when the CDC returned this piece of
23 evidence to the Highway Patrol, we dispositioned it in
24 ACS. In ACS it will show that there is no storage
25 location anymore. That tells us that it was

1 dispositioned, returned.

2 Q. Would you look this up in ACS by the -- how would
3 you find it in ACS, by the 1B number or another way?

4 A. Yes, by the 1B number.

5 Q. So if you entered this 1B 200 into ACS -- and
6 again are we talking about the collected items portion
7 of ACS?

8 A. Yes, ma'am.

9 Q. You input it in there, and can you see from the
10 result of that that this piece of evidence is no longer
11 in FBI custody?

12 A. Yes, in the chain of custody section of ICM,
13 collected items.

14 Q. And now looking at this -- so this -- did you say
15 this Package Copy reference here means that this was the
16 actual 192 that accompanied that piece of evidence
17 through its life at the FBI?

18 A. Yes, ma'am.

19 Q. And can you explain this whole set of papers that
20 are attached to this 192 and what they mean.

21 A. Behind the FD-192 is the start of the chain of
22 custody. It shows when the chain -- the date and time
23 of the chain of custody that the item was collected and
24 every time that it was checked out. So on the third
25 page it shows where -- the last chain of custody is

1 where it was released to OHP and the date and time that
2 it was released.

3 Q. Does that last line say released to OHP trooper?

4 A. Yes.

5 Q. And the date is -- can you read the date?

6 A. 7/17/06 at 10:45 a.m.

7 Q. And is there a document included here that shows
8 exactly what was included in the release?

9 A. Yes, ma'am. It is the FD-597 that shows that it
10 was released to OHP.

11 Q. Does this document indicate that the tape that
12 was collected from Charles Hanger was included in the
13 return on July 17, 2006?

14 A. Yes, ma'am.

15 Q. And looking back at the previous page, you had
16 identified this previous page as the items that were
17 collected initially; is that right?

18 A. Yes, ma'am.

19 Q. And so is it the case that the videotape that's
20 mentioned on the first line of this document on D-120,
21 when the collection took place, that would be the same
22 tape that is referenced on the next page on item number
23 2?

24 A. Yes, ma'am.

25 MR. TRENTADUE: Objection, speculation, Your

1 Honor. Everything is redacted that would identify as
2 being what counsel is asking the witness to testify to.

3 MS. WYER: Your Honor --

4 THE COURT: Overruled. You can
5 cross-examine her on that point.

6 MS. WYER: So the question was is it the
7 case that the videotape identified on the sheet on Bates
8 stamp page D-120, the list of items collected, would
9 that be the same tape that is mentioned on this next
10 page that you were describing as the list of items that
11 were released?

12 MR. TRENTADUE: Objection, speculation.

13 THE COURT: Sustained.

14 Q. (By Ms. Wyer) Do you know whether the tape
15 identified on the list of items that were released is
16 the same tape that was collected from Charles Hanger?

17 A. It appears to be.

18 MR. TRENTADUE: Objection, calls for a yes
19 or no answer, Your Honor. I move to strike.

20 THE COURT: Well, I'm going to sustain the
21 objection and strike the answer. It does call for a yes
22 or no answer.

23 The question is do you know they're the same
24 tapes?

25 THE WITNESS: No, sir.

1 Q. (By Ms. Wyer) Based on your understanding of how
2 releases are documented, did you find this release sheet
3 attached to this 192?

4 A. Yes, ma'am.

5 Q. So does this release sheet relate to item number
6 1B 200?

7 A. Yes, ma'am.

8 Q. Do you know that?

9 A. Yes.

10 Q. So do you know that the tape identified on the
11 release sheet is part of 1B 200?

12 A. It is.

13 Q. And do you also know that the -- that there is
14 one tape identified on the list of collected items --
15 there's one tape listed there on the list of collected
16 items.

17 A. Yes.

18 Q. And do you know that that tape is part of 1B 200?

19 A. Yes.

20 Q. Is that the only tape that is part of 1B 200?

21 A. Yes.

22 Q. So do you know that the tape that was released as
23 part of 1B 200 is the same tape that was collected as
24 part of 1B 200?

25 A. Yes.

1 Q. And could you -- do you have there with you --

2 THE COURT: Ms. Wyer, if we're at a
3 convenient breaking point, we should take our midmorning
4 break. Is this a good time for you?

5 MS. WYER: We can break.

6 THE COURT: Let's take a 15-minute break.

7 MS. WYER: Actually, Your Honor -- well,
8 you've already broken -- I'm very close to being done.

9 (Recess.)

10 THE CLERK: Court resumes session.

11 THE COURT: We are back in session in
12 Trentadue v. The FBI.

13 Ms. Wyer, you may continue.

14 MS. WYER: Thank you, Your Honor.

15 Ms. Lang -- first of all, Your Honor, I
16 would like to move to admit Exhibit 237 into evidence.
17 I had forgotten to do that.

18 MR. TRENTADUE: I object on relevance, Your
19 Honor. This document was never provided to me in
20 response to my FOIA request. It was clearly retrieved
21 or prepared in preparation for this trial, and I don't
22 think it's relevant.

23 THE COURT: Tell me again the Exhibit
24 Number, 237?

25 MS. WYER: Yes, Your Honor. It was the

1 exhibit that we were just discussing.

2 THE COURT: I will receive the exhibit. You
3 can argue about its significance and what weight the
4 court should give it.

5 MS. WYER: Thank you, Your Honor.

6 (Whereupon, Defendant's Exhibit 237 was
7 received into evidence.)

8 Q. (By Ms. Wyer) Ms. Lang, could you now look at
9 Defendant's Exhibit 229, that sheet that I had handed
10 you.

11 A. Yes, ma'am.

12 MS. WYER: Let the record reflect that
13 Defendant's Exhibit 229 has a label on the top, FD-192,
14 the date in the left-hand corner is 2/12/09, and the 1B
15 number under description of property is 1B 200.

16 MR. TRENTADUE: I don't mean to interrupt,
17 Your Honor, I'm having trouble hearing counsel. What is
18 the exhibit number?

19 MS. WYER: 229.

20 MR. TRENTADUE: 229.

21 MS. WYER: Let the record also reflect that
22 this has a -- the docket number of this court, document
23 number 23-5, with a Bates stamp at the bottom of page
24 115.

25 Q. (By Ms. Wyer) Ms. Lang, do you recognize this

1 document?

2 A. Yes.

3 Q. And looking at Exhibit 237, do you still have
4 237?

5 A. I do.

6 Q. Could you explain what Defendant's Exhibit 229
7 is.

8 A. It is a copy of the FD-192 for 1B 200.

9 Q. And what is the difference between the 192 in
10 Defendant's Exhibit 229 and the 192 in Defendant's
11 Exhibit 237?

12 A. In Exhibit 237 is the actual Package Copy that
13 was maintained with the evidence, and Exhibit 229 it
14 looks like it's a printout out of ACS, and it shows that
15 it was already released because there's no storage
16 location for those items. So this was after the fact,
17 after it was already returned.

18 THE COURT: Could you lay some foundation of
19 how this witness recognizes this document. She said she
20 recognizes it, but she also just said it looks like.

21 MS. WYER: Thank you, Your Honor.

22 Q. (By Ms. Wyer) Ms. Lang, when I was asking if you
23 recognize this document, I think what I meant to say is
24 can you identify what this document is by looking at it
25 based on your experience as an evidence technician?

1 A. Yes. Exhibit 229 is a copy of the FD-192 for 1B
2 200 after it has been released.

3 Q. How do you know that from looking at the
4 document?

5 A. Because there's no storage location. It says --
6 in the storage location it says "released."

7 Q. Where on the document is the storage location?

8 A. In about the middle of the page.

9 Q. Okay. So am I right in thinking that this is
10 like an auto field or something?

11 A. Yes. When we do a disposition in ACS in the
12 collected items database, when an agent returns
13 something or releases it, we state in there that it has
14 been released, and ACS automatically puts released in
15 for the storage location.

16 Q. Okay. And so on Exhibit 229 it says "released,"
17 that's different from the Package Copy that has an
18 actual location identified?

19 A. Yes, ma'am.

20 MS. WYER: Okay.

21 And let the record reflect that Defendant's
22 Exhibit 229 is also included in Plaintiff's Exhibit 34
23 Bates stamp page 115, as indicated in the lower
24 right-hand corner of this document.

25 Q. (By Ms. Wyer) Now, Ms. Lang, based on your

1 knowledge and experience as an evidence technician in
2 the Oklahoma City Field Office, can you think of any
3 other way of searching Oklahoma City bombing evidence
4 that would be likely to find additional videotapes that
5 plaintiff has not already received that would be within
6 the parameters of his request?

7 MR. TRENTADUE: Objection, foundation as to
8 her knowledge about other searches.

9 THE COURT: Well, overruled. She can
10 testify based upon her own knowledge.

11 THE WITNESS: Other than doing the ACS
12 search and the physical hands-on search, no.

13 Q. (By Ms. Wyer) And those are the searches that
14 you've already done.

15 A. Yes, ma'am.

16 MS. WYER: Thank you, Ms. Lang. No further
17 questions.

18 THE COURT: Cross-examination?

19 MS. WYER: Your Honor, could I move to admit
20 Exhibit 229 into evidence.

21 THE COURT: Any objection to receiving
22 Exhibit 229?

23 MR. TRENTADUE: Yes, Your Honor, because it
24 refers to an attachment. I never received an attachment
25 when I received this, nor anything that identified it as

1 the Hanger videotape in my copy.

2 THE COURT: Do you have a response to that,
3 the document's incomplete?

4 MS. WYER: I'm simply offering this -- this
5 document is already part of the release the plaintiff
6 received. I'm simply moving to admit it into evidence
7 because I discussed it as a separate evidentiary item
8 based on the court's instruction that exhibits should be
9 identified separately rather than being included in a
10 whole slew of documents. I pulled this exhibit out and
11 included it as a separate item.

12 THE COURT: Can you identify what the
13 receipt is?

14 MS. WYER: Your Honor, I'm not offering it
15 for any purpose related to that. I'm simply offering
16 it --

17 THE COURT: Mr. Trentadue has a right under
18 Rule 106 to have the entire document received.

19 MS. WYER: This is the only document that
20 I'm providing -- I'm talking about, Your Honor, just the
21 same document that the plaintiff already received.

22 THE COURT: My question is the document on
23 its face appears to be incomplete. Can you identify
24 what the attachment is that is referenced in the
25 document?

1 MS. WYER: Where is an attachment?

2 THE COURT: 1B 200, see attached receipt of
3 property.

4 MS. WYER: Ms. Lang -- can I continue
5 questioning the witness in order to explain this?

6 This document was generated from collected
7 items, it was printed out, and so it did not contain any
8 receipt from the printout. The receipt is in the
9 Package Copy, which is Defendant's Exhibit 237. The
10 attachment that's referenced here refers to the
11 attachment on the Package Copy, not -- when it printed
12 out directly from ACS there is no attachment.

13 THE COURT: Well, can you identify what the
14 attachment is that's referenced in the document?

15 MS. WYER: Yes, Your Honor. That would be
16 the attachment that is in Exhibit 237.

17 MR. TRENTADUE: Counsel has no basis to know
18 that, Your Honor.

19 THE COURT: Well, you can make your -- tell
20 me what your understanding is.

21 MS. WYER: My understanding is that this
22 Package Copy, Defendant's Exhibit 237, contains the
23 attachments that are referenced in the 192. These are
24 the actual attachments. This is the Package Copy in
25 Defendant's Exhibit 237 that accompanies the evidence.

1 The same information is stored in the ACS collected
2 items system, that the collected items system does not
3 have a physical attachment in it. The attachment that
4 is referenced on this item are the attachments on the
5 Package Copy.

6 THE COURT: I'm going to receive the
7 document. You can follow up through cross-examination
8 as to whether or not the document is incomplete.

9 (Whereupon, Defendant's Exhibit 229 was
10 received into evidence.)

11 THE COURT: Cross-examination?

12 MR. TRENTADUE: Yes, Your Honor.

13 **CROSS-EXAMINATION**

14 **BY MR. TRENTADUE:**

15 Q. Ms. Lang, as I understand your testimony, that,
16 yes, this very day OKBOMB evidence is kept in the
17 Oklahoma City Field Office but in the valuable evidence
18 vault room?

19 A. Only the valuable evidence of OKBOMB is kept in
20 the valuable vault.

21 Q. I had trouble understanding, what is valuable
22 evidence?

23 A. Money, checks, things of that nature.

24 Q. Checks, blank checks, cash checks?

25 A. Not cash checks, sir, no. Blank checks.

1 Q. Blank checks. What else?

2 A. Jewelry, valuable antiques.

3 Q. If you would look in Exhibit 41 in plaintiff's,
4 it's the blue binder. You know Linda Vernon, don't you?

5 A. Yes, sir.

6 Q. Look at Exhibit 41. You recognize this as part
7 of the record of the OKBOMB file?

8 A. Yes, sir.

9 Q. And it talks about -- it talks about in October,
10 if I can get this to work, 15, 1997, items were being
11 kept in the valuable evidence vault in the OKBOMB case.

12 A. At the command post, sir. Yes, sir.

13 MS. WYER: Objection, Your Honor. Lack of
14 foundation. This witness -- there's no indication this
15 witness has any familiarity with what is in this
16 document.

17 MR. TRENTADUE: Well, the document says what
18 it says, doesn't it, ma'am?

19 THE WITNESS: Yes, sir.

20 THE COURT: The objection is overruled.
21 It's in evidence and he can ask questions about it.

22 MR. TRENTADUE: Excuse me, sir.

23 THE COURT: I said the document is in
24 evidence and he can ask questions about it.

25 MR. TRENTADUE: So whatever was in there

1 apparently they took out for copying, and when it was
2 completed, it was resealed by the writer, and returned
3 to the valuable evidence vault.

4 MS. WYER: Objection, calls for speculation.

5 THE COURT: Overruled.

6 THE WITNESS: Yes, sir.

7 Q. (By Mr. Trentadue) Now, you testified that
8 Exhibit 237, which was a chain of custody on a Hanger
9 tape?

10 A. Yes, sir.

11 Q. You were asked to get that about a month ago?

12 A. I'm going to have to guess it was a month ago. I
13 couldn't tell you exactly when, I'm sorry.

14 Q. Fairly recently, though.

15 A. Within the last six months probably.

16 Q. Who asked you?

17 A. To tell you the truth, I really don't know.

18 Q. Did they tell you it was for purposes of this
19 trial?

20 A. It was part of the FOIA request.

21 Q. No, that they wanted this document for the trial.

22 A. We were looking for the Charley Hanger tape, and
23 this showed that the Hanger tape had been returned.

24 Q. And you found this document -- you looked for it
25 and found it about a month ago.

1 A. Within the last six months.

2 Q. And I believe you testified that you did a manual
3 search of the OKBOMB warehouse.

4 A. Yes, sir.

5 Q. And when did you do that?

6 A. It's been within the last three weeks.

7 Q. And you did that because you were going to be
8 asked to testify as to the contents.

9 A. Yes, sir.

10 Q. And you were not comfortable with what other
11 people may have reported to you about the contents of
12 that warehouse, were you?

13 A. I did not want to have to testify from what other
14 people had.

15 Q. Prior to that time you had never been asked to do
16 a manual search of that warehouse for these videotapes,
17 had you?

18 A. We were asked to do a search of the warehouse,
19 yes. There were just other people involved in that
20 search with me.

21 Q. When was that search done?

22 A. Over a year ago.

23 Q. Was that the one Ms. Wright came and asked you to
24 do?

25 A. I'm sorry, the who?

1 Q. Your supervisor, Ms. Wright?

2 A. Yes.

3 Q. I believe you said it was about somewhere within
4 a year ago?

5 A. Yes.

6 Q. Now, in the blue binder let's have you look at
7 Exhibit 34.87. You recognize that form, don't you,
8 ma'am?

9 A. 1B 22, yes.

10 Q. 34, Exhibit 34, page 87 at the bottom, correct?

11 A. Yes.

12 Q. It refers to three videotapes from the parking
13 lot security cameras 7th and Harvey?

14 A. Yes, sir.

15 Q. And it references down at the bottom location, it
16 says ELSUR room.

17 A. That is for a cassette tape. The three
18 videotapes, the location is OKBOMB cabinet A.

19 Q. But the location is in -- so you say the ELSUR
20 room was for videotapes?

21 A. No, sir. It is for that cassette tape.

22 Q. And ELSUR refers, is that the electronic
23 surveillance system?

24 A. Yes, sir.

25 Q. And so it's not just a court-ordered

1 surveillance, it's any kind of surveillance tapes or
2 videotapes.

3 A. I don't know that much about ELSUR, sir, I'm
4 sorry.

5 Q. But certainly there's a videotape in here.

6 A. No, sir. It says it's a cassette tape --

7 Q. Cassette tape.

8 A. -- is in ELSUR.

9 Q. If you look at Exhibit 203, which is my original
10 FOIA request, it would be in the black binder. Let's
11 see if I can call it up for you on the screen.

12 A. I have it.

13 Q. I think you said you were shown parts of that
14 about a year ago?

15 A. Yes.

16 Q. What parts can you recall being shown?

17 A. I remember being asked to look for the Regency
18 Tower tapes.

19 Q. Do you remember who showed you that?

20 A. My supervisor.

21 Q. And did she say what it was for?

22 A. A FOIA request.

23 MR. TRENTADUE: Okay.

24 Before I move on, Your Honor, I would move
25 for the admission of Exhibit 41.

1 THE COURT: Any objection to Exhibit 41?

2 MS. WYER: Yes, Your Honor. We object that
3 this document is not relevant to the search or the
4 likely location of responsive tapes.

5 THE COURT: On grounds of relevance, the
6 objection is overruled. Exhibit 41 is received.

7 (Whereupon, Plaintiff's Exhibit 41 was
8 received into evidence.)

9 Q. (By Mr. Trentadue) Ma'am, in the blue binder, if
10 you would look at Exhibit 44.

11 A. Yes, sir.

12 Q. Take a minute and look at that. Have you ever
13 seen this document before?

14 A. No, sir.

15 Q. Do have any understanding what the initials TOU
16 are?

17 MS. WYER: Objection, lack of foundation.

18 THE COURT: Overruled. She can answer yes
19 or no.

20 THE WITNESS: No.

21 Q. (By Mr. Trentadue) Do you know it?

22 A. No.

23 Q. Have you ever heard anyone discuss in the
24 Oklahoma City Field Office that the OKBOMB file was a
25 restricted file?

1 MS. WYER: Objection, calls for hearsay.

2 THE COURT: Overruled.

3 THE WITNESS: No.

4 Q. (By Mr. Trentadue) Have you ever heard anyone
5 complain about not being able to upload documents into
6 the OKBOMB file?

7 A. No, sir.

8 Q. Have you -- or would you, in your normal course
9 of work at the Oklahoma City Field Office, upload
10 documents into the OKBOMB file?

11 A. No, sir.

12 Q. Is there anybody, to your knowledge, in that
13 office who is charged with the responsibility of
14 screening and uploading documents into the official
15 file?

16 A. I'm sure there's someone is. I don't know who.

17 Q. But you don't know.

18 A. No, sir.

19 Q. And as part of your duties in OKBOMB, or working
20 for the Oklahoma City Field Office, do you have to be
21 familiar with the paper file in the warehouse, the
22 records?

