

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

In re: )  
 )  
JESSE C. TRENTADUE, )  
 )  
Plaintiff, )  
 )  
vs. ) Case No. 2:08-CV-00788  
 )  
UNITED STATES CENTRAL )  
INTELLIGENCE AGENCY, )  
FEDERAL BUREAU OF )  
INVESTIGATION, et al., )  
 )  
Defendants. )  
 )  
\_\_\_\_\_ )

BEFORE THE HONORABLE CLARK WADDOUPS

July 30, 2014

Transcript of Bench Trial

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351 South West Temple  
8.430 U.S. Courthouse  
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Salt Lake City, Utah, July 30, 2014

\* \* \* \*

THE COURT: Good morning. We're back in session in  
Trentadue versus the FBI. Counsel and parties are present.

Mr. Trentadue, you may proceed.

MR. TRENTADUE: I would like to call our first witness by video conferencing, Your Honor. It will be Ms. Coverdale from Oklahoma City, Oklahoma.

THE COURT: And Ms. Coverdale is appearing by video conference. If we could place her under oath.

THE CLERK: Ms. Coverdale, will you please raise your right hand. Can you hear me?

JANNIE COVERDALE,

called as a witness at the request of the Plaintiff,  
having been first duly sworn, was examined  
and testified as follows:

THE WITNESS: I do.

**DIRECT EXAMINATION**

BY MR. TRENTADUE:

Q. Good morning, Ms. Coverdale. Can you hear me okay?

A. Yes.

THE COURT: Could we have Ms. Coverdale spell and tell us her name and spell her name.

Q. (By Mr. Trentadue) Ms. Coverdale, would you

1 state your name for the record and spell it?

2 A. Jannie Coverdale, J-A-N-N-I-E C-O-V-E-R-D-A-L-E.

3 Q. And where do you now live, ma'am? Can you hear  
4 me?

5 A. Yes.

6 Q. Where do you reside now?

7 A. I live in Oklahoma City. I live at 2139  
8 Southwest 48th Street in Oklahoma City.

9 Q. And do you work?

10 A. Yes, I do.

11 Q. Where are you employed?

12 A. I work for Methodist Church Foundation where we  
13 help poor people.

14 Q. And were you living in Oklahoma City in 1995?

15 A. Yes, I was.

16 Q. And in April of 1995, where did you live, ma'am?

17 A. I lived in the Regency Tower Apartments at 333  
18 Northwest Fifth Street.

19 Q. And did anyone live there with you?

20 A. Yes. My two little grandsons. I had custody of  
21 them. One was named Aaron Coverdale, he was five years old;  
22 the other one was Elijah Coverdale, he was two years old.

23 Q. And did you work then?

24 A. Yes, I did. I worked for the Oklahoma County  
25 Assessors Office.

1                   Q.     And while you worked, what childcare arrangements  
2     did you have for your grandsons?

3                   A.     My grandsons were in the daycare center in the  
4     Murrah Federal Building.

5                   Q.     What was your routine about transporting them to  
6     the daycare center when you went to work?

7                   A.     I lived about a block from the federal building.  
8     So we would get up in the morning and we would walk to the  
9     federal building and I would drop them off at the daycare  
10    center.

11                  MR. TRENTADUE: I have an exhibit I would like to show  
12    the witness if I could, Your Honor.

13                  THE COURT: You may.

14                  MR. TRENTADUE: It is on my screen. I don't know how  
15    -- can you see an exhibit, Ms. Coverdale?

16                  THE WITNESS: No, I can't. Now I do.

17                  Q.     (By Mr. Trentadue) Now you do?

18                  A.     Yes.

19                  Q.     Now, before you testified today, I believe I sent  
20    you Exhibit 32, did I say you were going to be asked about?

21                  A.     Yes.

22                  Q.     And you have looked at this photograph before,  
23    haven't you?

24                  A.     Yes.

25                  Q.     And in the background this building, what is that

1 building?

2 A. That is the Regency Towers. That is where I  
3 lived.

4 Q. And this building (indicating)?

5 A. That was the Murrah Federal Building.

6 Q. And when you walked -- do you recognize this as  
7 being the scene of the Murrah Building after the bombing?

8 A. Yes.

9 Q. I no longer need the exhibit. When you walked  
10 your grandsons every morning to the daycare center, did you  
11 observe any surveillance cameras?

12 A. Yes. At the Regency we had two surveillance  
13 cameras in the lobby, one facing Fifth Street, one facing  
14 the elevators, there was another camera on the fifth floor  
15 of the Regency that was facing Fifth Street but more like  
16 toward the federal building. And there was one on the roof  
17 of the building that was also facing Fifth Street.

18 Q. And when you walked your grandsons to the daycare  
19 center every morning, would you walk under that surveillance  
20 camera?

21 A. Yes.

22 Q. Did you see your grandsons alive after  
23 April 19th, 1995?

24 A. I never saw my grandsons after I dropped them off  
25 that morning.

1 Q. Do you know a man named Jon Hersley?

2 A. Yes.

3 Q. Who is he?

4 A. He is a special -- he was a special agent for the  
5 FBI.

6 Q. Do you know him personally?

7 A. I thought so. I talked to him quite a bit in  
8 Denver and in Oklahoma City.

9 Q. And when you say in Denver, what were you talking  
10 to him -- why were you in Denver?

11 A. I was in Denver for the hearings and the trials  
12 for Timothy McVeigh and Terry Nichols.

13 Q. Did you ever ask Agent Hersley about the others  
14 involved in the bombing?

15 A. Yes, sir, I did.

16 Q. What did you say to him?

17 A. I asked him wasn't there other people involved in  
18 the bombing? And he said we think so and we are looking for  
19 him.

20 MR. TRENTADUE: No further questions, Your Honor.

21 Thank you, ma'am.

22 THE COURT: Cross-examination?

23 MR. SIPLE: Yes, Your Honor.

24 //

25 **CROSS-EXAMINATION**

1 BY MR. SIPLE:

2 Q. Good morning, Ms. Coverdale. Can you see me and  
3 hear me?

4 A. I can see you. I don't hear you too well.

5 Q. Okay. Can you hear me better now, Ms. Coverdale?

6 A. Yes, I can.

7 Q. Okay. Just a couple of questions about where  
8 you're testifying from, your location. Do you -- is anyone  
9 in the room with you right now?

10 A. No.

11 Q. Do you have any notes or papers with you right  
12 now?

13 A. No.

14 Q. Thank you. You testified about the locations of  
15 cameras on your building. Do you know if tapes were  
16 collected from those cameras by the FBI?

17 A. I was in the store at the Regency one day talking  
18 to Danny Wilkinson who owned the store, it was on the first  
19 floor of the Regency, and an FBI agent and a policeman came  
20 through the store. I knew the policeman, I cannot remember  
21 his name, and he told me that they were going up to the  
22 fifth floor to view the tapes that were taken the morning of  
23 the bombing.

24 Q. And do you remember when this conversation  
25 occurred?

1                   A. It was at least -- it was after six months of the  
2 bombing because I lived in a motel room for six months after  
3 the bombing and I had moved back home.

4                   Q. Okay. So this was a conversation relayed to you  
5 six months after the bombing; is that correct?

6                   A. Yes, they were coming to view the tapes.

7                   Q. Okay. And who was the person that told you, that  
8 was unclear to me?

9                   A. He was a police officer and I cannot remember his  
10 name.

11                  Q. Do you know what police force he actually worked  
12 for?

13                  A. Oklahoma City Police Department.

14                  Q. He wasn't with the FBI?

15                  A. He was with somebody with the FBI.

16                  Q. Did he tell you who that person was?

17                  A. No, he didn't.

18                  Q. So you don't know personally whether those tapes  
19 were actually collected from your building, do you,  
20 Ms. Coverdale?

21                  A. No, I don't.

22                  Q. Let's just -- if tapes were collected, would you  
23 have any information as to where those tapes might be today?

24                  A. No, I don't.

25                  Q. Ms. Coverdale, do you have any of your own

1           theories about the Oklahoma City bombing, what happened that  
2           day?

3           A.     Yes.   Yes, I do.

4           Q.     And what is your theory?

5           A.     My theory is that Timothy McVeigh was not by  
6           himself the morning of the bombing because I have talked to  
7           other people that saw Tim that morning and he was not in  
8           that Ryder Truck alone.  And somebody moved Timothy  
9           McVeigh's car from that parking lot.  Because if they  
10          hadn't, that car would have burned up.

11           Q.     What is your basis for this -- for this theory  
12          that you have?  Why do you believe that?

13           A.     It is common sense.  When I got up to the federal  
14          building that morning about five minutes after I heard the  
15          explosion, all of the cars were on fire.

16           Q.     Do you think that the FBI is any way responsible  
17          for the Oklahoma City bombing?

18           A.     I think the FBI has covered up a lot of  
19          information.

20           Q.     Why do you think that?

21           A.     Because Timothy McVeigh was not here alone and  
22          because Timothy McVeigh wasn't smart enough to plan that  
23          bombing and carry it out by himself.

24           Q.     How do you know that about Tim McVeigh?

25           A.     Because I have talked to people that knew Tim

1                   McVeigh.

2                   Q.     Who did you talk to?

3                   A.     One person I talked to was on death row with  
4                   Timothy McVeigh and I asked him if Tim was smart enough to  
5                   plan the bombing and carry it out by himself and he said no.

6                   Q.     You think the FBI is covering up other  
7                   investigations?

8                   A.     I beg your pardon?

9                   Q.     Do you think that the FBI might be covering up  
10                   other investigations other than the Oklahoma City bombing?

11                  A.     Yes.

12                  Q.     What about the 9-11 attacks?

13                  A.     I don't know about them, about that one, but I  
14                  think they are covering up Flight 800.

15                  Q.     What was Flight 800 specifically?

16                  A.     It was the plane crash, some kids were flying  
17                  from New York to Paris, France and the plane crashed, caught  
18                  on fire and crashed. And all of the kids on the plane died.  
19                  It was right after the bombing.

20                  Q.     What is your basis for believing that the FBI is  
21                  covering up with respect to Flight 800?

22                  A.     Because they have never proven to anybody what  
23                  really happened. Just like they have never proven to  
24                  anybody what happened April 19th, 1995.

25                  Q.     Did you actually go to the Oklahoma City bombing

1 site that day down to the Murrah Building area April 19th?

2 A. Yes, sir. Yes, I did. I was up there no later  
3 than seven minutes after I heard the explosion. I worked  
4 two and a half blocks from the federal building.

5 Q. Okay. And you said you thought you knew Agent  
6 Hersley; is that correct?

7 A. Yes.

8 Q. Why I think you actually used the word I thought  
9 I knew him. Why did you characterize it that way?

10 A. Because nobody has really told us what happened  
11 on April 19th, 1995. And I still believe there is some  
12 guilty people walking the streets.

13 Q. When did you -- I am unclear when this  
14 conversation occurred with Mr. Hersley that you testified  
15 to. When was that?

16 A. It was -- it was while we were in Denver for  
17 Timothy McVeigh's trial. I didn't write the dates and the  
18 times down.

19 Q. And where did it occur? It was during the trial,  
20 but where specifically were you?

21 A. At the federal building where the trial was held.

22 Q. Was it while you were in the courtroom?

23 A. No, I talked to him outside of the courthouse.

24 Q. I want to ask you more about the cameras you  
25 talked about in your building, Ms. Coverdale. Are you --

1 did you ever look at the -- did you see any footage from  
2 those tapes at any time like the film?

3 A. I saw -- I saw the one of the -- of Terry Nichols  
4 driving up Fifth Street that Easter Sunday night when he  
5 came down here to pick up Tim. I saw the one of Tim on  
6 April 19th, 1995, when Tim parked the Ryder Truck across the  
7 street from the Regency, he got out of the truck and walked  
8 to the back of the truck and did something.

9 Q. Where?

10 A. Those --

11 Q. I'm sorry.

12 A. -- those were taken from the lobby of the  
13 Regency.

14 Q. And where did you see those films?

15 A. On TV and in the newspaper.

16 Q. Okay, thank you. With respect to what those  
17 cameras showed, do you know if those cameras that you  
18 testified to what the particular angles were in terms of  
19 what they were positioned to capture?

20 A. The one in the lobby was facing Fifth Street.  
21 The Regency and the Federal Building was on Fifth Street.  
22 The one on the fifth floor was Fifth Street and was facing  
23 Fifth Street but in a different angle. And the one up on  
24 the roof was the same way.

25 Q. Do you know if maybe they had rotating camera

1           angles meaning they might switch to different pictures over  
2           time and shoot?

3           A.    I don't know that.

4           Q.    Do you know how those cameras actually operated?

5           A.    I don't know anything about cameras.  No, I  
6           don't.

7           Q.    Have you ever heard the term dummy camera?

8           A.    No.

9           MR. SIPLE:  I have no further questions.  But Your  
10          Honor, I would like to move to strike this witness's  
11          testimony for lack of foundation.  She has no personal  
12          knowledge about where these tapes might be likely be found,  
13          she doesn't really know any specific information about the  
14          cameras and I just don't think it is relevant to a question  
15          of the FBI search for records in this case.

16          THE COURT:  The motion to strike is denied.  You can  
17          argue the weight that should be given to the testimony when  
18          I give you the opportunity to make argument.  Redirect?

