

**REGARDLESS OF HOW THE COURT RULES ON THIS MOTION TO
CONDUCT DISCOVERY, IT WILL NOT BE AN ABUSE OF DISCRETION**

Admittedly, discovery is not a common litigation tool employed in a *FOIA* suit. Nevertheless, discovery is appropriate in a *FOIA* case when there is reason to believe, as in this case, that the agency is either withholding records or did not conduct an adequate “good faith” search for the materials. *See Information Acquisition Corp. v. Dept. of Justice*, 444 F.Supp. 458 (D.C. 1978). *See also Murphy v. Fed Bureau of Investigation*, 490 F.Supp. 1134 (D.C. 1980); *Giza v. Sec’y of Health, Education and Welfare*, 628 F.2d 748, 751 (1st Cir. 1980); *Niren v. INS*, 103 F.R.D. 10 (D. Or. 1984); *Reisberg v. Dept. of Justice*, 543 F.2d 308 (D.C. Cir. 1976). The discovery permitted under *FOIA* also includes depositions designed to disclose the “malfeasance” of the government. *See Judicial Watch, Inc. v. United States Dept. of Commerce*, 127 F.Supp. 2d 228 (D.C. 2000).¹

¹ The foregoing case law certainly disposes of FBI Defendants argument that discovery is not allowed in a *FOIA* case. That is - - discovery allegedly being beyond the Court’s jurisdiction to authorize in a *FOIA* case. FBI Defendants also argue that the need for discovery is essentially moot since they have complied with the Court’s *Order* regarding production of informant records. That argument, however, is disposed of by *Weisberg v. USDOJ*, 627 F.2d 365 (D.C. Cir. 1980), which holds that even after an agency claims that it has “complied substantially” with its *FOIA* obligations discovery, including depositions, is permissible to test the veracity of that claim. Finally, FBI Defendants argue that this is nothing more than a *Motion* by Plaintiff for the Court to reconsider its prior rulings in this case. That, too, is not true. Plaintiff is not seeking to

In its May 5, 2005 *Order*, the Court stated that: “Upon motion, the Court will permit Plaintiff to conduct discovery should the FBI fail to produce documents and/or records responsive to his *FOIA* requests.” (Doc. No. 31.) The documents Plaintiff requested in this instance were related to the question of whether FBI Defendants had prior knowledge of the planned attack upon the Murrah Building as a result of the activities of informants associated with the intelligence gathering activities of the Southern Poverty Law Center (“SPLC”) directed at the white supremacist paramilitary compound at Elohim City, Oklahoma and/or the Midwest Bank Robbery Gang.

Plaintiff’s *FOIA* request was drafted with rifle shot specificity. Plaintiff asked FBI Defendants for documents and/or records concerning Morris Dees² and/or the SPLC’s involvement with and/or connection to Elohim City, OKBOMB, BOMBROB,³ Tim McVeigh, Richard Guthrie, Terry Nichols, Dennis Mahon, Robert Millar, Michael

revisit the Court’s rulings about FBI Defendants not having to conduct additional searches for documents. Rather, Plaintiff wishes to undertake limited discovery to test FBI Defendants’ “good faith” or “malfeasance” in responding to his *FOIA* requests.

² Dees was a co-founder and Executive Director of the SPLC. Dees’ elevated rank within the SPLC is important because of the admissions he has made regarding the SPLC’s intelligence gathering operations that were directed against various hate groups, such as those residents of and visitors to Elohim City.

³ “OKBOMB” and “BOMBROB” were the case names FBI Defendants gave to, respectively, the Oklahoma City Bombing and the Midwest Bank Robbers.

Brescia, Peter Langan and Andreas Strassmeir through what now seems to have been a joint FBI-SPLC undercover sting operation involving many informants. FBI Defendants eventually produced to Plaintiff well in excess of 100 pages of documents claiming that these documents all related to the SPLC's involvement with Elohim City, the Oklahoma City Bombing and/or Midwest Bank Robbery Gang through an informant network. Those documents, however, were heavily redacted with the names of informants blacked out, and no document was dated earlier than April 25, 1995, a week following the Bombing.⁴

The notion that a joint sting operation involving FBI Defendants and/or the SPLC sprang suddenly to life on April 25, 1995 -- six days after the worst domestic terrorist strike against the United States in the 20th century -- is not credible. It is especially not credible given the fact that Plaintiff has now documented that there were at least seven informants involved with McVeigh and the others who likely carried out the attack on the

⁴ This document is a teletype to FBI Director Louis Freeh and it appears in the record at Doc. 59 *Exhibit* 1. This teletype is remarkable not only for being the earliest SPLC informant document produced by FBI Defendants, but also because of its contents. It originates out of the FBI Little Rock field office, and references an Arkansas informant who, as a result of "his undercover capacity", had been able to infiltrate a number of militia groups around the Country, including the "Arizona Patriots" and their "white supremacist activities around the Kingston, Arizona, area." This informant was to undergo a "detail debriefing to be conducted by the FBI at Montgomery, Alabama," which is also home of the SPLC.

Murrah Building, and that as a result of this widespread undercover operation, FBI Defendants had advance knowledge of this attack. Yet, despite this advanced notice FBI Defendants never took action to stop the Bombing. More importantly, in response to Plaintiff's *FOIA* requests FBI Defendants have produced no documents or records related to their prior knowledge about the planned attack on the Murrah Building.

Plaintiff does not yet know the specifics of how any of this circle of informants are tied to the SPLC. But the discovery he seeks is not a fishing expedition. The two witnesses Plaintiff wishes to depose are likely to have information related to the duration and scope of this informant sting operation. These witnesses are Terry Nichols, who helped McVeigh construct a bomb and, David Paul Hammer, who spent almost two years on death row with McVeigh listening to McVeigh describe the Bombing in minute detail, including the identities of the others involved. Based upon the information that Nichols and Hammer have with respect to the Bombing, it is also Plaintiff's belief that both of these men may know facts which can, directly or indirectly, reveal and explain this joint FBI - SPLC informant sting operation. More importantly, that knowledge can only be fully exploited by taking their depositions, preserved on videotape.

It is likewise Plaintiff's belief that if he is allowed to depose Nichols and Hammer, these men will be able to provide evidence that will link the informants thus far revealed to the SPLC and, thereby, identify and/or document the existence of records responsive to Plaintiff's *FOIA* request that have not been produced. With this discovery, Plaintiff expects to demonstrate FBI Defendants' malfeasance or bad faith in meeting their disclosure obligations under *FOIA*.

