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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

----- X

JAMES LUTCHER NEGLEY, )

Plaintiff, )

vs. )

FEDERAL BUREAU OF )

INVESTIGATION, )

Defendant. )

----- X

Case No.  
03-CV-2126 (GK)  
Pages 1-135

VIDEO TELECONFERENCE  
DEPOSITION OF SANDRA A. FIGONI  
Friday, July 13, 2007  
Washington, D.C.

Reported by: Sara A. Watt

Job No. 182040

Page 2

1  
2  
3  
4 July 13, 2007  
5 1:03 p.m.  
6  
7 Video teleconference deposition of SANDRA A.  
8 FIGONI, held at the offices of:  
9  
10 Federal Bureau of Investigation  
11 935 Pennsylvania Avenue, Northwest  
12 Washington, D.C. 20535  
13  
14 Pursuant to notice, before Sara A. Watt, Registered  
15 Merit Reporter and Notary Public in and for the  
16 District of Columbia.  
17  
18  
19  
20  
21  
22

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1 ALSO PRESENT:  
2 Mary Ann Kenney, California Notary Public  
3 Brett Sander, intern  
4 Omar Ayad, intern  
5  
6 (Ms. Figoni and Ms. Kenney were present by video  
7 teleconference from San Francisco. All others  
8 present in D.C.)  
9 ---  
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11  
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Page 3

1 ON BEHALF OF THE PLAINTIFF:  
2 Prashant Khetan, Esquire  
3 Ross, Dixon & Bell  
4 2001 K Street, Northwest  
5 Suite 400  
6 Washington, D.C. 20006-1040  
7 (202) 662-2000  
8  
9 ON BEHALF OF THE DEFENDANT:  
10 Oliver W. McDaniel, Esquire  
11 Office of the U.S. Attorney  
12 555 4th Street, Northwest  
13 Washington, D.C. 20530  
14 (202) 616-0739  
15  
16 Jennifer U. Toth, Esquire  
17 Federal Bureau of Investigation  
18 Office of General Counsel  
19 935 Pennsylvania Avenue, Northwest  
20 Washington, D.C. 20535  
21 (202) 220-9327  
22

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2  
3 EXAMINATION OF SANDRA A. FIGONI: PAGE  
4 MR. KHETAN 7  
5 ---  
6  
7 EXHIBITS  
8  
9 FIGONI DEPOSITION EXHIBITS PAGE  
10 None.  
11 ---  
12  
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21  
22

2 (Pages 2 to 5)

Page 6

1           P R O C E E D I N G S  
2       Thereupon,  
3           S A N D R A   A .   F I G O N I  
4       A witness, called for examination by counsel for  
5       the Plaintiff, and, after having been sworn by the  
6       notary, was examined and testified as follows:  
7           T H E   W I T N E S S :   I   d o .  
8           M R .   M C D A N I E L :   O k a y .   M s .   F i g o n i ,   O l i v e r  
9       M c D a n i e l   t a l k i n g .   H o w   a r e   y o u   t o d a y ?  
10          T H E   W I T N E S S :   I ' m   f i n e .   H o w   a r e   y o u ?  
11          M R .   M C D A N I E L :   G o o d .   W e ' r e   g e t t i n g   r e a d y  
12       t o   s t a r t   w i t h   t h e   d e p o s i t i o n .   I   j u s t   w a n t e d   t o   l e t  
13       y o u   k n o w   e v e r y o n e   w h o ' s   h e r e .  
14          A c r o s s   f r o m   m e   i s   M r .   K h e t a n .   H e ' s   g o i n g  
15       t o   b e   t a k i n g   t h e   d e p o s i t i o n .   A n d   w i t h   h i m   i s   --  
16          T H E   W I T N E S S :   H e l l o ,   M r .   K h e t a n .  
17          M R .   K H E T A N :   G o o d   a f t e r n o o n .  
18          M R .   M C D A N I E L :   A n d   w i t h   h i m   i s   h i s  
19       i n t e r n .  
20          M R .   A Y A D :   H i .  
21          M R .   M C D A N I E L :   O n   t h e   s a m e   s i d e   o f   t h e  
22       r o o m   i s   h i s   i n t e r n .   O k a y .

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1           A n d   y o u   k n o w   m e   a n d   y o u   k n o w   J e n n i f e r .  
2       A n d   w i t h   u s   i s   a n o t h e r   i n t e r n   w h o ' s   w i t h   u s .   O k a y .  
3           T H E   W I T N E S S :   O k a y .  
4           M R .   M C D A N I E L :   J u s t   w a n t e d   t o   m a k e   s u r e  
5       y o u   k n e w   w h o   e v e r y o n e   i s   i n   t h e   r o o m .  
6           E X A M I N A T I O N   B Y   C O U N S E L   F O R   P L A I N T I F F  
7       B Y   M R .   K H E T A N :  
8           Q .   A r e   w e   r e a d y   t o   b e g i n ?  
9           A .   Y e s ,   s i r .  
10          Q .   O k a y .   W e   j u s t   w e r e   i n t r o d u c e d ,   b u t   a g a i n  
11       I ' m   P r a s h a n t   K h e t a n .   I   r e p r e s e n t   J a m e s   N e g l e y   i n  
12       t h i s   l a w s u i t .   W h y   d o n ' t   w e   g o   o v e r   s o m e   v e r y   b a s i c  
13       g r o u n d   r u l e s   b e f o r e   w e   s t a r t .  
14          H a v e   y o u   h a d   y o u r   d e p o s i t i o n   t a k e n  
15       b e f o r e ?  
16          A .   Y e s ,   I   h a v e .  
17          Q .   H o w   m a n y   t i m e s ?  
18          A .   T w i c e .  
19          Q .   A n d   w h e n   w e r e   t h o s e ?  
20          A .   T h e   f i r s t   o n e   w a s   l a t t e r ' 7 0 s ,   e a r l y  
21       ' 8 0 s .   A n d   t h e   s e c o n d   o n e   w a s   i n   t h e ' 9 0 s .   I ' m  
22       l o s i n g   t r a c k   o f   t i m e ,   b u t   1 9 9 0 s   s o m e t i m e .