19          MR. TRENTADUE:  No redirect, sir.

20          THE COURT:  Thank you, Ms. Coverdale.  You are now  
21          excused.  We appreciate you taking the time to give us your  
22          testimony.

23          THE WITNESS:  Thank you.

24          MR. TRENTADUE:  Thank you, ma'am.

25          THE COURT:  You may call your next witness.

1 MR. TRENTADUE: Don Browning.

2 THE WITNESS: He wants Don. Don, they're calling you.

3 (Brief pause in proceedings.)

4 UNIDENTIFIED SPEAKER: Just have a seat right there  
5 and they'll be talking to you here, all right?

6 THE WITNESS: Uh-huh (affirmative).

7 THE CLERK: Mr. Browning, can you hear me and see me?

8 THE WITNESS: Um, real weak.

9 THE CLERK: How is that? Is that better?

10 THE WITNESS: Better, uh-huh.

11 THE CLERK: Please raise your right hand.

12 **DONALD RAY BROWNING,**

13 called as a witness at the request of the Plaintiff,

14 having been first duly sworn, was examined

15 and testified as follows:

16 THE WITNESS: So help me God.

17 **DIRECT EXAMINATION**

18 BY MR. TRENTADUE:

19 Q. Good morning, Mr. Browning. Can you hear me  
20 okay?

21 A. Yes, sir.

22 Q. If we could have the exhibit down I'll put  
23 another one up in a minute. I can change exhibits on this  
24 one right now? We can leave it up if I can switch them that  
25 will be fine.

1                   Mr. Browning, would you state --

2                   A.     Yes, sir.

3                   Q.     Would you state and spell your name for the  
4 record, please?

5                   A.     Yes, sir. My name is Donald Ray Browning, last  
6 name spelled B as in boy, R as in Robert, O as in Oscar, W  
7 as in William, N as in near, I as in India, N as near, and G  
8 as in gulf.

9                   Q.     Did you grow up in Oklahoma, sir? Did you grow  
10 up in Oklahoma?

11                  A.     Yes, sir, I did.

12                  Q.     And --

13                  A.     In Choctaw, Oklahoma.

14                  Q.     I am speaking over you. I'll stop doing that.  
15 Did you go to -- did you graduate from high school?

16                  A.     Yes, sir, I did.

17                  Q.     And what did you do after high school?

18                  A.     I attended a year at Oklahoma State University.

19                  Q.     What did you do after that?

20                  A.     The summer after that I joined the Marine Corp.

21                  Q.     What year was that?

22                  A.     1967, July of 1967.

23                  Q.     What division did you serve in? Could you hear  
24 me, sir? Mr. Browning?

25                  A.     Yes, sir.

1                   Q. You joined the Marine Corp, did you serve in any  
2 particular division?

3                   A. Yes, sir. I spent two years basically with the  
4 first battalion 7th Marines in Vietnam.

5                   Q. When you came back from Vietnam, what did you do  
6 for work?

7                   A. When I first came back, it was really hard to  
8 find a job. I started at a grocery store sacking groceries  
9 that paid a dollar ten an hour. I found another job that  
10 paid two dollars an hour, I was putting false brick on  
11 facias of buildings, and then hired on with the police  
12 department in February of '71.

13                  Q. Which police department were you hired by? Which  
14 police department, sir?

15                  A. Oklahoma City Police Department.

16                  Q. And in the 1990s, were you still with the  
17 Oklahoma City Police Department?

18                  A. Yes, sir, I was.

19                  Q. And what position did you have with the Oklahoma  
20 City police office?

21                  A. Actually, during that time frame I had two  
22 different jobs. Beginning in the early '90s, I was assigned  
23 to the solo motorcycle unit. In 1993, I transferred to the  
24 K9 unit which I had been in the K9 unit previously.

25                  Q. And by K9 unit you had a dog?

1                   A. Yes, sir.

2                   Q. And your dog's name was what?

3                   A. His name was Gunny, G-U-N-N-Y.

4                   Q. Now, you mentioned you were a motorcycle patrol  
5                   officer?

6                   A. Yes, sir.

7                   Q. And did part of your duties as a motorcycle  
8                   patrol officer include providing security for federal  
9                   officials visiting Oklahoma?

10                  A. Yes, sir, it did.

11                  Q. And did that require you to work with the secret  
12                  service?

13                  A. Yes, sir, um, depending upon the ranking of the  
14                  dignitary, if it was a high ranking dignitary then we dealt  
15                  with secret service and other federal agencies that were  
16                  assisting with the protection and procession control and  
17                  destinations.

18                  Q. Now, as part of this plan of providing protection  
19                  to the -- first of all let me ask you, where was the secret  
20                  service office located?

21                  A. At that time it was in the A.P. Murrah Building.

22                  Q. And did the secret service ever give you a tour  
23                  or review of the surveillance system in the Murrah Building?

24                  A. Yes, sir. A couple of different occasions they  
25                  showed us some of the weaponry that they had to assist in

1                   the protection of the dignitary, and then they also did kind  
2                   of a tour of that general area and showed us the security  
3                   equipment.

4                   Q.     Would that include security cameras?

5                   A.     Yes, sir, it did.

6                   Q.     Surveillance cameras?

7                   A.     Yes, sir.

8                   Q.     Did they point out to you the external cameras on  
9                   the Murrah Building?

10                  A.     Not as far as on the north side. They did point  
11                  out a camera on the south side of the building.

12                  Q.     Did you observe cameras around the building as  
13                  part of this provided protection for federal officials?

14                  A.     Yes, sir. I was through that area usually  
15                  several times through the day and the cameras on the north  
16                  side of the building were very noticeable.

17                  Q.     Now you remember the morning of April 19th, 1995?

18                  A.     Yes, sir, I do.

19                  Q.     What were you doing before the Murrah Building  
20                  was destroyed?

21                  A.     I was home that was the evening that we were  
22                  going to do train Wednesday night, so I had slept in trying  
23                  to prepare for that all night shift Wednesday evening.

24                  Q.     And did you, sometime that morning, go to the  
25                  scene of the bombing?

1                   A. Yes, sir. Apparently, I felt it at our residence  
2                   enough that it woke me up and I got up, looked around, and  
3                   just moments later the phone began ringing and it was the  
4                   dispatcher call wanting me to respond to the Murrah  
5                   Building.

6                   Q. Did you take your dog Gunny with you?

7                   A. Yes, sir, I did.

8                   Q. What did you see when you arrived at the Murrah  
9                   Building?

10                  A. A lot of debris, cars were still smoking, there  
11                  was no fire visible, of course several fire units and other  
12                  police units were on the scene already along with numerous  
13                  ambulances.

14                  Q. Once you got to the scene, did you undertake any  
15                  effort to help victims?

16                  A. Yes, sir. Initially I started through the north  
17                  corner of the building, I'm sorry, the northeast corner of  
18                  the building. I had parked my unit at the intersection of  
19                  Fifth and Robinson. Um, saw that at that point the dog  
20                  really was not going to be real beneficial as far as  
21                  immediate search work, put him back in the car, and then  
22                  assisted people as they were either leaving the building or  
23                  trying to walk out of the debris.

24                  Q. Did you find anyone trapped in the building?

25                  A. I'm sorry, sir, I did not hear you.

1 Q. Did you find anyone trapped in the building?

2 A. Yes, sir.

3 Q. Did you make any effort -- first of all who was  
4 this person, if you know?

5 A. Um, her name was Dana Bradley. I did not  
6 actually find her, but I was assisting in trying to help  
7 extricate her from the building.

8 Q. And how was she trapped?

9 A. There was a large beam probably about three feet  
10 by four feet that had collapsed and pinned her leg  
11 underneath it.

12 Q. Now, were you interrupted in your efforts to help  
13 Ms. Bradley?

14 A. Yes, sir. I was ordered by a federal marshal or  
15 U.S. Marshal to leave the area, that we were not authorized  
16 and were not needed at that point.

17 Q. Did you -- subsequently you left the area, you  
18 left Ms. Bradley in the building, you're standing outside?

19 A. Yes, sir.

20 Q. Did you subsequently hear from the FBI why you  
21 were forced out of the building?

22 MR. SIPPLE: Objection.

23 THE WITNESS: Yes, sir.

24 MR. SIPPLE: I think he mentioned marshal service. I  
25 didn't hear FBI.

1                   MR. TRENTADUE: Okay. Excuse me, misstatement.

2                   Q. (By Mr. Trentadue) Did you eventually hear why  
3                   you were forced out of the building?

4                   A. Yes, sir, we did.

5                   Q. And what were you told and who were you told it  
6                   by?

7                   A. We were told by a female, a white Caucasian  
8                   female, wearing an FBI rain jacket, had reasonably long hair  
9                   in a pony tail. We were advised that there were files so  
10                   critical to the government that there would be no recovery  
11                   effort. We were to stand our ground on the courtyard of the  
12                   Murrah Building, on the south side of the Murrah Building,  
13                   and they would let us know when we would be allowed back  
14                   into the building.

15                   Q. Now, prior to testifying today, sir, I sent you  
16                   some exhibits to look at, didn't I?

17                   A. Yes, sir, you did.

18                   Q. And I want to talk about the exhibits and they  
19                   would be -- one contained some photographs let's see if I  
20                   can get it up on the screen quickly. I just want you to  
21                   identify them.

22                   A. Okay, sir.

23                   Q. Can you see that photograph?

24                   A. Yes, sir.

25                   Q. Do you recognize that photograph?

1                   A. Yes, sir, I do. That is the northwest corner of  
2 the Murrah Building.

3                   Q. And do you know when that photograph was taken?

4                   A. Not for sure, but by the debris it had to be  
5 early in the morning of the first day.

6                   Q. And do you know who took that photograph?

7                   A. I am not for sure on that. I am assuming that it  
8 was from Melvin Sumter which was the forensic deputy for the  
9 Oklahoma County Sheriff's Department.

10                  THE COURT: Mr. Trentadue, could you identify the  
11 exhibit number so that the record is clear?

12                  MR. TRENTADUE: It is Exhibit 20, photograph A that is  
13 attached to it. I'm sorry, Your Honor.

14                  Q. (By Mr. Trentadue) Now circled up in the right  
15 hand corner there is an object. What is that object, sir?

16                  A. That is one of the surveillance cameras.

17                  Q. And you remember seeing that camera there that  
18 morning?

19                  A. Yes, sir.

20                  Q. Now, positioned by that camera is a ladder?

21                  A. Yes, sir.

22                  Q. Do you remember that ladder being there?

23                  A. Yes, sir, I do.

24                  Q. Did you see anyone remove that camera that  
25 morning?

1                   A. Not that particular camera, sir. We were on the  
2                   south side like I said staged in the courtyard. I did not  
3                   see that camera removed. I did see cameras on the south  
4                   side of the building removed.

5                   Q. And explain to the court what you saw in terms of  
6                   being removed. Who removed them?

7                   A. There was three or four men wearing FBI rain  
8                   jackets using that extension ladder and they were removing  
9                   not only the camera but the bracketing and a good distance  
10                   of the wiring.

11                  Q. Fair to say they were removing all evidence of  
12                  the camera having been there?

13                  A. Yes, sir.

14                  Q. And I want to show you one last photograph.  
15                  Again, you recognize this photograph, it is Exhibit C to  
16                  Exhibit 20, attachment C to Exhibit 20?

17                  A. Yes, sir, I recognize the photo.

18                  Q. Who do you recognize? Do you recognize the  
19                  person in the background?

20                  A. Um, no, sir I don't know him personally, um,  
21                  however he was wearing an OSBI or Oklahoma State Bureau of  
22                  Investigation rain jacket.

23                  Q. And if we look in the background, there is a  
24                  later picture, let's see if I can do a better job of it, of  
25                  the one I had shown you earlier with a camera. Do you see

1 the camera there?

2 A. No, sir, it is gone.

3 MR. TRENTADUE: No further questions of this witness,  
4 Your Honor.

5 THE COURT: Cross-examination?

6 MR. SIPLE: Yes, Your Honor.

7 **CROSS-EXAMINATION**

8 BY MR. SIPLE:

9 Q. Hi, Mr. Browning, can you hear me okay?

10 A. Good morning, sir.

11 Q. I just want to ask you some -- I want to ask you  
12 some questions about where you're testifying from. Do you  
13 have any -- is anyone in that room with you today?

14 A. No, sir, there is not.

15 Q. Do you have any notes with you?

16 A. No, sir, I do not.

17 Q. Okay. Mr. Browning, if there were actually film  
18 recovered from those cameras, you would know -- you would  
19 have no idea where that film might be today, would you?

20 A. No, sir, I would not.

21 Q. I want to understand the testimony that you gave  
22 earlier. So your testimony is that a female in an FBI  
23 jacket came in and prevented you from being in the area  
24 while survivors were being rescued -- is your testimony  
25 that --

1 (Whereupon, the reporter slowed Mr. Siple down.)

2 THE WITNESS: Yes, sir, we were.

3 THE COURT: Let me ask you to stop for just a minute.

4 We have lost the image. Okay. Now we have got it back.

5 You may go ahead.

6 Q. (By Mr. Trentadue) So you testified that a  
7 female in an FBI jacket came into the area and stopped,  
8 prevented you, made you leave the area, preventing you from  
9 rescuing others so that in your words critical files could  
10 be recovered. Is that -- is that correct?