23 A. To deal with evidence?

24 Q. Just the 302s and just the documentary materials
25 that are gathered.

1 A. I know that they are there at the warehouse.

2 Q. Okay. Have you ever worked with them?

3 A. No, sir.

4 Q. Okay. Are they stored in a certain part of the
5 warehouse, or do you know?

6 A. Yes, they are.

7 Q. Okay. And are all of them stored there?

8 A. I don't know.

9 MS. WYER: Objection, lack of foundation.

10 MR. TRENTADUE: That's lack of foundation.

11 I think that's all the questions I have, Your Honor.

12 THE COURT: Redirect?

13 **REDIRECT EXAMINATION**

14 **BY MS. WYER:**

15 Q. Ms. Lang, I just wanted to clarify one thing
16 about the previous search, do you recall whether the
17 previous search before the one that you just did was in
18 conjunction with the reorganization of the tapes,
19 putting the tapes from -- something that you mentioned
20 in your direct testimony, moving the tapes from one
21 place to another?

22 A. Yes, it was.

23 Q. Do you remember exactly when that reorganization
24 happened?

25 A. I do not. Over a year ago approximately.

1 Q. And was there only one such reorganization that
2 you know of?

3 A. For videotapes, yes.

4 Q. So whenever that reorganization happened is that
5 when this previous search occurred?

6 A. Yes.

7 MS. WYER: Thank you, Ms. Lang. No further
8 questions.

9 THE COURT: Thank you.

10 Is there any recross?

11 MR. TRENTADUE: Yes.

12 **RECROSS-EXAMINATION**

13 **BY MR. TRENTADUE:**

14 Q. And so you think it was -- all of these things
15 seemed to have happened approximately a year ago.

16 A. Yes, sir.

17 MR. TRENTADUE: Thank you.

18 THE COURT: Thank you. You may step down.

19 May this witness be excused?

20 MR. TRENTADUE: Yes, Your Honor.

21 THE COURT: Thank you. You are excused.

22 The FBI may call its next witness.

23 MR. SIPLE: Your Honor, the FBI calls

24 Ms. Doris Reed.

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DORRIS REED,

called as a witness at the request of the Defendant,
having been first duly sworn, was examined

And testified as follows:

THE CLERK: Please say and spell your full
name for the record.

THE WITNESS: Dorris M. Reed, D-o-r-r-i-s;
middle initial M.; last name Reed, R-e-e-d.

DIRECT EXAMINATION

BY MR. SIPLE:

Q. Good morning Ms. Reed. Where do you work
currently?

A. Would you speak up a little.

Q. Ms. Reed, where do you work currently?

A. For the FBI in the Oklahoma City Division.

Q. What is your current position there?

A. I'm a supervisory administrative specialist.

Q. And what does that position entail, what is a
supervisory administrative specialist, what do you do?

A. I supervise support staff. We have agents, and
then we have professional support staff.

Q. So you're in a support role. Just to be clear,
you don't do investigative work, you're not an agent.

A. No, I'm not.

Q. Okay. How long have you been in the Oklahoma

1 City Field Office?

2 A. Since December 1991.

3 Q. Are you familiar with the -- in your support
4 staff role, the role that you've been in, have you had
5 reason to be -- become familiar with the Oklahoma
6 City -- the OKBOMB paper files?

7 A. Yes.

8 Q. And could you explain, please explain to the
9 court how you're familiar with the OKBOMB paper files.

10 A. In 1995 when the bombing happened, I was a rotor
11 on the squad and basically took care of cases. And when
12 the bombing happened they sent me down to the first
13 command site post to take care of the case.

14 Q. Okay. You used the term "rotor," I'm not sure
15 that that's been fully described before, what is a
16 rotor?

17 A. A rotor is like a file clerk. We had secretaries
18 on the squad and then we had rotor clerk, and they took
19 care of the cases for the agents and our documents and
20 filed things and just took care of...

21 Q. So that's what you did. You're saying you were
22 at the command post in 1995 when the bombing occurred?

23 A. Yes.

24 Q. And as a rotor you were involved with paper files
25 at that time.

1 A. Yes.

2 Q. Did you continue to be involved during your
3 tenure at the Oklahoma City Field Office with the paper
4 files?

5 A. Yes.

6 Q. How so?

7 A. After I was a rotor, I became a file supervisor.
8 And I am -- I wasn't custodian over all of the records,
9 but I have historical knowledge of ACS and I'm the go-to
10 person when they have questions.

11 Q. And just what does a file supervisor do, what is
12 that role in particular that you just mentioned?

13 A. I was supervisor over all the rotors on the
14 squads who maintained the cases for the agents and I,
15 you know, answered questions, I did training, just
16 kept -- took care of things.

17 Q. So the file supervisor was that for OKBOMB?

18 A. Yes.

19 Q. So how long were you the file supervisor for the
20 OKBOMB paper files?

21 A. I was file supervisor for six years, from '99 to
22 2006.

23 Q. Do you still have responsibility with respect to
24 the Oklahoma City paper files?

25 A. Yes, I do.

1 Q. And in what capacity is that?

2 A. I have handled FOIA requests and I have access to
3 the OKBOMB warehouse, and so whenever we would have FOIA
4 requests, I would be tasked to go pull the documents.

5 Q. Based on your experience and familiarity with the
6 paper files, I want to ask you some questions just so we
7 can be clear about what we're talking about. Where is
8 the OKBOMB -- where are the OKBOMB paper files, where
9 are they located?

10 A. They're maintained at an off-site at a warehouse.
11 It's just too voluminous to keep it in the Oklahoma City
12 Division's closed files.

13 Q. Could you describe the paper files, you know, how
14 large, in terms of document numbers, what are we taking
15 about?

16 A. As Ms. Lang explained, they're in a warehouse.
17 Evidence is on one side of the warehouse and the paper
18 documents, the file, is on another side of the
19 warehouse, and we have file cabinets just lined up back
20 to back and cabinets around the room with the file.

21 Q. Let me ask you, do you know the number -- do you
22 have an idea of the number of documents that are in the
23 paper files?

24 A. The paper file itself has over 85,000 serials.

25 Q. What do you mean when you say "serial"?

1 A. A serial is like a 302 or any type of document
2 they want to document to the file and that we upload to
3 the file. A serial could have one page, it could have
4 hundreds of pages, just depending on whatever it was
5 that they wanted submitted to the file.

6 Q. And when you say over 85,000 documents, it's -- a
7 document could be a bunch of pages, it could be one
8 page?

9 A. Yes.

10 Q. How is it -- you mentioned it's in the warehouse
11 and there are filing cabinets, how is it -- is there
12 some other organizational structure for the paper files?

13 A. Yes, in ACS.

14 Q. What do you mean by "in ACS"?

15 A. ACS is the system where we started uploading the
16 documents. ACS was very new. In 1995 is when it came
17 about. And then, of course, when OKBOMB happened in
18 April, then it -- at first we weren't able to share.
19 That was the whole idea for ACS so we were able to
20 upload the text of the document and other divisions
21 could see our documents.

22 Q. So when you say ACS, you're talking about an
23 electronic database.

24 A. Yes.

25 Q. What I wanted to ask you about is, before that,

1 is the paper files themselves, how they're broken down,
2 is there an organizational structure in terms of how
3 they're organized?

4 A. Yes. We have -- OKBOMB has a file number, and
5 this case being so large that the agent decided to --
6 wanted sub-files to be able to sort documents like
7 inserts or like sub-D as a 302 has its own sub-file. We
8 have 94 sub-files in the OKBOMB file.

9 Q. And with regard to sub-files, so are -- just so
10 I'm clear and the court's clear, sub-files could be any
11 number of different topics within the OKBOMB file?

12 A. Yes.

13 Q. You mentioned sub-D files, could you elaborate on
14 what the sub-D file is?

15 A. The sub-D file is the 302 file. When an agent
16 goes out and does an interview with an individual, they
17 document their interview with this person and they -- it
18 gets typed up and it gets uploaded into the file.

19 Q. Do you know how many -- do you have an idea of
20 how many serials, documents, are in the sub-D file?

21 A. Over 18,000.

22 Q. So it's over 18,000 302s?

23 A. Yes.

24 Q. Do you know if there's a sub-file, just a
25 specific sub-file, that concerns videotapes?

1 A. I'm not aware of -- the majority of the tapes are
2 kept on the evidence side, unless it's a copy that they
3 may have submitted to a sub-file.

4 Q. Just to be clear, you mentioned -- you said
5 earlier that you were the go-to person for the paper
6 files. From time to time, you mentioned FOIA, but do
7 you get requests in your ordinary duties from agents or
8 other people in your office to go get the paper file,
9 pull a document from the warehouse?

10 A. Yes.

11 Q. Could you give an example of what that might
12 consist of?

13 A. We would get FOIA requests from Headquarters or
14 requests from inside. A lot of people don't understand
15 the volume of this file. In a lot of FOIA requests they
16 ask for the case, and sometimes we can send them the
17 file, but there is no way that we could ship the OKBOMB
18 file to them. It would take truckloads. So when they
19 send me the information, a lot of times they don't
20 understand how different divisions enter things in
21 there, so I would have to search in ACS if it was a name
22 to narrow down where I needed to go to at the warehouse
23 to get a copy.

24 Q. I just want to make clear about something. You
25 mentioned FOIA requests. Did you actually do, in this

1 case, any of the searching, like trying to locate
2 videotapes or anything that Mr. Trentadue is looking for
3 in terms of trying to be responsive to the request, did
4 you have any role in that?

5 A. No.

6 Q. Let me ask you, you mentioned ACS earlier when I
7 asked you about organization. Let me ask you this
8 question, would you ever go out to the paper file when
9 someone asked you, whether it was a FOIA request or
10 otherwise, to go to the paper file, is there a way you
11 could go out to the warehouse and just find the
12 document, just pull it?

13 A. No.

14 Q. And why not?

15 A. Because the paper file is so large that we need a
16 starting point. It would be like if you asked me to go
17 to the library, public library, and search for a
18 document regarding sea lions and just told me to go
19 search. You would have to have a starting point. There
20 is just -- you could do it, but it would take days and
21 days to find the area that you needed to go to.

22 Q. And so what would your starting point be if you
23 were requested to do a search for a particular document
24 or type of document in the --

25 A. I would go to ACS.

1 Q. And what would you do with respect to ACS?

2 A. If I had a name I would go to UNI, which is
3 another like subsystem of ACS, it's Universal Index, and
4 I could search a name and the name would bring me up
5 every file that that name was in, and then that would
6 narrow my search to go to the warehouse.

7 Q. Just to be clear, have you ever done a search of
8 the paper files looking for documents with not using ACS
9 or a records search system?

10 A. No.

11 Q. You mentioned that it would take days to do a
12 manual search. I want to have a better understanding of
13 why that's the case, why would it take so long to find a
14 particular document if you were asked to go out there
15 and do a manual search?

16 MR. TRENTADUE: Objection to relevance, Your
17 Honor.

18 THE WITNESS: As I said earlier, there are
19 serials --

20 MR. TRENTADUE: If this witness had nothing
21 to do with my FOIA request, then I don't see what the
22 relevance of this testimony is.

23 MR. SIPLE: The witness has testified to her
24 knowledge and experience with the paper files and how to
25 search them, and I understand an issue to be in this a

1 request from the plaintiff to potentially do a manual
2 search of the paper files.

3 MR. TRENTADUE: Your Honor, that's the
4 remedy that comes if I prevail here. This is not the
5 subject for this trial.

6 MR. SIPLE: Feasibility, burden, the
7 likelihood of a search producing a result.

8 THE COURT: The objection is overruled. You
9 can proceed.

10 Q. (By Mr. Siple) Could you please elaborate on why
11 you say that a manual search would not be something you
12 would recommend in terms of finding documents?

13 A. Because if you don't know where to start at, what
14 sub or the main file that this document is, like I said,
15 the sub-D has 18,000 serials itself, and you need a
16 starting point. You just can't go out there -- you
17 could start reading, but it could take one person, I'm
18 not even sure how long, but, you know, some serials are
19 one page, some serials could be hundreds of pages.

20 Q. You just mentioned reading, so this would entail
21 actually someone personally going through and reading
22 the documents?

23 A. You would have to read every single thing on the
24 document.

25 Q. And in your experience using ACS, what is the

1 likelihood that a manual search of what you just
2 described would be any more likely to produce responsive
3 records than starting with ACS and looking at ACS?

4 MR. TRENTADUE: Objection, foundation.

5 MR. SIPLE: She just testified about her
6 experience using ACS as a starting point for finding
7 documents in the paper files.

8 THE COURT: Overruled.

9 Q. (By Mr. Siple) You may answer, Ms. Reed.

10 A. Okay. Repeat the question.

11 Q. Based on your testimony, you talked about the
12 difficulties of a manual search, why do you think --
13 excuse me, based on your experience with the paper
14 files, do you think -- is there any reason to believe
15 that a manual search, just going out there and looking
16 through the documents as you described, is it any more
17 likely to produce responsive documents than starting and
18 using ACS, using the abilities of ACS to search?

19 A. No.

20 MR. TRENTADUE: Objection, speculation, and
21 I think it's compound too, Your Honor.

22 THE COURT: Overruled. You may answer.

23 THE WITNESS: I'm sorry, I didn't hear.

24 THE COURT: The objection is overruled. You
25 can answer the question.

1 Q. (By Mr. Siple) Do you understand the question,
2 Ms. Reed? I can try to rephrase it.

3 A. Okay. Yes, rephrase, could you.

4 Q. Do you think manually searching the paper files
5 would be any more likely, based on your experience, to
6 find responsive records of a particular record than
7 searching through ACS?

8 A. No. I mean ACS is where you would start from.
9 You would have to have a starting point and that would
10 pinpoint what you're looking for.

11 Q. So just to be clear, you're saying that ACS would
12 help you locate the particular records?

13 A. Exactly.

14 Q. We talked broadly about the whole organization of
15 the paper files, the 94 sub-files and the number of
16 serials and the size. Now, I want to talk about just
17 specific parts of it just to break it down. What if
18 there is a -- what if I suggested to you, and this may
19 go to your earlier testimony, what if I suggested to
20 you, well, why don't you just go out and manually search
21 the sub-D file, just the 302s, would you recommend,
22 based on your experience with the paper files, is that a
23 reliable approach, an appropriate approach for finding
24 responsive documents?

25 A. Say that one more time.

1 Q. Let me just put it this way, if the request was I
2 want you to go, Ms. Reed, and search the sub-D file,
3 just the sub-D, for let's say documents pertaining to
4 videotapes, would you recommend that as a course of
5 action to find relevant documents with the term
6 videotape?

7 A. I wouldn't recommend it.

8 Q. And why is that?

9 A. I would still go to ACS to narrow down what you
10 need to look at. 18,000 documents in a sub-D is still a
11 lot of volumes to review.

12 Q. Now, what about the -- are these -- let me ask it
13 this way, let's just talk about the -- I want to focus
14 on now another way to break this down, the first 14 days
15 of, let's just say, the OKBOMB investigation, what if
16 the request was, well, why don't we -- we can just focus
17 on the first 14 days and let's look at all the serials
18 for the first 14 days, so go out to the warehouse and do
19 that, is that something that you could do and would that
20 be reliable in your opinion?

21 A. You could, but the first actual 14 days would not
22 be right there from April 19th to -- is that May 3rd?
23 I'm not exactly sure of the date -- because we had so
24 many field offices sending in paperwork that when ACS
25 came about that they were uploading, or they were

1 sending us documents, you could have had an April 20th
2 document after a May 5th or May 3rd document, depending
3 on when it got to the office and it got entered in the
4 system.

5 Q. I think just one other question, Ms. Reed, I may
6 have already asked it, so I'm not going to rephrase it,
7 but I just want to be clear, have you ever just gone out
8 to the warehouse for any reason and just searched
9 manually for a file in your experience working with the
10 OKBOMB paper files?

11 A. No.

12 MR. SIPLE: I don't have any further
13 questions at this time.

14 THE COURT: Cross-examination?

15 MR. TRENTADUE: Yes, Your Honor.

16 **CROSS-EXAMINATION**

17 **BY MR. TRENTADUE:**

18 Q. Ms. Reed, I understand that you had all of the
19 paper records acquired or obtained or prepared by all
20 the field offices in the country sent to Oklahoma City.

21 A. I'm sorry, could you speak into the microphone.
22 I can't hear you.

23 Q. If I understood you correctly, all the paper
24 records, the 302s and leads gathered and prepared by the
25 field offices throughout the country in the OKBOMB

1 investigation were sent to Oklahoma City.

2 A. Yes, as far as I know.

3 Q. And they're stored in this warehouse that
4 everyone's been talking about.

5 A. Excuse me. Would you repeat that.

6 Q. They're stored in this warehouse.

7 A. Yes.

8 Q. And one side is the physical evidence and the
9 other side is the paper record.

10 A. Yes.

11 Q. Now, is it all just jumbled and thrown in there
12 or is it organized?

13 A. Pardon me?

14 Q. Is it all just thrown in there in a jumble or is
15 it organized?

16 A. It's organized.

17 Q. Is it organized by field office or totally?

18 A. There are both.

19 Q. And how is that?

20 A. We have the OKBOMB file that is organized with
21 the main and the sub-files, and then we have copies that
22 were maintained that are copies that are in the file.

23 Q. What I'm asking is, for example, if the Kansas
24 City Field Office had done work on the OKBOMB case and
25 they prepared documents, are their documents merged in

1 with the Oklahoma City Field Office documents or are
2 they maintained separately?

3 A. They are merged in with the Oklahoma City Field
4 Office file.

5 Q. Thank you. And so when you say they're merged
6 in, it would be, for example -- well, let's take a look
7 at something I was going to ask you a question about,
8 you talked about the serials, and so if I get an
9 understanding. If you would look at the blue binder
10 there in front of you there, ma'am. No, the -- there
11 should be a blue cover on it.

12 A. Okay.

13 Q. Now, look at Exhibit 34.

14 A. 34?

15 Q. Yes, ma'am. If you look at the bottom of the
16 page it starts with the number 1, if you'll go to page
17 38.

18 A. Yes.

19 Q. And this is you recognize as a 302?

20 A. Yes.

21 Q. Okay. And just so I understand, it has up here
22 the date of May 3rd, 1995. Is that the date it was
23 transcribed?

24 A. Yes.

25 Q. That means typed and put into the file?

1 A. Yes.

2 Q. Then you have down here a date of April 29, 1995,
3 was that the date this information was apparently
4 gathered by the agent?

5 A. Yes, that investigated on.

6 Q. Then over here at the bottom we have this number,
7 and it gives the OKBOMB case number and it says sub-D,
8 would that be sub-file D?

9 A. Yes.

10 Q. And then it has a number 1474.

11 A. Yes.

12 Q. And is that the number -- you said if you look
13 you can find it by serial number, so is that the serial
14 number that is given to this document?

15 A. Yes.

16 Q. So I'm assuming then that the next document that
17 went into this sub-D file would be number 1475.

18 A. Should be.

19 Q. Okay. Then the one previous to that would be
20 1473.

21 A. Sequential order.

22 Q. Yes. Now, you've testified that they're
23 maintained in serial order in your catalog system in the
24 warehouse.

25 A. Yes.

1 Q. Is that yes?

2 A. Yes.

3 Q. And so, fair to say, that the first documents
4 that went into that OKBOMB -- well, first let me strike
5 that. The Oklahoma City Field Office was the
6 originating field office on the investigation, weren't
7 they, ma'am?

