

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



JESSE C. TRENTADUE,

Plaintiff,

v.

CENTRAL INTELLIGENCE AGENCY, et al.

Defendants.

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

**FIFTH 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 274 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) This declaration is being submitted pursuant to the Court's Minute Order dated March 21, 2012, and supplements and incorporates the information previously provided in the declarations of David M. Hardy, dated July 16, 2010 ("Hardy Declaration") September 15, 2010 ("Supplemental Hardy Declaration"), January 28, 2011 ("Second Supplemental Hardy Declaration"), June 30, 2011 ("Third Supplemental Hardy Declaration"), and September 22, 2011 ("Fourth Supplemental Hardy Declaration"). I provide this declaration in order to explain in greater detail how and by whom the information provided in my previous declarations was acquired and to provide additional information about certain issues raised at the March 21, 2012, hearing.

(4) As RIDS Section Chief, I am familiar with the procedures followed by FBI personnel in responding to requests for information from FBI files pursuant to the provisions of the FOIA, 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a. All FOIA requests directed to any component of the FBI – with the exception of the Crime Lab and Criminal Justice Information Services – are processed by RIDS. RIDS receives over 17,000 FOIA/Privacy Act requests per fiscal year. When a FOIA request is submitted to the FBI pursuant to the instructions on the FBI's website, it is addressed to RIDS in Winchester, Virginia. In the course of handling and processing a FOIA request, numerous RIDS personnel are involved. For example, the Work Process Unit performs the initial electronic search of the FBI's Automated Case System ("ACS"). Other RIDS personnel then review records for responsiveness and determine whether any FOIA/Privacy Act exemptions apply. In the course of processing a FOIA response, it is common practice for RIDS personnel to contact and enlist the assistance of FBI personnel outside RIDS, such as FBI personnel in FBI investigative units or field offices. For example, the assistance of FBI personnel involved in a particular ongoing investigation may be necessary in order to determine whether certain FOIA exemptions apply to particular information. The assistance of FBI personnel in other offices may also be necessary when an

initial search identifies records that are physically located in those offices. If a FOIA request becomes a subject of litigation and it is necessary to prepare a FOIA declaration, RIDS personnel who were directly involved in the FOIA response provide me with the FOIA request and all relevant details about how the request was processed. I review this material and, where exemptions have been claimed, I review the records in question and the bases for the exemptions. I review thoroughly the FOIA response that RIDS personnel have prepared so that I am familiar with the processing of the request and the response. The declarations that I submit in connection with FOIA litigation, on behalf of the FBI, are based on the personal knowledge that I acquire through this process, as well as upon the information that RIDS personnel have collected and that I have reviewed in my official capacity.

(5) I have engaged in the process of review described in Paragraph 4 above when preparing the declarations submitted in this litigation. Through this process, I am familiar with the procedures that FBI personnel have used and the steps FBI personnel have taken when searching for records responsive to plaintiff's October 12, 2008 FOIA request and when responding to Orders from this Court. The individual FBI employees in RIDS and other FBI offices that have been involved in this process are neither Senior Executive Service personnel nor do they hold positions as public FBI spokespersons; the names of such individuals would therefore qualify as exempt from disclosure under FOIA Exemptions 6 and 7(C), and it is FBI policy not to release the names of such individuals.<sup>1</sup> I identify these individuals below by their

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<sup>1</sup> Indeed, the individual FBI employees who have participated in the search process that has occurred with respect to plaintiff's FOIA request are not FBI investigative agents but instead are individuals who have administrative responsibilities and expertise relating to FBI records and information technology systems. Because the FBI receives approximately 46 new FOIA/Privacy Act requests every day, it would be highly burdensome to track down and enlist the aid of particular FBI agents who had been involved in a particular investigation in the past in the administrative process of searching for records. The very purpose of the FBI's recordkeeping system is to make FBI records accessible to FBI personnel conducting searches, without relying on the individual FBI agents who created or collected those records, perhaps (as here) many years in the past. As I described above, if a search locates records that may implicate an ongoing investigation, only then would RIDS personnel consult with FBI personnel involved in the investigation in order to determine whether any material was exempt from disclosure.