11 A. Yes, sir. That is that is exactly what she told  
12 us.

13 Q. Do you know who this person was? Name?

14 A. I have no idea, sir.

15 Q. And what is your basis for concluding that she  
16 was with the FBI?

17 A. She was wearing an FBI rain jacket, um, there was  
18 several FBI agents in the area all dressed with that rain  
19 jacket. I just made the assumption that she was an FBI  
20 agent.

21 Q. If I was prevented from rescuing people who were  
22 potentially in harms way I would be pretty upset about that.  
23 Were you?

24 A. Yes, sir, extremely upset.

25 Q. Did you report this to anyone at the time?

1                   A. Well, there wasn't anybody to report it to. It  
2                   wasn't just myself and my dog, there was a large crowd.

3                   Q. So the answer is no, you didn't report this to  
4                   anybody and said that seemed wrong?

5                   A. No, sir.

6                   Q. Thank you.

7                   A. No, sir.

8                   Q. If you were at the scene then surely you must  
9                   have saw FBI agents helping rescue people?

10                  (Whereupon, the reporter slowed Mr. Siple down.)

11                  THE WITNESS: Not from that advantage point, no, sir,  
12                  I did not.

13                  Q. (By Mr. Siple) You didn't see any FBI agents  
14                  going into the building and recusing survivors?

15                  A. I knew there was FBI agents in the building. I  
16                  could -- you could see them moving about. I can't say what  
17                  they were doing.

18                  Q. Did you ever work for the FBI in any capacity,  
19                  Mr. Browning?

20                  A. No, sir.

21                  Q. Let me ask you about the tours of the building.  
22                  When was the last time you toured the Murrah Building prior  
23                  to the bombing?

24                  A. I think it was probably '91 or early '92. It was  
25                  the last time I ran dignitary escort when I was on motors.

1                   Q.    Last time you were in the Murrah Building for a  
2 tour was 1991 or 1992; is that correct?

3                   A.    Yes, sir, that is correct.

4                   Q.    And you saw cameras at that time, you got to see  
5 cameras?

6                   A.    Yes, sir.

7                   Q.    You don't know how many cameras were on the  
8 Murrah Building, do you, Mr. Browning?

9                   A.    No, sir. There were two that was very noticeable  
10 on the north side. And like I said that morning of the  
11 explosion, I could see a camera on the south side of the  
12 building that was still mounted to the building.

13                  Q.    All right. And because your last tour of the  
14 Murrah Building was 1991 or 1992, Mr. Browning, you have no  
15 way of knowing, do you, whether those cameras were  
16 operational on April 1995, do you?

17                  A.    No, sir. There is no way that I would know  
18 whether they were operational or not.

19                  Q.    And you would have no way of knowing whether  
20 those cameras actually stored video, do you, Mr. Browning?

21                  A.    I know at the time of the escorts that they did  
22 -- those were recorded and stored.

23                  Q.    And how did you know that?

24                  A.    Due to the tour they provided us relative to  
25 Murrah Building and of the Federal Protection Agencies area

1 in the federal building.

2 Q. So someone pointed -- your testimony is someone  
3 pointed out there was a place where video was stored; is  
4 that right?

5 A. There was a place, they pointed out a place where  
6 there were numerous recorders and monitors being audited by  
7 a couple of different gentlemen that were in the area.

8 Q. And this is on the tour in 1991 and 1992;  
9 correct?

10 A. Yes, sir. Yes, sir, that is true. That is  
11 correct.

12 Q. Did you actually participate in the Oklahoma City  
13 bombing investigation, Mr. Browning?

14 A. I'm sorry, sir, I didn't hear your question.

15 Q. I'm sorry, I'll repeat. Mr. Browning, did you  
16 actually participate in the Oklahoma City bombing  
17 investigation in any way?

18 A. Not in the investigation itself, didn't work  
19 strictly to the recovery and rescue of victims.

20 Q. So you have no way of -- you have no idea what  
21 evidence was recovered as part of the investigation, do you,  
22 Mr. Browning?

23 A. No, sir, other than that information or evidence  
24 that involved victims of the explosion.

25 Q. Okay. So just so we're clear, you have knowledge

1 of information about the victims?

2 A. Yes, sir.

3 Q. But you don't know about the actual evidence the  
4 FBI collected as part of the investigation, do you,  
5 Mr. Browning?

6 A. No, sir, I do not.

7 Q. Have you ever read any books about the Oklahoma  
8 City bombing investigation, Mr. Browning?

9 A. I have not read anything thoroughly though I have  
10 seen books and have breezed through some of them, but have  
11 not read a book in its entirety on it.

12 Q. Have you read anything by Roger Charles about the  
13 Oklahoma City bombing, Mr. Browning?

14 A. No, sir, not that I recall.

15 Q. Are you at all familiar with Mr. Charles'  
16 conclusions regarding the cameras at the Murrah Building?

17 A. Not his personal conclusions, no, sir.

18 Q. Did you provide a declaration in this case,  
19 Mr. Browning, prior to this trial, a written declaration for  
20 the court?

21 A. Yes, sir, I did.

22 Q. And when did you submit that declaration?

23 A. It has been about four years ago, four or  
24 five years ago.

25 Q. Thank you. So four or five years ago, so that is

1                   about -- you submitted this declaration about 15 years after  
2                   the events you're testifying to here today; is that correct?

3                   A.     Yes, sir, that is correct.

4                   MR. SIPLE: No further questions, Your Honor. But I  
5                   would move to strike this witness's testimony lack of  
6                   foundation, personal knowledge. The last time he was in the  
7                   Murrah Building, by his own testimony, was 1991 or 1992.  
8                   There is no relevance to -- he has no information pertaining  
9                   to the likely locations where the FBI could search for these  
10                   cameras and so we would move to strike his testimony in its  
11                   entirety.

12                   THE COURT: The motion is denied. Again, you can  
13                   argue the weight that should be given to the testimony when  
14                   you are given that opportunity.

15                   MS. WYER: Thank you, Your Honor.

16                   THE COURT: Mr. Trentadue, any redirect?

17                   MR. TRENTADUE: No redirect.

18                   THE COURT: Thank you, Mr. Browning, for your  
19                   testimony. We appreciate it. You're now excused. Thank  
20                   you.

21                   THE WITNESS: Thank you. Thank you, sir.

22                   MR. TRENTADUE: Next call Joe Cooley.

23                   THE WITNESS: Thank you so much.

24                   THE CLERK: Mr. Cooley, can you hear me and see me?

25                   THE WITNESS: Yes, I can.

1                   THE CLERK: Will you please raise your right hand.

2                   THE WITNESS: Sure.

3                   **JOE BRADFORD COOLEY,**

4                   called as a witness at the request of the Plaintiff,

5                   having been first duly sworn, was examined

6                   and testified as follows:

7                   THE WITNESS: I do.

8                   **DIRECT EXAMINATION**

9                   BY MR. TRENTADUE:

10                  Q. Mr. Cooley, my name is Jesse Trentadue. I am  
11                  going to be the first to examine you, sir. Would you state  
12                  and spell your name for the record?

13                  A. My first name is Joe, J-O-E, middle name is  
14                  Bradford, B-R-A-D-F-O-R-D, and last name is Cooley,  
15                  C-O-O-L-E-Y.

16                  Q. And where do you live, sir?

17                  A. I didn't quite hear that, I'm sorry.

18                  Q. Where do you live?

19                  A. Oklahoma City.

20                  Q. And how long have you lived in Oklahoma City?

21                  A. About 30 years.

22                  Q. In the spring of 1995, were you employed?

23                  A. I was.

24                  Q. And who were you employed by?

25                  A. I had two jobs. The first was with the CIT Group

1                   Sales Financing, the other was Profile International  
2                   Security Services.

3                   Q.     And what was Profile International Security  
4                   Services?

5                   A.     It was an 8(a) Minority-Owned company that did  
6                   private investigative work and provided security services.

7                   Q.     And what position did you hold with PFI?

8                   A.     I was a private investigator and a security  
9                   supervisor.

10                  Q.     And as part of your position with PFI, did you  
11                  ever have occasion to tour the Murrah Building's  
12                  surveillance system?

13                  A.     I did.

14                  Q.     And in what context did you do that?

15                  A.     We were bidding the contract to provide security  
16                  for that building.

17                  Q.     And did you go to the building to view the system  
18                  in order to prepare the bid?

19                  A.     I did.

20                  Q.     And did you tour the building and the security  
21                  system?

22                  A.     I did.

23                  Q.     Did you observe the existence of exterior  
24                  surveillance cameras?

25                  A.     I did.

1                   Q.     And did you notice if there was -- was there a  
2                   monitor where you could see these cameras actually showing  
3                   the front of the building?

4                   A.     Yes.

5                   Q.     And can you remember the timeframe this occurred?

6                   A.     When you say timeframe, are you talking about the  
7                   time of day?

8                   Q.     No, the date, the period of time. Was it  
9                   obviously before the bombing?

10                  A.     Yes.

11                  Q.     How much?

12                  A.     It was -- I would guesstimate around three,  
13                  four months, something like that.

14                  Q.     Okay. And did you have contact with anyone in  
15                  terms of getting information about the system?

16                  A.     I did.

17                  Q.     And who was that?

18                  A.     That was Mr. Tom Hunt.

19                  Q.     And who was Mr. Hunt?

20                  A.     Mr. Hunt was employed by the Federal Protective  
21                  Services who was in charge of the building, security for the  
22                  building.

23                  Q.     Okay. Does Mr. Hunt still live in Oklahoma City?

24                  A.     He does.

25                  MR. TRENTADUE: No further questions of the witness,

1 Your Honor.

2 THE COURT: Cross-examination?

3 MR. SIPLE: Yes, Your Honor.

4 **CROSS EXAMINATION**

5 BY MR. SIPLE:

6 Q. Good morning, Mr. Cooley. Can you hear me?

7 A. Good morning, sir. Yes, sir.

8 Q. I would like to ask you some questions about the  
9 location that you're testifying from. Is anyone in the room  
10 with you there today?

11 A. No, sir, I am here by myself.

12 Q. Do you have any notes in the room with you?

13 A. I do not.

14 MR. SIPLE: May I step away from the podium for one  
15 moment?

16 THE COURT: You may.

17 Q. (By Mr. Siple) I apologize for that.

18 Mr. Cooley, when was the last time that you were in the  
19 Murrah Building before the bombing?

20 A. It was several weeks, but I don't know  
21 specifically, but it was several weeks before the bombing.

22 Q. Now, if there were tapes from the cameras you  
23 mentioned from the bombing, you wouldn't have any  
24 information where those tapes might be today, would you?

25 A. No.

1                   Q.    And you have no idea whether those cameras were  
2    actually functioning on April 19th, 1995, do you?

3                   A.    No, I do not.

4                   Q.    Can you tell me about this bid that you were  
5    putting on the building? What did that concern? What were  
6    you looking to do?

7                   A.    We were trying to get the contract to provide  
8    security services for the Murrah Building.

9                   Q.    And you met with Mr. Hunt, is that your  
10   testimony, correct?

11                  A.    That is correct.

12                  Q.    And what was Mr. Hunt's position?

13                  A.    He was working for the Federal Protective  
14   Services.

15                  Q.    And you met with Mr. Hunt prior to that? Prior  
16   to this meeting where you were working you were on the bid?

17                  A.    Um, no.

18                  Q.    Do you know how many cameras were on the Murrah  
19   Building?

20                  A.    I can't recall the exact number on the building,  
21   no.

22                  Q.    You don't know how many cameras were on the  
23   Murrah Building, do you?

24                  A.    Um, no, I do not.

25                  Q.    Did you submit a declaration in this case? Do

1                   you remember submitting a declaration in this case prior to  
2                   trial?

3                   A.     I do.

4                   Q.     Do you know when you submitted that declaration?

5                   A.     I don't recall the exact date of that. As I  
6                   said, I don't have any paperwork here with me.

7                   Q.     Okay. Does February 2010 sound about right?

8                   A.     Um, I guess that could be, yes.

9                   Q.     So it is fair to say your declaration you  
10                  submitted for this case is approximately 15 years after the  
11                  events you have described here today; is that correct?

12                  A.     That would be correct.

13                  Q.     Have you done any reading or research on your own  
14                  about the Oklahoma City bombing?

15                  A.     I have.

16                  Q.     And what -- what have you read?

17                  A.     I have read articles that were pulled off the  
18                  internet, and I have -- there were some books, I don't  
19                  recall the names of these it is been a while since I have  
20                  read those.

21                  Q.     Does the name Roger Charles sound familiar to you  
22                  at all?

23                  A.     Roger Charles?

24                  Q.     Yes.

25                  A.     No, I can't say that it does.

1                   Q.    Have you read any of Mr. Charles' conclusions  
2                   about the Oklahoma City bombing?

3                   A.    Not that I can recall.

4                   Q.    When you were putting this bid on the building,  
5                   did you ever have occasion to talk to Mr. Richard Williams,  
6                   Richard Eugene Williams?

7                   A.    Richard. That name does not ring a bell.

8                   Q.    Did you ever have an opportunity to talk to the  
9                   building manager or the director for operations of that  
10                  building?

11                  A.    No, I did not.

12                  Q.    Do you have any personal knowledge of the  
13                  evidence? You don't have any -- excuse me. Strike that.