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1           Q .   O k a y .   A n d   t h e   f i r s t   o n e   t h a t   w a s   i n   t h e  
2       l a t t e r ' 7 0 s   o r   e a r l y ' 8 0 s ,   j u s t   v e r y   b r i e f l y ,   w h a t  
3       w a s   y o u r   i n v o l v e m e n t   i n   t h a t   c a s e ?   W e r e   y o u   a  
4       p a r t y   t o   t h a t   c a s e ?  
5           A .   N o .   I   w a s   a s k e d -- I   p r o c e s s e d   a   F r e e d o m  
6       o f   I n f o r m a t i o n   A c t   r e q u e s t   a n d   P l a i n t i f f ' s   a t t o r n e y  
7       w a n t e d   t o   a s k   m e   s o m e   q u e s t i o n s   r e g a r d i n g   t h a t .  
8           Q .   O k a y .   A n d   w a s   t h a t   t a k e n   i n   y o u r  
9       c a p a c i t y   a s   a n   e m p l o y e e   o f   t h e   F B I ?  
10          A .   Y e s ,   i t   w a s .  
11          Q .   A n d   w a s   t h a t   w h i l e   y o u   w e r e   w o r k i n g   a t  
12       t h e   S a n   F r a n c i s c o   f i e l d   o f f i c e ?  
13          A .   Y e s .  
14          Q .   O k a y .   W h a t   w a s   y o u r -- w h a t   w a s   y o u r  
15       r o l e   i n   t h a t   p a r t i c u l a r   F O I A   r e q u e s t ?  
16          A .   I   w a s   t h e   a n a l y s t   t h a t   p r o c e s s e d   t h e  
17       r e q u e s t .  
18          Q .   W h e n   y o u   s a y " p r o c e s s e d , "   d o e s   t h a t   m e a n  
19       t h a t   y o u   p h y s i c a l l y   s e a r c h e d   f o r   r e s p o n s i v e  
20       d o c u m e n t s ?  
21          A .   Y e s .  
22          Q .   O k a y .

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1           A .   I t   w a s   q u i t e   s o m e   t i m e   a g o .   I   c a n ' t  
2       r e m e m b e r   a l l   t h e   d e t a i l s ,   b u t   y e s ,   t h a t   w a s   m y   r o l e  
3       a t   t h e   t i m e .  
4           Q .   O k a y .   A n d   w a s   y o u r   i n v o l v e m e n t   a   r e s u l t  
5       o f   a   c a s e   f i l e d   b y   t h e   p e r s o n   w h o   h a d   r e q u e s t e d  
6       d o c u m e n t s ?  
7           A .   I t   w a s -- t h e   q u e s t i o n   a t   h a n d   w a s  
8       r e g a r d i n g   a   p a r t i c u l a r ,   n o t   d o c u m e n t ,   b u t   a   t a p e  
9       t h a t   w a s   r e t r i e v e d   t h r o u g h   t h e   s e a r c h .  
10          Q .   O k a y .   A n d   w a s   t h e   i s s u e   w h e t h e r   o r   n o t  
11       y o u   h a d   f o u n d   t h e   t a p e   o r   w h e t h e r   o r   n o t   y o u   h a d  
12       p r o d u c e d   t h e   t a p e ?  
13          A .   T h e   q u e s t i o n   w a s   n e i t h e r .   T h e   q u e s t i o n  
14       w a s   w h e n   I   d i d   r e t r i e v e   t h e   t a p e   i n   t h e   o f f i c e ,  
15       w h a t   d i d   I   d o   w i t h   t h e   t a p e   t o   m a k e   s u r e   i t   w a s  
16       s e c u r e .  
17          Q .   O k a y .   A n d   d i d   y o u   h a v e   a n y   o t h e r  
18       i n v o l v e m e n t   i n   t h a t   c a s e ?  
19          A .   N o .  
20          Q .   O k a y .   A n d   t h e n   y o u   m e n t i o n e d   a   s e c o n d  
21       l a w s u i t   s o m e t i m e   i n   t h e ' 9 0 s .   D o   y o u   k n o w   i f   t h a t  
22       w a s --