title rather than their name so that these individuals' personal online privacy will not be compromised through being mentioned by name, and potentially harassed, in the various online media that commonly discuss various theories relating to the Oklahoma City bombing.<sup>2</sup>

(6) When RIDS personnel first received plaintiff's FOIA request, an individual in the Work Process Unit did an initial electronic search of the General Indices of FBI's Central Records System, through the Automated Case Support system, using the search term "OKBOMB." As a result of that search, one FBI case file was located, 174A-OC-56120, at a single location – the Oklahoma City Field Office ("OCFO"), which has been designated as the repository for all OKBOMB-related files. From prior experience with FOIA requests for OKBOMB-related records, RIDS personnel knew that individuals in the OCFO had particular expertise and knowledge regarding OKBOMB records. RIDS personnel were also aware that OCFO had on-site the OKBOMB ZyIndex, which allows full text electronic searches of OKBOMB investigation records.<sup>3</sup> Because the ZyIndex allows the full text of records to be searched, RIDS personnel asked OCFO for assistance in proceeding with the response to plaintiff's FOIA request. The financial analyst<sup>4</sup> located at OCFO conducted the electronic searches of both the ZyIndex and ACS using the search terms listed in prior declarations.

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<sup>2</sup> A Google search reveals that my own name, David M. Hardy, appears on perhaps hundreds of web pages in reports on this litigation. In addition, Attorney General Eric Holder, Attorney General Janet Reno, and the Department of Justice Attorney assigned to this case, Kathryn Wyer, have all been tagged with the epithets "Curse Eric Holder! Curse Janet Reno! Curse Kathryn Wyer!" in connection with this case, on a web page entitled Trust Christ or Go To Hell. See <http://www.trustchristorgotohell.org/tag/curse-kathryn-wyer/>.

<sup>3</sup> ZyIndex is a tool used for major investigations to allow for easier access to documents rather than going to ACS or the paper file(s). During the OKBOMB investigation, the ZyIndex was the primary tool for searching for investigative documents as the migration to ACS was only in its beginning stages.

<sup>4</sup> Although it might seem unusual for a financial analyst to be heavily involved with OKBOMB records, this individual was at OCFO during the criminal prosecutions of Timothy McVeigh and Terry Nichols and at that time the job title was Forensic Financial Analyst, which involved being familiar with the records if testimony at trial was needed. This individual reviewed every piece of evidence and provided all documents to the defense attorneys, which is how she has historical knowledge about OKBOMB.

Because these electronic searches used, among other search terms, the search term “videotape,” all videotapes in the OKBOMB case file would presumably have been located through this search. In order to determine which of those videotapes were actually responsive to plaintiff’s request, OCFO personnel reviewed each search result individually for descriptions of the videotapes that had been located. As a result of this process, OCFO personnel located 30 videotapes and 200 pages of documents responsive to plaintiff’s request and provided these records to RIDS. After these videotapes and documents were processed to determine if they contained any material exempt from disclosure under FOIA, RIDS personnel then provided the responsive documents and videotapes to plaintiff.

(7) Unrelated to plaintiff’s FOIA request, OCFO evidence technicians planned to conduct an inventory of the Evidence Control Room (“ECR”) of the OKBOMB Warehouse. Because OCFO personnel were aware of the subject of plaintiff’s FOIA request, due to OCFO’s prior involvement in the search process, OCFO personnel notified RIDS personnel of the planned inventory, and RIDS personnel requested that the OCFO evidence technicians conducting the inventory also, at the same time, perform a manual search for any additional materials in the ECR that might be responsive to plaintiff’s FOIA request. Prior to the inventory, the OCFO evidence technicians conducting the inventory were provided with a copy of plaintiff’s FOIA request to use for purposes of the search. Following the inventory and search, these personnel reported to RIDS personnel that no additional responsive material was located through that search.