8 A. Yes.

9 Q. So it was their case.

10 A. Yes.

11 Q. So the most documents -- the earliest documents
12 into those files would have been Oklahoma City Field
13 Office documents.

14 A. I can't say that for a fact.

15 Q. Okay. But they're on the scene, they're
16 gathering evidence, writing out these 302s, so you would
17 expect naturally to see their material there first.

18 A. I can't say that.

19 Q. Okay. Whatever it is, we can certainly go
20 through up to a certain level of serials, like this is
21 April 29th, 1995, that's a week after the bombing, we
22 have 1474 serials in sub-file D, we could certainly go
23 look at those things fairly easily, couldn't we?

24 A. At what?

25 Q. We could go look at those 1474 documents pretty

1 easily, you could lay your hands on them pretty easily,
2 couldn't you?

3 A. Repeat that again.

4 Q. Okay. If someone said to you, Ms. Reed, I want
5 you to go look at these first 1474 documents, you would
6 know where to find them.

7 A. Yes.

8 Q. It wouldn't be a lot of documents, would it?

9 A. Yes.

10 MR. SIPLE: Your Honor, I object. I don't
11 see the relevance of this. Looking or laying hands on
12 documents is not the same as reviewing and actually
13 searching for responsive data.

14 THE COURT: Overruled.

15 Q. (By Mr. Trentadue) I mean you could pull them out
16 and say here are the 1474 documents.

17 A. Yes.

18 Q. Somebody else could look at them and see if it
19 was what they wanted.

20 A. They could.

21 Q. And then we could say, okay, now instead of this
22 one, I could look ahead and say, okay, the 2500 document
23 seems to be about two weeks after the Oklahoma City
24 bombing, could you please, Ms. Reed, pull those for us
25 so we can look at them?

1 A. I could.

2 Q. Anybody ever ask you to do that?

3 A. No.

4 Q. Now, I want to show you and ask you a question
5 about Exhibit 45 that's also in the blue binder. Now,
6 you recognize this as a 302 also.

7 A. Yes.

8 Q. And this one up at the top it has a July 7th --
9 no, July 22nd, 1996 date --

10 A. Yes.

11 Q. -- as it was transcribed.

12 And it looks like the investigation down at
13 the bottom was done on July 15, 1996.

14 A. Yes.

15 Q. But I don't see on this one a serial number.

16 A. It might have been redacted.

17 Q. Okay. But assuming there's no serial on this one
18 and someone came to you -- well, first of all, if
19 there's not a serial on it, does that mean it wasn't
20 uploaded into the --

21 A. I would think.

22 Q. So the serial also -- we have a serial number on
23 it like D, we saw D1474, that means it's been uploaded
24 into the ZyIndex or whatever the database that we're
25 using.

1 A. ACS.

2 Q. Okay. And if you don't see a serial on it, that
3 may indicate that it hadn't been uploaded.

4 A. Not necessarily.

5 Q. Okay. But I mean you would expect to see a
6 serial notation on a document that had been uploaded.

7 A. Depending on who put the document in the file.

8 Q. Okay. So some do a better job than others.

9 MR. SIPLE: Objection, relevance.

10 THE COURT: Overruled.

11 Q. (By Mr. Trentadue) You may answer, ma'am.

12 A. It doesn't have to be written on the document,
13 especially original, you don't want anything on it
14 except the agent's initials.

15 Q. You certainly -- if this was the original, you
16 certainly wouldn't put all these black highlights on it,
17 would you?

18 A. If they made a copy for somebody.

19 Q. Okay. But this is -- obviously because this has
20 got all --

21 MR. SIPLE: Objection, calls for
22 speculation.

23 MR. TRENTADUE: This is obviously not the
24 original, wouldn't you say, ma'am?

25 THE COURT: Let me overrule the objection.

1 THE WITNESS: I can't say that for a fact.

2 Q. (By Mr. Trentadue) Assuming all you had was this,
3 and they said to you, Ms. Reed, find us this document,
4 how would you do it?

5 A. I would search ACS.

6 Q. What if nothing shows up in ACS?

7 A. You could go to Zy possibly.

8 Q. What if nothing shows up in Zy?

9 A. Pardon?

10 Q. What if you've got nothing in the Zy image
11 database?

12 A. Then it may not be in there. But I do see a
13 serial number blacked out.

14 Q. So you think that's a serial number blacked out
15 there.

16 A. Yes.

17 Q. Okay.

18 Now, would you look at Exhibit 44. Take a
19 moment and look at that, ma'am. Now, you were in charge
20 of the paper files in the OKBOMB case?

21 A. I wasn't in charge of them. I was the file
22 supervisor later on.

23 Q. You're supervisor. Have you seen this document
24 before?

25 A. I can't say. It looks familiar, but a lot of

1 it's marked out.

2 Q. Well, I'm asking you, you have seen this before,
3 haven't you?

4 A. I can't say that for a fact.

5 Q. Well, let's talk about -- first of all, what does
6 DTOU mean, what's your understanding of what that
7 consists of?

8 A. Repeat that again.

9 Q. Well, you look at this first paragraph here.

10 A. Okay. Under unclassified?

11 Q. Yes. It says, Unclassified Non-Record, DTOU has
12 instructed us to upload and serialize all information
13 related to Terry Nichols and the national explosives --
14 and the additional explosives/materials to the Detroit
15 file or blank to our file on Terry Nichols, and to the
16 OKBOMB file. See below re uploading instructions.

17 A. Yes.

18 Q. All right. Were you aware of receiving a message
19 like this in the Oklahoma City Field Office?

20 A. I don't recall, but I know that we were uploading
21 things to the file.

22 Q. And then it goes down below and it says, It has
23 been brought to my attention that the OKBOMB file is
24 restricted. Is it restricted, ma'am?

25 A. Pardon?

1 Q. Is it a restricted file, to your knowledge?

2 A. It was at the time.

3 Q. And it's not now?

4 A. No.

5 Q. And it says, that some of you have not been able
6 to upload documents --

7 MR. SIPLE: I'm going to object to
8 relevance. This is a different field office than
9 Oklahoma City by the face of the document.

10 THE COURT: Well, she can answer the best of
11 her knowledge. Overruled.

12 Q. (By Mr. Trentadue) So it is my understanding from
13 your testimony that it was a restricted file.

14 A. At the beginning.

15 Q. And that meant not everyone had access to it,
16 correct?

17 A. Not to be able to put their documents to the
18 file.

19 Q. Somebody would have to review the documents
20 before they went into the official file?

21 A. If it was approved by a supervisor, it was
22 uploaded to the file.

23 Q. So a supervisor would review the 302, for
24 example, that an agent prepared and make a decision if
25 it went into the file or didn't go into the file.

1 A. They would sign off on it, then it would be
2 uploaded.

3 Q. I presume then if it went into the file, then
4 that would be turned over to defense counsel.

5 A. Yes.

6 Q. If it went into the file, then that would be
7 subject to a FOIA response.

8 A. Yes.

9 Q. If it doesn't go into the file, then it doesn't
10 go to defense counsel, does it?

11 A. That I do not know.

12 Q. If it doesn't go into the file, it certainly
13 doesn't go to a FOIA requester, does it?

14 A. As far as I know, everything is in the file.

15 Q. That wasn't my question. If it's not in the
16 file -- if it doesn't go into the file, then it's not
17 subject to a FOIA requester's request.

18 MR. SIPLE: Objection, relevance. Calls for
19 a legal conclusion.

20 THE COURT: Overruled. You should answer.

21 THE WITNESS: If something's not there, you
22 can't give it to someone.

23 MR. TRENTADUE: That's exactly right.

24 And do you know where they kept the material
25 that wasn't uploaded? For example, a supervisor looked

1 at it and said, whoa, whoa, we're not going to put --

2 MR. SIPLE: Objection, assumes facts not in
3 evidence.

4 THE COURT: I'm sorry, what's your
5 objection?

6 MR. SIPLE: Assumes facts not in evidence.
7 He's talking about all the stuff that wasn't uploaded.
8 I don't know what he's referring to. There's no
9 testimony about materials that were not uploaded.

10 MR. TRENTADUE: It was an assumption I
11 asked, Your Honor.

12 THE COURT: Just rephrase the question. The
13 objection's overruled.

14 MR. TRENTADUE: Assume that a supervisor
15 looked at a 302, for example, and says this isn't going
16 into the official file, it's not going to be uploaded --

17 MR. SIPLE: Objection, calls for
18 speculation.

19 THE COURT: Would you let him finish the
20 answer please -- or the question before you object. It
21 makes an awful record when you prematurely object.

22 MR. TRENTADUE: Yes, sir.

23 There are situations, obviously you have the
24 supervisor review it, there's a reason for him reviewing
25 it or her reviewing it is to decide what's going on and

1 become record in the case. Supposing, assuming, that a
2 supervisor reviews a 302 and says, no, this is not
3 going -- for whatever reasons, says this is not going to
4 be uploaded, do you know what happens under those cases
5 to that 302 or that document?

6 MR. SIPLE: Objection, speculation, and
7 there are so many facts assumed in that question, I
8 can't even count them.

9 THE COURT: Overruled. You should answer.

10 THE WITNESS: If it didn't have anything to
11 do with the file, it wouldn't go in that case.

12 Q. (By Mr. Trentadue) Have you ever heard of the
13 I-Drive?

14 A. Yes.

15 Q. And was that in the Oklahoma City Field Office?

16 A. They're in every field office.

17 Q. Was that where they held these documents for
18 supervisory review?

19 A. Not for the supervisory review. He reviewed a
20 hard copy.

21 Q. But would that be where the document remained
22 while the supervisor reviews a hard copy?

23 A. Yes.

24 Q. Okay. So then if the supervisor said, okay, it's
25 a go, they hit the send button, they send it up into the

1 official file.

2 A. It's not that simple, but, yes.

3 Q. So my point is if the supervisor says, nope, this
4 is going to stay right where she is, it would remain in
5 the I-Drive.

6 MR. SIPLE: Objection, Your Honor. We're
7 getting beyond the scope of the direct and this --
8 Ms. Reed is here to testify about paper files, and it
9 calls for speculation as far as uploading by other
10 supervisors and people.

11 THE COURT: Overruled.

12 Q. (By Mr. Trentadue) So it would remain in the
13 I-Drive.

14 A. Possibly.

15 Q. You don't know of any other place it would go.

16 A. Unless they took it out of there if it wasn't
17 relevant to the case.

18 Q. Or hit delete?

19 A. Possibly not. If it went to another file you
20 wouldn't delete it.

21 Q. And then -- has the I-Drive -- is the I-Drive
22 still in existence in the Oklahoma City Field Office?

23 A. Repeat that.

24 Q. Is there still an I-Drive in the Oklahoma City
25 Field Office?

1 A. No.

2 Q. Is there an S-Drive now?

3 A. Yes.

4 Q. And does it serve the same function as the
5 I-Drive?

6 A. Yes.

7 Q. Have you ever heard, ma'am, of -- and I can never
8 pronounce it, it's ELSUR?

9 A. Yes.

10 Q. What is that?

11 A. Electronic surveillance.

12 Q. Let's see if we can have you go to the same
13 Exhibit 34 and page 87 at the bottom.

14 A. What page?

15 Q. 87.

16 A. Yes.

17 Q. Do you see that document, this is one of the
18 documents --

19 A. Repeat that.

20 Q. Yes, ma'am. It's page 87 at the very bottom, and
21 it talks about three videotapes and parking lot security
22 camera 7th and Harvey, and it says location, ELSUR Room.
23 What is the ELSUR Room?

24 MR. SIPLE: Objection, Your Honor,

25 mischaracterizes the document.

1 THE COURT: I'm sorry, I couldn't understand
2 your objection.

3 MR. SIPLE: I'm just -- I believe he's
4 mischaracterized what the document says.

5 Q. (By Mr. Trentadue) Well, it says location, ELSUR
6 Room.

7 A. Yes, it does.

8 Q. And you say that means electronic surveillance.

9 A. That's what it's short for.

10 Q. Yes. Have you -- is there a special location, to
11 your knowledge, where they keep paper records on
12 electronic surveillance?

13 A. They have their own sub-files.

14 Q. Their own sub-files.

15 A. Yes.

16 Q. Is there an index that -- so if I went in there
17 and said, okay -- how many sub-files did you say you
18 have in the OKBOMB case?

19 A. 94.

20 Q. 94. So if I came to you and said, Ms. Reed, do
21 you have an index where I can look into these sub-files
22 and see what they're each set up for, would you have
23 that?

24 A. Would I have -- repeat that, please.

25 Q. Would you have an index that would say what each

1 of these 94 sub-files is dedicated to?

2 A. Yes.

3 MR. TRENTADUE: No further questions, ma'am.

4 Thank you.

5 THE COURT: Redirect?

6 MR. SIPLE: Yes, Your Honor.

7 **REDIRECT EXAMINATION**

8 **BY MR. SIPLE:**

9 Q. Ms. Reed, plaintiff just asked you during the
10 cross-examination about a restricted file. Do you have
11 an understanding of why a file is restricted, what the
12 purpose is?

13 MR. TRENTADUE: Objection, foundation.

14 THE COURT: She can answer yes or no. Do
15 you have any understanding of what a restricted file is?

16 THE WITNESS: Yes.

17 Q. (By Mr. Siple) Do you understand the purposes for
18 why a file might be restricted?

19 A. Yes.

20 Q. What are those purposes?

21 MR. TRENTADUE: Objection, foundation.

22 THE COURT: I'll sustain the objection for
23 lack of foundation.

24 Q. (By Mr. Siple) You testified earlier on
25 cross-examination about supervisors reviewing documents

1 before they go into a file, correct?

2 A. Yes.

3 Q. And that was in conjunction with the testimony
4 concerning a restricted file, correct?

5 A. Yes, sir.

6 Q. And is part of the reason why a file is
7 restricted to avoid errors in documents to make sure
8 they are complete?

9 MR. TRENTADUE: Leading.

10 THE COURT: Sustained.

11 Q. (By Mr. Siple) Do you believe that -- based on
12 your testimony earlier about restricted files, you
13 testified earlier about document review. Is one of the
14 purposes for that to avoid errors in uploading
15 documents?

16 MR. TRENTADUE: Objection, leading.

17 THE COURT: Overruled.

18 THE WITNESS: Repeat that again.

19 MR. SIPLE: Is one of the reasons to avoid
20 errors in uploading documents?

21 MR. TRENTADUE: Objection, foundation, Your
22 Honor.

23 THE COURT: You can answer.

24 THE WITNESS: To restrict people from
25 uploading things because ACS was so new that it was --

1 not all divisions were online with it yet, so to avoid
2 things getting put into the wrong place, they restricted
3 the file to the Oklahoma City people that worked on the
4 case.

5 Q. (By Mr. Siple) I think you testified earlier that
6 you have experience during the time when the file was
7 restricted; is that correct?

8 A. Yes.

9 Q. Okay. Do you have any experience uploading
10 documents or knowledge of documents being uploaded
11 during that time period?

12 A. Yes.

13 Q. So you're familiar with the process during when
14 the file was restricted; is that correct?

15 A. Yes.

16 Q. Based on that, can you -- are there any other
17 reasons why there are restrictions placed on a file,
18 other than avoiding the errors that you talked about?

19 MR. TRENTADUE: Objection, foundation.

20 THE WITNESS: We have various sub-files if
21 we're --

22 MR. TRENTADUE: I withdraw the objection.
23 Sorry, Your Honor.

24 THE COURT: You may proceed.

25 THE WITNESS: You have various files that --

1 like grand jury, if you're not on the grand jury list
2 you can't look at the things in that file, so you have
3 to have restrictions on a need-to-know basis.

4 Q. (By Mr. Siple) What about the organization of the
5 file, is that important as far as the paper files,
6 maintaining the paper files?

7 A. Very.

8 Q. And would that be a reason why access might be
9 restricted to make sure they're filed correctly?

10 A. Yes.

11 Q. Your answer was yes? I didn't hear.

12 A. Yes.

13 Q. Can we turn to in the blue binder Exhibit 45 that
14 plaintiff was asking you about on cross?

15 A. 45?

16 Q. Yes, please.

17 A. Okay.

18 Q. I think you were -- I just want you to elaborate
19 on something I thought you were trying to answer on
20 cross. Down at the bottom of the document do you see a
21 serial number?

22 A. Yes.

23 Q. What serial does that relate to, what file?

24 A. Sub-D file.

25 Q. I'm talking about in terms of the main file, what

1 main file does this document refer to?

2 THE COURT: What page in Exhibit 34 are you
3 referring to?

4 THE WITNESS: Did you say 45?

5 MR. SIPLE: 45, yes.

6 THE WITNESS: Okay.

7 Q. (By Mr. Siple) And at the top of it it's dated
8 7/22/1996, just to make sure we're talking about the
9 same document.

10 A. Date of transcription.

11 Q. Yep. And then down at the bottom there's a file
12 number?

13 A. Yes.

14 Q. What is that file number, what's the main file?

15 A. 174A-OC-56120.

16 Q. What file does that refer to?

17 A. That's the OKBOMB file number.

18 Q. Okay. Now, plaintiff was suggesting that this
19 may not have a serial number on it. Are you able to
20 look at this and determine whether it has a serial
21 number or not, this paper document?

22 A. It does have a serial number.

23 Q. How do you reach that conclusion?

24 A. You can see that it was blacked out.

25 Q. It's been redacted?

1 A. Pardon?

2 Q. So you're saying it's been redacted?

3 A. Yes.

4 THE COURT: So if it's been redacted, how do
5 you know it had a serial number?

6 THE WITNESS: Well, because I can see it
7 through the blackout.

8 THE COURT: Can you tell us what the serial
9 number is.

10 THE WITNESS: 15601.

11 Q. (By Mr. Siple) If I could move on, Ms. Reed, to,
12 I think it was, Exhibit 34, page 87?

13 A. Excuse me?

14 Q. Exhibit 34, page 87.

15 A. 34?

16 Q. Yes.

17 A. Page 87?

18 Q. 87.

19 A. Okay.

20 Q. You were talking with Mr. Trentadue about the
21 location evidenced on this particular document. Could I
22 ask you to take a closer look at this document, take a
23 minute to review it.

24 A. It's an FD-192.

25 Q. And it appears that locations are referenced on

1 this document; do you see that?

2 A. Yes.

3 Q. And from what I'm seeing here, I see two
4 locations referenced. I was wondering if that would
5 help you elaborate on your answer at all in terms of
6 location being referenced here.

7 A. Yes. There's two different barcodes and two
8 different locations.

9 Q. Okay. And what is the first location listed
10 there?

11 A. OKBOMB Cabinet A.

12 Q. So would that be one location where this item
13 that's being referenced would be?

14 A. Yes.

15 Q. You talked about ZyIndex, you mentioned
16 ZyIndex -- I'm sorry, we're done with that exhibit,
17 Ms. Reed. You mentioned ZyIndex when you were crossed
18 as well. Are you familiar with ZyIndex?

19 A. Somewhat.

20 Q. How somewhat? What's your familiarity with
21 ZyIndex?

22 A. Zy was used at the beginning so they could get --
23 they could scan all the documents from ACS into this
24 database so they could do a text search because it was
25 so voluminous they could find documents they were

1 looking for.