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1 A. Yes.  
2 Q. Do you know if that was in the early '90s  
3 or the late '90s?  
4 A. It started -- it went on for many years  
5 and it even went to court. I really have lost  
6 track of time when the deposition was actually  
7 given. And then my court appearance was the latter  
8 '90s or early 2000s. I can't remember --  
9 Q. Okay. And what --  
10 A. -- the actual date.  
11 Q. I'm sorry. I don't mean to interrupt  
12 you.  
13 A. That's okay.  
14 Q. What was your involvement in that case?  
15 A. The involvement in that case was to try  
16 to explain the records process.  
17 Q. Okay. Were you also involved in that  
18 case as it related to processing a FOIA request?  
19 A. No, I was no longer in FOIA.  
20 Q. Okay. Were you involved to explain the  
21 records process at the San Francisco field office?  
22 A. Yes. It was regarding San Francisco

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1 records.  
2 Q. Okay. And you had your deposition taken?  
3 A. Yes.  
4 Q. You were not a party to that lawsuit; am  
5 I correct?  
6 A. No, I was not.  
7 Q. Okay. And then I believe you said you  
8 also were called in for trial?  
9 A. Yes, I was.  
10 Q. Okay. And was the substance of your  
11 testimony at trial similar to what you just  
12 described, to explain the records process?  
13 A. Yes.  
14 Q. Okay.  
15 A. Yes, it was.  
16 Q. So at some point, and we'll get to this  
17 in more detail later, but just to complete this,  
18 you said a few minutes ago that at some point you  
19 stopped processing FOIA requests.  
20 When did that happen?  
21 A. 1988. I processed FOIA requests for 11  
22 years and then in 1988 I went into management.

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1 Q. When you say "management," does that mean  
2 the records process, is that what you're calling  
3 management?  
4 A. It's the current position I'm in now.  
5 Q. And what is that?  
6 A. I'm a supervisory administrative  
7 specialist. My role is pending files, closed  
8 files, evidence, mail dispatch, investigative  
9 assistance. There's support -- it's all on the  
10 support capacity, people that do record checks and  
11 serve subpoenas.  
12 I'm also a contracting officer and I  
13 oversee two San Francisco budgets, the support  
14 overtime budget and the supply budget.  
15 Q. And are you doing this only for San  
16 Francisco or do you have any role that relates to  
17 the main office as well?  
18 A. My management is here in San Francisco,  
19 but I do have contact with headquarters. But the  
20 people that work for me, they're all assigned to  
21 the San Francisco division.  
22 Q. Okay. We'll get to your current role and

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1 your job duties in a moment, but other than the two  
2 depositions that we just talked about have you had  
3 any prior deposition experience?  
4 A. No.  
5 Q. Any court appearances other than the one  
6 you just talked about?  
7 A. No.  
8 Q. Okay. We've already gone through by  
9 doing this some of the ground rules, but let me  
10 just do them anyway just so they're on the record.  
11 Obviously as you've experienced, this is  
12 a question and answer process. I'm going to ask a  
13 series of questions and what I'm trying to get from  
14 you are answers to those questions.  
15 Because we've got a court reporter here,  
16 she's going to be trying to take down everything  
17 that you and I say, as well as anyone else in this  
18 room. We may face a little bit of trouble because  
19 we're doing this over video and there may be some  
20 lag time between when I talk and you talk. So we  
21 just both have to make an effort to try not to  
22 interrupt the other person. And I apologize in

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1 advance if I do that. I certainly don't mean to.  
2 To the extent that you are going to  
3 answer a question yes or no, because we've got a  
4 court reporter taking down answers, if you could  
5 actually verbalize yes or no instead of nodding  
6 your head or shaking your head.  
7 If I'm asking a question that you don't  
8 understand or if you don't hear me, please just ask  
9 me to repeat it or rephrase it. I'll be happy to  
10 do that. I should warn you that I just started  
11 coming down with a cold so I may not be clear in  
12 what I'm saying, so please don't hesitate to tell  
13 me if you don't understand me or anything else.  
14 I'll be happy to repeat it.  
15 If you need a break, we can do that at  
16 any time. This is not a marathon. So any breaks  
17 you need, we're happy to do that. Just let me  
18 know. The only thing I would ask is if we're in  
19 the middle of a question, if you could wait until  
20 you answer the question and then we take the break.  
21 A. Okay.  
22 Q. Do you have any questions before we

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1 continue?  
2 A. No, I do not.  
3 Q. What did you do to prepare for this  
4 deposition?  
5 A. I -- yesterday I had a conference with  
6 Mr. McDaniel and Jennifer Toth and we had prep to  
7 go over what the proceedings would be like today.  
8 Q. And how long was that conversation?  
9 A. Approximately 45 minutes.  
10 Q. And did you speak to Mr. McDaniel or  
11 Ms. Toth prior to last night in order to prepare  
12 for this deposition?  
13 A. Jennifer Toth and I had talked within the  
14 last couple of weeks, when they requested my  
15 presence.  
16 Q. And were those conversations more about  
17 scheduling the deposition or did you talk about the  
18 substance of the deposition?  
19 A. Scheduling.  
20 Q. Okay. When did you first learn that you  
21 were going to have your deposition taken in this  
22 case?