(8) When RIDS personnel assigned to this matter needed additional information relating to the OKBOMB case file and the OKBOMB Warehouse during the course of this litigation, they again sought assistance from OCFO personnel. For example, upon inquiry, the Supervisory Administrative Specialist over the ECR at the OKBOMB Warehouse explained to RIDS personnel that there was no separate videotape log compiled in connection with the OKBOMB investigation. The same Supervisory Administrative Specialist also informed RIDS personnel that the logbook at the entrance to the ECR of the OKBOMB Warehouse did not

record any information about particular items in the Warehouse, but only recorded the names of individuals who entered the ECR. In addition, the Evidence Control Technician for the OKBOMB Warehouse informed RIDS personnel that the "1B" or "bulky" file designates the boxes in the ECR that contain evidence; the boxes are labeled with 1B file numbers in order to facilitate the ability to locate particular items of evidence once they have been identified through an electronic search. From this explanation, RIDS personnel understood that the "1B" file for the OKOMB Warehouse was already manually searched by OCFO personnel during the inventory and search process described above because the inventory involved reviewing the contents of these same boxes.

(9) After this Court issued its Order of May 13, 2011, RIDS personnel assigned to this matter made various additional inquiries in order to gather the information and/or perform the additional searches that the Court had requested.

**MAY 13, 2011 ORDER, PARAGRAPH 2**

(10) Paragraph 2 of the Court's Order directed the FBI to provide more information about the I-Drive and S-Drive systems, whether they had been searched, and whether such a search would be reasonably calculated to located records responsive to plaintiff's FOIA request. In order to gather the requested information, RIDS personnel contacted the Supervisory Information Technology Specialist ("ITS") at OCFO because, based on RIDS' prior contacts with OCFO in connection with this FOIA matter, that individual was expected to be familiar with whether or how the I-Drive system was used during the OKBOMB investigation and whether the current S-Drive system is likely to contain any OKBOMB-related information.

(11) In response to this inquiry from RIDS, the Supervisory ITS explained, based on his own familiarity with OCFO's former and current information technology systems as well as his review of documents he was able to locate in the CRS pertaining to I-Drive searches for OKBOMB-related material, that although the I-Drive system no longer exists, it did exist during the OKBOMB investigation and was used by FBI personnel involved in the investigation in the

same way that it was used in general – as a means of storing temporary drafts of documents so that supervisors could review the drafts for form, grammatical accuracy, and to ensure they were sufficiently detailed and, if so, give final approval. After final drafts were approved, they were uploaded to ACS, and any temporary drafts were then supposed to be deleted. In May 2001, due to pending criminal proceedings, the FBI's Director's Office ordered all Field Offices and Legats to perform comprehensive searches of their I-Drives for all investigative materials related to OKBOMB and certify that such a search was performed. The OCFO Supervisory ITS informed RIDS that, pursuant to that order, teams of personnel at other field offices and units had engaged in comprehensive searches and reviews of their I-Drives, which resulted in the transfer of any OKBOMB-related records that had been located to OCFO. OCFO personnel then reviewed all such records for comparison with the information entered or uploaded into the FBI's automated systems (i.e., ZyIndex and ACS). Any records that were not already included in the ZyIndex and ACS files were added to those files at that time. Therefore, any information that previously could have been found on the I-Drive that was potentially responsive to plaintiff's request would now have been located through the automated searches of ZyIndex and ACS that the FBI has already conducted.