Whether to allow discovery in a *FOIA* case is a matter of discretion for the Court, and Plaintiff concedes that if the Court were to deny this *Motion*, that decision would not be an abuse of discretion. Plaintiff hastens to add, however, that the Court's granting of this *Motion* to conduct discovery would also not be an abuse of discretion. Simply put, regardless of how the Court rules, the decision would be lawful and affirmed in the event of an appeal. But Plaintiff respectfully submits that based upon the principles underlying *FOIA* which are to inform the public about the activities of the Government and based upon FBI Defendants' obvious bad faith in responding to Plaintiff's *FOIA* requests, coupled with the significance of the information sought by Plaintiff related to the Government's involvement in and/or prior knowledge of the Oklahoma City Bombing and the public's right to know the history of the Bombing, in this instance the better

reasoned and just decision for the Court to make would be to allow these depositions.⁵

STATEMENT OF UNDISPUTED FACTS SUPPORTING DISCOVERY

Supreme Court Justice Brandeis said:

Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be in peril if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for the law; and invites every man to become a law unto himself. . . .

Olmstead v. United States, 277 U.S. 438, 485 (1928). Justice Brandeis' words are an appropriate background against which to view and weigh the following facts related to the Government's involvement in the Oklahoma City Bombing via SPLC informants and the extremes to which the Government has gone to keep that involvement a secret, all of which are proper subjects of discovery.

⁵ See *NLRB v. Robins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978) (FOIA is designed "to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed). And there could be no better use of that law than this case.

A. Morris Dees: The SPLC Warned The FBI About An Attack

The place to begin in evaluating Plaintiff's *Motion* to conduct discovery is the history of this case. A history that has FBI Defendants repeatedly trampling upon the policies and purposes of *FOIA*.⁶ Set out below are the facts taken from that history which support allowing the discovery requested by Plaintiff.

1. In the summer of 2004, Plaintiff commenced this action to require FBI Defendants to produce documents/records which, directly or indirectly, reported upon, concerned, referenced or referred to Morris Dees and/or the SPLC's involvement with and/or connection to the following: Elohim City, OKBOMB, BOMBROB, Tim McVeigh, Richard Guthrie, Terry Nichols, Dennis Mahon, Robert Millar, Michael Brescia, Peter Langan, and/or Andreas Strassmeir, including all contacts which Dees or the SPLC may

⁶ *FOIA* requests are to be liberally and broadly construed. *See Anderson v. Dept. of Health and Human Services*, 907 F.2d 930 (10th Cir. 1990). That, however, FBI Defendants did not do. FBI Defendants would not produce any document unless it contained the name of Dees, the Southern Poverty Law Center or acronym "SPLC." In other words, even if the document concerned informants working for the SPLC but failed to include the trigger names/words "Dees," "Southern Poverty Law Center" or "SPLC," then the document was not produced. FBI Defendants' narrow interpretation of their *FOIA* obligations is inconsistent with the purposes and policy of that law, especially given the evidence, overwhelming evidence, of Government wrongdoing with respect to the Bombing. Under *FOIA*, the public's interest in insuring the integrity and reliability of the Government through disclosure is greatest, as in the instant case, when there is evidence of wrongdoing on the part of the Government. *See Lissner v. United States Customs Service*, 231 F.3d 1220 (9th Cir. 2001).

have directly or indirectly had with any of the foregoing individuals through informants.(Doc. No. 1.) FBI Defendants responded by representing to the Court that there were no such documents or records. (Doc. No. 14.) Thereafter, Plaintiff placed in the record two teletypes from the then Director of the FBI, Louis Freeh, referencing an SPLC undercover operation. (Doc. No. 17.)

2. The filing of those two responsive documents by Plaintiff when FBI Defendants insisted that no such records existed did not go unnoticed by the Court. In its May 5, 2005 *Order*, the Court stated:

Given the specific nature of Plaintiff's requests in this case – and Plaintiff's specific evidence that at least some of the requested documents do exist and reasonably should have been found by the FBI – the Court finds that the FBI search was not reasonably calculated to discover the requested documents.

(Doc. No. 31 p. 5.) The Court then ordered FBI Defendants to do a manual search and produce all responsive documents, which were documents related to the SPLC's contacts with McVeigh, the Midwest Bank Robbers, Elohim City, etc. through informants.

3. On July 26, 2005, FBI Defendants produced 87 pages of heavily redacted documents referencing a SPLC informant operation. (Doc. No. 58.) That production was followed on June 2, 2006, by another production of 58 pages of heavily redacted documents also discussing a SPLC informant operation. (Doc. No. 96.) As previously

noted, the subject of these documents is a widespread (nationwide) undercover operation directed at various militia groups that was apparently being jointly conducted by FBI Defendants and the SPLC, which operation seems to have drawn in McVeigh and the others who carried out the Bombing.⁷

4. In the record (Doc. No. 26), is a DVD recording of a press conference given in December of 2003, by Mr. Dees. That conference took place at Southeastern Oklahoma State University. At this press conference, Mr. Dees spoke about how the SPLC worked closely with the FBI in forming and operating an intelligence network to monitor and gather information about hate groups. Dees also stated at this press conference that about six months prior to the Oklahoma City Bombing, the SPLC had warned both FBI Defendants and Attorney General Janet Reno about an impending severe domestic terrorism attack and that within minutes following the Bombing of the

⁷ With respect to FBI Defendants' production of documents, the Court made the following observation:

Also, it is troubling that so many of the documents produced by the FBI referred to FD-302s that were or should have been prepared, and the disclosed documents also refer to other attachments that at one time appear to have accompanied the document, yet these documents have not been produced. While the FBI's failure to discover documents is not necessarily an indication of bad faith, it is puzzling that *so many* documents could be referenced but not produced.

(Doc. No. 88, p. 21) (Emphasis in original). The discovery Plaintiff seeks will hopefully solve this puzzle.

Murrah Building, the SPLC had telephoned the FBI to say that the “patriot movement” was involved in that attack, not Muslim extremists.⁸

5. A reporter in the audience attempted to question Mr. Dees about Andreas Carl Strassmeir. But Dees refused to answer any questions about Strassmeir. Instead, Dees insisted that no one at Elohim City had anything to do with the Bombing. However, as Plaintiff is prepared to demonstrate to the Court, that was not true. And at one time, Mr. Dees did not believe that it was true.⁹

⁸ The SPLC’s call to the FBI immediately following the Bombing stating that the attack was the work of the “patriot movement” seems to be corroborated by a teletype from the Oklahoma field office to Director Freeh. It was sent at 4:40 PM on April 19, 1995, and requests that “all offices canvas sources and complaints involving domestic terrorism” Immediately focusing the search for perpetrators upon domestic terrorists is consistent with the SPLC’s call to the FBI earlier that day. A copy of that teletype is attached hereto as *Exhibit 1*.