Page 16

1 A. I don't know, about a week ago or so.  
2 Q. Okay. Did you speak to anyone else to  
3 prepare for this deposition?  
4 A. No, I did not.  
5 Q. Did you speak to Jennifer Wilson?  
6 A. Jennifer, when she came back from her  
7 deposition, she came to see me and said that more  
8 than likely I would need to be deposed.  
9 Q. Did you --  
10 A. And that's it.  
11 Q. Okay. Did you and Ms. Wilson talk at all  
12 about the substance of her testimony or your  
13 testimony?  
14 A. No, we did not.  
15 Q. Did you talk to anyone else in  
16 preparation for this deposition?  
17 A. No, I did not.  
18 Q. Did you review any materials or records  
19 in order to prepare for this deposition?  
20 A. I was provided some documents from  
21 Jennifer, and yes, we went over them yesterday.  
22 Q. And what materials were those?

Page 17

1 A. There were two, four pages, which I have  
2 right here. Do you want me to describe them?  
3 Q. I believe I know which four pages they  
4 are, but if you could just -- just so that we're  
5 clear, could you tell me what pages you're talking  
6 about?  
7 A. There's a document dated 10/18/1995, from  
8 Sacramento to San Francisco, two pages.  
9 Q. Okay.  
10 A. And then there's a -- looks like an  
11 internal EC from an SA in Sacramento to Sacramento,  
12 dated 10/4/1995, with an event log.  
13 Q. Did you review anything else to prepare  
14 for this deposition?  
15 A. No.  
16 Q. Did you review any deposition testimony  
17 to prepare for this deposition?  
18 A. No, I did not.  
19 Q. Do you know who Clifford Holly is?  
20 A. No, I do not.  
21 Q. How about Mr. Hardy?  
22 A. No.

Page 18

1 Q. Okay. Anything else other than what  
2 we've talked about that you've done to prepare for  
3 this deposition?  
4 A. No, I have done nothing else.  
5 Q. Okay. Are you aware of the pending  
6 lawsuit between my client, Mr. Negley, and the FBI?  
7 A. No, I am not.  
8 Q. I know Madam Court Reporter took this a  
9 little bit earlier, but for the record could you  
10 state -- could you give us your full name?  
11 A. Sandra A. Figoni.  
12 Q. And what does the A stand for?  
13 A. Ann.  
14 Q. Can you spell that, please?  
15 A. A-N-N.  
16 Q. Okay. And what is your --  
17 A. My official Bureau name is Sandra A.  
18 Figoni.  
19 Q. Okay. Thank you. I appreciate that  
20 clarification.  
21 What is your professional address?  
22 A. 450 Golden Gate Avenue, 13th floor, San

Page 19

1 Francisco, California, 94102.  
2 Q. And is that the San Francisco field  
3 office of the FBI?  
4 A. Yes, it is.  
5 Q. Have you ever gone by another name?  
6 A. Yes, I have. My married name was Gowan,  
7 G-O-W-A-N. I was divorced in 1984 and went back to  
8 my maiden name.  
9 Q. Okay. And I believe you told me earlier  
10 that your current title is supervisory  
11 administrative specialist; is that right?  
12 A. Yes, it is.  
13 Q. Okay. And how long have you held this  
14 title?  
15 A. Almost -- well, 20 years.  
16 Q. Is that since 1988?  
17 A. Yes.  
18 Q. Okay. And have you always been in the  
19 San Francisco field office as long as you've been a  
20 supervisory administrative specialist?  
21 A. Yes, I have.  
22 Q. Prior to that, what was your job title?

Page 20

1 A. Prior to that I was -- I forget the name  
2 of the title. I processed Freedom of Information  
3 and Privacy Act requests.  
4 Q. And how long did you do that?  
5 A. 11 years.  
6 Q. So that would be from 1977 to 1988?  
7 A. Yes.  
8 Q. And was that only in San Francisco?  
9 A. Yes, it was.  
10 Q. Prior to 1977 were you employed by the  
11 FBI?  
12 A. Yes, I was.  
13 Q. And what was your role then?  
14 A. I had several jobs. I started out as  
15 delivering mail, file clerk. I also was a rotor  
16 clerk, I don't know if you've heard that term  
17 before, where I processed information that went  
18 into the files, indexed, serialized, maintained  
19 pending records for an investigative squad.  
20 Q. And how long were you a rotor clerk?  
21 A. I was -- let's see. Probably about three  
22 or four years.

Page 21

1 Q. Do you know approximately when that was?  
2 A. That was in the beginning of my career.  
3 Q. When did you --  
4 A. I came on board 11/2/70, and probably  
5 within about two years I became a rotor clerk.  
6 Q. So is it safe to say that approximately  
7 between 1972 and 1976, or thereabouts, you were  
8 the -- you were a rotor clerk?  
9 A. Well, I also in between that became what  
10 we call an ELSUR clerk, which are electronic  
11 surveillance information, I processed. So I did  
12 that for a couple years before I did FOIA requests.  
13 Q. Okay. Would you -- were you doing that  
14 the same time you were doing the rotor clerk  
15 responsibilities?  
16 A. No, it was a separate job.  
17 Q. Okay. And what was -- can you give me  
18 that title again?  
19 A. Well, it was called an ELSUR clerk at the  
20 time.  
21 Q. Does that stand for something?  
22 A. Electronic surveillance.