(12) The OCFO Supervisory ITS further advised RIDS personnel that in March 2004, prior to the elimination of the I-Drive system, the FBI's Office of Inspections took steps to verify that all Field Offices and Legats had completed their I-Drive searches for all OKBOMB investigative material. If these offices had performed I-Drive searches, they were to certify to the Assistant Director of Inspections that a search was conducted or alternatively, to forward backup tapes for the I-Drives for the time period of May 15, 2001. The OCFO Supervisory ITS was unaware of any Field Office or Legat providing backup tapes and was unable to advise whether any such backup tapes would still exist or if so, where they would be located, except that OCFO did not itself possess any I-Drive backup tapes. The Supervisory ITS advised that backup tapes are not used for recordkeeping purposes and would not be retained on a permanent basis. It is my

assumption, based on the fact that the I-Drive search process occurred in connection with the criminal prosecutions of Timothy McVeigh and Terry Nichols, which concluded years ago, that even if backup tapes were collected by the Office of Inspections, by this time they must have been disposed of and no longer exist, and that any further materials that were retrieved from any such backup tapes were electronically indexed in ACS and ZyIndex and filed in the OKBOMB file at the OKBOMB Warehouse.

(13) Again according to the OCFO Supervisory ITS, the I-Drive system, which was based on a Novell server, was decommissioned after this search process had already been completed and no longer exists. FBI computer systems underwent periodic changes after the I-Drive system was eliminated, and several different operating systems and hardware upgrades have occurred since that time. While FBI information technology personnel may refer to certain shared-drive features on these various systems (which differ from system to system) as "S-Drives," there is no single "S-Drive" in existence today that would contain all information that may have been migrated from the I-Drive system, and no shared drive or folder on OCFO or any other field office servers, which are outside the FBI's Central Records System and are intended to store documents on a temporary basis, is at all likely to contain any material responsive to the plaintiff's request. See Third Supplemental Hardy Declaration, ¶16. In fact, it would be in direct violation of the Director's order for individuals to continue to maintain OKBOMB-related material in their own folders or in shared folders instead of having transferred any such records to OCFO.

(14) At the hearing, a question came up as to how burdensome a search of the S-Drive would be. RIDS personnel believe, and I agree, that a search of what FBI IT personnel might call "S-Drives" today would be fruitless because these drives did not exist at the time of the OKBOMB investigation. As explained above and in previous declarations, they are therefore not locations likely to yield records responsive to plaintiff's FOIA request for OKBOMB videotapes and related information; instead all records related to the OKBOMB investigation should be in



the OKBOMB Warehouse. However, should the Court consider ordering a search of the S-Drives in use today, we would respectfully submit that it would be so burdensome that a reasonable estimate of the time necessary to do so is unavailable. According to the ITS, since there is no single folder or drive that serves as an "I-Drive repository" for information that might have come from the time period when the I-Drive was in operation, there would be no way to isolate a particular folder or field office server as the correct place to search, so any search would have to be done by FBI Headquarters IT personnel, through a process of searching all FBI servers and folders nationwide that could take several months to complete. Such a search would be unprecedented, and given my conclusion that there is virtually no possibility of finding records responsive to plaintiff's FOIA request through such a search, and the fact that the obvious and only likely location for OKBOMB records – the OKBOMB Warehouse – has already been searched, I have not attempted to initiate such a search through FBI Headquarters IT personnel.

**MAY 13, 2011 ORDER PARAGRAPHS 3-4**

(15) Paragraphs 3 and 4 of the Court's Order directed the FBI to address searches of FBI Evidence Control Centers at FBI Headquarters, OCFO, and the FBI Crime Lab. In regard to FBI Headquarters, RIDS personnel were not aware of an Evidence Control Center at FBI Headquarters. In order to confirm that there was in fact no ECC at FBI Headquarters, RIDS personnel asked the Unit Chief of the Crime Lab Evidence Control Unit's Forensic Science Support Section whether there was an ECC, or any similar repository of physical evidence, at FBI Headquarters. The Crime Lab Unit Chief was able to confirm that there is no such ECC.

(16) RIDS personnel asked the same Crime Lab Unit Chief whether the Crime Lab's Evidence Control Room contained any OKBOMB videotapes. In response to this inquiry, Crime Lab personnel conducted a manual search for OKBOMB videotapes, and the Crime Lab Unit Chief reported back to RIDS personnel that no OKBOMB videotapes were located during that search. The Crime Lab Unit Chief further advised my staff that the Crime Lab maintains no paper files related to the OKBOMB investigation as it was told by FBIHQ to forward all

OKBOMB material to OCFO for inclusion in the main OKBOMB file.