2 Q. In your experience, is ZyIndex a place -- you
3 mentioned text search, is that a place that would allow
4 you to search the files based on text?

5 A. Yes.

6 Q. And is that very similar to ACS that you
7 described earlier?

8 A. Somewhat.

9 Q. In locating paper files, in your experience,
10 would there be any reason to not rely on these tools to
11 find responsive documents, either Zy or ACS?

12 A. Repeat that.

13 Q. Is there any reason, based on your experience
14 working with paper files, that you would not rely on
15 either the ZyIndex or ACS to locate documents within the
16 paper files?

17 A. It would be my first go to.

18 Q. I think you testified earlier that you need a
19 starting point as far as finding documents; is that
20 correct?

21 A. Yes.

22 Q. And why is that important?

23 A. Like I stated earlier, if you sent somebody to
24 the public library to find something and just told them
25 to search for a specific topic and didn't give them a

1 starting point, it could take forever to know where to
2 go to.

3 Q. Now, you talked about -- Mr. Trentadue was
4 suggesting problems with uploading. I want to deal with
5 that on sort of a larger level. Do you recall that
6 there was at some point, I think you testified, that
7 documents were sent to the Oklahoma City -- your field
8 office relating to OKBOMB; do you recall something like
9 that?

10 A. Yes.

11 Q. Could you elaborate on that process, what was
12 involved there, how was it that files were sent to
13 Oklahoma City?

14 A. They FedExed things to the office. Different
15 divisions, various divisions had leads to talk to people
16 regarding the case, and so they would do their 302 or
17 their insert, their documentation, and they would put it
18 on a disk and send it to the Oklahoma City office for us
19 to upload into ACS.

20 Q. Was there any -- and this was -- I think you're
21 referring now to the timeframe when this was an active
22 investigation; is that correct?

23 A. Yes.

24 Q. Okay. Was there a later point in time when field
25 offices were directed to send documents to your field

1 office, paper files?

2 A. Yes, numerous times.

3 Q. Can you elaborate on that?

4 A. When we thought we had everything for the file,
5 then they would -- they found out there was more
6 documents out there and they directed each division,
7 their SAC, to certify that they had sent everything to
8 the Oklahoma City office to ensure that we had all the
9 documents.

10 Q. Were you -- so you were there at Oklahoma City as
11 this process occurred?

12 A. Yes.

13 Q. Do you -- were you involved in receiving all
14 these paper documents into your file?

15 A. Yes. I don't remember what year, but it was on
16 Mother's Day, I was directed to come into the office
17 because they were having agents fly in and had to bring
18 the documents straight to the office.

19 Q. Were these documents coming from field offices
20 all over the country?

21 A. Yes.

22 Q. Who else was involved in the process with you in
23 terms of receiving these documents and making sure they
24 got into your custody?

25 A. There was probably various rotors that worked

1 with it. At the time, I believe I was file supervisor.
2 So depending on who was working on the file at the time.

3 Q. If we were looking -- I just want to ask you
4 about if a piece of evidence originated in Oklahoma
5 City, for instance, surveillance footage that was taken
6 somewhere in Oklahoma City, is there any reason why that
7 would be uploaded or taken into custody in another
8 office?

9 A. Not that I'm aware of.

10 Q. So I guess what I'm getting at, if there's a
11 piece of evidence that's in Oklahoma City, it would be
12 your field office that would document that.

13 A. Yes, they should.

14 Q. There was one other exhibit concerning the
15 Detroit office that Mr. Trentadue pointed to. Ms. Reed,
16 could I call your attention -- could you pull up and
17 look at Exhibit 44 in the binder.

18 A. Excuse me?

19 Q. I'm sorry, Exhibit 44 in the blue book.

20 MR. TRENTADUE: Did you say Exhibit 44?

21 MR. SIPLE: Yes, sir.

22 THE WITNESS: Okay.

23 Q. (By Mr. Siple) I want you to just take a moment
24 to ensure that you've looked at this document in its
25 entirety, and take as long as you need.

1 A. Okay.

2 Q. Now, this is a document that is apparently
3 describing problems with uploading into OKBOMB file; is
4 that correct?

5 A. Yes.

6 Q. Can you see from this document what field office
7 it is that the problem uploading is coming from?

8 A. The lower half of the document shows that it came
9 from -- it has DL in parentheses, that's Dallas, and
10 then the top part of it shows DN in parentheses, that's
11 Denver.

12 Q. Let me ask it a different way, is there any
13 reason to believe that this was your office having
14 trouble uploading materials into the file?

15 A. I don't think so, but I can't answer it. It
16 doesn't show who it went to.

17 Q. Let me ask you another question about this. Can
18 you see the date of this that this was sent?

19 A. The first date, April 6, 2005.

20 Q. And are there any other dates on the document?

21 A. Down at the bottom there's a 4/7/2005, but I
22 don't know what that pertains to. Possibly -- I see
23 over to the side a written date, 4/7/2005, where
24 somebody initialed and then it was put into the file.

25 Q. So this is -- just to be clear, this appears to

1 be an uploading report problem reported in 2005; is that
2 correct?

3 A. Yes.

4 Q. Based on your experience and all that you've
5 described, including collecting documents into the paper
6 file from other offices, are you confident that using
7 ACS and ZyIndex would be the best ways to locate
8 documents now within your custody with the paper file?

9 A. Absolutely.

10 MR. SIPLE: No further questions.

11 THE COURT: Recross?

12 MR. TRENTADUE: Yes, Your Honor, just very
13 briefly. While I'm setting up, I would move for the
14 admission of Exhibit 44.

15 MR. SIPLE: Objection, relevance.

16 THE COURT: You chose to ask about it, so
17 I'm going to receive it. Exhibit 44 is received.

18 (Whereupon, Plaintiff's Exhibit 44 was
19 received into evidence.)

20 **RECROSS-EXAMINATION**

21 **BY MR. TRENTADUE:**

22 Q. If you would look back at Exhibit --

23 A. I'm sorry, I can't hear you.

24 Q. Yes, ma'am. If you would look back at Exhibit
25 34, page 87.

1 A. 34?

2 Q. Yes.

3 A. Okay.

4 Q. You were asked a question about, well, there's
5 two locations here where these tapes went, and that's
6 true, apparently it looks as though two of these three
7 tapes went to the OKBOMB case file, correct?

8 A. Yes.

9 Q. Then one tape, a surveillance tape, went to the
10 ELSUR Room, which you said is electronic surveillance.

11 A. Yes.

12 Q. Now, you were asked by counsel you have to know
13 where to start when you're looking for something.

14 A. A starting point, yes.

15 Q. So would sub-file D1 be a good starting point?

16 A. Sub-file D1, what is the 1?

17 Q. The serial of the first entry.

18 A. The serial?

19 Q. That's a good starting point; isn't it?

20 A. Of Sub-D, if you want to start at the beginning.

21 Q. Yes. You were asked -- and that's a great point,
22 you start at the beginning to see what was taking place
23 in Oklahoma City the first two weeks after the bombing,
24 you start at serial 1 and go up.

25 A. If the first one started at the very beginning on

1 April 19th.

2 Q. Well, when you receive these serials in from
3 these other offices, how are they assigned their numbers
4 in the OKBOMB file?

5 A. They are uploaded into ACS and it generates the
6 serial number.

7 Q. Okay. But it's reasonable to expect that the
8 initial evidence gathered on the scene within the first
9 few days after the bombing would be in the Oklahoma City
10 Field Office.

11 A. Possibly.

12 Q. Well, it's more likely than not, isn't it, ma'am?

13 A. I can't attest to that.

14 Q. And you were asked about some of the other
15 reasons why you would use the I-Drive or the S-Drive.
16 Part of it may be to keep irrelevant material out of the
17 official file?

18 MR. SIPLE: Objection, speculation.

19 THE COURT: Overruled.

20 THE WITNESS: I can't say that.

21 Q. (By Mr. Trentadue) It's a possibility, though,
22 isn't it?

23 A. There's always the possibility.

24 MR. TRENTADUE: No further questions, Your
25 Honor.

1 THE COURT: Thank you. You may step down.
2 May this witness be excused?

3 MR. TRENTADUE: As far as I'm concerned,
4 yes, Your Honor.

5 MR. SIPLE: Yes, Your Honor.

6 THE COURT: Thank you. You are excused.

7 Let's take our noon hour break. I have a
8 drug court graduation that's supposed to start shortly
9 after 1:00, so that should be very short, maybe 10
10 minutes, so we'll start -- let's assume we'll start
11 somewhere about 20 after 1:00.

12 MR. TRENTADUE: There's something I need to
13 inquire about, I think that's the government's last
14 witness, other than Mr. Hardy.

15 MR. SIPLE: No. We have actually one other
16 witness before Mr. Hardy, if Mr. Hardy is called to
17 testify.

18 MR. TRENTADUE: Who is that?

19 MR. SIPLE: Michael Morgan, he's an IT
20 specialist.

21 MR. TRENTADUE: Will Mr. Hardy be here
22 today?

23 MR. SIPLE: Mr. Hardy is available, although
24 we intend to, at the close of our evidence from these
25 others witnesses, to basically restate our objection to

1 him testifying.

2 MR. TRENTADUE: Your Honor, there was a
3 concern expressed by the government about finishing.
4 Now that we've lost Mr. Matthews, there isn't going to
5 be any problem about that. But I would ask the court to
6 reconsider the issue of Mr. Matthews, rather than a
7 request to counsel, that it be an order to the FBI that
8 these people like Mr. Matthews have an informant number
9 where all their contacts are tracked, they are tracked,
10 that they can consult the people under that number, who,
11 if anybody, contacted Mr. Matthews, what, if any,
12 suggestions or threats were made to him or his family
13 that may have induced him not to testify tomorrow. I
14 don't think a request is enough, I think this is a
15 serious matter. I've never had to have brought
16 something like this up in almost 40 years as an
17 attorney, I've never had anything like this happen.

18 THE COURT: Well, the suggestion that there
19 was interference or encouragement by an official of the
20 government to have this witness not appear or appear at
21 trial is a serious allegation. I want the FBI's team to
22 get to the bottom of this, to conduct a reasonable
23 inquiry, and to report to the court what they've done to
24 satisfy themselves that no one from the government
25 interfered in any way with this witness's appearing to

1 testify at trial.

2 MR. TRENTADUE: Thank you, sir.

3 MR. SIPLE: Your Honor, may I ask, could we
4 approach on this issue?

5 THE COURT: Well, I'm not sure why this
6 should be a matter of confidential information. It
7 seems to me this is a public issue and the explanation
8 should be given publically.

9 MR. SIPLE: We're continuing to look into it
10 at this point.

11 THE COURT: Once you've completed your
12 investigation, I'll expect you to make a public report
13 of what has happened.

14 MR. SIPLE: At this point, I just don't have
15 any information.

16 MR. TRENTADUE: May we leave our stuff here,
17 Your Honor, or should we carry it out?

18 THE COURT: I'm sorry?

19 MR. TRENTADUE: May we leave our stuff here
20 at counsel table?

21 THE COURT: Yes.

22 We will be in recess.

23 (Lunch recess.)

24 THE CLERK: Court resumes session.

25 THE COURT: Thank you for your patience

1 while we handled the drug court graduation. We are back
2 in session in Trentadue v. The FBI. Counsel and the
3 parties are present. The FBI may proceed with its next
4 witness.

5 MR. SIPLE: Thank you, Your Honor. The FBI
6 calls Mr. Michael Morgan.

7 **MICHAEL MORGAN,**
8 called as a witness at the request of the Defendant,
9 having been first duly sworn, was examined
10 and testified as follows:

11 THE CLERK: Please say and spell your full
12 name for our record.

13 THE WITNESS: Michael D. Morgan,
14 M-i-c-h-a-e-l, initial D., M-o-r-g-a-n.

15 **DIRECT EXAMINATION**

16 **BY MR. SIPLE:**

17 Q. Good afternoon Mr. Morgan. Where do you
18 currently work?

19 A. At the FBI Oklahoma City Division.

20 Q. Is that what has been referred to as the Oklahoma
21 City Field Office?

22 A. Yes.

23 Q. What is your position there at the Oklahoma City
24 Field Office?

25 A. Supervisory ITS, or Information Technology

1 Specialist.

2 Q. What is a supervisory ITS, what does that
3 position entail?

4 A. I supervise the group of individuals that
5 maintain the computer systems, the administrative
6 systems in the office, the network, the hardware,
7 software, enduser support, we install computers and
8 support the users that use them.

9 Q. Just a little bit late that's -- you support
10 mainly the computer infrastructure for the Oklahoma City
11 Field Office?

12 A. Yes.

13 Q. Do you support agents or have any
14 responsibilities for supporting agents in the field?

15 A. We support all personnel, so -- but it's
16 basically -- just like we have help-desk-type support,
17 so if somebody's having a problem with a computer, they
18 call us and we come and see what the problem is.

19 Q. You mentioned that you're a supervisor, so do you
20 have individuals that work under you?

21 A. Yes.

22 Q. How many?

23 A. Four at this time.

24 Q. And when did you start -- how long have you been
25 working at the Oklahoma City Field Office?

1 A. May of 1987.

2 Q. Did you start in the IT section, or what position
3 did you start at?

4 A. Yeah. I was a recent graduate with a computer
5 science degree, and it was called a computer specialist
6 job back then.

7 Q. So has your entire time with the field office
8 since 1997 been in IT?

9 A. Yes, since 1987.

10 THE COURT: Could you scoot your chair
11 forward just a little bit? Thank you. It will pick up
12 better in the microphone.

13 Q. (By Mr. Siple) So are you familiar with the
14 Oklahoma City Field Office computer infrastructure and
15 its systems?

16 A. Yes.

17 Q. I want to draw your attention to some questions
18 about I-Drives and S-Drives that have come up, so can I
19 ask you are you familiar with the terms I-Drive and
20 S-Drive?

21 A. Yes, I am.

22 Q. Could you explain to the court what I-Drive
23 refers to, what is that specifically?

24 A. It used to be a drive that was on an older system
25 that we had. We used letters to designate different

1 drives on the servers that were local to Oklahoma City,
2 and they were broken down by what -- basically what they
3 were used for. So the I-Drive was the drafts drive,
4 which was used for people's work in progress as they --
5 when they were typing up their 302s or inserts or
6 whatever it was, and that was a holding place, until
7 such time it was reviewed and approved by a supervisor,
8 and then it was uploaded into the record system, ACS,
9 and at that time it was deleted from the I-Drive.

10 Q. And just so I'm clear, the I-Drive is a place on
11 the server, a shared workspace?

12 A. Yes. The computer system is a server, like all
13 computers basically starts with the C-Drive where your
14 operating system is, and then you would -- those are
15 just logical names. It's just a way to separate space
16 on the drives so that users can understand what they're
17 looking at and where to go. That was older terminology.
18 People are more familiar now with folder names, but back
19 then we used the letters as designators.

20 Q. And you mentioned about drafts, I think you
21 mentioned a moment ago. So is the I-Drive a place where
22 documents are composed initially?

23 A. Typically they would probably compose them on
24 their home directory, but they could compose them there,
25 but it was still a temporary file until it was uploaded

1 into the system.

2 Q. And the system is, did you say ACS?

3 A. ACS, the records system, yes.

4 Q. Does the I-Drive still exist, is that still
5 something in existence?

6 A. Not in that form anymore, no.

7 Q. Please explain, why do you say that?

8 A. Back then we had Novell servers. Since that
9 time, I believe it was about 2004, we switched to a
10 Windows-based system, so the new servers were built, and
11 we had contractors that came in and they migrated all
12 the current data on the old servers to the new servers.
13 The new servers use a different file structure and
14 naming system. There is no I-Drive per se. But we do
15 have what's called the S-Drive, which is a shared drive,
16 and under it it has folder names that people can use,
17 and it makes a little more sense to people. So they
18 have their home directory, common folders, they have
19 teams or maybe squads, and then there's also a folder
20 called drafts, and below drafts are each squad has a
21 folder and below those folders each user has a folder.

22 Q. So would it be fair to say, based on what you've
23 just described, that the S-Drive is to replace or
24 supplant the I-Drive?

25 A. Yes.

1 Q. Do you know when this was that the I-Drive you
2 mentioned is no longer in use, when this migration
3 happened that you referred to?

4 A. In 2004.

5 Q. Would you describe what that term migration, what
6 is that process, what was that?

7 A. We had contractors come in, all users were
8 instructed to go through their folders individually,
9 clean up any old files that shouldn't be there. You
10 know, people have a tendency to collect -- they may use
11 files for templates and things like that to keep from
12 having to retype forms. And so we asked them to clean
13 that up so that the new servers didn't have a lot of
14 wasted space, the old things that weren't really needed
15 anymore. At such time the contractors would migrate
16 their data to a space on the new server that was
17 designated for them under their home directories and
18 their user name.

19 Q. And so, if I'm understanding you right, part of
20 the migration was whatever was on the I-Drive was to
21 move things to the S-Drive.

22 A. If there was any pending work on the I-Drive it
23 would have gone to the S-Drive under drafts and their
24 user folder, yes.

25 Q. What about the servers that supported the

1 I-Drives, do they still exist?

2 A. No. After a period of time, once everything
3 was -- we were sure everything was up and running and
4 everything existed the way it was supposed to, those
5 were decommissioned, we broke them down, all their
6 parts, wiped the hard drives, and sent those to
7 Headquarters for destruction.

8 Q. Do you know when that occurred?

9 A. Sometime in 2004.

10 Q. Did the I-Drive have backup tapes?

11 A. At the time, when we had those servers, we did do
12 local backups. The backups that were for the purpose of
13 disaster recovery in case our server crashed or
14 something like that, we would do daily, weekly, and
15 monthly backups. Those tapes were reused though. I
16 think there was a 60-day retention time on those and
17 then they could be reused or destroyed, depending on if
18 they were good or not. And they were just used for
19 disaster recovery. They weren't saved as far as a
20 record because everything that was a record was uploaded
21 to ACS.

22 Q. What do you mean by disaster recovery
23 specifically?

24 A. Well, occasionally hard drives fail. We have
25 redundancy built in, but you never know when something

1 catastrophic can happen. They were made -- there could
2 be a fire or something like that. So they were just
3 made for that specific purpose in case something
4 catastrophic enough that we couldn't recover it from the
5 system, we would go to the tapes and restore the tapes
6 to a system.

7 Q. Were the backup tapes also decommissioned?

8 A. Once we went away from the tape system, those
9 were all destroyed. All of our backups are done
10 remotely now by Headquarters. We don't do any local
11 backups anymore.

12 Q. You mentioned S-Drive, and so that's the drive
13 that is currently in operation at the Oklahoma City
14 Field Office, is that your testimony?

15 A. Yes.

16 Q. Okay. I want to talk about specifically the
17 possibility of searching the S-Drive, let's talk about
18 that.

19 A. Okay.

20 Q. If you were to be asked or directed, Mr. Morgan,
21 can you go ahead and, let's say, search the S-Drive for
22 OKBOMB materials, is that something that could be done?