14                  Mr. Cooley, you don't have any personal knowledge of  
15                  the FBI's investigation of the evidence that it actually  
16                  collected in this case, do you?

17                  A.    No, I do not.

18                  MR. SIPLE: No further questions, Your Honor. But as  
19                  with the other witnesses, I would move to strike this  
20                  witness for lack of foundation. He has no information that  
21                  could lead us to a place where we could search for these  
22                  videotapes. He doesn't have personal knowledge about the  
23                  operation of the videotapes or numbers of cameras, and  
24                  therefore his testimony is totally irrelevant to the facts  
25                  at issue.

THE COURT: Motion is denied. Again, you can argue the weight of the evidence when the appropriate time comes.

Any redirect, Mr. Trentadue?

MR. TRENTADUE: No, sir.

THE COURT: Thank you, Mr. Cooley, for your testimony, and you are excused.

THE WITNESS: Thank you, Your Honor.

MR. TRENTADUE: Recall Mr. Hardy to the stand, Your Honor.

THE COURT: I think you can close the video link now.

DAVID M. HARDY,

recalled as a witness at the request of the Plaintiff,  
having been previously duly sworn  
and testified as follows:

## **DIRECT EXAMINATION**

BY MR. TRENTADUE:

Q. Good morning, Mr. Hardy.

A. Good morning.

Q. And do you have in front of you, sir, Exhibit 70?

A. Yes.

Q. And is that a declaration that you in fact signed?

A. Am I missing -- this looks like a videotape  
ition.

Q. Okay. That is 71, I believe.

1 A. Okay. I don't see it.

2 Q. Perhaps we could remark 70.

3 THE CLERK: Okay yeah I mean I have got one right  
4 here.

5 MR. TRENTADUE: May I approach the witness, Your  
6 Honor?

7 THE COURT: You may.

8 Q. (By Mr. Trentadue) I'll hand you Exhibit 70,  
9 sir?

10 A. Thank you.

11 Q. Take a minute and look at that and tell me if  
12 that is a declaration that you signed?

13 MR. SIPPLE: I'm sorry to interrupt, I want to clarify  
14 the document that we're talking about.

15 MR. TRENTADUE: If you look at the first page it says,  
16 *Trentadue versus Federal Bureau of Investigation, District*  
17 *of Utah case number 04-CV-772, declaration of David M.*  
18 *Hardy.*

19 MR. SIPPLE: Is that Exhibit 70? Is that marked as --  
20 I just have a copy.

21 MR. TRENTADUE: Yes.

22 MR. SIPPLE: Okay.

23 Q. (By Mr. Trentadue) If you turn to the last page  
24 that is your signature, is it not, Mr. Hardy?

25 A. Still working through it, I'll be right there.

1 Yes, that is my signature.

2 Q. And the date of that declaration is what?

3 A. December 9th, 2004.

4 Q. And when you look at Paragraph 20, excuse me,  
5 Paragraph 16 highlighted some language?

6 A. Yes.

7 Q. Would you read that into the record for me,  
8 please.

9 A. "Finally, a search of the CRS indices at FBI  
10 headquarters in the Oklahoma City Field Office, and a search  
11 of the I and S drives at the Oklahoma City Field Office for  
12 a former FBI Director Freeh memorandum dated on or about  
13 January 4th, 1996, revealed that FBI Headquarters in  
14 Oklahoma City Field Office have no records responsive to  
15 plaintiff's request."

16 Q. And you signed that declaration under oath,  
17 didn't you, sir?

18 A. I certainly did.

19 Q. Now, if you could look at -- we talked about your  
20 deposition you had given in is it the Negley case?

21 A. Correct.

22 Q. I think that is up before you. I think that is  
23 Exhibit 71?

24 A. 71, correct.

25 Q. And if could you look at Page 22 and yesterday we

1 talked about -- you signed a lot of declarations in the FOIA  
2 lawsuits, don't you, sir?

3 A. I'm sorry, I am reviewing Page 22.

4 Q. It is the highlighted portion. We'll go through  
5 it right here now with you.

6 A. Well, I would like to put it in context, if I  
7 could.

8 Q. You're more than welcome to do that, sir.

9 A. Okay, I'm ready.

10 Q. Okay. Do you remember in this series of  
11 questions and the answers and the question was, starting at  
12 Line 16 on Page 22, is there a standard declaration that the  
13 FBI uses in FOIA cases? And what was your answer, sir, if  
14 you would read that into the record?

15 A. I'm sorry, what? I didn't catch you, I was  
16 reading.

17 Q. Well the question is, starting at Line 16, is  
18 there a standard declaration that the FBI uses in FOIA  
19 cases? And you give an answer starting on 18. Would you  
20 please read that answer, sir, into the record?

21 A. There is, I would say, an overall template.  
22 Because the routine is separate litigation which we provide  
23 in the courts, but each one, obviously, is tailored for that  
24 particular case. So there is not, if you will, a  
25 boilerplate search paragraph. Each part of it reflects --

1 makes a factual declaration, in fact, reflects what occurred  
2 in a particular case.

3 Q. Next question, okay. I guess what I'm trying to  
4 understand, Mr. Hardy, is what exactly is your role in  
5 preparing or in signing the declarations. Did someone else  
6 draft the declaration?

7 A. The declaration is initially drafted by a  
8 paralegal and worked with the FLU, and then is worked with  
9 the AUSA many times, and then I will be involved in the  
10 drafting as well.

11 Q. Question, okay. What is your involvement in the  
12 drafting?

13 A. I will read it once the initial drafts are made  
14 is the normal rule and then make changes and corrections and  
15 clarifications as I think are needed.

16 Q. Question, okay. But, when you're making changes  
17 or clarifications, are you conducting any of the searches  
18 yourself?

19 A. I don't search.

20 Q. Question, are you reviewing any of the files  
21 yourself? And it goes over on to Page 24.

22 A. Yes, on all the files I review them in order to  
23 make the declaration of the exemptions that are being used.

24 Q. Question, okay. So to be clear, when you say  
25 you're reviewing files, you're reviewing the documents that

1 are being produced or withheld?

2 A. Withheld or have been produced or are at issue  
3 within the declaration at this point.

4 Q. Question, okay. Well, to be clear, though, when  
5 we talk about are at issue, if someone asks for particular  
6 documents and the FBI decides they are not going to produce  
7 them because they are not responsive, do you review those  
8 documents as well?

9 A. In that circumstance I would review it, when you  
10 say documents are nonresponsive, you're talking about a term  
11 of art. If you say there's no record in this docket, then I  
12 will not review the search. If, in fact, there are  
13 documents contained in a release that we say are not  
14 responsive meaning these are within the general area of what  
15 have been requested, then I would look at those documents to  
16 insure that they are not responsive.

17 Q. Did you look at any documents in this case that  
18 you felt were nonresponsive?

19 A. Um, again, let's go through the term of art. The  
20 nonresponsive documents are documents that are withheld in  
21 full or found outside that are part of the release. And I  
22 looked at the release during the course of the process. So  
23 I can't remember exactly what -- actually my memory I am  
24 just not that sharp on exactly what I did. But the bottom  
25 line is, if it is outside of the scope of the request, I

1       wouldn't have looked at it, if it is determined that it  
2       could be. But if it is within the request and responsive  
3       because of its context, but the particular document is not  
4       responsive, then I will look at it because it is going to go  
5       out or we're going to be saying it is not responsive.

6           Q. And you depend upon your trained personnel to  
7       review it for nonresponsiveness?

8           A. Yeah, the process is really we have talked about  
9       two things. One is you have your search and search  
10      identifies a road essentially a set of documents and then I  
11      don't use this term here but we'll commonly call it scoping,  
12      the documents are scoped, meaning that they then undergo a  
13      manual review looking at them to see whether or not  
14      comparing the request because remember you search using  
15      search terms so we're going to get a universe of records  
16      then you further refine that search by using the terms of  
17      the request to see whether or not the documents in question  
18      are responsive.

19           Q. My question is, if the document is determined to  
20      be nonresponsive, you don't make that determination, you  
21      depend upon your trained staff to do that?

22           A. Yes, that is correct.

23           Q. And, of course, if your direct staff don't  
24      receive the documents, then they can't possibly review them  
25      for responsiveness, can they?

1                   A. My direct -- don't review the documents they'll  
2 review the documents before they go out. But as far as the  
3 macro universe of the search, um, if they don't see them,  
4 um, they can report but they definitely can report on other  
5 people screening it which would be driving towards this  
6 case.

7                   Q. Now, if you would look at Exhibit 14, I would  
8 just like you to look at the first page and the last page to  
9 make sure that that is in fact the declaration that you  
10 signed in this case, your Fifth Supplemental Declaration?

11                  A. All right, hold on. I should just look at the  
12 screen. Okay, I'm ready.

13                  Q. And you did sign that declaration, didn't you,  
14 sir?

15                  A. I certainly did.

16                  Q. Now, I want to direct your attention to  
17 Paragraph 14 which is on Page 8.

18                  A. If you could put it on the monitor, please.

19                  Q. You say that at the hearing a question came up as  
20 to how burdensome a search of the S-drive would be. RIDS  
21 personnel, and who are RIDS personnel?

22                  A. These are the people that report to me.

23                  Q. Okay. Believe, and I agree, that a search of  
24 what FBI IT personnel might call S-drives today would be  
25 fruitless because these drives did not exist at the time of

1 the OKBOMB investigation. As explained above, and in  
2 previous declarations, they are therefore not locations  
3 likely to yield records responsive to plaintiff's FOIA  
4 request for OKBOMB videotapes and related information.  
5 Instead, all records related to the OKBOMB investigations  
6 should be in, if we go to the next page, the OKBOMB  
7 warehouse. And then this next sentence you say, however,  
8 should the court order -- consider ordering a search of the  
9 S-drives in use today, we would respectfully submit that it  
10 would be too burden -- it would be so burdensome that a  
11 reasonable estimate of the time necessary to do so is not  
12 available. That is what you represented to the court,  
13 correct, sir?

14 A. Yes.

15 Q. And that was in response to the court's order  
16 saying search the S-drive, search the I-drive and if you  
17 don't, tell me why you don't?

18 A. Correct.

19 Q. And you didn't search it?

20 A. We did not search the S-drives.

21 Q. And that is your explanation as to why you  
22 didn't?

23 A. That is one of the explanations. I talk about it  
24 in a number of places, but yes.

25 Q. And then you were also asked about searching the

1 paper file for the first 14 days following the bombing?

2 A. That is correct.

3 Q. And if you didn't do that search then you were to  
4 tell the court why?

5 A. Correct.

6 Q. And then if we look over on Page 10 Paragraph 18,  
7 starting down about the middle of the Paragraph 18 you refer  
8 to having some conversations. This individual you say  
9 explained to RIDS personnel the difficulties of manually  
10 searching for paper versions of records that were created  
11 during a specific span of time. Due to the fact that not  
12 all papers gathered from outside OCFO, that is the Oklahoma  
13 City Field Office, I take it, have been integrated into the  
14 OCFO paper files but instead are in separate boxes often the  
15 same boxes in which they arrived at the warehouse. And the  
16 fact that none of the material is strictly in chronological  
17 order based on when evidence was collected or reports were  
18 written.

19 Was it your understanding then that this material WAS  
20 just thrown in boxes in the warehouse in Oklahoma City?

21 A. No, that is not what it says. What it -- my  
22 understanding is that the -- is that the documents came in,  
23 they were uploaded into ACS and serialized, but they weren't  
24 serialized in chronological order and their physical custody  
25 is not in I guess what you would call a singular linear file

which is there. So they were not just thrown into boxes when they came in there. They are also, I believe I stated, I would say I can't remember if I stated in a declaration or if I heard it, but it was essentially they looked for duplicates and tried to cull them out. In other words, there was a massive screening process that was going on in the Oklahoma Field Office, Oklahoma City Field Office, so that they were not just thrown in boxes.

Q. But certainly the records from the Oklahoma City Field Office, the serials would be in chronological order, wouldn't they, sir?

A. When you say chronological order they're talking about date chronology and the answer is no. You would think about you could have things written, a 302 written and the agent doesn't get it approved or somebody else gets theirs approved right away, it gets uploaded into the system, the later date is going to be in front of the first date. So the answer is no. And then -- then when you multiply that by things that are being written all over the country and flowing into Oklahoma City Field Office and then put into the Oklahoma City file, I think that it is a fair description to say that they're not in chronological order. They're in serial order, but they are not in chronological order.

MR. TRENTADUE: If I may have a moment, Your Honor, I

1 may be through with this witness.

2 THE COURT: You may take a moment.

3 MR. TRENTADUE: No further questions, Your Honor.

4 THE COURT: I have a follow up question on  
5 Paragraph 18. You refer to an individual without providing  
6 that individual's name, that was the basis for talking to  
7 some other personnel that then gave you the information. Is  
8 that correct?

9 THE WITNESS: Yes, sir.

10 THE COURT: What was the name?

11 THE WITNESS: Mr. Trentadue, could you put that back  
12 up on the screen? I'm sorry, Your Honor.

13 THE COURT: That is fine. My question simply is, what  
14 was the name of the individual who had firsthand knowledge  
15 of the way these materials were organized?