(17) In order to respond to the Court's Order with respect to the Evidence Control Center at OCFO, RIDS personnel contacted a Supervisory Administrative Specialist at OCFO whose responsibilities include supervising the evidence control technicians to ensure that they follow FBIHQ evidence handling policies. This individual confirmed that OCFO has designated an external warehouse (the OKBOMB Warehouse) as the only place where all material related to the OKBOMB investigation is stored, and that any evidence related to the OKBOMB investigation would therefore be in the ECR at the OKBOMB Warehouse. The Supervisory Administrative Specialist also advised RIDS personnel that the OCFO also has a separate ECC located on-site but that, because the OKBOMB Warehouse is the location that houses all materials related to the OKBOMB investigation, including the entire OKBOMB case file, there would be no reason to expect any OKBOMB materials to be located in the on-site ECC.

(18) In order to address the Court's Order with respect to the OKBOMB Warehouse, RIDS personnel contacted the Evidence Control Technician for the OKBOMB warehouse. This individual is familiar with the layout of paper records and evidence in the OKBOMB Warehouse and how evidence and paper files related to the OKBOMB investigation have been gathered from FBIHQ, the Crime Lab, and other field offices and stored in the Warehouse. This individual explained to RIDS personnel the difficulties of manually searching for paper versions of records that were created during a specific span of time, due to the fact that not all papers gathered from outside OCFO have been integrated in OCFO paper files but instead are in separate boxes, often the same boxes in which they arrived at the Warehouse, and the fact that none of the material is arranged strictly in chronological order based on when evidence was collected or reports were written. Based on the description provided to me of these files, I concluded that documents referencing evidence collected during the first 14 days of the OKBOMB investigation could be anywhere in the paper files in the OKBOMB Warehouse. Based on this information, RIDS personnel concluded, and I agree, that the burdens of manually searching paper files far outweigh

the conceivable utility of such a search because, not only would it be impossible to narrow the manual search of paper files on a reasoned basis according to particular dates, but such a search would be redundant of, and inferior to, the electronic searches that were already conducted using the ZyIndex and ACS. The further information provided in Paragraph 11 of my Third Supplemental Declaration was also based on information provided by the Evidence Control Technician for the OKBOMB Warehouse, who traveled to the Warehouse in order to attempt to measure the physical length of various sections of the paper files.

**MAY 13, 2011, ORDER PARAGRAPH 5**

(19) Paragraph 5 of the Court's Order of May 13, 2011, directed me to indicate whether I know of the existence or likely location of certain videotapes that plaintiff has alleged were not, but should have been, provided to him, and to indicate whether I am aware of anyone else that may know of the existence or likely location of such videotapes. The videotapes in question are (1) the videotape from the dashboard camera of Oklahoma Highway Patrol Trooper Charles Hanger from the day that he made a traffic stop of Timothy McVeigh; and (2) videotapes that contain surveillance footage from cameras mounted on the exterior of the Murrah Federal Building on April 19, 1995, the day of the Oklahoma City bombing. As I explained above, after RIDS personnel contacted the financial analyst at OCFO and requested that she provide assistance, in light of her access to the OKBOMB ZyIndex as well as her expertise and close familiarity with OKBOMB records and files, this individual did locate a copy of the Hanger videotape, and RIDS personnel provided a copy of that videotape to plaintiff. The Assistant General Counsel of the Office of the General Counsel assigned to this case had been informed by OCFO's Chief Division Counsel, who is now retired, that the original videotape from Trooper Hanger's car was returned to the Oklahoma Highway Patrol at some point.<sup>5</sup> Even if that were not