⁹ In his book *Gathering Storm*, published in January of 1996, Dees impeaches himself about Elohim City having no role in the Bombing. On page 165 of that book, for instance, he states: “McVeigh’s connections to Elohim City, a far-right Christian Identity compound on the Arkansas - Oklahoma border, are highly suspicious.” After discussing some of McVeigh’s Elohim City contacts, Dees goes on in his book to say that he is “skeptical” of the *New York Times*’ conclusion that the attack on the Murrah Building was solely the work of McVeigh and Nichols, “two former Army buddies.” Mr. Dees may indeed have known otherwise or at least had reasons to suspect an Elohim City connection to the Bombing through informants. The relevant pages from *Gathering Storm* are attached hereto as *Exhibit 2*.

B. Roger Moore: I Am A Protected Witness

Terry Lynn Nichols was convicted along with Timothy McVeigh for having carried out the bombing of the Alfred P. Murrah Building in Oklahoma City, Oklahoma on April 19, 1995. Nichols has submitted a *Declaration* in support of this *Motion to Conduct Discovery*. (Doc. No. 100.) Set out below are the facts taken from Nichols' *Declaration* and *Exhibits* attached to that *Declaration* which support allowing the discovery requested by Plaintiff.

1. On September 3, 2004, Nichols wrote to then Attorney General John Ashcroft. Nichols' purpose in writing to Mr. Ashcroft was to have others involved in the Oklahoma City Bombing brought to justice. In that letter, Nichols stated that he was prepared to fully cooperate with the Department of Justice to achieve this goal. According to Nichols, he never received a response to that letter either from Attorney General Ashcroft or from anyone else from the Department of Justice. Nichols says that since writing that letter the Government has denied him all contact with the media. (*Nichols Dec.* ¶¶ 3 and 4.)

2. A copy of the letter which Nichols wrote to former Attorney General Ashcroft is attached hereto as *Exhibit 3*. In this letter, Nichols stated to Mr. Ashcroft: "I am willing to disclose publicly all I know including how I was involved in the OKC bombing." (Emphasis in original.) Nichols then proceeded to outline for Mr. Ashcroft

the role that Arkansas gun dealer Roger Moore may have played in the Bombing by having provided “blasting caps” and “kine-stik along with other explosive components.”

3. Nichols described in his *Declaration* the construction of a bomb at Geary Lake, Kansas on the morning of April 18, 1995 using kine-stik obtained from Roger Moore. Attached hereto as *Exhibit 4* is a sketch (Figure 2 thereon) prepared by Nichols of the bomb (Figure 1) he and McVeigh built that morning. This document also contains Nichols’ sketch of the bomb (Figure 3) which Lori Fortier said that McVeigh had described to her and a sketch of the bomb McVeigh described in the book *American Terrorist* as the one used to destroy the Murrah Building. Nichols insists, however, that the bomb described by McVeigh in *American Terrorist* did not resemble the one he helped to build. Nichols says that the bomb described by McVeigh in *American Terrorist* was not only bigger and designed differently, but it displayed a level of expertise and sophistication which neither McVeigh nor Nichols had in building a bomb. (*Nichols Dec.*, ¶ 42.)¹⁰

¹⁰ Nichols said that McVeigh describes a much larger bomb than the one he and McVeigh built at Geary Lake the day prior to the Bombing. It is possible that the difference could be attributed to the 8 -1/2 boxes of Tovex explosives which McVeigh and Nichols stole from a quarry in Marion, Kansas. Nichols said that a small amount (one box) of these quarry explosives was used in the bomb built a Geary Lake, but that he did not know what happened to the other 7-1/2 boxes of Tovex. The Tovex may have been added to the bomb later by McVeigh since Nichols never saw him after McVeigh left in a Ryder truck for Oklahoma City on the morning of April 18, 1995. (*Nichols Dep.*, ¶¶ 12 and 44.)

4. According to Nichols, Roger Moore “**was part of McVeigh’s plot.**” (*Id.* at ¶ 31)(Emphasis added). Attached to Nichols’ *Declaration* as *Exhibit D* (Doc. No. 101) is a memorandum from McVeigh’s defense counsel documenting what McVeigh had said to them about Moore’s involvement in the Bombing, including Moore having provided McVeigh with the kine-stik used to detonate the bomb and McVeigh’s threats to “**sink Roger Moore**” if Moore testified against McVeigh. This document reveals that “**Mr. McVeigh stated [to his defense attorneys] that he made several ‘Kinestik purchases from Moore and Moore even commented to him that he didn’t mind selling [McVeigh] the Kinestik’ because he [Moore] knew that he [McVeigh] would put them to good use.**” (*Exhibit D*, p. 3.)(Emphasis added).¹¹

5. Nichols says in his *Declaration* that the robbery of Roger Moore was “staged” so that if any investigation of the Bombing tracked back to Moore, Moore could claim that he was a victim of a home robbery rather than a supplier of funds and explosives used to carry out the attack. (*Nichols Dec.* ¶ 32.) *Exhibit E* to the *Nichols Declaration* is a report on Moore’s activities prepared by the Nichols defense team from

¹¹ This document also reveals that Moore told a member of McVeigh’s defense team that he was “**glad that the FBI did not search his house the day after the Bombing because if they had done so, that they would have found more weapons in his home than were found at the Dividian Compound at Waco, Texas.**” When McVeigh was told this, he “**immediately replied that the FBI would have found cases of Kinestiks.**”(*Id.*)(Emphasis added).