Page 22

1 Q. Okay. And did you work somewhere prior  
 2 to working with the FBI in 1970?  
 3 A. No, because I came from high school.  
 4 Q. Okay.  
 5 A. So I had a job when I was going to high  
 6 school, but that's about it, at a retail store.  
 7 Q. That's fine. Have you -- well, do you  
 8 have a college degree?  
 9 A. I have some college but I do not have a  
 10 degree.  
 11 Q. And did you take some classes while  
 12 you've been working with the FBI?  
 13 A. Not recently.  
 14 Q. Okay. Have you taken any classes or  
 15 received any training on processing FOIA requests?  
 16 A. A lot of extensive training on records  
 17 and my jobs that I've held in the FBI, yes, I have.  
 18 Q. Let's start with any kind of training  
 19 you've had in processing FOIA requests. What --  
 20 specifically what kind of training have you had?  
 21 A. Well, we have training from FBI  
 22 headquarters. We have on-the-job training. We

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1 what you were doing?  
 2 A. Initially the CDC, we worked for the CDC  
 3 and they were the supervisory level. As time went  
 4 on, I became one of the lead analysts and I  
 5 reviewed stuff within the unit.  
 6 Q. And so would you also make determinations  
 7 as to whether or not to produce a particular  
 8 document if you found it?  
 9 A. Well, based on the Privacy Act, the  
 10 Freedom of Information and Privacy Act were guiding  
 11 us to what we released and what we did not.  
 12 Q. Right.  
 13 A. And the procedure set out by  
 14 headquarters.  
 15 Q. But you personally would make those  
 16 decisions?  
 17 A. Yes.  
 18 Q. Okay. Were you consulting with an  
 19 attorney when making those decisions?  
 20 A. No. I mean they -- the final -- someone  
 21 else would look at your final product before you  
 22 sent it out.

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1 also -- we always had conferences and training  
 2 sessions throughout the years.  
 3 Q. And were those training sessions to  
 4 discuss how to respond to FOIA requests or how to  
 5 search for documents responsive to FOIA requests,  
 6 or both?  
 7 A. All of it.  
 8 Q. Okay. Was part of your role in  
 9 processing FOIA requests, did you also determine  
 10 how to respond to FOIA requests?  
 11 A. Sure, yes.  
 12 Q. Well, maybe you can help me out there.  
 13 What would -- what was your role? When  
 14 you were processing FOIA requests what did that  
 15 include?  
 16 A. It would include reviewing the request  
 17 letters, initiating the searches, responding to the  
 18 requester depending on what the circumstances were,  
 19 and to the point of processing documents.  
 20 Q. Now, when you -- well, when you were  
 21 doing this whole process, were you reporting to  
 22 anyone or were you -- was there someone supervising

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1 Q. Right. But the final product you'd send  
 2 out would be documents that you're producing. I'm  
 3 talking about documents that you withheld.  
 4 Would somebody look at --  
 5 A. Yeah, the whole request, all of it.  
 6 Q. Okay. So somebody would look at the  
 7 whole thing?  
 8 A. Would review it. A second pair of eyes  
 9 would always review it, yes.  
 10 Q. Well, but would the second pair of eyes  
 11 be someone who is a supervisor or would it just be  
 12 someone at the same level as you?  
 13 A. A super -- well, the CDC would review it.  
 14 At one point we had an attorney that looked at it.  
 15 And as time went on I became one of the lead  
 16 analysts and I looked at other people's job  
 17 products.  
 18 Q. And did you continue to do this even when  
 19 you took in the management position in 1988?  
 20 A. No, I did not. It was a separate  
 21 position.  
 22 Q. Okay. Are you familiar with the process

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1 in San Francisco for responding to FOIA requests as  
 2 it -- as it relates to the -- since 2002?  
 3 A. No.  
 4 Q. Okay.  
 5 A. It's changed tremendously since I've been  
 6 out of it for the last 20 years, 19 years.  
 7 Q. Okay. Now, you said that your  
 8 response -- you talked about your responsibilities  
 9 as a supervisory administrative specialist.  
 10 Can you go through those duties again for  
 11 me?  
 12 A. Pending files, closed files, evidence,  
 13 mail dispatch. I also supervise a group of people  
 14 that assist investigations, investigative support  
 15 specialists. They do, like, record checks and  
 16 search subpoenas, et cetera. They help our  
 17 investigators.  
 18 And also I'm a contracting officer and I  
 19 have oversight to two budgets in our San Francisco  
 20 division. One's support overtime and the other is  
 21 our supply budget.  
 22 Q. Okay. And who do you report to in your

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1 Q. No, no, please, go ahead.  
 2 A. So it's just I facilitate getting them  
 3 what they need.  
 4 Q. And is that in addition to the duties  
 5 that you've talked about earlier?  
 6 A. It's part. It's kind of under the same  
 7 umbrella of records.  
 8 Q. Okay.  
 9 A. Pending, closed records.  
 10 Q. Let's talk about each of those. I'm  
 11 actually going to start in the reverse order. You  
 12 said that you oversee two budgets.  
 13 What budgets are those?  
 14 A. Support overtime.  
 15 Q. Okay.  
 16 A. And the supply budget, which is basically  
 17 buying papers, pens.  
 18 Q. Okay.  
 19 A. Toner cartridges, the like.  
 20 Q. Okay. You said you also act as a  
 21 contracting officer. What does that mean?  
 22 A. I approve spending, have to --

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1 current job?  
 2 A. I report to the administrative officer.  
 3 Q. Who is that?  
 4 A. Dominic Gizzi, G-I-Z-Z-I.  
 5 Q. And how long have you been reporting to  
 6 is it -- did you say Mr. Gizzi?  
 7 A. Yes.  
 8 Q. How long have you been reporting?  
 9 A. 19 years.  
 10 Q. Okay. In your current role do you have  
 11 any responsibility as it relates to responding to  
 12 FOIA requests?  
 13 A. No, I do not. I'd like to clarify that.  
 14 The process has changed quite a bit and the people  
 15 that do process FOIA requests are at FBI  
 16 headquarters now, actually Winchester, Virginia.  
 17 And they do E-mail me for assistance on records, to  
 18 retrieve records that we -- closed files or  
 19 anything that might be retrievable through a search  
 20 of our records.  
 21 Q. And is that in addition --  
 22 A. So I facilitate -- I'm sorry.