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<sup>5</sup> RIDS personnel recall that it was the understanding of this individual that the Oklahoma Highway Patrol had given the original tape to Trooper Hanger himself for his personal use, and that Trooper Hanger may have donated the tape to a library or museum collection. However, neither I nor anyone at RIDS has attempted to verify that information since any material that is outside the FBI's custody, control, or possession is outside the scope of any FOIA request

the case, the fact remains that I neither know, myself, nor know of anyone else who may know where any other copy of the Hanger videotape might be found within the custody, control, or possession of the FBI, given that no other copy was located during the searches that have occurred, including the manual search of the Evidence Control Room of the OKBOMB Warehouse, which is where other videotapes responsive to plaintiff's request were found.<sup>6</sup> The OKBOMB Warehouse ECR is the only location that RIDS personnel were able to identify, or of which I am otherwise aware, where any such videotape would likely be, if it existed and were currently in the FBI's custody, possession, and control.

(20) In regard to videotape surveillance footage from the Murrah Federal Building, I also neither know, myself, nor know of anyone else who may know where any such videotape footage might be found within the custody, control, or possession of the FBI. Indeed, I have neither seen nor heard of any reports or accounts, from anyone in the FBI, of anyone ever having viewed any such footage, and I have no personal knowledge, nor have I received information from anyone else in the FBI that suggests, that such videotape footage exists. I was informed that, at the March 21, 2012, hearing, plaintiff proposed that the FBI ask an individual with the last name "McNalley" about these videotapes. I am aware that a document that purports to be a Secret Service Timeline references an individual by the name "ATSAIC McNalley" who purportedly noted (perhaps to whomever prepared the Timeline, although the author of the Timeline is not identified anywhere in the document that plaintiff has attached to his filings) that there was security video footage showing a Ryder truck pulling up to the Federal Building before the bombing. The Timeline does not indicate that the person referenced as ATSAIC McNalley had seen this footage, nor that the footage was supposed to have come from cameras mounted on the exterior of the Federal Building itself. The Timeline also does not indicate where the

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submitted to the FBI.

<sup>6</sup> As I have described, those tapes were found through electronic searches of the OKBOMB ZyIndex, which occurred prior to the manual search; however, no other version of the Hanger tape was found through those electronic searches either.

referenced videotape footage was, at the time the Timeline was prepared, or who possessed it. Following the March 21, 2012, hearing, RIDS personnel searched an FBI employee directory for individuals who might be the ATSAIC McNalley referenced in the Timeline, but RIDS personnel did not locate any such individual with that name. The title "ATSAIC" does not indicate whether the individual in question is an FBI employee, and the fact that the name appears in a Secret Service document suggests that this individual may well have been a Secret Service employee rather than an FBI employee.<sup>7</sup> Because any information in the possession of the Secret Service is outside the scope of any FOIA request submitted to the FBI, and outside the scope of RIDS' authority, I have not contacted the Secret Service on this matter.

(21) The only additional information I have regarding the Timeline reference to videotape footage is that, according to a newspaper report that RIDS personnel found, even the Secret Service has disavowed the accuracy of this reference. According to the article, which was reporting on the sworn testimony of an identified Secret Service agent who appeared as a witness in the Terry Nichols prosecution, "[t]he log that the information [in the Timeline] was pulled from contained reports that were never verified," so the Secret Service did not "vouch for its reliability," and the Secret Service "knows of no videotape" matching the description in the Timeline. See Exhibit A. If such a videotape were in the FBI's possession, custody, or control, it would be in the Evidence Control Room of the OKBOMB Warehouse, where all evidence in the FBI's possession relating to the OKBOMB investigation is kept. OCFO personnel conducted a manual search of the ECR and did not find any such videotape, nor was any such videotape located through the electronic searches of the OKBOMB ZyIndex or ACS. I am unaware of any other search method that RIDS personnel or any other FBI personnel might use that would be reasonably likely to locate such a videotape. The OKBOMB Warehouse ECR is the only location that RIDS personnel were able to identify, or of which I am otherwise aware, where any

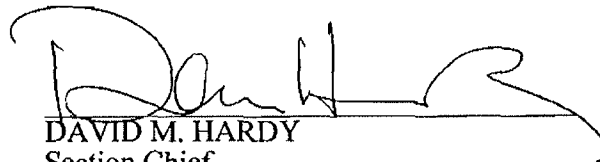
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<sup>7</sup> "ATSAIC" is a Secret Service acronym for Assistant to the Special Agent in Charge. The FBI does not use this acronym nor does it have a comparable position.

such videotape would likely be, if it existed and were currently in the FBI's custody, possession, and control.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, and that Exhibit A attached hereto is a true and correct copy.