16 THE WITNESS: That is Linda Vernon.

17 THE COURT: And Linda Vernon then talked to someone  
18 else who worked for you. Who was the person she talked to.

19 THE WITNESS: It would have been Monica Mitchell.

20 THE COURT: Thank you. Redirect?

21 MR. SIPPLE: Yes, Your Honor.

22 **CROSS-EXAMINATION**

23 BY MR. SIPPLE:

24 Q. Mr. Hardy, the staff that worked for you like  
25 Monica Mitchell and others, are they trained at how to do

1                   their jobs with respect to FOIA processing?

2                   A.    Yeah.  We have really extensive training program.

3                   When you first come into our section and you come in as GS-7  
4                   which is a grade in the federal service and then you go to  
5                   six weeks of searching school.  In other words, it is a  
6                   school which teaches you how to do the initial processing  
7                   unit functions.  So you -- there is a classroom followed by  
8                   work on the computer and then you take a written exam by the  
9                   time that you are through.  Um, from there then you go to  
10                   the initial processing unit and you have at that point  
11                   essentially six months of supervised training.  Along with  
12                   that we have a certification program in order to be  
13                   certified.  So it takes three -- you have to get through  
14                   three gates.  The first gate is successfully passing the  
15                   course.  The second then is you're under supervision and  
16                   your supervisors are grading your performance for the first  
17                   six months.  If you successfully perform at that level, then  
18                   you show that you can perform all of the functions which  
19                   have been identified as essential functions for an IPU  
20                   specialist, then your supervisor will certify that you are  
21                   essentially ready to fly solo.

22                   At that point then that means your work is reviewed in  
23                   a routine nature, not that no one looks at it, but a routine  
24                   nature as everyone is.  And then as you progress there,  
25                   there becomes a certain point at which you hit a level of

1 expertise. And once recommended by the supervisor, then you  
2 will be at that point recommended for an exam. Then we have  
3 an exam which covers a more complete exam, kind of a quasi  
4 practical written exam that people will take, and then they  
5 will be certified as an Initial Processing Unit Specialist.  
6 That is -- that is the search training. After an individual  
7 does that, and then they perform in initial processing unit  
8 for a while, then they're transferred to either a  
9 classification or a FOIA unit, after going to school again,  
10 in that same process.

11 And to get final certification of WPU and FOIA or  
12 declassification, it takes about three and a half to four  
13 years before we'll certify you. And then at that point you  
14 are -- your work just gets routine reviews.

15 Q. Did you ever in your role as chief of RIDS check  
16 up on the work that your staff is doing with respect to  
17 let's just say searching for records?

18 A. Overall, again, sensitive cases will take a  
19 specific but I mentioned I think at the initial direct that  
20 I routinely do dumpster diving which I try to do two a week.  
21 And dumpster diving is I will go into cases on a random  
22 basis, basically because they peak my interest, or maybe  
23 that they're taking a long time to complete and I want to  
24 know what the heck is going on here. So, um, at that point  
25 I will always start by going in I read the request letter,

1 that is the first thing that I look at, then I go look at  
2 the search slips, because, um, the analyst who is involved  
3 is not relaying the information to me, I'm doing it on my  
4 own. So the search slip gives a history of the search. I  
5 am able to -- it records it. That is the function of the  
6 search slip. And then I will go and look at the files that  
7 were gathered. And that is at the initial processing. So  
8 yeah, I will be looking at the searches that way and if it  
9 is being processed, I'll go in and start following the case  
10 notes and see exactly how the processing is being performed.

11 Q. I want to ask you a question about your  
12 declarations. Mr. Trentadue was asking you about personal  
13 knowledge. If we could have you look at Plaintiff's Exhibit  
14 and specifically the first page, page two?

15 A. Page two.

16 Q. Yeah, Page 2 of Exhibit 14 which I believe should  
17 be your Fifth Supplemental Declaration?

18 A. Correct.

19 Q. Okay. If you could read that last sentence of  
20 the last paragraph I think it carries over?

21 A. Starting out with the assistance?

22 Q. Um, it should be with the statements contained?

23 A. Which paragraph am I in, I'm sorry?

24 Q. Paragraph 2?

25 A. Paragraph 2.

1 Q. I'm sorry.

2 A. Okay. I have got you. Okay, statements  
3 contained in this declaration are based upon my personal  
4 knowledge upon information provided to me in my official  
5 capacity and upon the conclusions and determinations reached  
6 and made in accordance therewith.

7 Q. Okay. Just so I'm understanding the statement as  
8 you submitted, you list three things is it -- are you  
9 attempting to convey that this whole declaration is based on  
10 your own personal knowledge?

11 A. No.

12 Q. Could you explain -- break this down for me how  
13 these -- what you're basing your information on when you  
14 submit these declarations and how it relates to personal  
15 knowledge which you mentioned in all your declarations?

16 A. First, personal knowledge will be my direct  
17 involvement in a case, I'm sorry, will be the direct  
18 involvement, my direct involvement in a case at any stage.  
19 That would be looking at the files, it would be sometimes  
20 discussion as there may be a tactical discussion that is  
21 made as to how do we search this case, what approach are we  
22 going to take, and I'll be in on that discussion. So when I  
23 say personal knowledge, I mean I was involved in it.

24 Um, information provided to me in my official  
25 capacity, that is as the section chief of RIDS and the

1 program manager of FOIA. So I have a number of people that  
2 report to me either directly or indirectly, and they are  
3 providing information to me. And also it is information  
4 from the assistant general counsel when it gets into  
5 litigation, the assistant general counsel is deeply involved  
6 in the entire process as well. So that individual will be  
7 discussing it with me as well. And then based on the --  
8 these two inputs, um, then those will be the basis for my  
9 conclusions and determinations.

10 Q. So when you have listed these three things  
11 because not everything is based on your personal knowledge  
12 in these declarations; is that correct?

13 A. That is correct.

14 Q. I would like to pull up, if we could look at  
15 Plaintiff's Exhibit 71 which is the transcript I think he  
16 was questioning you about?

17 A. Oh yeah, okay. Yes.

18 Q. If we could go to -- I think it was Page 57?

19 A. Okay. I am there.

20 Q. Okay. And just on Page 56 and 57 you're talking  
21 about search slips. Your question about this, I just want  
22 to get your understanding, is it your understanding  
23 Mr. Trentadue has requested or sought search slips in this  
24 particular case?

25 A. I have seen no request for search slips.

1                   Q. I want to ask you -- okay. And that was -- that  
2 is all I had on that particular point. I wanted to make  
3 sure we had the reference. I want to ask you about the  
4 court's order in this case that was been referenced quite a  
5 bit in Mr. Trentadue's cross-examination. It is  
6 Document 82, and I don't know if it is included as an  
7 exhibit. Let me --

8                   A. Document 82?

9                   MS. WYER: Exhibit 9.

10                  Q. (By Mr. Siple) Sorry, Plaintiff's Exhibit 9.

11                  A. Yes, sir, the order. I have got it. Thank you.

12                  Q. If I could call your attention to -- I'm just  
13 going to ask you about the paragraphs I think you were asked  
14 about. Paragraph 2 of Exhibit 9 which is on Page 2?

15                  A. Yes.

16                  Q. You testified that you read this order; is that  
17 correct?

18                  A. I did read the order.

19                  Q. Did you understand it? Was it understandable to  
20 you?

21                  A. Yes, very clear.

22                  Q. Okay. Was it your understanding then that  
23 Paragraph 2 was requiring a search to be done?

24                  A. The court wanted me to search it unless I could  
25 explain why it was not reasonably calculated to locate the

1 requested videotapes or other materials.

2 Q. So a search was not done though; is that correct?

3 A. A search was not done, that is correct.

4 Q. Did you provide an explanation as to why not?

5 A. Yes, I did provide an explanation.

6 Q. Okay. And Paragraph 3, if I could draw your  
7 attention to that paragraph?

8 A. Yes.

9 Q. Did you understand that paragraph when reading  
10 the court's order?

11 A. Yes, I did.

12 Q. Okay. And what was your understanding of what  
13 that paragraph required?

14 A. It required first for us to address specifically  
15 whether or not the evidence control center located at  
16 headquarters Oklahoma City in the FBI Crime Lab were  
17 searched manually. And then if they had not, explain why  
18 there is no reasonable likelihood that the requested files  
19 would be located in any of those locations. And I mean the  
20 report says it as clear as any way I could summarize it.

21 Q. Okay. And how did you comply or how did your  
22 office comply with Paragraph 3?

23 A. Well, we first asked as far as the Evidence  
24 Control Center at headquarters, we asked the head of the  
25 Evidence Control Unit whether or not there was an Evidence

1 Control Center at headquarters and he said there was not.  
2 And then in my own personal experience being in the  
3 headquarters at least once a week, I have never seen  
4 anything similar to that. So from that, but based on the  
5 representations of the Laboratory Evidence Control Unit or  
6 let's go down to the FBI Crime Lab. The -- we determined  
7 that it had not been searched manually and we searched it.

8 And then finally for Oklahoma City, based on -- we  
9 looked at two essentially evidence warehouses. One was the  
10 OKBOMB warehouse and the other one was the separate evidence  
11 control center for the Oklahoma City Field Office. The  
12 Oklahoma City field office employees and staff informed us  
13 that no evidence for the Oklahoma City -- for OKBOMB had  
14 been sent to the regular Oklahoma City Field Office building  
15 and that it all had been sent to the other building.

16 Um, the -- we had information that when the  
17 reorganization occurred at the -- at the OKBOMB storage  
18 facility that they had manually looked at the tapes. So  
19 that is how we initially addressed that.

20 Q. So you reviewed this order at the time that you  
21 responded to this particular order?

22 A. That is correct.

23 Q. Were you satisfied that in your mind that you had  
24 done what you had been asked to do?

25 A. Yes, I was.

1                   Q.    Was there any intent to ever not respond fully to  
2 the court's order?

3                   A.    Um, no. And in doing this, we -- you said  
4 framework that I used before that I talked about yesterday  
5 as far as we -- it wasn't like, you know, we just jumped off  
6 in to the middle of it, we essentially started de novo. And  
7 so we looked at the I and S drives, and looking at -- go  
8 through the entire analysis as to whether or not there would  
9 likely be records there, and then we looked at the resource  
10 issue which would be involved in it and we determined that  
11 it was not -- did not meet the criteria for either, that it  
12 would be reasonably likely to be documents there and that it  
13 would cause -- it would require enormous or it require  
14 enormous manpower both for us to go through the search. And  
15 we used the same basic -- with each one of these we started  
16 de novo. And then that is why the FBI Crime Lab while I was  
17 -- I thought it was borderline if you just used a strict  
18 analysis, um, but we are trying to be -- we were trying to  
19 be flexible and it seemed to be reasonable so we went ahead  
20 and searched that.

21                   I mean from a strictly analytical standpoint with the  
22 files being returned back to the Oklahoma -- OKBOMB  
23 warehouse, it didn't seem like there would be -- I'm not  
24 sure if it was reasonable, but we went ahead and did the  
25 search there just to make sure because it was something that

1 we had not explored before.

2 Q. I'm sorry to bounce between exhibits, Mr. Hardy,  
3 but I would like to actually go back to Plaintiff's Exhibit  
4 71 the deposition transcript and I would like to turn to, I  
5 think, Page 22.

6 A. Which one am I in?

7 Q. It should be -- I believe it is Exhibit 71, the  
8 -- referring to the Negley transcript, it is actually 70.

9 A. 70.

10 THE COURT: The Negley transcript is 71.

11 Q. (By Mr. Siple) 71.

12 A. Okay, I'm there.

13 Q. This is talking about -- you're being questioned  
14 at Page 22, and I believe Mr. Trentadue had you read  
15 Page 22, portions of it, 23 and 24, largely relating to your  
16 declaration process. You're welcome to review it right now  
17 again if you would like.

18 A. Okay, I'm ready.

19 Q. The testimony here is talking about information  
20 you have at the time you are doing the declaration; is that  
21 correct?

22 A. That is correct.

23 Q. Okay. At the time you do the declaration, is  
24 that the first time that you hear about the case?

25 A. No, the declaration is at the tail end, if you

1 will. I mean as far as our work goes so we have gone  
2 through all of the processing which has to be gone through,  
3 um, we will be discussing the case such as this a long time  
4 beforehand. So my involvement will be before this point.

5 Q. Okay. And so in your answer there to the  
6 question, and how is that information conveyed to you, and  
7 if you could just read starting with your answer at line 12  
8 at page 22.

9 A. It will normally be conveyed to me in the course  
10 of the declaration, and then, if I have questions, I'll go  
11 back and talk to the person who conducted the search.

12 Q. Okay. And when you talk about the information in  
13 this particular -- I want to -- in this particular instance,  
14 are you talking about information in the declaration or what  
15 are you specifically --

16 A. Right, I'm talking about the declaration at this  
17 point.

18 Q. But by the time the declaration came to you, you  
19 would have information, some information about the case?

20 A. Yes, on this kind of case. I mean it may be very  
21 short before if it is a quick no records when there is only  
22 just a search. So I mean there is not one standard -- I  
23 would normally get involved near the tail end, almost  
24 simultaneous with the declaration, but this kind of a case  
25 you're going to be involved a long time before then.

1                   Q.    Okay. I think that is all I have on that point.

2                   Mr. Hardy, in your experience dealing with FOIA matters, do  
3                   issues get narrowed over time in the litigation or by  
4                   narrowing over time during the course of the litigation of a  
5                   FOIA case?