FBI documents, including a FD-302 reporting upon a conversation between Moore and his attorney Richard McLaughlin. According to this report, “McLaughlin told Moore that he [McLaughlin] hopes the government indicts him [Moore] for financing the OKC bombing.” That report goes on to say that “In response, Moore then got a funny look on his face and stated they would not do anything to him because **he was a protected witness.**” (*Exhibit E*, Doc. No. 101) (Emphasis added).¹²

6. Nichols likewise discusses McVeigh’s involvement with Moore and Moore’s girlfriend Karen Anderson, including their relationship with Andreas Strassmeir who, according to McVeigh, was to provide, “if necessary,” a “safe house” following the Bombing at “some back woods place in Oklahoma.” (*Nichols Dec.* ¶ 14.)¹³ Nichols says that McVeigh, Anderson and Moore traveled the gun show circuit together and that the gun show circuit was McVeigh’s “network” used to obtain materials, and people with the

¹² In this report, McLaughlin had a lot of interesting things to say about Moore, such as the fact that “**Moore had tried to arrange bond for Tim McVeigh** when he was held at the Noble County Jail after his April 19, 1995 arrest and prior to authorities determining McVeigh’s connection to the OKC Bombing.” (*Exhibit E to Nichols Dec.*, ¶ 10) (Emphasis added). McVeigh’s arrest that morning was a result of the license plate that was missing from his getaway car. Nichols said that McVeigh had intentionally removed the license plate from that vehicle and left it in a Herington, Kansas storage shed where Nichols found it the day after the Bombing. (*Nichols Dec.* ¶¶ 43 through 45).

¹³ As the Court now knows, that “backwoods” place was Elohim City.

knowledge-skills needed to carry out the Oklahoma City Bombing. (*Id.* at ¶ 13).¹⁴

7. Moore, McVeigh, Anderson and Strassmeir met at a gun show in April of 1993 in Tulsa, Oklahoma. (*Id.* at ¶ 14.) FBI FD-302 reports of interviews with Moore and Anderson are attached as, respectively, *Exhibits B and C* to the *Nichols Declaration*. These reports reveal that it was Moore and Anderson who put McVeigh in contact with a chemist having anti-government views by the name of Steve Colbern, who was living in the desert near Kingman, Arizona.

C. McVeigh: Moore Provided Weapons And Explosives

Also in the record in this case is the *Declaration* from David Paul Hammer (Doc. No. 99). Hammer spent almost two years with McVeigh on death row prior to the latter's execution. During their association, Hammer and McVeigh had long discussions about the Oklahoma City Bombing including the others involved. Hammer wrote a book about those conversations called *Secrets Worth Dying For*. It is undoubtedly one of the most knowledgeable books about the Bombing. In addition, Hammer submitted a *Declaration* in support of this *Motion*. Set out below are the facts taken from *Hammer's Declaration*

¹⁴ Of course, if Moore was an informant then the gunshow circuit would also be a means for him to tap into the various militia groups around the Country. Moreover, Terry Nichols' defense team put together a thorough "*Investigative Memorandum*" of evidence, mostly from FBI FD-302s, on Moore's activities, including his statement to a reporter for the *Arkansas Democrat Gazette* that: "Whatever I was doing for the FBI is f* * * ed (fucked up) because they blew my cover." (*Investigative Memorandum*, page 1). A copy of that *Memorandum* is attached hereto as *Exhibit 5*.

which support allowing the discovery requested by Plaintiff.

1. McVeigh told Hammer about his trips to the Christian Identity Settlement in Oklahoma known as “Elohim City.” McVeigh also said that at the request of Roger Moore, McVeigh attended a gun show in Tulsa, Oklahoma during April of 1993 where he sold guns to Andreas Strassmeir. (*Hammer Dec.* ¶¶ 14 and 15.)¹⁵ Thereafter, McVeigh visited Strassmeir, Michael Brescia, Kevin McCarthy, Richard Guthrie and Shawn Kenny at Elohim City. McVeigh’s first trip to Elohim City occurred on October 12, 1993. (*Id.* at ¶ 17.)

2. According to Hammer, McVeigh said that Strassmeir was friends with both Roger Moore and Karen Anderson. McVeigh also said that he traveled from Elohim City to Arkansas to visit Moore where the Oklahoma City Bombing was discussed. Moore told McVeigh that he [Moore] would be willing to provide materials for the cause. (*Hammer Dec.*, ¶¶ 18, 20 and 22.)

3. **Moore and Anderson delivered weapons and explosives to Strassmeir at Elohim City when McVeigh was present.** Also present at Elohim City were Michael Brescia and Kevin McCarthy. (*Hammer Dec.* ¶¶ 20 and 22.)

4. **McVeigh first met members of the Midwest Bank Robbers, including**

¹⁵ FBI records indicate that McVeigh reserved a table at that gun show using the name “Tim McEeige” giving as his address “the same [address] as that for Karen Anderson.” *Exhibit 5* at page 4.

Guthrie, at Elohim City and thereafter began to rob banks with them. (*Id.* at ¶¶ 21 and 22.) McVeigh admitted that while at Elohim City in September of 1994, he, Strassmeir, Brescia and Dennis Mahon planned the bombing of the Alfred P. Murrah Building. (*Id.* at ¶ 23.)¹⁶ Dennis Mahon was the leader of the Tulsa, Oklahoma Chapter of the White Aryan Resistance. (*Hammer Dec.*, ¶¶ 20 and 23.)¹⁷

D. Richard Guthrie: McCarthy Took Out The Murrah Building

Peter K. Langan was convicted along with Richard Guthrie and other members of the Midwest Bank Robbery Gang in the FBI case known as “BOMBROB.” He was also an unwilling-coerced informant for the United States Secret Service. Langan has furnished a *Declaration* which is attached hereto as *Exhibit 6*. In that *Declaration*, Langan provides information concerning others who were involved in the Oklahoma City Bombing. Set out below are the facts taken from *Langan’s Declaration* and attached exhibit, which support allowing the discovery requested by Plaintiff.

¹⁶ That date is consistent with Nichols’ statement that McVeigh started to gather the components for a bomb in late September of 1994. (*Nichols Dec.* ¶ 17). This date is also consistent with the date of the warning about a domestic terrorist attack Dees says the SPLC gave to the FBI and Attorney General Janet Reno in the Fall of 1994.

¹⁷ Corroboration for McVeigh’s connections to Elohim City comes, from of all places, the SPLC informant documents produced by FBI Defendants. For example, in the record as *Exhibit 14* at Doc. No. 59 is a February 27, 1997, teletype from the FBI’s Denver command post to the Mobile, Alabama field office stating that “Intelligence reports from the Southern Poverty Law Center, an Alabama-based organization that tracks militia groups, indicate that McVeigh visited the compound in 1994 and 1995.”

1. In 1993, Langan was in jail in Georgia awaiting trial on armed robbery charges when he was recruited by the United States Secret Service to act as an informant against Richard Lee Guthrie and other members of the Midwest Bank Robbers. Langan was released from jail and made contact with Guthrie in October of 1993. (*Langan Dec.*, ¶¶ 3 and 4.)