Executed this 14<sup>th</sup> day of June, 2012.

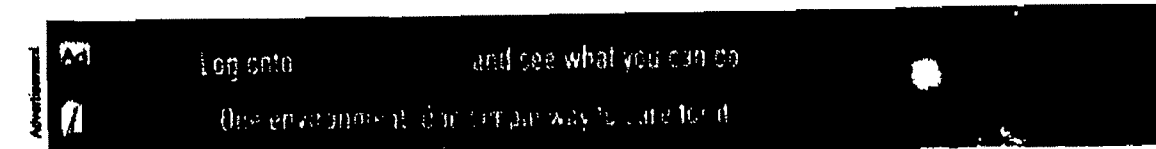


DAVID M. HARDY  
Section Chief  
Record/Information Dissemination Section  
Records Management Division  
Federal Bureau of Investigation  
Winchester, Virginia

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.		)	Civ. A. No. 2:08-CV-00788
		)	
CENTRAL INTELLIGENCE AGENCY, <u>et al.</u>		)	
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Defendants.		)	
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**EXHIBIT A**



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### Secret Service cited mystery video in Oklahoma City blast

WASHINGTON (AP) — A Secret Service document written shortly after the 1995 Oklahoma City bombing described security video footage of the attack and witness testimony that suggested Timothy McVeigh may have had accomplices at the scene.

A Secret Service agent testified Monday that the log does, in fact, exist but that the government knows of no videotape. The log that the information was pulled from contained reports that were never verified.

Stacy A. Bauerschmidt, assistant to the special agent in charge of the agency's intelligence division, said the timeline was an internal log developed to help locate personnel lost in the bombing and determine if the agency was a specific target of the attack.

Reports may have been based on mere speculation and the agency does not vouch for its reliability, she said. (Related site: Documents obtained by the AP)

"It's for us. It's a crisis document," Bauerschmidt said during testimony at bombing conspirator Terry Nichols' murder trial in McAlester, Okla.

"Security video tapes from the area show the truck detonation 3 minutes and 6 seconds after the suspects exited the truck," the Secret Service reported six days after the attack on a log of agents' activities and evidence in the Oklahoma investigation.

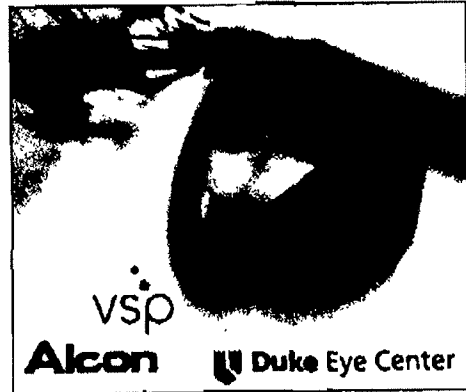
The government has insisted McVeigh drove the truck himself and that it never had any video of the bombing or the scene of the Alfred P. Murrah building in the minutes before the April 19, 1995, explosion.

Several investigators and prosecutors who worked the case told The Associated Press they had never seen video footage like that described in the Secret Service log.

The document, if accurate, is either significant evidence kept secret for nine years or a misconstrued recounting of investigative leads that were often passed by word of mouth during the hectic early days of the case, they said.

"I did not see it," said Danny Defenbaugh, the retired FBI agent who ran the Oklahoma City probe. "If it shows what it says, then it would be significant."

Other documents obtained by AP show the Secret Service in late 1995 gave prosecutors several computer disks of enhanced digital photographs of the Murrah building, intelligence files on several subjects in the investigation and a file detailing an internal affairs inquiry concerning an agent who reconstructed key phone evidence



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against McVeigh.