23 A. It could be done. I would probably direct that
24 it should be done by Headquarters. In the field we
25 have, even though we have some administrative access, we

1 have limited access. So it would be -- the only way we
2 would have to do that would be a basic Window search,
3 which is not that sophisticated, and we have a lot of
4 data on our servers, so -- and also we have restrictions
5 where we can't stay logged on overnight. You have to
6 log out. So depending on how long a search might take,
7 it could be cut short of a system. So if we were
8 instructed to do that, I would probably request
9 Headquarters and the system administrator to do a search
10 of our servers for us because it could take quite a bit
11 of time.

12 Q. And just to understand what this search might
13 pull up or might consist of, can you just elaborate on,
14 okay, let's just say you ran a search on the S-Drive,
15 what would be the result, what would be generated?

16 A. Depending on your search and how many different
17 terms you use, you could generate thousands of hits, and
18 then that's just going to give you a file name and a
19 location. So basically you would have to have somebody
20 go through each of those documents and pull them up,
21 read through them, and see if it was what you were
22 looking for or not.

23 Q. Mr. Morgan, based on your knowledge and
24 experience, is it likely that searching the S-Drive
25 would turn up any additional OKBOMB materials that were

1 not in ACS?

2 MR. TRENTADUE: Objection, Your Honor,
3 speculation.

4 THE WITNESS: No.

5 THE COURT: Sustained. The answer is
6 stricken.

7 Q. (By Mr. Siple) Mr. Morgan, you testified earlier
8 that documents that are on the S-Drive should be
9 uploaded to ACS; is that correct?

10 A. Yes.

11 Q. What were you basing that testimony on?

12 A. That's our -- that's the procedure we use to make
13 sure anything related to whatever case it is is put into
14 the system. The reason I said I wouldn't expect there
15 to be anything there is because we actually did do an
16 exhaustive search of the old I-Drives, the new -- the
17 old I-Drives when they still existed through the McVeigh
18 trial. We were instructed by the court to ensure that
19 there were no documents anywhere that might not have
20 been put into the file because they were concerned that
21 they may not have been turned over in discovery, so
22 every field division was instructed by the courts to not
23 only search their computer systems, but search all their
24 file drawers, desk drawers, workspace and make sure that
25 there were no documents that hadn't been uploaded. And

1 at the time, I think they did find several documents
2 that turned out to be possibly duplicates of ones that
3 weren't uploaded, but, at that time, the court was
4 satisfied that they had found everything and it was put
5 into the file.

6 Q. You mean uploaded into ACS.

7 A. Yes.

8 Q. Based on that knowledge and your experience, do
9 you think there's any reason a search of the S-Drive
10 would be likely to find documents that were not
11 otherwise in ACS?

12 MR. TRENTADUE: Objection, speculation.

13 THE COURT: Overruled.

14 THE WITNESS: No, sir.

15 MR. SIPLE: I don't have any additional
16 questions at this time.

17 THE COURT: Cross-examination?

18 MR. TRENTADUE: Yes, Your Honor.

19 **CROSS-EXAMINATION**

20 **BY MR. TRENTADUE:**

21 Q. Mr. Morgan, when did you -- your current position
22 is what, sir?

23 A. Supervisory ITS.

24 Q. And when did you first start working in the
25 Oklahoma City Field Office?

1 A. May of 1987.

2 Q. 1987. And you've been in the IT department how
3 long?

4 A. 27 years.

5 Q. And you said in 2004 is when you got rid of the
6 I-Drive system?

7 A. Yes.

8 Q. What part of 2004 was that, early?

9 A. Early. I think it was -- may have been April,
10 I'm not sure. I really don't recall exactly.

11 Q. Okay. And do you recall doing a search of the
12 I-Drive system in Oklahoma City in 2004 for one of my
13 FOIA requests?

14 A. I know that we searched the servers in 2001
15 related to that case back then. As far as your FOIA
16 request, I don't specifically recall whether --

17 Q. There was another FOIA request.

18 A. Okay.

19 Q. You mentioned how difficult it is or
20 time-consuming to do a search of the S-Drive. Would it
21 be any different to have done a search on the I-Drive?

22 A. It would have been a similar process.

23 Q. Pretty close to the same?

24 A. Well, the I-Drive was Novell, so there are some
25 differences. Actually, Novell had a little more power

1 back then, and it was just the way it was designed we
2 had a lot more administrative access over time. Our
3 ability to do administrative duties has kind of moved to
4 Headquarters, so it is different now than it was then.

5 MR. TRENTADUE: If I may have a moment.
6 What was our last exhibit number?

7 THE CLERK: It was 69.

8 MR. TRENTADUE: Just for identification
9 purposes and to keep a record, we should probably mark
10 this as 70.

11 Mr. Morgan, perhaps I could show you
12 exhibit --

13 MS. WYER: Excuse me, we have not received a
14 copy of whatever this is.

15 MR. TRENTADUE: I have it right here, Your
16 Honor --

17 THE COURT: Show it to Ms. Wyer.

18 MR. TRENTADUE: -- for the court.

19 Does the witness have the copy?

20 THE CLERK: It's right there.

21 Q. (By Mr. Trentadue) Exhibit 70, Mr. Morgan, this
22 was a declaration that Mr. Hardy filed in another FOIA
23 case, if you would look on page 8, see the bottom of the
24 page, the highlighted language?

25 A. Yes.

1 Q. It says, Finally, a search of the CRS indices at
2 the FBI Headquarters and the Oklahoma City Field Office,
3 and a search of the I and S-Drives at the Oklahoma City
4 Field Office for a former FBI Director Freeh memorandum
5 dated on or about January 4th, 1996, revealed that FBI's
6 Headquarters and the Oklahoma City Field Office had no
7 records responsive to plaintiff's request. Do you
8 remember having done this search for Mr. Hardy?

9 A. I don't specifically remember, but I know we have
10 done some searches like that, so probably so.

11 Q. And the date of this declaration is December 9,
12 2004? It would be the last page.

13 A. On the last page?

14 Q. Yes, sir.

15 A. Yes.

16 Q. And the search you did was actually for both the
17 S-Drive and the I-Drive.

18 A. Well, that's the terminology he used here. I
19 don't specifically remember in 2004 if -- I don't recall
20 that we had an I-Drive, but it would have been included
21 under the S-Drive.

22 Q. But, anyway, Mr. Hardy says you did the searches,
23 and you recall doing the searches.

24 A. I don't specifically recall. This was in 2004.

25 MR. SIPLE: Objection, that just said that

1 there is no indication that Mr. Hardy said that Mike
2 Morgan, this witness, did the search.

3 THE COURT: Overruled.

4 Q. (By Mr. Trentadue) Mr. Morgan, you recall doing a
5 search.

6 A. I've done many searches for different reasons.
7 I'm just saying I don't specifically remember this from
8 this first time that it was asked of me if I recall
9 this.

10 Q. You don't dispute that it occurred.

11 A. I don't.

12 Q. Now, you mentioned it's a shared drive, the
13 I-Drive, so -- and the agent has it obviously; is that
14 correct?

15 A. Yes.

16 Q. And then the next person that shares in it would
17 be the supervisor?

18 A. Well, the way it's -- the I-Drive is the root and
19 below that are folders, and at each folder level,
20 depending on who it's made for, accesses are given. So
21 as an administrator, I would have access to the root of
22 the drive, but a user would have only access to their
23 folder, and then their supervisor would have access to
24 their folder.

25 Q. Okay. So the supervisor would come into the

1 I-Drive and access the agent's folder.

2 A. Yes.

3 Q. And that was to look at and review the agent's
4 work.

5 A. Yes.

6 Q. And the supervisor would make the decision
7 whether -- what needed to be done, changes or
8 modifications to complete it, and then upload it into
9 the official file.

10 A. Yes.

11 Q. And above the supervisor was anyone else had
12 access to the agent's folders on the I-Drive?

13 A. Not other than an administrative user.

14 Q. When you say "not other than an administrative
15 user" --

16 A. That would be me and individuals that work for
17 me.

18 Q. Okay. But what about in addition to the
19 supervisor, would he have a superior that could access
20 the work through the I-Drive?

21 A. Typically no, we wouldn't give anybody above --
22 we just don't -- we wouldn't give it to them. If they
23 requested it for whatever purpose and we were told to do
24 that, we would do it, but that would be a special
25 request.

1 Q. Fair to say it could be done. If you were told
2 to do it by someone high enough up the food chain, you
3 would do it.

4 MR. SIPLE: Objection, calls for
5 speculation.

6 THE COURT: Overruled.

7 THE WITNESS: Yes.

8 Q. (By Mr. Trentadue) Now, how is that different
9 from the S-Drive, is it the same structure?

10 A. Yes.

11 MR. TRENTADUE: No further questions, Your
12 Honor.

13 THE COURT: Redirect?

14 MR. SIPLE: No, Your Honor.

15 THE COURT: Thank you. You may step down.
16 May this witness be excused?

17 MR. SIPLE: Yes, Your Honor.

18 THE COURT: You're excused.

19 MR. TRENTADUE: Yes.

20 THE COURT: The FBI may call its next
21 witness.

22 MR. SIPLE: Before I do that, Your Honor, I
23 would like to, if I could just be heard, our next
24 witness, depending on how the court hears our objection,
25 I would like to restate our objection to Mr. Hardy

1 testifying.

2 THE COURT: You may.

3 MR. SIPLE: May I approach the podium?

4 THE COURT: Of course.

5 MR. SIPLE: Your Honor, respectfully, this
6 court directed a trial on the reasonableness of the
7 FBI's search, and we have provided witnesses who, in
8 great detail, have testified of their own personal
9 knowledge and involvement in conducting a search for
10 records responsive to plaintiff's request. You've heard
11 even today from people from the Washington Explosives
12 Division from Washington, D.C., and you've heard in
13 detail from Linda Vernon, who perhaps has more
14 institutional knowledge about the OKBOMB file than
15 anyone in the FBI. In short, we've provided all the
16 evidence that establishes the search that was done, and
17 we believe the reasonableness of it. So we think
18 Mr. Hardy's testimony is totally irrelevant, and having
19 him testify would serve no purpose in terms of the
20 ultimate question here, the assessment of the search
21 that was completed.

22 When we talk about no purpose here, I want
23 to also emphasize the purpose to which Mr. Hardy serves.
24 He has provided declarations in this case, no doubt, but
25 he's done that in a way that is intended under the law

1 and accepted by many courts, as we've briefed
2 previously. And I would just call the court's attention
3 to our supplemental memo 104 where he addressed this
4 issue of what's appropriate in FOIA for a declarant.
5 And the standards there are pretty clear, that a
6 declarant is the person who is ultimately responsible
7 for the office that handles FOIA requests for the
8 agency. So it's not just about Mr. Hardy, but this is
9 the standard practice across the government in FOIA
10 cases. Obviously, the volume of FOIA requests for each
11 agency is very large and is increasing. And so the
12 purpose of that declaration is to allow a ready way for
13 a court to assess the records search.

14 That being said, this court has decided that
15 it wants to evaluate the evidence here in a trial, and
16 we've done that and we can continue to do that. But
17 with that happening and the fact that we've gone down
18 that road now, there is just no relevance to Mr. Hardy's
19 testimony, which, again, his purpose as to providing a
20 declaration was to synthesize for the court the search
21 in a manner that's done across cases and accepted by
22 courts in many circuits, as we've cited.

23 I think the only purpose now for having
24 Mr. Hardy testify, frankly, would be to basically harass
25 Mr. Hardy. It wouldn't serve any purpose in terms of

1 further evaluating the reasonableness of the search or
2 the good faith. I think the record speaks for itself in
3 terms of the good faith of the individuals from various
4 corners of the FBI, who not only conducted the search
5 but responded to this court's orders to respond to
6 additional information, and they have done that
7 thoroughly and they act, by the way I should add, with
8 the presumption of good faith. And to the extent there
9 is any suggestion that Mr. Hardy's testimony would go to
10 any issue of bad faith, I would just add to that, under
11 the law, even if documents are missed, that doesn't
12 mean -- that doesn't meet bad faith, even if there are
13 minor discrepancies in the way the search is described,
14 that doesn't establish bad faith. Any bad faith needs
15 to be evaluated by what the individuals did, acting at
16 the behest of Mr. Hardy, to conduct the search. Did
17 they go at it diligently, did they look to places where
18 they thought they were likely to find responsive
19 documents? And the evidence over two days now, or close
20 to it, establishes that that is the case.

21 And so I would just renew our objection at
22 this time in light of the fact that you have now had
23 that opportunity to fully assess the FBI's search. And,
24 again, Mr. Hardy, in the normal course of business and a
25 practice accepted as a matter of law and used throughout

1 the courts -- and I would add that, you know, this trial
2 I think illustrates the fact that we do these
3 declarations because there's a lot of moving pieces in
4 conducting a records search at times, particularly when
5 the request is fairly complex. And so if we had to have
6 a trial each and every time and call in people from all
7 over the agency each and every time for the 18,000 FOIA
8 requests, for example, the FBI will handle this year, it
9 would be unwieldy. This is an exceptional case, and we
10 understand the court's concern, so we are here and we've
11 put on our evidence. That evidence is in now, and we
12 don't think having Mr. Hardy testify serves any
13 relevance to this proceeding at this stage, and we would
14 renew our objection to Mr. Hardy having to appear at
15 this trial.

16 THE COURT: Mr. Trentadue, do you wish to
17 respond?

18 MR. TRENTADUE: Yes, Your Honor. I'll be
19 very brief. Mr. Hardy submitted to the court six
20 declarations under oath purporting he had personal
21 knowledge describing the searches that have been
22 conducted. And quite honestly, Your Honor, the court
23 has to interpret the evidence. Most of the evidence
24 shows those searches were not conducted or else they
25 were conducted just before this trial commenced. So I

1 think Mr. Hardy is a key witness.

2 THE COURT: Well, I'm satisfied that
3 Mr. Hardy has relevant information. He did submit six
4 declarations, he made representations to the court about
5 the extent of the search. I don't believe this record
6 would be complete without his testimony and giving
7 Mr. Trentadue the opportunity to cross-examine him as to
8 the searches that may or may not have been done that
9 should have been done. So I'm overruling the objection.
10 Mr. Hardy should come forward.

11 MR. SIPLE: We're prepared to do that, Your
12 Honor, but may I just ask the court's indulgence for a
13 brief comfort break. Lunch is not sitting well with me.

14 THE COURT: Yes. Do you want five minutes?

15 MR. SIPLE: Yes. Five minutes is fine.

16 THE COURT: We'll take a five-minute break.

17 (Recess.)

18 THE CLERK: Court resumes session.

19 THE COURT: We're back in session in
20 Trentadue v. The FBI. The FBI may proceed.

21 MR. SIPLE: Yes, Your Honor. My sincerest
22 apologies for that rush out.

23 THE COURT: No problem.

24 MR. SIPLE: At this time, we're prepared to
25 call Mr. David Hardy.

1 THE COURT: Mr. Hardy, if you would come
2 forward.

3 **DAVID HARDY,**
4 called as a witness at the request of the Defendant,
5 having been first duly sworn, was examined
6 and testified as follows:

7 THE CLERK: Please say your full name and
8 spell it for the record.

9 THE WITNESS: David M. Hardy, H-a-r-d-y.

10 **DIRECT EXAMINATION**

11 **BY MR. SIPLE:**

12 Q. Good afternoon Mr. Hardy. What is your current
13 position? I'm sorry, where are you currently employed?

14 A. I'm sorry?

15 Q. Where are you currently employed?

16 A. I'm currently employed with the FBI.

17 Q. What is your position with the FBI?

18 A. I'm Chief of the Records Information
19 Dissemination Section, which is part of the Records
20 Management Division.

21 Q. How long have you been in that position?

22 A. I've been in that position since August 2002.

23 Q. Prior to 2002 were you employed somewhere else?

24 A. Yes. Prior to 2002 I was in the Navy.

25 Q. How long were you in the Navy?

1 A. I was in the Navy for 30 years.

2 Q. Did you retire?

3 A. I did. I retired in August 2002.

4 Q. What did you do in the Navy?

5 A. I was a Judge Advocate General for the primary
6 part of my career. I started out as a line officer on a
7 surface ship, then the Navy sent me to law school, and
8 then I had varying -- for the next essentially 22 years
9 I was in legal positions.

10 Q. What is a -- you mentioned Judge Advocate
11 General, what is that?

12 A. A Judge Advocate General is a staff corps -- uh,
13 commissioned officers who are attorneys and conduct the
14 legal affairs for the uniformed side of the Navy.

15 Q. You said you retired, so what rank did you retire
16 at out of the Navy?

17 A. I retired as a Rear Admiral lower half. I have
18 to say lower half because there's an upper half in here.
19 They'd get upset, so...

20 Q. And how many -- for those who might be familiar
21 with the Army, how many stars is that?

22 A. That's the equivalent of a Brigadier General.

23 Q. What was your, I guess your final position, what
24 were you doing at the time you retired from the Navy?

25 A. When I retired from the Navy I had been serving

1 as the Assistant Judge Advocate General, and I was
2 responsible for all civil law matters. That would have
3 been national security admiralty, torts claims,
4 international law, litigation, administrative law, so
5 there were ten different divisions.

6 Q. Did any of that entail Freedom of Information
7 Act?

8 A. Yes, Freedom of Information Act. We -- in two
9 ways, first that the Administrative Law Division within
10 the Office of the Judge Advocate General was responsible
11 for substantive policy for the Freedom of Information
12 Act, and those employed within the Navy, and then our
13 Litigation Division was responsible for all FOIA appeals
14 within the Navy and also for all litigation which
15 involved the Freedom of Information Act.

16 Q. And prior to that have you had experience in the
17 Navy as a Judge Advocate General for working on FOIA
18 matters?

19 A. Right. When I finished law school in 1980 I went
20 to a legal office, and then during that time I was
21 responsible for torts and claims. At that time, FOIA
22 was pretty new, but we were just -- we started out with
23 the foundation of doing FOIA work. Then after that I
24 went for Air Wing Commander who owned three air
25 stations, and one of them was Fallon, which was

1 expanding its range out in Nevada. So a significant
2 amount of environmental issues and FOIA requests that
3 were flowing from there, so I was pretty experienced.

4 After that I went back to school in a
5 master's in international law, which kind of sidetracked
6 me from FOIA for awhile because I was doing operation in
7 the float billets positions. But then I came back as
8 the legal advisor to the Vice Chief of Naval Operations,
9 he's the number two guy in the Navy, right at the time
10 of Tailhook. So I was responsible for numerous FOIA
11 requests for the military justice issues that were going
12 on in Tailhook, plus responsible for all the FOIA for
13 the E-ring, the outer -- the Chief of Naval Operations
14 Office in the Pentagon, and I managed that program for
15 them.

16 Q. So prior to joining the FBI as Chief of RIDS how
17 much experience would you say you had working on FOIA
18 matters?

19 A. I think in all toll -- I mean it started back in
20 1982 off and on, but really heavy dose at the end, so
21 just years I think is the best description.

22 Q. Just how many years have you been Chief of RIDS
23 at this point?

24 A. Boy, you're going to put me to a math test, I
25 think 12, August of 2002.

1 Q. I want to talk about your role at RIDS. What do
2 your responsibilities entail as Chief of the Records
3 Information Dissemination Section?

4 A. Well, beyond the administrative duties of taking
5 care of 250 people that work for the FBI, I'm also
6 responsible for the FBI's Freedom of Information Act,
7 Privacy Act programs, I'm responsible for the FBI's
8 declassification review under Executive Order 13-5-26,
9 and then I'm also responsible for review --
10 prepublication review for all manuscripts written by
11 employees or former employees that involve the FBI and
12 reviewing them.