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1 procurement, spend the government's money. My  
 2 authority level is \$25,000.  
 3 Q. Okay. I believe you said that you assist  
 4 in investigations.  
 5 What's your role in that?  
 6 A. I am the supervisor. I have a supervisor  
 7 under me who supervises a group of people that  
 8 assists the agents with their investigations in  
 9 different capacities. They can do online record  
 10 checks, they can help serve subpoenas, et cetera.  
 11 It's one group of people that are under my realm of  
 12 responsibility.  
 13 Q. Does that ever include responding to FOIA  
 14 requests?  
 15 A. No, it does not.  
 16 Q. You said that you also have -- some part  
 17 of your job involves mail dispatch.  
 18 What is that?  
 19 A. Yes, it's internal routing of mail and  
 20 routing mail outside the office to other FBI field  
 21 offices or to private citizens or whatever.  
 22 Q. Okay.



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1 A. It's the handling of mail, which still is  
2 done.  
3 Q. Right. And you mentioned evidence.  
4 What's your role with evidence?  
5 A. It's a program under my supervision. I  
6 have a supervisor that actually supervises the  
7 people that handle the evidence. But it's evidence  
8 that we seize for our investigative cases.  
9 Q. Okay. And then finally you mentioned  
10 pending and closed records. And I believe you tied  
11 that in with what FBI headquarters sometimes asks  
12 you to do.  
13 Describe for me, what do you do with  
14 pending and closed records?  
15 A. I supervise the supervisors that have the  
16 people employed to them that process the records.  
17 We have -- we have employees that are assigned to  
18 squads that process the records that go into our  
19 pending investigations, and we also have people  
20 that manage and maintain our closed files records.  
21 And both of those units are under my  
22 responsibilities.

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1 Q. Okay. You used the word "process." What  
2 did you mean by "process"?  
3 A. Well, when a document is generated by an  
4 investigator or an analyst and it goes into the  
5 file, there is a method that we have to serialize  
6 the document, upload the document, possibly index  
7 the document based on the investigator's direction.  
8 And those are the people that maintain the records  
9 and assist the squad with whatever they may need.  
10 Q. And you oversee that?  
11 A. Yes.  
12 Q. Okay.  
13 A. I have supervisors that oversee that  
14 directly. I'm the next level of supervision.  
15 Q. Okay. And is this something you've been  
16 doing since 1995?  
17 A. Yes.  
18 Q. Okay. Well, describe for me then what is  
19 the process by which if an agent creates a sheet of  
20 paper, what happens to it?  
21 MR. MCDANIEL: Can you be more specific  
22 in terms of what do you mean? In terms of

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1 cataloging it as a record for the office? Do you  
2 mean do they keep it? I mean what do you mean?  
3 BY MR. KHETAN:  
4 Q. I mean I want you to walk me through the  
5 entire process from when an agent has written  
6 something up or typed something up, what is it that  
7 the people who you supervise who they supervise,  
8 what are they doing with that sheet of paper?  
9 A. Well, once it goes through the approval  
10 processes of their supervisor, then the people that  
11 work for me will process the document. It will be  
12 initialed off and approved. It would be serialized  
13 and uploaded, possibly indexed if it's marked for  
14 indexing. And then it would be placed in the file.  
15 If we're the office of origin of the  
16 file, it would be placed in the file. If it's a  
17 response to a lead that was sent to San Francisco,  
18 then the document, the original document, would  
19 have to be sent to the office of origin to be  
20 placed in their file.  
21 Q. And if it's outside of San Francisco,  
22 then would you keep a copy of it in San Francisco

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1 or no?  
2 A. No, not now we don't. Now, the file  
3 process has changed since 1995 and what we do now.  
4 Q. When did that change take place?  
5 A. The change took place in October of 1996.  
6 Q. All right. Let's talk about it first  
7 before the change.  
8 The steps that you described was after an  
9 agent creates a document and it's approved by a  
10 supervisor, you mentioned something about how it  
11 gets initialed. Who is initialing it?  
12 A. The approve -- the supervisor that's  
13 approving the document.  
14 Q. And who is -- is that an agent's  
15 supervisor or is that a supervisor --  
16 A. Yes.  
17 Q. So it's not a supervisor who you oversee?  
18 A. No, it is not.  
19 Q. And so generally when we look at these  
20 documents, is that the initials that we'll see  
21 sometimes on the bottom right corner?  
22 A. Not necessarily. Normally the approval