2. Also associated with Langan were Kevin McCarthy, Shawn Kenny, Scott Stedeford, Mark Thomas and Michael Brescia. (¶ 28.) According to Langan, McCarthy, Brescia and Stedeford stayed for long periods of time with Strassmeir at Elohim City. (*Id.* at ¶ 31.)

3. Langan said that in the early hours of April 20, 1995 between 1:00 a.m. and 2:00 a.m. – following the Bombing – McCarthy and Stedeford arrived at the house where Langan was living in Pittsburg, Kansas. They had traveled to Kansas from Elohim City. (*Id.* at ¶ 8.) McCarthy subsequently admitted to Langan that he had “**liabilities**” arising out of the Oklahoma City Bombing. (*Id.* at ¶¶ 20 and 21.)(Emphasis added).

4. Shortly thereafter, McCarthy and Stedeford went to visit Mark Thomas at Thomas’ home in Pennsylvania. Guthrie joined them in Pennsylvania. Guthrie later told Langan that as a result of that trip he learned that McCarthy was John Doe 2¹⁸. Guthrie

¹⁸ The notion that McCarthy was “John Doe 2” is not in conflict with Guthrie also having been “John Doe 2.” This is so because McVeigh was apparently aided and assisted by a number of individuals, which undoubtedly explains the discrepancy in the

also supposedly said that: “**Your young Mr. Wizard [Kevin McCarthy] took out the Murrah Building.**” (*Langan Dec.*, ¶¶ 13 and 15) (Emphasis added).

5. Attached as *Exhibit A* to *Langan’s Declaration* is the FBI’s 302 report of an interview with Kevin McCarthy following the Bombing. That interview took place June 14, 1996 and the purpose of that interview was to query McCarthy “**regarding his knowledge of the Oklahoma City Bombing . . .**” (Emphasis added). According to this report, McCarthy admitted that in April of 1995 he was residing at Elohim City “with Andy Strassmeir.” McCarthy stated that “also residing with Strassmeir were McCarthy’s close friends, Michael William Brescia and Scott Anthony Stedeford.” This FD - 302 likewise states that “**Timothy McVeigh, who had been arrested for the Bombing, had apparently telephoned Andy Strassmeir in Elohim City several weeks prior to the Bombing.**”¹⁹ McCarthy, however, insisted that three days prior to the Bombing he and

various descriptions of “John Doe 2.”

¹⁹ This is a highly significant fact. It is highly significant because in one of the documents produced by FBI Defendant, a January 4, 1996 teletype, the telephone calls McVeigh made to Elohim City are reported but the name of the person McVeigh was calling is redacted or blacked out. Knowing that the redacted name was that of “Strassmeir,” fills in a lot of the missing information on this document. It, for example, reveals that FBI Defendants knew that Strassmeir was then in North Carolina and planning “to leave the U.S. via Mexico, in the near future,” which he did. But despite this knowledge of flight, FBI Defendants did not stop Strassmeir. This particular document is discussed in more detail, *infra*, at p. 27.

Stedeford “left the Strassmeir residence and traveled to Pittsburg, Kansas where they stayed with Peter Langan and Richard Guthrie.” (*Langan Dec.*, ¶ 31, Ex. A.)²⁰ But as previously noted, according to Langan, that was not true. McCarthy and Stedeford did not arrive in Pittsburg until the early morning hours of April 20, 1995. Moreover, they had traveled to Pittsburg from Elohim City.

E. Secret Service: Money From Bank Robberies Financed The Bombing

Attached hereto as *Exhibit 7* is the *Declaration* of Matthew J. Moning, a former Cincinnati police officer. Moning was involved in tracking the activities of the Midwest Bank Robbery Gang, including Langan, Guthrie and Shawn Kenny. Kenny recently went public with his role as an informant for the FBI. (*Doc. No. 82.*) Moning supplies information about the activities of Guthrie and the others, including the involvement of the FBI and Secret Service. Set out below are the facts taken from Moning’s *Affidavit* which support allowing the discovery requested by Plaintiff.

1. From August of 1993 to June of 1994, Moning was actively involved in tracking Guthrie, Kenny and the “Midwest Bank Bandits.” (*Moning Aff’d* ¶ 1.)

²⁰ McCarthy apparently told the FBI that he was at Pittsburg with Langan and Guthrie when he “learned of the Oklahoma City Bombing . . .” It is reported that there is another FD - 302 of an FBI interview with McCarthy wherein he gives yet another story about his location when he first learned of the Bombing. In this 302, McCarthy claims he was in Iowa. Interestingly, Lanagn reports that the FBI fostered and supported McCarthy’s Iowa statement even though the Bureau knew it was not true. (*Langan Dec.* ¶ ‘s 41 and 42).

2. While Moning provides many interesting details about Kenny and the others, the most significant for purposes of the *Motion* at bar would be in ¶ 12 of his *Affidavit* where he discusses his conversations with Secret Service Agent Larry Haas. Haas informed Moning that Guthrie had committed suicide while in custody “after being told that he was going to be executed for his role in the Oklahoma City Bombing case.”²¹ According to Haas, Guthrie was told that “**money from his robberies had been tied to that case** and that meant the death sentence.” (*Moning Aff’d*, ¶ 12) (Emphasis added).

3. Years before Shawn Kenny went public with his role as an informant for the FBI, Moning correctly states in his *Affidavit* that Shawn Kenny was an FBI informant. (Moning Dec., ¶ 10.) Moning also states that Kenny’s record and criminal history “has been and still is being actively ‘erased’.” (*Id.* at ¶ 11.)²²

4. Moning also says that FBI Agent Wood admitted that the FBI had recovered from the Midwest Bank Robbers “an arsenal in weapons, ammunition, explosives, blasting caps, rocket launchers, etc.” (*Id.* at ¶ 7.)²³

²¹ This, too, corroborates McVeigh’s admission to Hammer that he (McVeigh) had robbed banks with members of the Midwest Bank Robbery Gang.

²² The fact that Kenny’s criminal record has been expunged is consistent with his role as an informant.

²³ Langan said that the blasting caps had been seized from Guthrie’s residence and destroyed by the FBI. Langan also said that McCarthy had given the blasting caps to him and Guthrie. (*Langan Dec.*, ¶ 32). Langan has no knowledge of how McCarthy came to

F. BATF: Strassmeir Threatened To Blow Up Federal Buildings

In the record as *Doc. No. 78, Exhibit No. 8*, is a transcript of a sealed proceeding in the *United States of America v. James Viefhaus, et al*, United States District Court for the Northern District of Oklahoma, No. 97-CR-00005-BU. This is a transcript of federal court proceedings that took place on April 24, 1997. The proceedings involved the testimony of Angela Graham. Graham was a Special Agent with the Bureau of Alcohol, Tobacco and Firearms (“BATF”). Graham testified about BATF informant, Carol Howe. Graham was asked, specifically, whether the Government’s claim about not having informants at Elohim City was true and she said “no.” Set out below are the facts taken from this transcript which support allowing the discovery requested by Plaintiff.