13 Q. You mentioned 250 people, are those people that
14 work for you at RIDS?

15 A. Yes. They all are in the Records Information
16 Dissemination Section.

17 Q. Is RIDS -- I'm trying to get a sense of what RIDS
18 is. Is RIDS broken down into separate components, or
19 how is your shop organized?

20 A. We take -- essentially with the 250 people, ten
21 people are involved with the review of the
22 declassification documents and two people on
23 prepublication review, but everybody else is on -- works
24 for the Freedom of Information Act and the Privacy Act
25 programs. So we are arranged administratively by

1 function because the process, in order to adequately be
2 able to move the requests that we get, requires a very
3 deliberate process and we're arranged administratively.

4 Generally, you have the initial processing
5 unit and units. These are the people that take the
6 requests that come in, and that involves about 60
7 people. Then you have -- once it gets -- we start doing
8 the processing, we have about 45 people who do the
9 declassification reviews because we do a great deal of
10 national security files that we have to do
11 declassification reviews for. And then the remainder
12 are involved in doing the FOIA redactions.

13 Q. How many -- do you know how many FOIA requests
14 does the FBI receive approximately each year?

15 A. This year we're going to receive about 18,000.
16 Last year it was 20,000. So it's around -- somewhere
17 around there.

18 Q. Now, do all these FOIA requests end up in
19 litigation in a court?

20 A. No. Our litigation runs on average of about 120
21 to 140 cases in litigation in any one time.

22 Q. Over the years as Chief of RIDS, what is your
23 experience in terms of overseeing searches for records?
24 How many have you been involved in, or what's your
25 experience there?

1 A. Well, if you -- I'm -- I look at the searches a
2 great deal, and -- so but if you take the 12-year
3 history and the volume and the level involvement of my
4 reviewing searches, I could say -- I could say easily
5 over 100,000 searches, probably multiple hundreds of
6 thousands, so if you put -- if you look for multiple
7 searches in a single case. So I've seen the good, the
8 bad, and the ugly, and I have a pretty good feel for it.

9 Q. In terms of the people you mentioned, 250 people
10 that work for you, do you know Monica Mitchell?

11 A. Yes, I do know Monica. She's an employee in the
12 Litigation Support Unit, which is one of the ten units
13 that I have.

14 Q. Now, are you still -- do you still have a -- I
15 guess a member of the bar, do you still maintain your
16 law license?

17 A. Yes. I'm licensed in Texas.

18 Q. Is your position at RIDS, is that considered an
19 attorney position?

20 A. Yes. The head of the FBI's Freedom of
21 Information Act program is one of a couple of attorney
22 supervisor positions at the FBI that are not part of
23 General Counsel's Office.

24 Q. Based on your years of experience and your role
25 at RIDS, are you familiar with the law concerning under

1 the Freedom of Information Act?

2 A. I think I have a considerable portfolio at this
3 point.

4 Q. Specifically, with respect to searches for
5 records, are you -- do you have -- are you familiar with
6 the standards for a reasonable search under FOIA?

7 A. Yes, I am.

8 Q. And in your words, in your position, how do you
9 envision the standard, how do you understand the
10 standard in terms of --

11 A. Well, it's a little bit different than you would
12 think in that there's two sides to FOIA when you're the
13 program manager. There's the substantive side, which is
14 the FOIA law, understanding the legal requirements and
15 understanding what the case law said. So that's the
16 substantive. And then the other side, though, is that
17 you have to be able to implement and design a system,
18 which not only can meet the -- which meets the
19 requirements of this law, in other words, you have to
20 transform something which is somewhat intellectual into
21 a process by which you can achieve, as close as you can,
22 the goals of the statute. It all goes back to the
23 statute by the way.

24 Q. Are you familiar with the record systems
25 themselves, are you familiar with the FBI's record

1 systems?

2 A. Yeah. One of the things that the FBI has done
3 that's unique to that agency, and we're one of the very
4 few agencies is that we're part of the Records
5 Management Division. As part of the Records Management
6 Division, the other sections within the division are
7 your records policy, they are the ones that keep the
8 paper records; then you have records automation, they're
9 the ones that work on automated records. So we're
10 embedded with them, so there's quite a bit of emphasis
11 within the division, even beyond the experience that you
12 get being there of becoming knowledgeable in records,
13 such as we're required to, as the section chief, to be
14 certified as a federal records manager by the National
15 Archives. We actually design courses for people to take
16 throughout the FBI, but we also have to take them on
17 records management.

18 So you're in a records culture, I guess, is
19 the best way, which works very well, because they have
20 the same issues that you have. They have the physical
21 process by which they have to provide you with the
22 records, or the records have to be kept so that I'm able
23 to work with them to make the most efficient ability to
24 get records, and at the same time they work with me so
25 that their policies, and as they do their records work

1 they're always aware of the implications of the Freedom
2 of Information Act.

3 Q. I want to talk specifically about, since the FBI
4 obviously investigates, so I want to talk specifically
5 about investigative records. Are you familiar with
6 systems for investigative records at the FBI?

7 A. Yes, I'm familiar with that, and ACS is the
8 primary tool that the FBI uses for investigative
9 records, until 2012 when we started transitioning over
10 to Sentinel, which is electronic records.

11 Q. So based on your knowledge and experience with
12 respect to ACS -- strike that.

13 Based on your knowledge and experience,
14 where would be the logical place to start searching for
15 investigative records?

16 A. You know, when you take a Cajun recipe it always
17 starts out, first you start with a rue. Well, in
18 investigative records first you start out with an ACS
19 search because that is the primary means by which
20 records are found and used. When you start out, though,
21 when you say you start, it kind of jumps ahead a little
22 bit of why -- there's total rationale. The FOIA statute
23 is, like I said, the key, and the FOIA statute has
24 certain parameters to it, and as you design the system
25 of which your ACS search is part of that process, that

1 work process that takes place, you have to consider
2 those factors. So those are the factors that we use.
3 And these factors are, number one, the Freedom of
4 Information Act, it's -- the requests are looking for
5 records that the FBI holds at the time of the request,
6 and that's really the outer boundaries of what a Freedom
7 of Information Act request is supposed to encompass.

8 The second thing is that it's very
9 egalitarian. You -- it -- there's only one group of
10 special people, if you will, as far as FOIA requests,
11 and those are people that satisfy the provisions for
12 expedited processing. So absent that, there's no
13 special category for requesters. And so what you have
14 to do is design a system which will work for everyone,
15 and then you have to, as best as possible in a
16 methodical manner, implement that system.

17 The third thing about it is speed. The FOIA
18 statute says we should have our requests done in 20, or
19 30 days if we say there's unusual circumstances. Not
20 doubting the wisdom of Congress, but that's an
21 impossibility. It defies physics for an agency like us.
22 There's just not any way to do it. But what it does
23 mean, though, and how we interpret it, is we try to go
24 as fast as we possibly can. It's very clear, deep in
25 the intent of FOIA, I mean it's like kind of one of the

1 baselines, that not only should people be able to get
2 the records, they should be able to get them in a timely
3 manner. So we -- that is an extremely large part of
4 what we're going -- you know, that we have to do as we
5 go through that. So we're taking those considerations.

6 There are some variables, though, that
7 impact on it. First off is that we have limited
8 resources. While I think the FBI is robustly resourced
9 as compared to other agencies, I think the FBI's devoted
10 quite a lot of its organization to the Freedom of
11 Information and Privacy Act, it is still, given the
12 volume of what we have, 18,000 requests per year, and
13 the complexity, I would say we probably have the most
14 complex requests in the federal government. We range
15 from purely national security issues to law enforcement
16 issues to requests that are halfway in-between. The
17 international terrorism cases are kind of criminal
18 cases, national security cases. So we have a very
19 complex process that's going to be involved. So we have
20 limited resources in order to make these 18,000.

21 So what that requires, then, is to develop a
22 systematic methodology which meets the final requirement
23 of the Freedom of Information Act, and which we've
24 talked a lot about, is the reasonableness, a reasonable
25 likelihood that where we search there's going to be

1 records. This is not just a legal term that we're
2 using, it is also a very practical term because if we
3 search where it's not reasonable, then in fact we are
4 using resources which means that the other people who
5 are in the pipeline at the time or coming in the
6 pipeline, do not get -- they don't get the service,
7 we're not able to hit that optimum speed, which we
8 always try to achieve. So I mean those are the basic
9 parameters.

10 So having kind of laid this framework of
11 what we do, then where are the investigative records?
12 Well, the investigative records are in ACS because
13 that's what ACS was designed for and that's where the
14 FBI puts it. But it's not an archival record. ACS is
15 not there to record history. That's not its process.
16 It is -- ACS is there so that agents can share
17 information, it's there so agents can build cases and
18 present them in court, it's there so that the FBI can
19 screen for people who want citizenship, and it's the
20 sole tool that's used, it's there for people who want to
21 get federal employment, it's there for matters,
22 extremely serious matters, it's there if a person gets
23 approved for presidential appointment, it's there and
24 used to determine whether or not people can get close to
25 the president in a meeting or something like that. So

1 it is a, if you will, a live system. It's not an
2 archival system, and it's designed to -- it fills an
3 extremely serious function. It has been efficient and
4 effective, and people who make the decisions, higher
5 than me, but very serious people looking at issues, such
6 as national security, have essentially said this is a
7 system that we're going to use.

8 So that's where you start, I mean that's
9 step number one, you always go to ACS for a request for
10 investigative records.

11 Q. Can I talk to you about -- and thank you for
12 that, Mr. Hardy. Can I talk to you about what you
13 mentioned the practicalities, and I want to focus in on
14 your process, how you sort of plug in on a particular
15 requester that comes into your office. Can you, for the
16 court, walk us through your process, where you are
17 engaged, your involvement in terms of requests that come
18 in to RIDS.

19 A. Right. Again, given the volume obviously, and
20 having splendid employees like Monica Mitchell, who just
21 represents pretty much my whole section and her skills,
22 I don't look at every request that comes in
23 and -- but what happens is is that there is a triage
24 that occurs everyday, and then once a week at a weekly
25 meeting I will be shown what has been essentially

1 identified as cases which involve really sensitive
2 information, this would be like FISA applications in the
3 current Snowden controversy. That's the type of issues
4 that would be there so that we can see them, extremely
5 sensitive to the FBI. There would be -- some of them
6 are just hard to find the information. These generally
7 would not be investigative requests. These would be
8 like give us all your policy on some obscure matter or
9 something like that for us to do.

10 The third one would be we identify people
11 who are a star case for litigation, not for special
12 treatment or bad treatment, but we're -- I mean we're
13 pragmatic, and if you have a high likelihood of going to
14 litigation, you're going to -- you're going to start
15 watching that case.

16 So those are presented to me. It's probably
17 maybe 10, 15 a week which they'll actually go through.
18 If it's difficult searches, then what we'll do is we'll
19 go -- we'll give advice on what we think needs to be
20 done. If it's kind of a routine but sensitive matter,
21 we'll just essentially make a mental note of it and
22 we'll start tracking that case as it works its way
23 through the process. There are a number of cases that I
24 never see when they roll in because they are ordinary.
25 Each case is unique in the sense that you would think

1 they were cookie cutter, but they're not. It seems like
2 the routine case always has a little nuance, but then
3 again we have highly skilled people who can handle the
4 minor nuances, and then we -- so I'm focused on the
5 cases and notified of them at that point.

6 Continuing along then, as the search is
7 being done, particularly if it's a search issue that's
8 being raised and stuff, then I will check back and see
9 where in fact we're doing -- how we're doing the search
10 and stuff.

11 There is one other way that I get involved.
12 I call it dumpster diving, in which I randomly try to
13 select maybe two cases a day and dive in. Okay. And
14 there's no -- it's just bad luck of the draw for the
15 analyst that gets that because I usually have about
16 8,000 questions, but this is a routine that I do and
17 this is what our Assistant Section Chief does as well.
18 We perform that on a regular basis.

19 Q. So I was going to ask you, you mentioned this
20 triage point, so the case that your office may flag for
21 litigation potentially, do you stay informed about those
22 cases after being notified of them?

23 A. Yes, I watch them, and then obviously when they
24 go into litigation then I watch them even closer.

25 Q. And how is it that you stay informed?

1 A. I'm sorry, what?

2 Q. How is it that you stay informed of these cases
3 through litigation?

4 A. The process that's used again is great employees
5 like Monica Mitchel, one of the primary means. Also if
6 it's in litigation, I have a litigation support unit
7 chief who -- a unit chief who is very skilled,
8 supervisors as well. And then when it goes into
9 litigation it kind of becomes a shared responsibility
10 with the Office of General Counsel. So I'll have an
11 assistant general counsel also who is involved, and we
12 essentially will discuss the cases as they move through.

13 Q. I want to ask you now about declarations. You've
14 obviously, as been noted on the record, submitted
15 declarations in this case. But I want to talk
16 generally, in your mind why do you submit declarations
17 in FOIA cases?

18 A. I think the major reason that I do it is I'm the
19 guy responsible. Okay. It's my responsibility for what
20 we do, performance, and I want to -- so I feel
21 responsible in that respect.

22 Second, I'm kind of the -- there are so many
23 disparate parts within the section that perform
24 multifunctions, that I'm, if you will, the person who
25 sees the big picture. Then, of course, I'm well versed

1 in the overall policies and legal analysis that occur at
2 a higher level and in the General Counsel's Office, so I
3 think that I'm the best informed as far as the broad
4 picture of what occurs.

5 Q. What is the process that you use in terms of the
6 drafting or the preparation of declarations?

7 A. It's a longer tail than you would first think.
8 The -- understand the coordination is going on before
9 the declaration is done, and so that begins the
10 involvement, but that all carries over to the
11 declaration. Somebody like Monica will be in the role
12 as a litigation support unit, she'll be essentially a
13 facilitator between what we do out on the floor. So we
14 have to -- in litigation, even though it's a legal
15 process and we're making declarations, we have to
16 coordinate that with the actual work process that we do.
17 So this is -- so you can't have the people out on the
18 floor doing something that is incongruous with what
19 you're going to say in the declaration, so that role is
20 played, but I'm briefed on that as that process goes on.
21 And then it's not -- it's not an everyday brief because
22 of just the sheer volume, but it's a periodic brief
23 which would -- and I can just say often once the case
24 gets in litigation.

25 Then the declaration is drafted. The actual

1 drafting is done by the people in the Litigation Support
2 Unit and working in conjunction with the Assistant
3 General Counsel in the case, but they're directly
4 coordinating with the people who are doing the work, the
5 searching, the scoping, the -- if it's past the initial
6 processing unit stage, the people who are doing the
7 redactions, so they are in close contact with them. So
8 someone like Monica would be my primary means to
9 information, but there are also -- Assistant General
10 Counsel's another group. And the processing goes on.

11 The process, the actual writing goes -- is
12 kind of going on in the background, the coordination is
13 being done, the legal analysis is being done, and then
14 once it gets to be fairly firm, then I'll forward it --
15 they'll forward it up for me to review, and then if I
16 have corrections or edits or what I want to do to it,
17 then I will send it back to them.

18 Q. I want to be clear about something, do you submit
19 declarations in all the FOIA cases, let's just say,
20 like, for example, the 18,000 you have this year?

21 A. No, it's only in litigation.

22 Q. So approximately how many declarations do you
23 submit in a given year?

24 A. I think I average about 90 to 100.

25 Q. I would like to move on to talk about this

1 request at issue today in this court, Mr. Trentadue's
2 request, so let me ask you, first of all, are you
3 familiar with Mr. Trentadue's Freedom of Information Act
4 request in this case?

5 A. Yes, I am.

6 Q. Could you please explain, how are you familiar
7 with it?

8 A. At some point during the triage process I was
9 told Mr. Trentadue made a request and -- but my
10 particular focus came in when litigation started.

11 Q. And you said that was during the triage process?

12 A. It would be the initial notice, and then during
13 the administrative process, which I think was pretty
14 short, I may have been briefed. To be honest, I don't
15 have a specific memory of it, but I certainly was aware
16 of it.

17 Q. I want to ask you about the search in this case.
18 Was the search conducted in Winchester at your facility?
19 Or actually where is your facility located?

20 A. The location where the searches are done is in
21 Winchester, Virginia, at what's called the Interim
22 Central Records Complex. It's been interim for eight
23 years, but anyway maybe some day it will be the real
24 thing.

25 Q. Was the search in this case conducted in

1 Winchester at that facility?

2 A. Yes, it was. It was conducted by the Work
3 Process Unit, which is the primary initial processing
4 unit.

5 Q. What is your understanding of how that search was
6 initiated in this case?

7 A. They searched the ACS, the UNI, which is the
8 Universal Index, using search terms, OKBOMB I think was
9 the primary search term, and located the OKBOMB file at
10 Oklahoma City.

11 Q. Did you call the file from Oklahoma City and
12 bring it to Winchester?

13 A. No. That's a good point. That's our normal
14 process, by the way, for requests. What we'll do is
15 when we locate the request, we'll ask the field office
16 for the records and then they'll send them to us and
17 from there and we'll scan them in. The sheer volume of
18 what was in Oklahoma City would preclude that and make
19 that a logistical -- something close to the Normandy
20 Invasion or something to get those up there. Plus we
21 knew that we had a highly knowledgeable group, we knew
22 that the Oklahoma City files were located in one
23 location, so we requested their assistance to locate the
24 files.

25 Q. I just want to clarify, did you say earlier that

1 ACS located the file was in Oklahoma.

2 A. Correct.

3 Q. So what was your request their assistance with?

4 A. What --

5 Q. The field office.

6 A. From the field office, the Oklahoma Field Office,
7 that's correct. And, of course, Linda Vernon is our --
8 we knew -- she has enormous institutional knowledge,
9 having been there during the entire OKBOMB process and
10 helping prepare cases for trial and also for our earlier
11 FOIA requests as well. So we knew that she was highly
12 skilled and we were well pleased with her previous
13 results and we had a great working relationship with
14 them, so we requested their assistance in searching.

15 Q. I want to -- you mentioned institutional
16 knowledge, what do you mean by that specifically in
17 terms of institutional knowledge?

18 A. The institutional knowledge, meaning that she has
19 been involved in the organization, the collection, the
20 dissemination, the management, and the administration of
21 the Oklahoma City file, Oklahoma City bombing files,
22 since the very beginning. So we -- you know, she is
23 really a Godsend to have her there frankly.

24 Q. I want to be very clear about something,
25 Mr. Hardy, did you know about this institutional

1 knowledge at the time that you asked for Oklahoma
2 City's --

3 A. Oh, absolutely. As a matter of fact, that was
4 probably the primary rationale that we used because we
5 knew the high skill level in Oklahoma City.

6 Q. I think you said something about prior experience
7 working with Oklahoma City, what is that specifically?

8 A. Well, we had previous FOIA's, anyway we've
9 actually -- I think we've maybe even been in litigation
10 with Mr. Trentadue, but we've been into the Oklahoma
11 City files.