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1 initials are up by where the document says  
 2 "approved by."  
 3 Q. That would make sense. Okay, all right.  
 4 So that's who initials it.  
 5 Then you said that they are serialized  
 6 and uploaded. What does that mean?  
 7 A. There's a process currently where the  
 8 document is uploaded into Electronic Case File  
 9 which gives you full text document retrieval.  
 10 Prior to October of 1996 we did not have that.  
 11 Q. Did you still serialize things prior to  
 12 1996?  
 13 A. Yes, we did. It was serialized, the  
 14 document was described, but we did not have full  
 15 text document retrieval.  
 16 Q. Was it still uploaded onto a computer?  
 17 A. It was not uploaded because uploading is  
 18 full text document retrieval.  
 19 Q. Okay. And that's the change that  
 20 happened in 1996?  
 21 A. Yes.  
 22 Q. Documents that were created prior to 1996

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1 when this change occurred, did someone in your  
 2 office go back, take all those documents, and then  
 3 upload them?  
 4 A. No, we did not.  
 5 Q. So if somebody sought records from San  
 6 Francisco from prior to 1996, how would someone in  
 7 your office locate those records if they're not  
 8 uploaded?  
 9 A. The basic serialization and indexing is  
 10 our retrievability. In order to retrieve a  
 11 document you have to index it and we would have to  
 12 search the universal index to be able to retrieve a  
 13 document, a paper document, which would refer us to  
 14 a file and a document.  
 15 Q. Okay. Let's get to indexing in a second  
 16 then. Maybe I misunderstand what serializing is.  
 17 What is the process of serializing, then?  
 18 A. Is to give the document a number, a  
 19 sequential number in that case file.  
 20 Q. And is that number somehow used in an  
 21 index?  
 22 A. Yes, it is.

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1 Q. Okay. Can you search -- well, how is it  
 2 used in an index? Is it not just a number?  
 3 A. It's used to retrieve a particular serial  
 4 within a case file. So as a reference, if it's a  
 5 reference index, which means it's not the subject  
 6 of the investigation and it's a reference index,  
 7 then it would have to have a serial number to  
 8 retrieve to that main case file.  
 9 If it's a main record, then the  
 10 individual's name or the company or whatever would  
 11 be indexed to the case file and not per se a  
 12 particular serial number.  
 13 Q. Okay. I think I understand you, except I  
 14 would never search the serial number, though, would  
 15 I? I mean I would be searching for a name or a  
 16 topic or a company.  
 17 A. Yes, you would.  
 18 Q. Okay.  
 19 A. You would have to have a subject matter  
 20 and search the universal index to be able to  
 21 retrieve you to a file and/or possibly serial  
 22 number.

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1 Q. Okay. So the fact that it's serialized,  
 2 the only real distinction there is it's a  
 3 difference of when I'm -- and I'm talking about in  
 4 terms of finding responsive documents based on a  
 5 search. The only real difference is instead of  
 6 having the entire file, I might be referred to a  
 7 specific serial?  
 8 A. Yes.  
 9 Q. Okay. So let's talk about indexing then.  
 10 You said sometimes it could be indexed.  
 11 Why would something not be indexed?  
 12 A. There's mandatory and discretionary  
 13 indexing. And mandatory indexing would be the  
 14 subject of a case, that's automatic, the subject  
 15 and the title of a case where you index that,  
 16 whether it be an individual, a company, or  
 17 whatever. And there's discretionary indexing and  
 18 it's really up to the agent or the person that has  
 19 documented it to mark it for indexing so that the  
 20 file clerk can put it into the system.  
 21 Q. Does a file clerk have any discretion to  
 22 decide to index something that the agent hasn't