6                   A.    I am sorry, can you repeat that again?

7                   Q.    Absolutely. When you're handling a FOIA case out  
8                   of your office, do the issues tend to get narrowed over time  
9                   in a matter that is in litigation?

10                  A.    Um, oh, clearly. They are usually again in  
11                  complex, particularly in complex litigations you will start  
12                  out with a set of issues and then they will get winnowed  
13                  down to contested issues or more important issues with  
14                  greater equities. So the general answer to that question is  
15                  yes.

16                  Q.    And so at the time that you do your declaration,  
17                  what are you -- are you focused in the case where are you  
18                  focused most? Where is most of your focus?

19                  A.    Um, well it depends. Again, it is just totally  
20                  dependent on what the case is and what the issues are that  
21                  were negotiated, you know, that we're discussing. It could  
22                  be at the initial processing unit stage, it could be in our  
23                  classification review, and what is classified and not  
24                  classified, it could be in the use of FOIA redactions, um,  
25                  whether they are appropriate or not. Normally it is not on

1 all of the redactions, it is usually on a certain set of  
2 redactions, so it could even get down to implied and  
3 informants, so it can get very specific and then that is  
4 where we're really going to put our elbow grease as we do  
5 the declaration.

6 Q. You were asked about whether you use a template.

7 Mr. Trentadue asked you about templates and the  
8 declarations. Is there some sort of template that you start  
9 with for declarations?

10 A. Um, you know, that is a -- the answer is no we  
11 don't have a -- we don't have a declaration template that we  
12 use. We use a standard process -- set of paragraphs that  
13 work in different cases but, um, so you're always going to  
14 start out with my background, you're always going to list  
15 what I do, if it is a declassification case it is always  
16 going to say that I'm an original classification authority,  
17 declassification authority, I mean those are the sorts of  
18 things you're going it go through. We will set the  
19 procedural history. But a very -- I mean each one of these  
20 varies, the amount of detail depends on the case. Um, then,  
21 normally we'll talk about the search, we will usually  
22 explain the automated ACS, and then we will start getting  
23 into the search in general terms, then get in search in  
24 specific terms. And this is a general format that most  
25 declarations follow in the federal government that I have

1 experienced at least in the Department of Justice.

2 So then we get into our coded bonds which are coded  
3 exemptions and the explanation for the exemptions. So we go  
4 through this entire process, but it can vary greatly. And  
5 B7(a) which is a -- there is a pending case and we have a  
6 FOIA for that, that is going to be look radically different  
7 than one that is -- that you have processed that the -- it  
8 is a closed case and there is no, you know, it is not  
9 pending because we take a whole different approach. So,  
10 again, it is case specific. So we have specific things.  
11 Um, I am uncomfortable with template because it sounds like  
12 we're checking -- we try to do everything look at the  
13 original, I start reading at the very first words, and um,  
14 starting with the how many people I do supervise and just  
15 follow it through. So it is not like fill in the blank and  
16 you keep moving.

17 Q. Do you ever submit a declaration where you  
18 haven't yourself familiarized yourself with the particular  
19 facts of whatever case it might be?

20 A. No. I always find out. I am briefed on the case  
21 before -- before I review the declaration.

22 Q. Mr. Hardy, how are you -- do you have any  
23 training on FOIA in your -- in your position? Are you ever  
24 trained in terms of standards and so forth?

25 A. Um, you know, usually I'm the trainer. Um, I --

1 I just taught at the Department of Defense FOIA, annual FOIA  
2 conference on use of B7 exemptions. I will go to a number  
3 of seminars. I mean there is a continuing process which is  
4 involved but, um, formal training in FOIA, there are some  
5 things that I will attend like fees are totally mysterious  
6 to me no matter how many times I learn them. Fortunately,  
7 my assistant section chief has a sharp accountant's mind and  
8 he knows how to work the whole fee issue. So I always have  
9 to go to a refresher on that. So whenever there is a FOIA  
10 program that goes over fees, I like to listen to it. There  
11 is a lot of continuing education because of case law  
12 changes, statutory changes, the AG memo, attorney general  
13 memo 2009, so I mean there is a lot of things to go but I  
14 would say rather than training it is continuing education at  
15 this point.

16 Q. Is there a -- do you know if there is a  
17 counterpart, if other agencies have a position like you  
18 serve in?

19 A. Well, each -- each agency is going to have a FOIA  
20 program manager but we're -- because we're centralized and  
21 we're so large I -- I think the only people that really are  
22 at my level are probably within the Department of Defense,  
23 they have fairly senior staff, but there may be others. You  
24 know, I'm not totally conversant with all of the agencies.  
25 I think the CIA also is at my level.

1 Q. Mr. Hardy, would you have signed a declaration in  
2 this case or any of the declarations in the case if you were  
3 not satisfied with the work that your staff had done in the  
4 search that was completed?

5                   A. I think that is absolutely true. That is  
6 correct.

7 Q. You would not have signed it?

8                   A.     I would not have signed it.   I will not sign a  
9     declaration that I am not satisfied with nor do I believe  
10    that it is correct.

11 Q. Thank you. If I could have a moment, Your Honor,  
12 I may be finished.

13 THE COURT: You may.

14 MR. SIPLE: We have nothing further for this witness,  
15 Your Honor.

16 THE COURT: Any follow up Mr. Trentadue?

17 MR. TRENTADUE: Yes, sir, just a very few questions,  
18 Your Honor.

## REDIRECT EXAMINATION

20 BY MR. TRENTADUE:

21 Q. It will take a second here to get set up. While  
22 I'm setting up I can ask you some questions, Mr. Hardy. You  
23 testified about the training your staff receives?

24 A. Yes, sir.

25 Q. In fulfilling their FOIA or the bureau's FOIA

1 obligations to citizens such as myself?

2 A. Yes, sir.

3 Q. And it sounded extensive. It is what, years?

4 A. It takes from -- to become overall certified it  
5 takes three and a half to four years; that is correct.

6 Q. And but Ms. Vernon wasn't given that training,  
7 was she?

8 A. No, she was not.

9 Q. And she isn't FOIA certified, is she?

10 A. No, she is not.

11 Q. And she is your gatekeeper, isn't she?

12 A. Well, in the Oklahoma City bomb file she is the  
13 institutional knowledge. And where she is not picked a  
14 formal education she has learned on-the-job.

15 Q. Now, I think you testified and I want to ask if  
16 this is part of the training your folks received that while  
17 they do their initial search, if they come across additional  
18 information during the course of that search or information  
19 that is provided to them that shows that indicates that the  
20 records may be located somewhere else, they go there to look  
21 at the other place too, don't they?

22 A. Um, you know I don't remember you asking me that  
23 but that is a correct statement. That if they find  
24 something which would indicate that there are records  
25 elsewhere, so, um, in this one it is like, you know, I

1 believe that the searches that were done with ACS, and  
2 ZyIndex were a reasonable search, but if there was  
3 information which would meet the criteria that I laid out as  
4 far as evaluating the statute, then we would certainly look.

5 Q. And it is your duty to do that?

6 A. Yes, it is.

7 Q. And in this case I think you testified that the  
8 search was confined to the OKBOMB files?

9 A. That is correct.

10 Q. And if I understand you correctly, you have taken  
11 an egalitarian approach to FOIA requests. So a request for  
12 how much toilet paper the bureau uses at headquarters in one  
13 year would be treated the same as a request for evidence  
14 that the government may have been involved prior knowledge  
15 about the Oklahoma City bombing?

16 MR. SIPLE: Objection, Your Honor, I think that  
17 mischaracterizes his prior testimony.

18 THE COURT: Well, the objection is overruled. We'll  
19 find out if that is the accurate statement or not. You may  
20 answer.

21 THE WITNESS: When you say gets the same treatment, is  
22 that the term you used.

23 Q. (By Mr. Trentadue) Yes.

24 A. Okay. It gets the same treatment, it is not  
25 saying it gets the same time, all right, because all

1 requests are different. But the bottom line is that because  
2 the statute doesn't provide any categories for more serious  
3 cases, what we do in this case both directly and indirectly  
4 impacts other people. So the toilet paper person, let's  
5 say, if we did the manual search on the records as estimated  
6 using the estimate that we had of 18,000 pages, would mean  
7 that there was 18,000 pages which we, over those 18 months,  
8 we could not process. I mean, um, I am sorry 18 months. If  
9 we come out to 18,000 pages that we couldn't process. So  
10 that toilet paper person who is waiting for his response,  
11 um, would have to wait because his pages are delayed because  
12 of what we're doing in the warehouse. You know, in that  
13 sense, then, he is directly impacted and there is no reason  
14 for the, under the statute, for his to be delayed if we're  
15 doing -- if we're doing a search which is outside what the  
16 statute calls for which is reasonably calculated to find a  
17 record.

18 So it is not a simple one-on-one formula, but I am --  
19 I should not and it would be irresponsible for me to use FBI  
20 resources to search for things where there is no likelihood  
21 of a reasonable likelihood of finding the document.

22 MR. TRENTADUE: No further questions, Your Honor.

23 THE COURT: Thank you. Mr. Hardy, thank you for your  
24 testimony. You may step down. May Mr. Hardy be excused?

25 MR. SIPLE: Yes, Your Honor, he may.

1                   THE WITNESS: Thank you.

2                   THE COURT: You are excused, sir. Mr. Trentadue, do  
3 you have additional witnesses to call?

4                   MR. TRENTADUE: Your Honor, I think if this is the  
5 government's last witness, I'm wondering if they're resting.

6                   MR. SIPLE: No, we do not rest. We intend to put on  
7 rebuttal and we intend to put on rebuttal opportunity.

8                   THE COURT: You're resting your case in chief.

9                   MR. SIPLE: Oh, I'm sorry. We are resting our case in  
10 chief, Your Honor.

11                  MR. TRENTADUE: We move for judgment as a matter of  
12 law, Your Honor. We don't think they met their burden to  
13 show that they carried out a reasonable search.

14                  THE COURT: I will take the motion under advisement  
15 and hear argument at that time and deal with that motion at  
16 the conclusion of all of the evidence. Any additional  
17 evidence to be put on by the plaintiff?

18                  MR. TRENTADUE: Yes, sir. The case to put on I think  
19 we could probably be through by noon.

20                  THE COURT: All right.

21                  MR. TRENTADUE: Very short witnesses.

22                  THE COURT: Why don't we take a mid morning break for  
23 about 15 minutes and then we'll proceed with the remainder  
24 of your case.

25                  MR. TRENTADUE: Yes, sir.

1 (Recess.)

2 THE COURT: We are back in session in Trentadue versus  
3 the FBI. Parties and counsel are present. Mr. Trentadue,  
4 you may proceed.

5 MR. TRENTADUE: Your Honor, I would call Dennis  
6 Williams. Please raise your right hand.

7 **DENNIS WILLIAMS,**

8 called as a witness at the request of the Plaintiff,  
9 having been first duly sworn, was examined  
10 and testified as follows:

11 THE WITNESS: I do.

12 THE CLERK: Thank you. Please state and spell your  
13 name for the record.

14 THE WITNESS: Dennis O. Williams, D-E-N-N-I-S, O,  
15 W-I-L-L-I-A-M-S.

16 **DIRECT EXAMINATION**

17 BY MR. TRENTADUE:

18 Q. Where do you reside, Mr. Williams?

19 A. South Jordan, Utah.

20 Q. And where were you born?

21 A. Hailey, Idaho.

22 Q. And where did you go to high school?

23 A. Pocatello High School in Idaho.

24 Q. Did you graduate from high school?

25 A. Yes, I did.

1 Q. And after that, where did you go?

2 A. I went to Idaho State University.

3 Q. And what years were you there?

4 A. I was there in 1960 and then probably 1964 to  
5 1968. Five years.

6 Q. And did you graduate from Idaho State University?

7 A. I did.

8 Q. What your degree in?

9 A. I had a bachelor's degree in physics.

10 Q. And did you go to work after graduating from  
11 Idaho State?

12 A. Yes. I went to work at Argonne National  
13 Laboratories at the test site in Idaho.

14 Q. And when you say test site, what kind of test  
15 site?

16 A. We tested nuclear reactors. I was attached to  
17 the theoretical reactor physics group.

18 Q. And did you subsequently leave that employment?

19 A. After two years I joined the FBI.

20 Q. And what year was that?

21 A. 1970.

22 Q. And where was your first assignment for the FBI?

23 A. I was initially assigned to the San Antonio  
24 Division, and after a few weeks I was transferred down to  
25 the border in Brownsville.

1 Q. And how long were you in Texas?

2 A. I was in Texas probably six or seven months.

3 Q. What was your next assignment?

4 A. I was transferred to what we considered our major  
5 office, Los Angeles was my second office of assignment and I  
6 was transferred there in 1971.

7 Q. Now are agents, how are they ranked? Do they  
8 have grades or --

9 A. Well, you start out as grade 10 and then the  
10 working grade is a grade 13. And it used to take 8 years to  
11 get to a grade 13 and I believe when I was -- early on in my  
12 career it was shortened to about 7 years to get -- to become  
13 a grade 13 agent.

14 Q. Okay. And when you were in Los Angeles, did you  
15 have any kind of assignments or responsibility for  
16 surveillance on domestic terrorists?