12 Q. So it was -- just to be clear on the record, so
13 it was Oklahoma City that you asked to help with the
14 search?

15 A. That is absolutely correct.

16 Q. More specifically, you expected Linda Vernon
17 would be involved?

18 A. Yeah. We would have had to rethought it if Linda
19 wasn't involved.

20 Q. Now, when you requested Oklahoma City Field
21 Office assistance, how did that process work, did you
22 just delegate the case to them to work on, or what was
23 the process?

24 A. Well, again, I mean there was a collaborative
25 effort in which there was constant communication between

1 Oklahoma City and the -- people like Monica Mitchell,
2 so -- as to what kinds of searches they were doing, what
3 were they doing, and I'm sure helping them out as far as
4 information we might have had, although I can't remember
5 anything that we really had to tell them to do
6 differently than what they were doing.

7 Q. So who was primarily responsible from your office
8 for this monitoring?

9 A. Well, Monica was the Litigation Support Unit,
10 LAS, or now GIS, who was primarily responsible. When I
11 say responsible, she was primarily the conduit.
12 Responsibility was still mine I mean. And, of course,
13 her seniors, she had a supervisor and she had a unit
14 chief. And so I guess it was a shared responsibility,
15 and so I'm not going to say it was her responsibility
16 though.

17 Q. As the search was being conducted, did you get
18 any updates or information from the field office?

19 A. Yeah. There was a constant flow of communication
20 back and forth. I just want to add, I mean, because --
21 is that not all that communication reached me on a daily
22 basis, but when it came time for me to get information
23 and that information had already been passed, I mean the
24 high level and skill level of the people, they just give
25 it to them and they run.

1 Q. And I would like to ask you for your opinion
2 about the search that was conducted in the case. So
3 what is the assessment of the search, the work that was
4 done in terms of locating records in this particular
5 case?

6 A. I thought it was spot on.

7 MR. TRENTADUE: Your Honor, that calls for a
8 legal conclusion. Again, I think that's the court's
9 province.

10 MR. SIPLE: He's responsible for the office,
11 Your Honor. I'm just asking him for his assessment of
12 the work that was done.

13 THE COURT: Why is that relevant?

14 MR. SIPLE: I understand that one of the
15 issues may be that the plaintiff is raising is potential
16 bad faith, and I think this goes to the good faith of
17 Mr. Hardy and his office in conducting the search.

18 THE COURT: Mr. Trentadue?

19 MR. TRENTADUE: Your Honor, I think these
20 are issues for the court to decide. What his opinion of
21 whether he met the law or not is irrelevant.

22 THE COURT: Sustained.

23 Q. (By Mr. Siple) Mr. Hardy, after the search was
24 completed in this case did you get information in terms
25 of what was done?

1 A. Yeah, I got information that was done.

2 And, you know, my monitoring process is not
3 to do legal analysis and make the ultimate decision. To
4 go back to another issue, which is that we have to have
5 a process, it's a work process, it's a physical process,
6 Your Honor, that makes this -- makes this reach the
7 legal conclusion that we do. So --

8 MR. TRENTADUE: Object to the narrative,
9 Your Honor.

10 THE WITNESS: So I -- so going back, I, in
11 fact, review that process and -- but use terms which are
12 legal terms, which is reasonable search, and did I think
13 the search met the methodology that I'm required to do.

14 MR. TRENTADUE: Object to the narrative,
15 Your Honor.

16 THE COURT: Sustained. And I'm going to
17 strike the answer.

18 MR. SIPLE: All right.

19 THE COURT: You should just listen to the
20 questions and don't attempt to avoid the objection by
21 giving your opinions as to what you think reasonable is.
22 Just listen to the questions and answer those questions.

23 THE WITNESS: Yes, sir. I apologize. It's
24 the curse of being a lawyer.

25 MR. SIPLE: So you're the Chief of RIDS, as

1 we've established, and do you feel you have a legal
2 obligation -- and I'll just proffer that I'm asking this
3 question to establish his handling of his obligations.

4 MR. TRENTADUE: Objection, again. It calls
5 for a legal conclusion, Your Honor.

6 MR. SIPLE: I don't think -- Your Honor, if
7 I could just --

8 THE COURT: Let him phrase the question,
9 then I'll hear your objection.

10 Q. (By Mr. Siple) Is one of your responsibilities as
11 Chief of RIDS to ensure that all the searches your
12 office conducts that you need to evaluate whether they
13 have met the standards under the Act?

14 A. I have to set the policy so that there's a
15 systematic methodology that meets my requirements, and
16 then I -- on selected cases I will look at them to see
17 whether or not that methodology has been used.

18 Q. When this search was completed, did you make that
19 assessment in your own mind that those standards had
20 been met?

21 A. Yes, I did.

22 Q. Do you think that the search that was done in
23 this case, and I'll ask it a different way, was
24 reliable?

25 A. I think the search was very reliable in not only

1 using the ACS but also using the ZyIndex.

2 Q. If I could just ask you why is it that you think
3 the search that was conducted in this case was reliable,
4 what are you basing that on, Mr. Hardy?

5 A. Well, I think --

6 MR. TRENTADUE: Object on the basis of
7 foundation.

8 MR. SIPLE: I've asked him to give the basis
9 for his conclusions.

10 THE COURT: I think Mr. Trentadue's point is
11 that we don't know to what extent he was informed of the
12 extent of this search. So his opinion as to whether it
13 was reliable or not reliable depends on what information
14 he had about the search. That foundation has not yet
15 been laid.

16 MR. SIPLE: Yes, Your Honor.

17 Q. (By Mr. Siple) Mr. Hardy, you testified earlier
18 that you monitored this case and received reports from
19 time to time.

20 A. That's correct.

21 Q. What information did you receive through those
22 reports about the case and the search?

23 A. I was informed how the search was conducted by
24 the Oklahoma City Field Office. And the parameters of
25 the search, I was informed of the search terms that were

1 used, and I was informed of the results of the search.

2 Q. Let me ask another question. I asked you earlier
3 about whether you were familiar with Mr. Trentadue's
4 Freedom of Information Act request. Do you have an
5 understanding of what he was requesting?

6 A. Yes. It was -- he was requesting videotapes,
7 exterior videotapes, this is kind of in a macro sense,
8 but also he was looking for supporting documentation,
9 which would show the -- how the FBI got possession of
10 those videotapes, so it was -- and so -- I mean that's
11 the basic kind of a -- hitting the high spots.

12 Q. Did any of the updates that you received about
13 this case convey to you how -- what was going on as far
14 as receiving that material, finding that material?

15 A. Yes. I was briefed on that they were using ACS
16 to locate the evidence and that they were searching it
17 and that they were using the ZyIndex text search to look
18 for the supporting documents.

19 Q. Are you familiar with the ZyIndex?

20 A. Yes, I am.

21 Q. And what is the ZyIndex?

22 A. ZyIndex is -- this is pre-ACS, an electronic case
23 file, was essentially a way to digitize records in cases
24 in which there was a huge volume of records because, of
25 course, manual processes just couldn't keep up with the

1 volume and it makes searching impossible, so -- or
2 extremely difficult. So the ZyIndex was for FBI
3 text-based documents. And I had seen it earlier in
4 earlier cases in which we used Oklahoma City, and I was
5 also familiar with the ZyIndex in the Unabomber case.

6 Q. As the search was being conducted at the Oklahoma
7 City Field Office, were you apprised of -- at that time
8 of the search tools that were being used?

9 A. Yes, I was.

10 Q. What were the search tools -- what were the
11 search tools that were being used?

12 A. The search tools that were being used were ACS
13 and -- for the evidence and the ZyIndex for the
14 supporting documents.

15 Q. You mentioned earlier Linda Vernon. Did she
16 factor into your -- would you consider her an asset in
17 the search?

18 A. We found in earlier cases, and this has been
19 corroborated in this one, that she's a very effective
20 searcher.

21 Q. So based on the information that you received,
22 did you ultimately get a report of the result of what
23 was found in this case?

24 A. Yes, I did. Although, to be honest, I can't
25 remember the exact date or whenever, but I was informed

1 of the results of the search.

2 Q. Based on the results that you received and the
3 reports concerning the tools that were used and the
4 updates you received, did you sit down at some point and
5 evaluate the search?

6 A. I was satisfied at the level -- I mean I didn't
7 do -- and the results --

8 MR. TRENTADUE: Objection --

9 THE WITNESS: I --

10 MR. TRENTADUE: Objection.

11 MR. SIPLE: If you could just pause for a
12 moment, we have an objection.

13 THE COURT: What's the objection?

14 MR. TRENTADUE: That called for a yes or no
15 answer, Your Honor.

16 Q. (By Mr. Siple) Did you sit down at some point,
17 Mr. Hardy, and evaluate the search that was done in this
18 case?

19 A. Yes.

20 Q. Did you make an evaluation at that time of
21 whether the search in your opinion was reliable?

22 A. Yes, I did.

23 Q. What is your opinion of whether the search was
24 reliable?

25 A. My opinion at that time and continues to be that

1 it was highly reliable.

2 Q. What factors are you relying upon to reach that
3 conclusion?

4 A. The -- at that time, it was the use of ACS and
5 ZyIndex, and, again, given the methodology that we used
6 and the results that occurred, then I thought that it
7 identified what the requester, Mr. Trentadue, wanted, so
8 it was reasonable and met the legal standard of a
9 reasonable search.

10 MR. TRENTADUE: Objection, Your Honor, he's
11 testifying to a legal conclusion.

12 THE COURT: Sustained. That portion of the
13 answer is stricken.

14 Q. (By Mr. Siple) Did you make an assessment at that
15 time of whether your office had located all the records
16 responsive to Mr. Trentadue's -- or had done a
17 sufficient search to locate records responsive to
18 Mr. Trentadue's request?

19 A. Yeah. At that point, I again ascertained that we
20 had used the appropriate search methodology, that we had
21 gotten results, the files were where they should have
22 been for a reliable search, and I saw no indication
23 that, in fact, it would go beyond -- that there should
24 be any reason why there should be files elsewhere at
25 that point. So I was very satisfied with the search.

1 Q. So the results you got back from the Oklahoma
2 City Field Office, if I'm understanding you right, at
3 that time did you believe there was any other place that
4 should be searched or additional searches that should be
5 done?

6 A. Not at that time. And my satisfaction
7 particularly was that I looked at all of those elements
8 that I listed before, as far as how we implement on the
9 FOIA statute, and it met that, those requirements.

10 Q. You talked a little bit earlier in your testimony
11 about resources and resource allocations. I would like
12 to ask you some more questions about that specifically.

13 A. All right.

14 Q. Compared to other federal agencies, doesn't the
15 FBI have quite a bit of resources in terms of a fairly
16 large budget?

17 A. We do. We're -- if you look at other agencies,
18 we have a very large FOIA organization. We also have a
19 very robust career path for FOIA, which is -- exceeds
20 most other agencies, but that's given the
21 responsibilities that they have and the complexity of
22 the work they do. I think their career path is
23 commensurate to those responsibilities.

24 Q. And when we talk about searches, and I want to
25 stay focused on investigative files because it's the

1 subject matter here, but is part of your responsibility
2 to make resource allocation decisions in terms of where
3 to search, how many searches to conduct?

4 A. Yes. It goes into the methodology that I said,
5 the systematic methodology, in which we search ACS as
6 the primary place to go because of the resource issue.
7 Again, it's a balance between where is it likely to
8 find, reasonable place to find files and balanced
9 against the high volume and the macrosis that we receive
10 all the time. So our use of resources is tied directly
11 to that larger picture.

12 Q. What about, you know, it could be argued the
13 subject matter might factor in, for example, this case
14 here, it's the Oklahoma City bombing, there's
15 allegations in this case by the plaintiff of potentially
16 a coverup, all the information is out there, OKBOMB was
17 a major investigation, should that sort of factor into
18 how you allocate resources?

19 A. Again, I go back to the statute -- we go back to
20 the statute each time. And I mentioned that there is no
21 special category for requests. And the reality is is
22 that you look at what comes through our door, we have
23 lots of special circumstances, I mean 9/11, Boston
24 Marathon, Benghazi, I mean it just goes on and on and on
25 and on of people -- of information that people are

1 requesting. So the egalitarian nature of FOIA is such
2 that we will provide the resources we need to do the
3 reasonable searches and do the processing, but there's
4 no special category for cases like this.

5 MR. SIPLE: If I could just have one moment.

6 Q. (By Mr. Siple) Mr. Hardy, I just want to ask you
7 in terms of this case here and the search that was
8 conducted and ultimately the result that was achieved by
9 your office, if you had it to do over again and you
10 could redo the process, is there anything that you would
11 do differently with respect to the search for records in
12 this case?

13 A. I'm looking at it, the search methodology was on
14 the spot for the requirements for our process, so I'm
15 convinced that we did exactly the right thing, which is
16 go to Oklahoma City and have them conduct an ACS search
17 and then a ZyIndex search for the documents.

18 Q. And has there been any information, additional
19 information, perhaps through the process, including up
20 to litigation that plaintiff has provided that has led
21 you to believe that there are other places that should
22 be searched that might be likely to have records?

23 A. No. And using the analysis that I did before,
24 there is not -- as a matter of fact, as time goes on and
25 the more and more issues are floated and more and more

1 you see consistent actions, I think it's the same
2 results in my mind that makes the search even stronger.

3 Q. And just to ask this question, were there any
4 irregularities of any kind or miscues with respect to
5 dealing with the Oklahoma City Field Office, any
6 problems that came up that were of concern to this
7 search process?

8 A. There was -- no, not with the Oklahoma City Field
9 Office. And when we did have a communications issue
10 which arose over whether or not 192s were in the
11 ZyIndex, somehow there was a miscommunication back and
12 forth, and I'm not exactly sure where it was, but -- so
13 we put that in a declaration. Of course, as soon as it
14 became apparent that that was true, then my immediate
15 reaction is the court has to know because I didn't think
16 we were quite -- it was unclear or it was misleading in
17 the declaration. I mean that was a communication issue,
18 but it didn't at all impact on the ultimate result of
19 how reliable I considered the search was.

20 Q. How satisfied are you with the search that was
21 conducted by --

22 A. I take my hat off to Oklahoma City. I think they
23 did a whiz-bang job.

24 MR. SIPLE: That's all the questions I have
25 at this time.

1 THE WITNESS: Okay.

2 MR. SIPLE: Thank you.

3 THE COURT: Cross-examination?

4 MR. TRENTADUE: Yes, Your Honor. What is
5 the court's schedule for the afternoon? I think we
6 can --

7 THE COURT: I don't have a calendar. We can
8 go as long as you have stamina to go. Do you want -- I
9 mean it's up to you. We can go -- we can recess right
10 now and commence again in the morning, or we can go for
11 a little while this afternoon. What's your pleasure?

12 MR. TRENTADUE: We can go a little while
13 then recess, Your Honor, just for a little while. And,
14 as I said, we're -- by the evidence that's come in, I've
15 shortened up my examinations for tomorrow, so we may
16 have -- I don't think we will finish Mr. Hardy
17 necessarily today, but my videoconferencing witnesses go
18 on at 8:30 and I should have them off in an hour
19 and-a-half, then it's a very short -- short witnesses
20 after them. Mr. Hardy can come back on the stand then.

21 THE COURT: All right. Let's proceed.

22 **CROSS-EXAMINATION**

23 **BY MR. TRENTADUE:**

24 Q. Mr. Hardy, altogether you submitted, I believe,
25 what, six declarations in this case?

1 A. I think that's right.

2 Q. Okay. And each of them was under oath.

3 A. Yes.

4 Q. And each of them, at least in part, you said it
5 was based upon personal knowledge.

6 A. Personal knowledge, correct.

7 Q. And I believe you testified here today that when
8 these FOIA requests come in, some are triaged for you.

9 A. That's correct.

10 Q. Not all.

11 A. Well, everything is triaged.

12 Q. Certain ones are brought to your attention.

13 A. Certain ones are brought to my attention, that's
14 right.

15 Q. They're brought to your attention at the
16 beginning.

17 A. At the very beginning, that's correct.

18 Q. And this was one that was brought to your
19 attention at the beginning, wasn't it, sir?

20 A. I have to think it was. I'm sure it was. I
21 mean, given our history together, your name is fairly
22 well known.

23 Q. And you say in difficult searches you check back
24 on the progress.

25 A. Yes.

1 Q. Did you consider this a difficult search?

2 A. I -- not a difficult, but a unique search, that's
3 correct.

4 Q. And then you talked about the declarations you
5 signed and how they're drafted.

6 A. Yes.

7 Q. You actually have a template you use, don't you,
8 sir?

9 A. No, actually, there isn't a template we use.
10 There is standard language that's been successful, and
11 so we tend to use that language and they follow a
12 certain format, but it's not a rote -- every one is
13 looked at, and then we work to avoid boilerplate, which
14 is suggestive of a template.

15 Q. Now, you testified to the folks you use as being
16 highly knowledgeable.

17 A. Yes.

18 Q. And you were particularly laudatory and
19 complimentary of the folks in Oklahoma City.

20 A. I think the world of them.

21 Q. You were particularly complimentary of
22 Ms. Vernon.

23 A. Yes.

24 Q. In fact, it almost seems as though you asked for
25 her specifically to do -- or someone from your office to

1 do this search.

2 A. You know, I'm not sure whether we asked for her
3 specifically or we asked Oklahoma City to do it knowing
4 that she would be doing it, but the bottom line was her
5 presence was a primary -- the primary factor actually in
6 my mind, other than the logistical nightmare that it
7 would have been for us to do it the way we did the
8 searches.

9 Q. But you never had any direct communications with
10 Ms. Vernon about the nature of the search she was doing.

11 A. I never communicated with her directly.

12 Q. Have you ever communicated with her directly?

13 A. I have never talked to Ms. Vernon directly.

14 Q. So communications have been through a third
15 party.

16 A. Have been through a third party and my
17 observation of the results of what she does, yes.

18 Q. Okay. And who is your liaison with Ms. Vernon,
19 in this case, who was it?

20 A. Monica Mitchell was the primary liaison.

21 Q. So all the information you've heard about these
22 searches that's contained in your declarations would
23 have come through Ms. Mitchell to you.

24 A. Not all of it. Other ones were coming through
25 the Assistant General Counsel who was assigned to the

1 case once it got into litigation. He was actively
2 involved in it. So communication would come through
3 there. And most of the time it was kind of difficult
4 to -- the information was kind of group information back
5 and forth, so it wasn't like -- it was more of a group
6 effort than just Monica coming and reporting what was
7 going on.

8 Q. Now, you remember back in May of 2011 the court
9 entered an order in this case requiring your office to
10 do additional searches.

11 A. Yes, I certainly do.

12 Q. If you will look at Exhibit 9 in the blue binder,
13 and it's on the screen too.

14 A. Okay.

15 Q. You recognize the order from the first page.

16 A. What's that?

17 Q. You recognize this?

18 A. Yes.

19 Q. Needless to say, I think you've probably read it.

20 A. Yes.

21 Q. Let's look at the second page, starting -- let's
22 talk about the first paragraph.

23 A. Sure.

24 Q. The court states -- if you'll just read the
25 un-highlighted part of that order into the record for

1 me, sir.

2 A. It says, In light of the *Islamic Shura Council*,
3 defendants are to affirm whether in this case Mr. Hardy
4 or any other affiants have misrepresented information or
5 provided incomplete or otherwise misleading information
6 to the court under asserted right to protect the
7 interests of the United States.

8 Q. And that was based upon the fact that in the
9 *Shura Council* case the court had found that less than
10 truthful declarations had been submitted, correct, sir?