1. Howe was the BATF informant at Elohim City during the fall and winter of 1994 and 1995. (*Transcript*, p. 7.) Howe made numerous contacts at Elohim City with Dennis Mahon. Mahon was suspected of making hand grenades and engaged in similar activities on behalf of the white supremacist movement. (*Id.* at pp. 8-9)

2. Howe called Graham the day after the Bombing to say that she thought she could identify John Doe No. 2. (*Id.* at p. 16.) Howe also provided the BATF with

possess these blasting caps. But with McCarthy’s Elohim City connections, the blasting caps may have come from Roger Moore who McVeigh supposedly said was a purveyor of weapons and explosives to the Elohim City network. If true, then Moore’s status as a “protected witness” means that he was possibly an agent/informant or, perhaps, even a provocateur?

information about Strassmeir. (*Id.* at 18.)

3. Howe told the BATF about Strassmeir's threat to "blow up federal buildings."

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

A: In general, yes.

Q: And that was before the Oklahoma City bombing?

A: Yes.

(*Transcript p. 30*) (emphasis added). Graham said that this threat was made several months before the Oklahoma City Bombing. (*Id.* at 30.)

4. According to Graham, at her direction, Howe actually went with "these people from Elohim City" to Oklahoma City. (*Id.* at p. 31.)

5. Graham gave the following additional testimony about Howe's information concerning Strassmeir and the others at Elohim City:

Q: And this was the place where Strassmeir was living? Elohim City?

A: Yes.

Q: And this is the gentleman that she [Howe] told you about that had intentions to blow up federal buildings?

A: That is the general militia rhetoric. Everyone out there [Elohim City] is saying the same thing.

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

A: No, it would be months.

Q: **Oh, when did that occur?**

A: **The fall of 1994.**²⁴

Q: **And you are sure about that?**

A: **Yes.**

(*Transcript*, p. 32) (Emphasis added).

6. But perhaps the most startling testimony from Graham concerned the fact that the Government was not being truthful in the McVeigh trial when it said that there were no informants at Elohim City.²⁵ Graham's testimony on this subject is set out below.

²⁴ Again, this date coincides with Nichols's statement about when McVeigh began to gather components for a bomb, with McVeigh's statement to Hammer about when the plan to attack the Murrah Building was formed, and with Dees' statement about the warning of a domestic terrorist attack given by the SPLC to the FBI and Attorney General Reno.

²⁵ McVeigh told Hammer that Elohim City was known as "ATF City" because of the number of informants living there or visiting the compound on a regular basis. (*Hammer Dec.*, ¶ 24.) McVeigh identified Strassmeir as an informant. (*Id.* at ¶ 18.) In addition to Howe (**BATF**), Langan (**Secret Service**) and Kenny (**FBI**), all of whom are admitted informants, in the instant case FBI Defendants submitted a *Declaration* from David E. Hardy, the Section Chief of the Bureau's "Records Management Division" disclosing the existence of still more unnamed informants.

That *Declaration* was submitted in support of the FBI's contention that Plaintiff

Q: Well, had you heard government statements that there was never an informant at Elohim City in the fall of 1994?

A: I haven't heard that.

Q: You've never seen those reports that the government took the position in connection with the McVeigh trial –

A: No, I haven't.

Q: **You would know that to be untrue though, that statement?**

A: **Yes, I would know that.**

(*Transcript*, p. 43.)(Emphasis added).²⁶

7. That questioning of Graham resulted in the Government asking that the transcript of those proceedings be “**sealed.**” The Government’s attorney asked that it be sealed to prevent the information from falling into the hands of the McVeigh defense

should not be given documents containing the names of the informants because they all had been promised confidentiality. According to Hardy, the FBI and/or SPLC had promised four individuals “confidentiality.” *Hardy’s Declaration* appears of record as *Exhibit A* to Doc No. 74. Hardy’s admission about these **four additional FBI informants** means that there were at least seven informants associated with the activities at Elohim City and the Midwest Bank Robbers! The Court has already stated that Shawn Kenny was not one of these four informants. (Doc. No. 88, p. 16.)

²⁶ Graham’s testimony about the presence of informants at Elohim City prior to the Bombing seriously calls into question FBI Defendants’ response to Plaintiff’s *FOIA* requests. Specifically, the fact that FBI Defendants failed to produce any documents or records related to SPLC informant activities with a date earlier than April 25, 1995. Again, it is not credible that given the level of infiltration of the Midwest Bank Robbers and Elohim City by Government-SPLC agents prior to April 19, 1995, that the earliest record of SPLC informant activity is one week AFTER the Bombing.

team. (*Transcript*, pp. 51-63.) The Court granted that *Motion* stating that: “With that McVeigh trial going on, I don’t want anything getting out of here that would compromise that trial in any way.” (*Id.* at p. 63.) Defense counsel immediately asked: “**What do you mean by compromise? Do you mean shared with the McVeigh lawyers?**” To which the Court responded:

. **Yes, or something that would come up, you know. We have got evidence that the ATF took a trip with somebody that said buildings were going to be blown up in Oklahoma City before it was blown up or something of that nature and try to connect it with McVeigh in some way or something.**

(*Transcript*, p. 63.)(Emphasis added).