"These abstract sheets are sensitive documents which we have protected from disclosure in the past," said a Secret Service letter that recounted discussions in late 1995 with federal prosecutors on what evidence would be turned over to defense lawyers.

Lawyers for Nichols say they have never been given the security video, photo disks or internal investigative file referenced in the documents.

The trial judge has threatened to dismiss the death penalty case if evidence was withheld. McVeigh was executed in 2001 on a separate federal conviction. Nichols was sentenced to life in prison on federal charges before being tried by the state this year.

The government has maintained for years that McVeigh parked the Ryder rental truck carrying a massive fertilizer bomb outside the Murrah building and left alone in a getaway car he parked around the corner. The bombing killed more than 160 people.

The only video prosecutors introduced at trial showed the Ryder truck without any visible passengers as it passed a security camera inside a high-rise apartment building a block away from the Murrah building.

But the Secret Service log reported on April 24 and April 25, 1995, that there was security footage showing the Ryder truck pulling up to the Murrah building. The log does not say where such video came from or who possessed it.

A log entry on April 25 states that the security footage allowed agents to determine the time that elapsed between suspects leaving the truck and the explosion.

An entry a day earlier on the same log reported that the security video was consistent with a witness' account that he saw McVeigh's getaway car in the lead before a woman guided the truck to its final parking spot in front of the Murrah building.

"A witness to the explosion named Grossman claimed to have seen a pale yellow Mercury car with a Ryder truck behind it pulling up to the federal building," the log said. The witness "further claimed to have seen a woman on the corner waving to the truck."

A Secret Service agent named McNally "noted that this fact is significant due to the fact that the security video shows the Ryder truck pulling up to the Federal Building and then pausing (7 to 10 seconds) before resuming into the slot in front of the building," the log said. "It is speculated that the woman was signaling the truck when a slot became available."

Defenbaugh said the FBI had talked to several witnesses suggesting two people had left the truck, but prosecutors never introduced the scenario at trial because it couldn't be corroborated. That's why a new security video would be significant, he said.

"It would have taken the investigation in a very specific direction," Defenbaugh said. "Rather than having to go down an eight-lane highway during rush hour, we would have gone down a faster path with just two or four lanes."

Defenbaugh said the FBI kept a log similar to the Secret Service document inside the Oklahoma City investigation command center that might help solve the mystery of the video. Justice officials declined to discuss documents, citing the ongoing Nichols' trial.

In addition to the witness mentioned in the Secret Service document, a woman working in Murrah's Social Security office who was rescued from the rubble and a driver outside the building both reported to the FBI seeing two men leave the truck, according to government documents.

The Secret Service log contained other information about the case — including that McVeigh made 30 calls to an Illinois gun dealer in the months before the attacks to seek dynamite and that the gun dealer subsequently failed a lie detector test. The Secret Service lost six employees in McVeigh's bombing, the single largest loss in agency history.

Nichols' attorneys last week asked the judge to dismiss the case on grounds the government withheld evidence, including the security video footage.

New documents obtained by AP show the Secret Service provided prosecutors other evidence that may not have been provided to defense lawyers, including a file showing the Secret Service agent who reconstructed crucial phone evidence against McVeigh was subjected to an internal affairs investigation and eventually cleared for her conduct in the case.

FBI officials say that file details allegations the agent wrongly collected grand jury-subpoenaed phone information about McVeigh's calls without FBI knowledge, and kept it for weeks while she produced analysis that helped the investigation.

The internal investigation caused complications for prosecutors. They decided it tainted the agent as a witness and they chose instead to hire an outside expert to redo the phone analysis for trial, officials said.

Secret Service spokesman Charles Bopp said the agency did nothing wrong.

"The Secret Service worked cooperatively with the FBI and other federal state and local law enforcement throughout the investigation," Bopp said. "The expertise of the Secret Service on electronic crimes and telecommunications provided unique and timely information to the ongoing investigation."

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