11 A. The court found that we provided misleading
12 information, that's correct. But I have to look at
13 the -- before I -- I would like to look at the *Shura*
14 *Council* opinion because I did not make misleading --
15 provide false or misleading information.

16 Q. Anyway the court --

17 MR. SIPLE: I have to object to this
18 testimony. There is not enough information in that
19 particular opinion, which involved an en camera process.
20 And also I would note that the district court was
21 overruled in that particular case.

22 THE COURT: I'm not sure what that objection
23 means.

24 Q. (By Mr. Trentadue) The point here -- excuse me,
25 sir. The point here is you were ordered, in light of

1 the *Shura Council* case, to affirm whether in this case
2 Mr. Hardy or any other of its affiants has
3 misrepresented information or provided incomplete or
4 otherwise misleading information to the court under an
5 asserted right to protect the interests of the United
6 States.

7 A. That's absolutely correct.

8 Q. And you did that, not only once, but twice,
9 didn't you? You submitted two declarations making that
10 affirmation.

11 A. I only remember one, but if I did two, I meant
12 it.

13 Q. We'll get to those in a minute.

14 Then we look in the second paragraph, it
15 says, Defendants shall provide further evidence
16 addressing whether the I-Drive and S-Drive identified by
17 counsel for defendants had been searched in response to
18 plaintiff's FOIA request. Then if you would read what
19 the court ordered you to do.

20 A. Correct.

21 Q. If you read the highlighted portion about what
22 you were ordered to do.

23 A. If such drives have not been searched, defendants
24 shall explain why such a search would not be reasonably
25 calculated to locate the requested videotapes or other

1 materials.

2 Q. And the searches weren't done, were they, sir?

3 A. No, we did not do the searches.

4 Q. If we look at the third paragraph, it says,
5 Defendants shall address specifically whether or not the
6 Evidence Control Centers, or other locations commonly
7 referred to as the ECC, located at Headquarters,
8 Oklahoma City, and the FBI Crime Lab were searched
9 manually.

10 And then you were ordered to do what, sir?

11 A. Defendants must explain why there's no reasonable
12 likelihood that the requested files would be located in
13 any of those locations.

14 Q. In fact, no search was done of the ECC at the
15 Oklahoma City Field Office, was it, sir?

16 A. No search was done of the ECC in the Oklahoma
17 City Field Office.

18 Q. If we look at the fourth paragraph, it says,
19 Defendants shall either manually search the physical
20 files located at the Evidence Control Centers located at
21 Headquarters, Oklahoma City, and the Oklahoma City Crime
22 Lab for the requested videos and other materials that
23 were collected during the first 14 days following the
24 Oklahoma City bombing on April 19, 1995, or provide
25 evidence as to why such a search is too burdensome as

1 not to be required. And there was no search done of the
2 OKBOMB files in Oklahoma City, was there, sir?

3 A. No, there was not.

4 Q. Then it says, finally, Defendants shall submit a
5 further declaration or affidavit from Mr. Hardy stating
6 he does not know of either the existence or the likely
7 locations of the requested videotapes. He is likewise
8 to state that he is otherwise unaware of anyone else
9 that may know of the existence or likely locations of
10 the videotapes at issue. If he cannot confirm so
11 truthfully, defendants will submit an affidavit
12 explaining such to the court.

13 And you did submit a sworn statement to the
14 court that you knew no other place of possible existence
15 of the tape or persons with likely knowledge as to the
16 location, did you, sir?

17 A. It didn't say possible existence. It said know
18 of either the existence or the likely in the question,
19 so it didn't say possible.

20 Q. I didn't mean to misquote that. But that's what
21 you were required to do, and you do that twice too,
22 don't you, sir?

23 A. That's right, I did not know either the existence
24 or the likely locations of the requested videotapes.

25 Q. You signed two declarations making that assurance

1 to the court.

2 A. That's correct.

3 Q. Now, when a search is conducted, as part of your
4 policy or procedure or methodology, as you called it,
5 set up back in -- is it Winchester, Virginia?

6 A. Winchester, Virginia, correct.

7 Q. The person who conducts the search uses a search
8 slip?

9 A. Yes.

10 Q. And this describes the nature of the search?

11 A. The search slip records the -- yes, the basis.
12 It gives you what files are searched and what were the
13 terms used, that's correct.

14 Q. And if there are any restrictions on the search,
15 that's also noted on the slip, too, isn't it?

16 A. Restrictions on the search.

17 Q. Yes.

18 A. I don't understand what that means.

19 Q. Well, if there's something in particular about
20 the search that you don't want found or you want to
21 limit the search in any way, that would be reflected on
22 the search slip.

23 A. No. The search slip just says what the person
24 did.

25 MR. TRENTADUE: May I approach, Your Honor?

1 THE COURT: You may.

2 MR. TRENTADUE: If I can hand this up. The
3 next one will be?

4 THE COURT: The next one would be 71.

5 MR. TRENTADUE: May I approach the witness,
6 Your Honor?

7 THE COURT: You may.

8 Q. (By Mr. Trentadue) I'm handing you a deposition
9 you gave. Do you remember giving a deposition in the
10 Negley case, Mr. Hardy?

11 A. Yes.

12 Q. Was that a moan?

13 A. Yes. It was a long deposition.

14 Q. Do you remember being asked about search slips in
15 the Negley deposition?

16 A. I have absolutely no memory of that.

17 Q. If you could look then at pages 56 and 57.

18 A. Got it.

19 Q. Do you remember giving this testimony starting at
20 line 15 on page 56, question, So there are handwritten
21 notes that a paralegal takes when they conduct a search?

22 What did you respond, sir?

23 A. There's a search slip that is used, that's
24 correct.

25 Q. Question, And will that -- would that contain if

1 there were any date restrictions on the search
2 conducted?

3 And your answer?

4 A. Generally the search slip will show what was
5 searched and what records were found to be that event
6 would be. If someone comes in and just asks for a name,
7 generally they're going to search everything unless --
8 usually, because if somebody requests a name, they're
9 going to have to -- I hope I don't sound this bad in
10 this testimony -- we ask them to provide them a date of
11 birth because that tells us whether they would be in the
12 manual indices or generally not or generally can tell
13 because --

14 Q. I'm not following where you're reading.

15 A. Well, it sounded better when I said it, I think,
16 but --

17 MR. SIPLE: Your Honor, Mr. Hardy may have
18 jumped to page 55 when he was --

19 THE WITNESS: Oh, I'm sorry, I'm sorry.
20 Generally the search slip shows what was searched and
21 what records were found to be responsive.

22 Q. (By Mr. Trentadue) Question, Okay. Did you
23 review that slip?

24 Your answer?

25 A. Did -- no.

1 Q. Question, Have you reviewed it at all with
2 regards to Mr. Negley's FOIA request?

3 A. No.

4 Q. Okay. Do you know if the paralegal limited the
5 date after which they searched records for Mr. -- in
6 response to Mr. Negley's FOIA request?

7 A. The initial search?

8 Q. Question, Yes.

9 A. I didn't have -- I have no idea.

10 Q. Question, Okay. Does that trouble you that you
11 submitted four declarations in this case, but you don't
12 know the limitations on the search that was conducted?

13 A. No.

14 Q. Question, Why not?

15 A. Because there's a regular search protocol that's
16 used in searches and it's a regular business practice.

17 Q. And you didn't review the paralegal search slips
18 in this case either, did you, sir?

19 A. I've not looked at the paralegal's -- the initial
20 search slip, that's correct.

21 Q. Now, if you look over on page 60, the question
22 that starts at line 14.

23 A. Correct.

24 Q. Would they also have a slip or notes that would
25 reflect any restrictions put on the search?

1 A. Well, they should have a search slip, that's
2 correct.

3 Q. Question, Did you review that search slip?

4 A. I did not review that search slip.

5 Q. Do you remember giving that testimony?

6 A. Yes, I do.

7 Q. In your methodology that you've developed for
8 responding to these FOIA requests, have you developed
9 any policy that the search is to be expanded if you come
10 across something that suggests that the
11 information -- or there's a likelihood for the records
12 to be found someplace else?

13 A. We're required under the statute and -- well,
14 case law at least, that we're supposed to go where
15 there's a reasonable likelihood of records. So if you
16 find information which would suggest that, then you
17 would go look for records there as well.

18 Q. And it's fair to say that if you're furnished
19 with information that may suggest that there's another
20 location to search, you should go there as well too.

21 A. That is correct.

22 Q. Now, if we could look at your Exhibit 54 in the
23 blue binder.

24 A. Okay.

25 Q. Do you recognize this declaration?

1 A. Yes.

2 Q. If you would turn to the second page, please.
3 Again, the second paragraph continuing in the second
4 page, that's what you said earlier that you said, The
5 statements contained in this declaration are based upon
6 my personal knowledge, and it would be fair, it goes to
7 say, upon information provided to me in my official
8 capacity, and upon conclusions and determinations
9 reached and made in accordance therewith.

10 A. Yes.

11 Q. You use that standard language in all of your
12 declarations, don't you, sir?

13 A. Yes.

14 Q. Then we talked about the -- in the fifth
15 paragraph, you talk about the first paragraph of the
16 court's order. What you say under oath, I affirm that I
17 have not misrepresented information or provided
18 incomplete or otherwise misleading information to the
19 court under an asserted right to protect the interests
20 of the United States.

21 A. Correct.

22 Q. And the interests of the United States would also
23 include the interests, I assume, of the FBI.

24 A. The interests of the United States are the
25 statutes. I don't swear allegiance to the FBI. I swear

1 allegiance to the Constitution of the United States,
2 which includes the statutes and regulations and things,
3 so the answer, no, it's the United States.

4 Q. I don't mean to be tricky about this, but I'm
5 assuming you also included in that you have not
6 misrepresented anything to the court, even if it was not
7 in the interests of United States to do so.

8 A. I'm sorry, I didn't -- it's my own -- I didn't
9 catch exactly --

10 Q. I wasn't trying to confine you just to whether
11 you had misrepresented something to further the
12 interests of the United States. I was saying I took by
13 this affirmation that you're saying to the court I
14 haven't misrepresented anything for any purpose.

15 A. No, I didn't say that. And I think this
16 declaration and this particular statement is in some way
17 responsive to the *Shura Council* case, which got into how
18 you enact the FOIA statute. So I don't think it says
19 that at all.

20 Q. What does it say, sir?

21 A. It says that I'm not going to misrepresent
22 information or provide incomplete or otherwise
23 misleading information to the court asserting that
24 somehow I have a right in the interests of the United
25 States.

1 Q. My question to you is I took that affirmation as
2 meaning that you are not and have not asserted any
3 misrepresent -- misleading or false information to the
4 court.

5 A. No. I think the germane paragraph for that is
6 the statements contained in this declaration are based
7 on my personal knowledge, the information provided me in
8 my official capacity, and upon the conclusions and
9 determinations reached and made in accordance therewith.

10 Q. And, again, I may be belaboring this thing
11 because I'm not very quick and I'm not understanding and
12 it's late in the day.

13 A. We're in trouble because I'm not real quick
14 either.

15 Q. Are you saying it's possible you've
16 misrepresented something in your affidavits and
17 declarations?

18 A. I'm saying that obviously there -- not
19 misrepresenting in the sense of a deliberate act, but I
20 think there was information that needed to be clarified,
21 that's correct. And that is when you write declarations
22 and you pass information, that happens, and so, again,
23 whenever that happens and you see the information that
24 you provided to the court that either misstates
25 something or it in fact provides such if you read it and

1 it really doesn't convey what occurred, then I feel an
2 obligation to go to the court and draw it out and tell
3 them what we've done.

4 Q. Then in the sixth paragraph you talk about the
5 Evidence Control Centers at FBI Headquarters.

6 A. That's correct.

7 Q. It says there's no Evidence Control Center at FBI
8 Headquarters.

9 A. There is no Evidence Control Center at the FBI
10 Headquarters.

11 Q. Then you talk about the Evidence Control Centers
12 at the Oklahoma City -- in Oklahoma City?

13 A. Correct.

14 Q. And then you say, As described in the Second
15 Supplemental Hardy Declaration, OCFO performed a manual
16 search of the physical evidence in the ECR within the
17 OKBOMB Warehouse, during the week...

18 A. That's correct.

19 Q. And but no search again done of the Evidence
20 Control Center in the field office.

21 A. No search, that's correct.

22 Q. Then if you would turn to the fourth page, and
23 this has to do with the manual searches that you were
24 asked to do or explain why they weren't done.

25 A. Correct.

1 Q. And down at the bottom you state to the court
2 under oath, For purposes of responding to the court's
3 order, I obtained an estimate from OCFO staff that the
4 documents serialized during the first 14 days following
5 the Oklahoma -- OKBOMB investigation (which -- if you
6 follow to the next page it says, the reasons explained,
7 are not the only documents that might be referenced --
8 that might reference evidence collected during the first
9 14 days) comprise 189 linear feet of material.

10 A. That's correct.

11 Q. You went on to explain to the court that Assuming
12 there are 200 pages per inch of material, there are
13 approximately 450,000 pages of documents. Based upon my
14 knowledge of search procedures and my experience
15 responding to FOIA requests submitted to the FBI, a
16 manual search of this material would be extremely
17 time-consuming and unprecedented in the history of the
18 FBI's FOIA program.

19 A. That's correct.

20 Q. Did you arrive at an estimation of how long it
21 would take to do this search?

22 A. Yes. We used 800 pages a day of what we think it
23 would be given our experience. Remember, our people are
24 looking at pages everyday, so we have a pretty good
25 sense of what's the maximum amount of pages you can do

1 to review, and so 800 pages, after you do 800 pages,
2 you're going to want to go home and have a beer, I
3 guarantee you.

4 Q. On page 7 you were asked to -- you attempted to
5 explain why no I-Drive searches were done?

6 A. Correct.

7 Q. Your response to the court was what?

8 A. At the time of the OKBOMB investigation, the
9 I-Drive was known as the Drafts drive and used as a
10 temporary working folder for electronic media. The
11 I-Drive temporarily stored electronic media prior to its
12 final approval. Once final approval was received, the
13 material was added to the official investigative file,
14 which includes indexing the material in ACS, the FBI's
15 automated system, and it was at the same time deleted
16 from the I-Drive.

17 Q. You go on on paragraph 6 to explain the
18 S-Drive -- 16, rather, on page 8.

19 A. Are you going to put that one up, or do you want
20 me to read it off the paper?

21 Q. I'm not so good at putting it up.

22 A. My kids could do it for you faster, I guarantee
23 you.

24 Q. And you talk about the S-Drive.

25 A. I'm sorry, do you want me to read the yellow

1 part?

2 Q. Yes.

3 A. The FBI currently has an S-Drive, known as a
4 common drive or a shared drive. At the time of the
5 system and server upgrades, old server information was
6 migrated to the new servers after careful examination by
7 all FBI personnel to ensure all migrated data was
8 current. This migration was after the 2001
9 comprehensive searches noted in paragraph 15.
10 Therefore, there is no reason to believe that the
11 S-Drive could contain any material responsive to
12 plaintiff's request.

13 Q. And that was your reasons for not doing a search
14 of the S-Drive or the I-Drive.

15 A. That's correct -- well, yes. But in the
16 background, in answer to your question, is always the
17 manpower resources and the level of effort which is
18 going to be used to do that and the likelihood of the
19 result, so that equation is always working in the
20 background behind that statement.

21 Q. But you've done I-Drive searches before or
22 ordered them before.

23 A. You know, I don't think I ever did an I-Drive
24 search. I can't remember when we did an I-Drive search
25 actually, if we did. I do know about S-Drive searches

1 though because that's what I live with everyday.
2 They're not S-Drives at Headquarters, they're an
3 H-Drive, but it's the same thing where you have shared
4 folders. And I'm familiar with the enormous
5 machinations which are required to get the information,
6 which you have to map the information and pull the stuff
7 out and watching the civil discovery people struggle
8 with this kind of issue. So it is a formidable task to
9 pull that information, and I'm knowledgeable about that.

10 Q. So there's an H-Drive at Headquarters.

11 A. Yeah, it's the same thing, it's a shared drive in
12 which you import folders.

13 Q. If you would look on page 11, you make those
14 representations --

15 A. Oh, page 10 -- did you say 11?

16 Q. Right.

17 A. While it's always possible that responsive
18 documents might have been misfiled and thus could be
19 located somewhere other than the OKBOMB file, though it
20 would be impossible to know where, I'm not aware that
21 this is the case, and a reasonable search did not and
22 would not locate any such documents if they exist
23 because they would not have been in a location likely to
24 contain responsive documents. Having reviewed all the
25 plaintiff's filings in this case, I can attest that all

1 locations likely to contain the information responsive
2 to the FOIA request have been searched and all
3 information that was located through these searches has
4 been provided to plaintiff.

5 Q. Is it fair to say with that statement you're
6 assuring the court that any responsive documents that
7 were not otherwise exempt were turned over to me?

8 A. Do you want me to read that one too?

9 Q. Say what?

10 A. I am unaware of the existence or likely location
11 of additional tapes responsive to the plaintiff's FOIA
12 request, including tapes from the Murrah Building or any
13 additional Hanger tape, other than the tape that
14 plaintiff already received, and do not know anyone who
15 would know where additional tapes would be located.

16 Q. And you also state in there in this sentence that
17 you have reviewed all of the fillings in the case.

18 A. I'm sorry, I didn't hear you.

19 Q. You also state in paragraph 20 that you reviewed
20 all of the fillings in this case.

21 A. Yes.

22 Q. In fact, Ms. Mitchell, or someone else in your
23 office, kept you fairly current on the status of this
24 case; is that fair to say?

25 A. Yeah. There was a lot of back a forth. There

1 was quite a back and forth between us.

2 MR. TRENTADUE: Your Honor, this might be a
3 good time to --

4 THE COURT: All right.

5 MR. TRENTADUE: -- conclude the day.

6 THE COURT: We will conclude our evidence
7 for today, resume tomorrow morning at 8:30.

8 MR. TRENTADUE: Yes, sir. My witnesses will
9 be ready to go, and then we can resume with Mr. Hardy
10 after that.

11 MR. SIPLE: I'm sorry, how much longer do we
12 think is going to be needed?

13 MR. TRENTADUE: I don't think it's going to
14 be that long. I plan on being hopefully finished in the
15 morning, Your Honor.

16 MR. SIPLE: Is there any reason why we
17 couldn't put Mr. Hardy on first thing?

18 MR. TRENTADUE: We have a video conference
19 that's scheduled at 8:30.

20 MR. SIPLE: We're happy to keep going, if
21 that would be okay with the court.

22 MR. TRENTADUE: It's been a long day, sir.

23 THE COURT: Yes. I think it's appropriate
24 for us to break at this point. We'll be in recess until
25 tomorrow morning at 8:30.

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(Whereupon, the matter was continued to
Wednesday, July 30, 2014, at 8:30 a.m.)

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C E R T I F I C A T E

State of Utah
County of Salt Lake

I, Karen Murakami, a Certified Shorthand Reporter for the State of Utah, do hereby certify that the foregoing transcript of proceedings was taken before me at the time and place set forth herein and was taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision;

That the foregoing pages contain a true and correct transcription of my said shorthand notes so taken.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of September, 2014.

Karen Murakami
Karen Murakami, CSR, RPR