G. SPLC: McVeigh Called Strassmeir At Elohim City For Help In The Bombing

In the record - - produced as a result of this *FOIA* suit are a number of FBI teletypes. With respect to this *Motion*, the following two teletypes are of special significance:

1. The first is a January 4, 2006, teletype from FBI Director Louis Freeh to a number of field offices which appears of record at Doc. No. 78, *Exhibit 2*. This teletype discusses a number of SPLC informants, including one from “Cincinnati” apparently associated with the Midwest Bank Robbery Gang and another at Elohim City. According to the Elohim City informant, before the Bombing Tim McVeigh telephoned Elohim City a number of times, including on April 5, 1995, asking for Strassmeir and attempting to

recruit others to “**assist in the OKBOMB attack.**” (Emphasis added).²⁷ This FD-302 likewise reports that just two days before the Bombing on April 17, 1995, McVeigh again called Elohim City asking for Strassmeir.²⁸

²⁷ Admittedly, the name of the person McVeigh was trying to reach at Elohim City is blacked out on this document, but that name consists of 23 letters and/or spaces and so, too, does the name “Andreas Carl Strassmier”. More importantly, from the previously mentioned McCarthy FD - 302 it is now known that with this call and another call just two days before the Bombing McVeigh was trying to reach Strassmier. Knowing it is Strassmeir name that is blacked out on this teletype provides the key to interpreting still other SPLC informant documents wherein the name is blacked out, such as a January 26, 19996, teletype from the Oklahoma City command post to Director Freeh. This document is filed of record at Doc. No. 59, *Exhibit 8*. It indicates that the person at Elohim City McVeigh was calling “conducted paramilitary training for EC [Elohim City] as well as other militia groups.” According to this document Strassmeir, who by then was in North Carolina on his way out of the United States, left Oklahoma because things were “too hot out there . . . referring to the Bombing in Oklahoma City.”

Strassmeir’s name was presumably blacked out on these and other SPLC informant documents by the FBI based upon the *Declaration* in which Hardy claimed four informants had been promised anonymity. Again, this teletype was produced as a document responsive to Plaintiff’s *FOIA* requests for records involving the SPLC’s informant undercover sting operation linked to Elohim City, the Midwest Bank Robbers and/or the Bombing, and that fact cannot be over emphasized. FBI Defendants’ production of these records in response to Plaintiff’s narrowly drawn *FOIA* request is an admission that there was such an SPLC informant operation involving these subjects.

²⁸ FBI records reveal that on April 17, 1995 McVeigh also telephoned and spoke with Dave Hollaway. This information is contained in a FD-302 of an informant concerning his or her discussions with Hollaway. According to the FD-302, Hollaway is former Special Forces, was briefly involved with the Central Intelligence Agency and has explosive ordinance disposal training. The informant states that in discussing the Bombing, Hollaway said: “The fucking truck was too far away” and that it was not parked in a position to “inflict the most damage on the building.” The informant states that Hollaway described the bomb “with an alarming degree of specificity” and implied

2. The second teletype is dated August 23, 1996. It, too, was produced by FBI Defendants, and appears of record as *Exhibit 3* at Doc. No. 78. Again, this teletype is from FBI Director Louis Freeh, and it concerns a domestic terrorism investigation being run or conducted out of the FBI's Philadelphia field office. The subjects of the teletype are Kevin McCarthy, Scott Stedeford, Michael Brescia, Richard Guthrie, Mark Thomas, and other members of the Midwest Bank Robbery Gang. This document also refers to McVeigh and his connection with Elohim City. In this teletype, Director Freeh talks at length about information provided by Guthrie after his arrest, including Guthrie having **“admitted to paying [someone whose name has been blacked out but is seven letters long -- as is M-C-V-E-I-G-H] money derived from bank robberies and identified [again blacked out a person whose name is seven letters long] as an accomplice in certain bank robberies.”**(Emphasis added).

3. This teletype is interesting because it repeatedly refers to “OKBOMB subject Timothy McVeigh” as well as the “BOMBROB subjects” who, the FBI publicly insists, have no relationship to each other or the Bombing.²⁹ Another interesting subject in this

that he was also involved. A copy of that FD-302 is attached hereto as *Exhibit 8*.

²⁹ This seems to be a common pattern on behalf of FBI Defendants: public statements that there is nothing linking McVeigh to Elohim City or the Midwest Bank Robbers. Yet as this document shows, within the FBI this link is clearly recognized and secretly pursued. Consider, for example, the June 17, 1996, FD-302 attached to Langan's *Declaration*. That document was part of the Bombing investigation (case

teletype are the April of 1995 telephone calls which McVeigh placed to Strassmeir's residence in Elohim City as well as an April 16, 1995 telephone call from Strassmeir's residence in Elohim City to Mark Thomas' home in Pennsylvania where Stedeford, McCarthy and Guthrie would eventually gather immediately post-Bombing.³⁰

H. Congress: McCarthy Is Also A Protected Witness

In December, 2006, Congress issued a report of its two-year investigation into the Oklahoma City Bombing by the Oversight and Investigations Subcommittee of the House International Relations Committee. The central findings of this report were that: (1) many questions remain unanswered about the Bombing; (2) the FBI should not have called off the search for John Doe 2; (3) the FBI did not thoroughly investigate the involvement of Andreas Strassmeir in the Bombing; (4) the FBI erred in allowing McVeigh to move forward the time of his execution while major questions remained about whether others were involved in the crime; and (5) that, far from assisting the Subcommittee with its investigation, the Justice Department and the FBI essentially dragged their feet and hid information from congressional investigators. That *Report* already appears of record as

174A-OC-76120) and it references not only McVeigh, but also Strassmeir, McCarthy, Stedeford, Guthrie, Brescia and Elohim City. For some reason, though, Elohim City and these individuals suddenly became of no interest to the OKBOMB investigators.

³⁰ Director Freeh also indicates that there apparently is an informant among this group who "consented to wearing a body recorder and transmitter."

Exhibit A at Doc. No. 97. Set out below are the facts taken from this *Report* which support allowing the discovery requested by Plaintiff.

1. The Subcommittee drew the obvious conclusion about the relationship between Guthrie and the death of Kenneth Michael Trentadue:

Bank robber Richard Guthrie claimed that he would soon be revealing information that **would blow the lid off the Oklahoma City bombing case**. The next day, he was found dead, hanging in his cell, purportedly a suicide. This suspicious ‘suicide’ mirrored a similar death of Kenneth Trentadue, another prisoner who may have been tangentially and incorrectly linked to the Oklahoma City bombing. **The death of these two prisoners, who happened to be very similar in appearance, is more than disturbing.**

(*Report*, p. 10) (Emphasis added).

