

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

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 JESSE C. TRENTADUE,))
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 Plaintiff,))
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 v.))
))
 CENTRAL INTELLIGENCE AGENCY, et al.))
))
 Defendants.))
 _____)



Civ. A. No. 2:08-CV-00788

SUPPLEMENTAL DECLARATION OF DAVID M. HARDY

I, David M. Hardy, declare as follows:

(1) I am the Section Chief of the Record/Information Dissemination Section (“RIDS”), Records Management Division (“RMD”), formerly at Federal Bureau of Investigation Headquarters (“FBIHQ”) in Washington, D.C., and now relocated to Winchester, Virginia. I have held this position since August 1, 2002. Prior to joining the FBI, from May 1, 2001 to July 21, 2002, I was the Assistant Judge Advocate General of the Navy for Civil Law. In that capacity, I had direct oversight of Freedom of Information Act (“FOIA”) policy, procedures, appeals, and litigation for the Navy. From October 1, 1980 to April 30, 2001, I served as a Navy Judge Advocate at various commands and routinely worked with FOIA matters. I am also an attorney who has been licensed to practice law in the state of Texas since 1980.

(2) In my official capacity as Section Chief of RIDS, I supervise approximately 276 employees who staff a total of ten (10) units and two field operational service center units whose collective mission is to effectively plan, develop, direct, and manage responses to requests for

access to FBI records and information pursuant to the FOIA; Privacy Act; Executive Order 13526; Presidential, Attorney General, and FBI policies and procedures; judicial decisions; and Presidential and Congressional directives. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

(3) Due to the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to requests for information from its files pursuant to the provisions of the FOIA, 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a. Specifically, I am aware of the treatment which has been afforded by the FBI in responding to plaintiff's October 12, 2008 FOIA requests.

(4) This declaration is being submitted in support of defendant FBI's motion for summary judgment, and supplements and incorporates the information previously provided in the Declaration of David M. Hardy dated July 16, 2010 ("First Hardy Declaration"). I have reviewed the plaintiff's filing of August 18, 2010, in which he suggests that the FBI should have searched separate computerized records of evidence gathered in the Oklahoma City bombing and that the FBI should have conducted a manual search of the rooms where this evidence is stored. I submit this supplemental declaration in order to explain why the plaintiff's suggestions do not make sense in light of the nature of the FBI's recordkeeping systems.

(5) As indicated in the First Hardy Declaration, the Automated Case Support System ("ACS") is the computerized subsystem of the FBI's Central Records System ("CRS"). As such, all documents that track chain-of-custody for evidence collected in FBI investigations, such as FD-302s and/or FD-192s, are uploaded into ACS. (For example, the chain-of-custody forms that

the plaintiff identifies as being used when evidence is sent to FBI laboratories are uploaded into ACS.) Because these documents identify the location of nondocumentary materials, when FBI RIDS personnel conduct a search in response to a FOIA request, they follow the same procedure whether the request seeks documentary or nondocumentary materials. Once a document identifying the location of nondocumentary materials is located, RIDS personnel then retrieve the nondocumentary materials from the location identified on the document. Because ACS contains the chain-of-custody documentation that allows retrieval of nondocumentary materials, there is no need to go beyond ACS when searching for material responsive to a FOIA request.

(6) In this instance, as indicated in the First Hardy Declaration, RIDS personnel went beyond normal procedures by contacting the Oklahoma City Field Office ("OCFO") for assistance. OCFO personnel performed burdensome text searches of a separate ZyIndex system that had been established during the Oklahoma City bombing investigation.¹ The ZyIndex system contains material that is duplicative of material that is already in ACS, including the FD-302s and/or FD-192s relating to the collection of material during the Oklahoma City bombing investigation, but in ZyIndex the material can be searched using full text searches, including wild card characters for the possible misspelling of common words. A ZyIndex search using terms

¹ As a result of further discussions with OCFO personnel for the purpose of preparing this declaration, I would like to expand upon what I stated in the First Hardy Declaration regarding the nature of the search conducted by OCFO personnel. Specifically, at the same time that OCFO personnel conducted text searches of the ZyIndex system, using the search terms set forth in my original declaration, First Hardy Declaration ¶35, OCFO personnel also searched the ACS General Indices using the same search terms, even though this search was largely duplicative of the ZyIndex search. The searches of ACS also included the search terms "surveillance," "video," "tape," and "camera." These searches were particularly burdensome because they produced a large number of "hits" that OCFO personnel then reviewed individually for responsiveness. The searches of ACS did not reveal any additional responsive material that was not located through the ZyIndex searches.

such as surveillance, video, tape, and camera allows relevant documents to be located, which in turn identify the location of any nondocumentary evidence, such as videotapes.

(7) Because nondocumentary material can be located through the procedures described above, RIDS personnel did not perform manual searches of locations where nondocumentary material is stored. There is no reason to believe that such manual searches would be more effective in locating nondocumentary material than the computerized searches described above. In addition, a manual search of the warehouse where nondocumentary materials collected during the Oklahoma City bombing investigation are stored would be extremely burdensome. OCFO personnel estimate that such a manual search would require two FBI personnel to spend an entire week working eight-hour days devoted exclusively to the search of nondocumentary material, that I believe is unnecessarily redundant to our prior automated searches. In addition, if the manual search included the files of documentary material located within the warehouse, which are also redundant of documents uploaded on ACS and ZyIndex, OCFO personnel estimate that the search would last an additional three weeks.

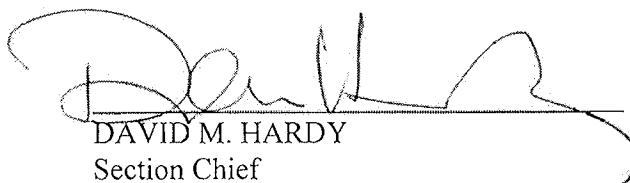
(8) As I previously stated with regard to the Hanger tape, we produced a true copy of the only tape that the FBI located that was responsive. OCFO personnel have advised that any other responsive tapes would most likely have been in the same location where this tape was found, and would therefore have been found together with this tape or else through the computerized text searches that were conducted. However, no other responsive tapes were found.²

² RIDS personnel have no reason to believe that the tape that was located is not a duplicate of the original Hanger tape, which was returned to the Oklahoma Highway Patrol. No documentation was found regarding this tape, and nothing identifies it as an "edited" version of

(9) Finally, let me emphasize that the ACS is designed to help investigators work cases and to make it easy to share their work with other FBI personnel no matter where located. Therefore, it operates to locate information and evidence as well as any accompanying paper trail.

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

Executed this 15th day of September, 2010.



DAVID M. HARDY
Section Chief
Record/Information Dissemination Section
Records Management Division
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Winchester, Virginia

the original tape. Even if there were some reason to believe the tape was not a duplicate, I do not understand the FOIA to impose any obligation on my office to perform a laboratory analysis of the tape that was found or to compare it to the original Hanger tape, which is no longer in the FBI's possession, in order to verify whether it is or is not an exact duplicate. Again, the FBI released a true copy of the only tape that was found.