17 A. Yes. I was the case agent for a major domestic  
18 security investigation. This assignment was given to me  
19 when I was a grade 10 agent normally reserved for a grade 13  
20 agent.

21 Q. And did you -- were you involved with informants?

22 A. Yes, I -- I inherited a very important informant  
23 and I also coordinated informant information that came from  
24 other FBI informants and informants with the LAPD and the  
25 Los Angeles Sheriff's Office.

1                   Q. And are you familiar then with the records and  
2 maintaining the privacy and secrecy on informants?

3                   A. Yes. It is a requirement that all agents have  
4 sources of information and it is basically two kinds. There  
5 is the informants, and the informants are not supposed to  
6 ever have to testify, their identity is to be kept secret.  
7 But then there is confidential sources and they might be  
8 working say in a business and providing information on an  
9 ongoing basis to an FBI agent who was the handler. And it  
10 is expected that the confidential sources when push comes to  
11 shove will testify in a court of law.

12                  Q. Okay. Now, is there any kind of identification  
13 given to a confidential informant?

14                  A. Yes, there is code numbers like you might say,  
15 for instance, I used to work this one informant called  
16 LA4861 and confidential sources and informants would have  
17 similar I.D.s.

18                  Q. And would there be a file kept on LA4861?

19                  A. Yes, there would be a file on every informant and  
20 every confidential source so that their information is kept,  
21 you know, intact, although it may be distributed to a number  
22 of other files.

23                  Q. Did you earn any recognition or awards as an  
24 agent?

25                  A. Yes. I received a number of commendations. The

1                   FBI headquarters at one point suggested to the LA field  
2                   office that I be given a commendation. I received incentive  
3                   awards both from my work in domestic security and following  
4                   that for my work in white collar crime for having one of the  
5                   highest numbers of convictions in the LA office.

6                   Q. Sir, I want to show you, if I could get it up on  
7                   the screen, what has been marked and identified as Exhibit  
8                   45.

9                   A. Yes, I see it.

10                  Q. Would you take a moment and look at that. Is  
11                  this what is called a 302?

12                  A. Yes, it says that in the top left.

13                  Q. And I wonder if you would take a moment and just  
14                  read through this document to yourself.

15                  A. I can't see the bottom of it.

16                  Q. There will be a copy there in the blue folder for  
17                  you if you want one closer. It would be 45 also.

18                  A. Yes, I have seen it.

19                  Q. Now, you were in the courtroom, I believe, when  
20                  this document was testified to the other day I think by  
21                  Ms. Reed?

22                  A. Yes, that is correct.

23                  Q. And there was some discussion about  
24                  serialization. And if I understood the testimony on  
25                  serialization that when a document is placed into an

1 official case file, it is given a number and into a sub file  
2 and it can be identified and located by that number. Is  
3 that a fair statement?

4 A. Well yes. I mean every -- every case has a case  
5 number, and then every document in that case has a serial  
6 number. The serial numbers are these sequential.

7 Q. And it first appeared to me that the document  
8 hadn't been serialized because I couldn't see a number on  
9 here and it had been technically blacked out and  
10 Ms. Reed helped us by pointing out that she thought she  
11 could see a number through the redaction. Can you see that  
12 one there on the screen, sir? Maybe it will show up better.

13 A. Yes. After the file number there is part that is  
14 blacked out and I can't see through that, and then there is  
15 a little white gap, and then there is another part that is  
16 blacked out but you can partially see through that.

17 Q. Now, does that look like it is a case number or  
18 would it be a confidential informant number?

19 A. That does not appear to be a case number to me.  
20 It appears to me to be an informant number.

21 MS. WYER: Objection, Your Honor, ambiguous. I don't  
22 know what he is talking about.

23 THE COURT: I am sorry. Your objection is you don't  
24 know what he is talking about?

25 MS. WYER: The question to that is ambiguous.

MR. TRENTADUE: Let me rephrase the question.

Q. (By Mr. Trentadue) In your experience,

Mr. Williams, is there any reason to black out a serial number for locating the document on a 302?

A. Um, I can't think of a reason to black out the  
1 number. Um, I can, you know, there are reasons to  
out a file number.

Q. What would those reasons be?

A. Um, well, for instance, a source may have provided information that would go into multiple cases. And there is litigation for instance pertaining to one of the cases, um, the government may not want to identify the other cases for some reason.

Q. If it involved a confidential informant, would be a reason to block it out?

A. Yes.

Q. And in your opinion this number looks here like a confidential informant number?

A. It looks to me like it has been handwritten in and it doesn't appear to me to be a file number, and it could be an informant number or confidential source number.

MR. TRENTADUE: No further questions, Your Honor.

THE COURT: Cross-examination?

## CROSS-EXAMINATION

BY MS. WYER:

1                   Q.    Mr. Williams, you don't have any information  
2                   about where any additional videotapes responsive to the  
3                   plaintiff's FOIA request might be located, do you?

4                   A.    No, ma'am.

5                   Q.    Mr. Williams, could you -- you don't actually see  
6                   any handwriting on this lower part of the document, do you?

7                   A.    I don't see any handwriting, no, ma'am.

8                   Q.    And Mr. Williams, you see that there is a file  
9                   number at the bottom of the document, correct?

10                  A.    The file number started 174A.

11                  Q.    And the last -- the last three digits of -- there  
12                  are three parts of that file number, correct?

13                  A.    Yes.

14                  Q.    And the last part of that file number normally  
15                  has five digits, correct?

16                  A.    I am not sure about that.

17                  Q.    Assuming the last part of the file number had  
18                  only additional two digits there is room in that black part  
19                  for a serial number, correct, to be followed immediately  
20                  after that?

21                  A.    In that first blacked out part following the file  
22                  number, there is room for several numbers.

23                  Q.    And normally the serial number appears directly  
24                  after the file number, correct?

25                  A.    Yes, ma'am.

Q. So you don't know that this document does not contain a serial number, correct?

A. All I know is I can't see one.

MS. WYER: No further questions.

THE COURT: Any redirect?

MR. TRENTADUE: No, Your Honor.

THE COURT: Thank you, Mr. Williams. May this witness be excused?

MS. WYER: Your Honor, as with the other of plaintiff's witnesses I would like to move to strike the witness's testimony. He has no information or personal knowledge of anything related to the reasonableness of the FBI's search and we move to strike on that basis.

THE COURT: Motion is denied. Thank you for your testimony. Can Mr. Williams be excused?

MR. TRENTADUE: Yes, Your Honor.

THE COURT: You're excused, sir. You may call your next witness.

MR. TRENTADUE: Yes, Your Honor. Roger Charles.

THE CLERK: Raise your right hand, please.

ROGER CHARLES,

called as a witness at the request of the Plaintiff,

having been first duly sworn, was examined

and testified as follows:

THE WITNESS: I do.

1                   THE CLERK: Thank you. Please state your name for the  
2 record.

3                   THE WITNESS: My name is Roger Gavin Charles,  
4 R-O-G-E-R G-A-V-I-N C-H-A-R-L-E-S.

5                   **DIRECT EXAMINATION**

6                   BY MR. TRENTADUE:

7                   Q. Mr. Charles, where do you reside?

8                   A. In Alexandria, Virginia.

9                   Q. And a little about bit about your background.

10                  Where you were you born?

11                  A. El Paso, Texas.

12                  Q. Where did you grow up?

13                  A. Mingo County, Williamson, West Virginia.

14                  Q. And I take it you graduated high school?

15                  A. I did.

16                  Q. What year was that?

17                  A. 1963.

18                  Q. What did you do upon graduation from high school?

19                  A. I entered the U.S. Naval Academy in Annapolis,  
20 Maryland.

21                  Q. And does one graduate from the Naval Academy or  
22 promoted out of it?

23                  A. You endure it.

24                  Q. I take it you graduated?

25                  A. I graduated in 1967.

1 Q. And you went into the Naval services?

2 A. I went into the U.S. Marine Corp as a second  
3 lieutenant.

4 Q. And what year was that?

5 A. 1967.

6 Q. And did you deploy overseas?

7 A. I did. And in February of 1968, I joined the  
8 First Marine Division in the Da Nang, Vietnam.

9 Q. And upon your return to the United States, did  
10 you continue with the career in the United States Marine  
11 Corp?

12 A. I did and retired 1 February of 1990.

13 Q. Okay. Following your retirement from the United  
14 States Marine Corp, what, if anything, did you do by way of  
15 employment?

16 A. I decided to try to choose a second career as  
17 journalism.

18 Q. And what are some of the positions you have held,  
19 worked in, in a journalistic field?

20 A. My first job was with Newsweek as a special  
21 correspondent which led to a cover story about the USS  
22 Vincennes shooting down an Iranian airliner. After that, I  
23 worked for three years with a nonprofit service in  
24 Washington D.C.

25 In the summer of 1996, I joined ABC 20/20 as a

1 month-to-month special contracted associate producer working  
2 on the Oklahoma City bombing case.

3 Q. And did you subsequently leave ABC?

4 A. I left in February of 1997 after we had produced  
5 a piece January the 17th was the air date called Families  
6 Want to Know, the first major media piece to question the  
7 government's version of events about the Oklahoma City  
8 bombing.

9 Q. And did you subsequently go to work for  
10 Mr. Rather, Dan Rather?

11 A. I went to work for Mr. Rather in 2001, correct.

12 Q. And what was your position there?

13 A. I was an associate producer on contract.

14 Q. And did you earn any awards or recognitions while  
15 associate producer with CBS and Mr. Rather?

16 A. I was part of the team that earned a Peabody  
17 Award for breaking the story on the Abu Ghraib incidents.

18 Q. Now, did you at sometime in your career, at some  
19 point in your career, become involved with the defense of  
20 Timothy McVeigh?

21 A. I did. After I had been fired from 20/20 in  
22 February of '97 for accusing Peter Jennings of spiking two  
23 stories about the Oklahoma City bombing that we had  
24 prepared, I went on the Don Imus Morning Show and said that  
25 and my employment with ABC was terminated at that point.

1                   So Steven Jones called me a couple of weeks later and  
2 we had interviewed him for the 20/20 story and he asked if I  
3 would consider being a field investigator for him and I  
4 agreed.

5                   Q.    And as a field investigator as part of the  
6 defense team, what were your responsibilities?

7                   A.    My responsibilities were to focus on the issues  
8 of prior warning of the threat of the bombing on the part of  
9 the agency, some agencies of the federal government. And  
10 prior knowledge of the specific threat in Oklahoma by the  
11 same agencies. And also the broader conspiracy other people  
12 were involved besides those at that time that had been  
13 identified McVeigh, Terry Nichols, and Michael Fortier.

14                  Q.    And did you subsequently come to write a book on  
15 the subject?

16                  A.    In 2012 I coauthored a book, yes.

17                  Q.    What is the title of the book?

18                  A.    *Oklahoma City What the Investigation Missed and*  
19 *Why It Still Matters.*

20                  Q.    Back when you worked for Mr. Jones, did that  
21 include interviewing witnesses?

22                  A.    It did.

23                  Q.    Did it include obtaining records from the  
24 government, the FBI, in preparation of the defense?

25                  A.    The government had turned over a massive amount

1 of material in discovery for that trial and I did try to  
2 review on a priority basis as much of those documents as I  
3 could that I felt were pertinent.

4 Q. I am going to show you Exhibit 69 and I don't  
5 think we have it loaded so I'll put it on the overhead  
6 camera. It should be in front of you, Mr. Charles.

7 A. This stops with 66.

8 Q. There should be -- it should be a loose piece of  
9 paper, loose paper exhibit.

10 A. Okay. Yes, sir, I see it.

11 Q. Let's see if I can get -- take a minute and look  
12 at that. This has been identified as one of the Oklahoma  
13 City bombing records and I believe it has been admitted. Do  
14 you recall seeing that document before, sir?

15 A. I have seen it before today.

16 Q. You have seen it before today?

17 A. Yes, sir.

18 Q. When did you first see it?

19 A. Sometime in the last several months while doing  
20 some research.

21 Q. And let me ask you this. Do you recall having  
22 this -- having seen this document when you were working as  
23 part of the McVeigh defense team?

24 A. I can state with real certainty that I never saw  
25 this document as a member of that defense team.

1                   Q.    What, if any, significance would this document  
2                   have had to you as a member of that defense team?

3                   A.    Well, in addition to the fact that it is a second  
4                   video source showing the Ryder Truck on the morning of the  
5                   bombing, it also indicates that there was some belief on the  
6                   part of the FBI, according to the document, that a  
7                   four-wheel drive vehicle, a Ford Explorer, passing only five  
8                   seconds prior to the Ryder Truck, might indicate that there  
9                   was some connection between the two vehicles.

10                  Q.    And at my request did you review the videotapes  
11                  that had been produced to me by the FBI in this case?

12                  A.    Yes, sir, I have.

13                  Q.    Did you review all of the Regency Tower tapes?

14                  A.    Yes, sir, I did.

15                  Q.    Do you recall seeing any footage from an ATM  
16                  machine?

17                  A.    I can state with certainty I did not.

18                  Q.    Now, I think you were in the courtroom when this  
19                  Exhibit 68 was discussed.