2. The Subcommittee also investigated the connection between Strassmeir and McVeigh. That relationship the Subcommittee reported gave “reason for suspicion.” Of particular concern to the Subcommittee, was the FBI’s insistence that there was no relationship between McVeigh, Strassmeir and Elohim City. This assertion caused the Subcommittee to wonder with obvious cynicism: **“Why would McVeigh try to recruit a virtual stranger to join him in such a monstrous criminal act? Obviously there was more to this relationship than is currently acknowledged.”** (*Id.* at p. 8) (Emphasis added).³¹

³¹ And indeed there was more of a relationship between Strassmeir and McVeigh than FBI Defendants are willing to admit. In the January 24, 1996 teletype, for instance, Director Freeh refers to information from an SPLC source at Elohim City that Strassmeir

3. But perhaps the most intriguing of the Subcommittee's findings related to Kevin McCarthy. Most notably, the Subcommittee's attempts to investigate McCarthy's obvious link to the Bombing, which the *Report* says ran into a stone wall:

The subcommittee's unsuccessful yet repeated attempts to reach Kevin McCarthy created more unanswered questions. Law enforcement officials told subcommittee staff that, after serving 5 years in federal prison for his role in the robberies, McCarthy was released on probation and returned to his native Philadelphia.³² However, a federal probation officer in Philadelphia could find no record of McCarthy in the federal probation system. A confidential law enforcement source informed the subcommittee that McCarthy was in some type of federal witness protection program and even located him living in Newtown, Pennsylvania. **When pressed for details a week later, this same source told staff that he could no longer help with this matter and that it was 'above his pay grade.'**

Continuing the attempt to locate McCarthy, the subcommittee chairman contacted the head of the Department of Justice's federal witness protection program. The official confirmed that in the past McCarthy had been in the program but had no information on his current status. Similarly, the subcommittee also discovered, through a private source, that McCarthy is no longer attached to the Social Security Number he had at the time of entry into the federal prison system. These

“allegedly has had a lengthy relationship with Tim McVeigh”

³² Another fact to ponder is that Langan, a Secret Service informant, received a life sentence without the possibility of parole, plus 35 years; whereas McCarthy received only a five year sentence and has been “disappeared” by the Government. Another curious figure is Midwest Bank Robber Mark Thomas, who seems to have enjoyed treatment similar to McCarthy's. During Langan's trial, Thomas agreed to testify about what he knew concerning McCarthy's connection to the Oklahoma City Bombing. That did not happen, however. Rather, Thomas became an FBI informant and “protected federal witness.” (*Langan Dec.*, ¶ 49.)

facts raise questions about whether McCarthy is, in fact, still under some sort of federal protection as well as why the Department of Justice was unable or unwilling to help find him. **It is astonishing that officials from the Department of Justice and other law enforcement agencies were unwilling to permit congressional investigators to question a former bank robber with a possible connection to a large-scale terrorist attack.**

*(Report, pp 10-11) (Emphasis added).*³³

CONCLUSION

This Thursday, April 19, 2007, it will have been twelve years since 168 people, including 19 toddlers, were killed in the attack upon the Murrah Building. It was and remains the single greatest act of domestic terrorism committed in the United States during the 20th Century. It will also soon be twelve years since the murder of Kenneth Michael Trentadue, and three years since Plaintiff started out to obtain proof that his brother - - because of his unfortunate resemblance to Richard Lee Guthrie, who Plaintiff suspects was a John Doe 2 in the Bombing³⁴ - - became the 169th victim of the Bombing when he was tortured to obtain information he did not have and eventually was strangled with a pair of plastic handcuffs. It is Plaintiff's goal to prove that his brother died while in federal

³³ The Government's resistance and obstruction of justice in the McCarthy matter is not so astonishing when one considers what was at stake: Subcommittee access to McCarthy placed at risk of exposure the Government's complicity, through informants, in the Bombing and its failure to prevent that attack.

³⁴ As previously observed, there was obviously more than one John Doe 2 since others clearly assisted McVeigh.

custody in Oklahoma City, Oklahoma as the indirect result of a failed Government sting operation at a white supremacist's paramilitary training compound at Elohim City, Oklahoma.

Plaintiff has attempted to do this through the exercise of his rights under *FOIA* by requesting documents and/or records related to SPLC informants involving Elohim City, Midwest Bank Robbers and/or the Bombing. Plaintiff has been successful in showing that the Government, through the activity of a gaggle of informants, had prior knowledge of and complicity in the Bombing. This proof did not come from documents and records which FBI Defendants were required by law to produce, but did not produce. Instead, Plaintiff has proven these matters as a result of the evidence obtained from Nichols, Hammer, Langan, Moning and the other sources referred to in this supporting *Memoranda*, including Government records that Plaintiff has obtained from a variety of sources other than FBI Defendants.³⁵ Yet that is not how it is supposed to have happened.

³⁵ These sources of evidence are not only independent of each other, but also involve members of the Bombing conspiracy, members of the Midwest Bank Robbery Gang, Congress and Government agents, including law enforcement personnel. Despite being from such diverse and independent sources, this evidence all comes together like the cross hairs of a rifle scope sited upon a network of informants somehow involved in the destruction of the Murrah Building on April 19, 1995. This is the story that the documents dated prior to April 25, 1995 but not produced would tell, which FBI Defendants obviously do not wish told. And that, in a nutshell, sums up this *FOIA* action and this *Motion*.

Plaintiff should have been able to arrive at this proof through the exercise of his rights under *FOIA*, which clearly did not occur.

Rather than stepping forward and meeting their *FOIA* obligations in accordance with the law, FBI Defendants' first response was to claim that there were no documents involving an SPLC informant operation. Thereafter followed a pattern of accusations and denials between the parties with FBI Defendants eventually being exposed as having failed to produce responsive documents, which prompted the May 5, 2005, *Order* from this Court. That *Order* after many months and further disputes between the parties eventually resulted in FBI Defendants reluctantly producing almost 150 pages of SPLC informant documents which they had initially told the Court did not exist. Yet, not one of these documents had a date earlier than April 25, 1995, even though the evidence is undisputed that an informant sting operation had been in existence since at least the fall of 1994.

Under the facts and history of this case, Plaintiff respectfully submits that he should be given the opportunity to depose Nichols and Hammer, and to videotape those depositions. The purpose for these depositions being to fully explore with these witnesses any knowledge they may have that, directly or indirectly, relates to informants operating within Elohim City, the Midwest Bank Robbery Gang and/or the Bombing conspiracy in order to challenge the lawfulness of FBI Defendants' response to Plaintiff's *FOIA* request..

DATED this 16th day of April, 2007.

/s/ Jesse C. Trentadue
Jesse C. Trentadue
Pro Se Plaintiff _____

CERTIFICATE OF SERVICE

_____ I HEREBY CERTIFY that on the 16th day of April, 2007, I caused a true and correct copy of the foregoing **REPLY MEMORANDUM IN SUPPORT OF MOTION TO CONDUCT DISCOVERY** to be served via electronic process upon the following:

Carlie Christensen
Assistant United States Attorney
185 South State Street, Suite 400
Salt Lake City, UT. 84111

/s/ Jesse C. Trentadue

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