20                  A.    Yes, sir.

21                  Q.    Do you recall having seen -- you obviously have  
22                  seen this before?

23                  A.    I have seen it before today, correct.

24                  Q.    When did you see it first?

25                  A.    Um, again, I think in the last several months

doing some research.

Q. Do you have any recollection of this document having been produced to you as part of the McVeigh defense team?

A. I do not recall that, no.

Q. And what, if any, significance would this document have had to you?

A. Well, it refers to a question from an FBI agent to Trooper Hanger wanting to get confirmation in order to identify an object that is visible on the road. And the only inference that a rational person could draw is that it would have to come from some image that this FBI agent had reviewed.

Q. And why would that have been significant to you?

A. Because the tape that Charlie Hanger claims to have provided starts with McVeigh seated in the backseat of the trooper's sedan and there is nothing in the videotape that I have reviewed several times that would make me question could that possibly be a pistol or what was the object.

Q. Now, if you would look, I will try to put it up on the screen, at Exhibit 45. Do you have that in front of you, sir?

A. Yes, sir.

Q. Do you recall having seen this document when you

were working with the McVeigh defense team?

A. I do not recall seeing that document.

Q. Would this document have been significant to you and why?

A. I believe it would have been significant because it has the phrase sting operation and that was something I was sensitive to because in my first trip to Oklahoma City in August of 1996, the ABC producer and I met for three days with various people in Oklahoma City and the conclusion of the most reliable credible people was that there had been a sting operation that had gone bad.

MR. TRENTADUE: No further questions of the witness,  
Your Honor.

THE COURT: Cross-examination.

MR. SIPPLE: Yes, Your Honor.

## CROSS-EXAMINATION

BY MR. SIPPLE:

Q. Mr. Charles, based on your experience as a defense investigator -- was this the McVeigh case?

A. Yes, sir.

Q. You probably have some knowledge of 302s; is that correct?

A. Correct.

Q. So you know that 302s are just reports of information?

1 A. Correct.

2 Q. And there is no independent corroboration that  
3 those reports to the FBI are actually true, correct?

4 A. They are a data element, so to speak, that must  
5 be used with other data to make a determination as to the  
6 veracity of the information therein.

7 Q. Okay. So just to be clear, a 302 is just a  
8 report of information?

9 A. It is a report of information, correct.

10 Q. That may or may not be true, correct?

11 A. It may or may not be true, correct.

12 Q. If we could go ahead and I would like to ask you  
13 to look back at Exhibit 69?

14 A. Yes, sir.

15 Q. If you could look at the second paragraph of that  
16 exhibit?

17 A. Correct. Okay.

18 Q. What agency is being referred to there?

19 A. The FBI. Sorry, the second paragraph, I am --  
20 okay the third -- second paragraph is the Bureau of Alcohol  
21 Tobacco and Firearms, the ATF.

22 Q. So this is information coming from the ATF;  
23 correct?

24 A. Relaying information from the FBI, correct.

25 Q. So this is a secondhand report of a report,

1 correct?

2 A. That is a report by the ATF on what they have  
3 learned from the FBI, correct.

4 Q. Thank you. Do you know if the FBI ever obtained  
5 any ATM machine film from the Regency Towers?

6 A. I do not know that.

7 Q. If there was such footage, would you have any  
8 idea where it would be located today?

9 A. I believe that they are like the military, that  
10 the FBI maintains a two set of books on sensitive  
11 operations. And I think what we have spent the time here  
12 dealing with is what I would call, from my military  
13 experience, the white side, the white book, the over  
14 publicly viewable information. I know that the military is  
15 very good at maintaining a black set of books which deal  
16 with covert and sensitive matters. And I believe because of  
17 the long history of the FBI and the military working  
18 together that they have the same.

19 MR. SIPLE: I think I move, Your Honor, to strike the  
20 response as -- the response to my question is nonresponsive.  
21 I asked whether you have any personal knowledge. Actually  
22 just rephrase, Your Honor.

23 Q. (By Mr. Siple) You don't have any personal  
24 knowledge of where these tapes might be today; is that  
25 correct?

1 A. That is correct.

2 Q. If I could refer you to Exhibit 68?

3 A. Yes, sir.

4 Q. Trooper Charlie Hanger is mentioned in that  
5 exhibit, is he not?

6 A. He is.

7 Q. Okay. Did you ever interview or talk to  
8 Mr. Hanger as part of your investigation?

9 A. I personally did not.

10 Q. Okay. Have you ever -- so you never talked to  
11 Mr. Hanger?

12 A. No.

13 Q. Mr. Trentadue referred to your book, I would like  
14 to ask you about that. Your Honor, may I approach the  
15 witness?

16 THE COURT: You may.

17 Q. (By Mr. Siple) I would like to call -- have you  
18 had an opportunity to look -- I haven't approached yet.

19 A. Thank you, sir.

20 THE COURT: Is this included among the exhibits you  
21 have provided to the court?

22 MR. SIPLE: Okay. I am just using it for impeachment.  
23 Do you still want it?

24 THE COURT: I still want it.

25 MR. SIPLE: Okay. Your Honor, I believe this should

1 be marked as Exhibit 250 for identification purposes only.

2 Q. (By Mr. Siple) Have you had an opportunity to  
3 look at the document I just handed you, Mr. Charles?

4 A. Sure. Yes, I have.

5 Q. And is this -- could you describe what the  
6 document is that I just handed you?

7 A. Um, it is the inside page for the book *Oklahoma*  
8 *City What the Investigation Missed and Why It Still Matters*.  
9 It also is a page, then there is a dedication page and the  
10 information about the Library of Congress, the copyright and  
11 so on, and then there is pages 90, 91, and 93.

12 Q. Is this an excerpt or an accurate excerpt of the  
13 book that you authored?

14 A. It appears to be an exact copy, yes.

15 Q. Could I call your attention to Page 91, please?

16 A. Okay.

17 Q. Could I have you look at the -- where the first  
18 full paragraph starts on Page 91?

19 A. All right. Do you want me to read it.

20 Q. Yes, could you read that paragraph please?

21 A. Most promising were two security cameras perched  
22 on the northwest and northeast corners of the Murrah  
23 Building. Both were trained on the Fifth Street entrance  
24 and the parking slots outside; if they had been working,  
25 they could have captured the final moments before the

bombing. The equipment was badly damaged in the explosion, but investigators thought there was a good chance the footage was recorded remotely and still intact at another location.

Q. Could you please continue the second paragraph?

A. Frustratingly, the cameras were not hooked up to any video system, and had not been for a long time. The wires were cut ten years before I got here. There were no monitors, nothing, said Tom Hunt, the head of Federal Protective Service, responsible for security at the Murrah Building. It was a cost-cutting measure, which Hunt said he had screamed about since taking the job.

Q. And could I have you jump down to the last full paragraph on that document?

A. The lack of footage seemed so incredible that for years some people believed the FBI was withholding it to maintain its position that McVeigh acted alone. Oklahoma City's Channel 4, the most sensationalist of the local news outlets, produced a report to this effect in late 1995. And, in 2004, the raw, entirely unredacted Secret Service timeline of the first few weeks of the investigation was made public and appeared to show the same thing. The timeline contained two separate references to such videotape evidence and described more than one suspect getting out of the Ryder Truck. For years after, the FBI was bombarded

1 with complaints and lawsuits demanding release of the  
2 footage.

3 Q. Thank you. So just your conclusion was that the  
4 Murrah Building's were never -- cameras were never working?

5 A. No, that is what this page says. That is not my  
6 conclusion.

7 Q. Okay. But you authored this book; is that right?

8 A. I co-authored this book. I was one of three  
9 people and I was low-man on the totem pole to determine what  
10 went into the book. And this was an issue that I fought  
11 vigorously against. I wanted to sway, and the editor and my  
12 co-author basically carried the day. And I have extensive  
13 material to back that up that I wanted a much more specific  
14 citation of evidence about the Secret Service timeline and  
15 John Hersley's sworn testimony at the preliminary hearing on  
16 4/27/95.

17 Q. But you still signed your name to this book?

18 A. I signed my name to the book.

19 Q. And how long were you an investigator for the  
20 McVeigh team?

21 A. I think it was somewhere around four months,  
22 maybe four and a half.

23 MR. SIPLE: No further questions, Your Honor.

24 MR. TRENTADUE: No redirect, Your Honor.

25 THE COURT: Thank you, Mr. Charles, for your

1                   testimony. You may step down. May this witness be excused?

2                   MR. TRENTADUE: Yes, Your Honor.

3                   THE WITNESS: Thank you, sir.

4                   THE COURT: You're excused.

5                   MR. TRENTADUE: Your Honor, I would move the admission  
6                   of Exhibit 45 not for the truth of the matters asserted  
7                   therein, but as evidence of information obtained by the FBI  
8                   that was in the OKBOMB file and as what one witness  
9                   Mr. Williams has described appears to be how a confidential  
10                  informant is handled.

11                  MR. SIPLE: Objection, Your Honor, relevance and  
12                  specifically 403 it is highly inflammatory and any relevant  
13                  value it might have to searchs for records or notice of  
14                  anything of that nature is far outweighed by its prejudicial  
15                  value and the inflammatory nature of the document and of  
16                  questionable veracity. Thank you.

17                  THE COURT: I'm going to overrule the objection. The  
18                  document has been referred to repeatedly throughout the  
19                  trial and without objection and the document will be  
20                  received.

21                  (Whereupon, Plaintiff's Exhibit 45 was received  
22                  into evidence.)

23                  MR. TRENTADUE: And the same with Exhibit 68. It has  
24                  been referred to repeatedly throughout the trial but it is  
25                  not offered for the truth of the matter asserted, just

1 offered for the report that was prepared by the FBI and was  
2 available and Ms. Vernon, I think, acknowledged that.

3 THE COURT: 68 is received.

4 (Whereupon, Plaintiff's Exhibit 68 was received  
5 into evidence.)

6 MR. TRENTADUE: And with that, Your Honor, I rest.

7 THE COURT: Does the FBI intend to call any rebuttal  
8 witnesses?

9 MS. WYER: If necessary, Your Honor, but first we  
10 intend to move for a judgment as a matter of law at this  
11 time. We don't believe that the --

12 THE COURT: Well, the court will reserve hearing  
13 argument on that until I have heard all of the evidence and  
14 we'll consider that at the same time I consider all of the  
15 arguments as to how the matter should be resolved. So the  
16 motion is taken under advisement at this point.

17 Does the FBI wish to call any rebuttal witnesses?

18 MR. SIPLE: Yes, we do, Your Honor. However, with the  
19 scheduling matters we thought those witnesses would be  
20 remote or coming in today. So we would like to put them on,  
21 it would not take very long, tomorrow morning.

22 THE COURT: Mr. Trentadue, does that work with your  
23 schedule?

24 MR. TRENTADUE: It would work for me, sir. Could I  
25 know who these witnesses are?

1                   THE COURT: Yes. Would you identify who you intend to  
2 call as rebuttal witnesses?

3                   MR. SIPLE: Yes, Your Honor. Actually could I go to  
4 the podium?

5                   THE COURT: Yes, come to the podium.

6                   MR. SIPLE: We would intend to call Mr. Richard Eugene  
7 Williams, who is the operations manager, a GSA employee at  
8 the time for the Murrah Building at the time of the  
9 explosion. And we would also call Mr. Trooper -- well then  
10 trooper but now Sheriff Charlie Hanger regarding his  
11 videotape that he took and gave to the FBI. We would also  
12 call Special Agent Steve Brannon who is responsible for  
13 authoring the 302s that have been put in evidence in this  
14 case and investigating the allegation concerning the tape  
15 sale and that copy and determined it to be a fraud. We  
16 would also call the OKBOMB investigators that we proffered  
17 to the court earlier Jon Hersley, Larry Tongate and Walter  
18 LaMar.

19                   THE COURT: All right. Anything further,  
20 Mr. Trentadue?

21                   MR. TRENTADUE: Yes, Your Honor. This seems like  
22 we're going to prove the existence of the tape --  
23 nonexistence of the tape which is not the issue involved in  
24 this case.

25                   THE COURT: Well, given the fact that there has at

1           least been a suggestion as to whether the tapes existed and  
2           whether the cameras were functional, I think in the interest  
3           of completeness and to address these issues as fully as  
4           possible, the witnesses should be allowed. So I am going to  
5           overrule any objection, you may call the witnesses. You  
6           will be ready to proceed at 8:30 in the morning?

7           MR. SIPLE: Yes, Your Honor.

8           THE COURT: Okay. We will proceed on that schedule.  
9           We will be in recess.

10           (Whereupon, the hearing concluded at 11:18 a.m.)

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1 STATE OF UTAH

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2 ) ss

3 COUNTY OF SALT LAKE

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5 I, Laura W. Robinson, Certified Shorthand  
6 Reporter, Registered Professional Reporter and Notary Public  
7 within and for the County of Salt Lake, State of Utah, do  
8 hereby certify:

9 That the foregoing proceedings were taken before  
10 me at the time and place set forth herein and were taken  
11 down by me in shorthand and thereafter transcribed into  
12 typewriting under my direction and supervision;

13 That the foregoing pages contain a true and  
14 correct transcription of my said shorthand notes so taken.

15 In witness whereof I have subscribed my name and  
16 affixed my seal this 16th day of September, 2014.

17

18

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19 Laura W. Robinson

20 RPR, FCRR, CSR, CP

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