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|--|--|
| <p style="text-align: right;">Page 38</p> <p>1 identified to index?<br/>2 A. Well, I think based on experience, they<br/>3 could go back to the agent and say, you know, maybe<br/>4 you should have indexed this or I'm going to add<br/>5 the date of birth or some other identifying<br/>6 information that could be helpful during<br/>7 retrievability. But most of the time they go by<br/>8 the markings on the document.<br/>9 Q. Okay. You say "markings on the<br/>10 document." Are agents physically marking the<br/>11 original document to identify what to index?<br/>12 A. Yes.<br/>13 Q. How do they do that?<br/>14 A. They mark it by either underlining for<br/>15 references, or circling for main subject matters.<br/>16 And then by indicating that there is indexing to be<br/>17 done on a document, they will -- they will place a<br/>18 circle in the right-hand corner of the document<br/>19 with their initials underneath that circle.<br/>20 Q. And is that done on the original<br/>21 document?<br/>22 A. Well, now it's done on the agent copy of</p> | <p style="text-align: right;">Page 40</p> <p>1 original?<br/>2 A. Yes.<br/>3 Q. But then doesn't that mean that if you<br/>4 have to produce that document, it's going to have<br/>5 his markups on it, his or her markups?<br/>6 A. Yes, uh-huh, yes.<br/>7 Q. Okay. Now, you also said that -- well,<br/>8 does it ever happen that a document is not indexed<br/>9 at all?<br/>10 A. That could happen. It's up to the agent<br/>11 whether he wants, he or she wants something<br/>12 indexed.<br/>13 Q. Well, if they don't index the document,<br/>14 though, how would anyone ever search for it?<br/>15 A. Well, you have to do -- if you're looking<br/>16 for something specific and you think it's in some<br/>17 kind of case file, you would have to do a hand<br/>18 search if it wasn't indexed.<br/>19 Q. But are -- I mean are hand searches done<br/>20 by the folks that process FOIA requests?<br/>21 MR. MCDANIEL: Objection, basis of<br/>22 knowledge.</p>  |
| <p style="text-align: right;">Page 39</p> <p>1 the document.<br/>2 Q. And that agent copy is given to the file<br/>3 clerk?<br/>4 A. If -- the agent copy, after it's<br/>5 uploaded, if he decides that he wants additional<br/>6 indexing done or whatever, then he will go ahead<br/>7 and give it back to the file clerk to do additional<br/>8 indexing.<br/>9 Q. Well, what I'm trying to understand is<br/>10 forget about additional indexing, but if the agent<br/>11 marks up his copy -- well, are there multiple<br/>12 copies?<br/>13 A. There's -- it depends on the document.<br/>14 On 302s, you have to have two copies, an original<br/>15 that you don't mark up and then one that you can<br/>16 mark up --<br/>17 Q. Okay.<br/>18 A. -- and indicate. Inserts, a lot of times<br/>19 you have two copies. Electronic communications or<br/>20 ECs, we're only required to file one copy.<br/>21 Q. But so on something like an EC where you<br/>22 only have one copy, is the agent marking up the</p>  | <p style="text-align: right;">Page 41</p> <p>1 You may answer.<br/>2 THE WITNESS: I can't hear you, Oliver.<br/>3 MR. MCDANIEL: I just objected and I said<br/>4 despite the objection I said you may answer.<br/>5 THE WITNESS: Okay. Could you repeat<br/>6 that again, please?<br/>7 MR. KHETAN: Sure. Now I don't remember.<br/>8 What was my question?<br/>9 (The reporter read back as requested.)<br/>10 THE WITNESS: I don't know.<br/>11 BY MR. KHETAN:<br/>12 Q. So I guess what I'm trying to understand<br/>13 then, if you know, because you mentioned that there<br/>14 are documents or there could be documents that are<br/>15 not indexed but that the way those would be<br/>16 searched would be through hand searches.<br/>17 A. Well, you have to understand, there's<br/>18 been changes to our records system, several<br/>19 changes. So without me explaining from the last 36<br/>20 years of my Bureau experience all of the times that<br/>21 the record system has changed, it's hard to answer<br/>22 your question specifically.</p> |

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|--|--|
| <p style="text-align: right;">Page 42</p> <p>1 Q. Okay. And --</p> <p>2 A. I believe -- go ahead.</p> <p>3 Q. I'm sorry, I don't mean to interrupt you.</p> <p>4 I was going to try to make it easier.</p> <p>5 I certainly don't want to put you through</p> <p>6 having to go through all 36 years of your work.</p> <p>7 I'm really interested in the time period from 1995</p> <p>8 forward. And I can be more specific if there's</p> <p>9 been multiple changes since 1995.</p> <p>10 But does that help narrow what your</p> <p>11 answer would have to be here?</p> <p>12 A. The only way to retrieve a document would</p> <p>13 be to search the index, that the document was</p> <p>14 marked for indexing, the file clerk indexed it to</p> <p>15 the index record, and the name was searched to be</p> <p>16 able to retrieve the document.</p> <p>17 Q. Okay. So how does that work for</p> <p>18 documents that are not indexed?</p> <p>19 A. Well, as I said before, indexing, there's</p> <p>20 mandatory indexing and discretionary indexing. And</p> <p>21 it's the discretionary indexing is up to the person</p> <p>22 that produces the document to mark it. If they do</p>   | <p style="text-align: right;">Page 44</p> <p>1 Q. And is there some kind of guidelines, if</p> <p>2 you know, that agents use to mark documents?</p> <p>3 A. Yeah, there has been some guidelines that</p> <p>4 we have, that comes -- you know, headquarters</p> <p>5 guides us and, you know, tells us, you know, what</p> <p>6 needs to be indexed and so forth. And we</p> <p>7 disseminate that type of information out to our</p> <p>8 employees.</p> <p>9 Q. And is that something that you --</p> <p>10 something that you've been doing as a part of your</p> <p>11 job?</p> <p>12 A. I have done that, yes.</p> <p>13 Q. Have you been involved in creating those</p> <p>14 guidelines?</p> <p>15 A. Not creating from square one, but just</p> <p>16 probably building on or clarifying for the people</p> <p>17 in the division.</p> <p>18 Q. Well, do you know what those guidelines</p> <p>19 say about indexing documents?</p> <p>20 A. Mandatory indexing and discretionary</p> <p>21 indexing, how to mark an index, as I had stated</p> <p>22 before. That's what the guidelines say.</p>  |
| <p style="text-align: right;">Page 43</p> <p>1 not mark it, if they decide there is no indexing to</p> <p>2 be done, then there is no indexing done.</p> <p>3 Q. And so does that mean that that document</p> <p>4 couldn't be searched?</p> <p>5 A. In order to search to retrieve a</p> <p>6 document, you have to have a name of a person, a</p> <p>7 company, a telephone number, whatever to search.</p> <p>8 We wouldn't search a document that we don't know</p> <p>9 whether it exists or not. So I'm not understanding</p> <p>10 the searching of a document question.</p> <p>11 Q. Right. But are there -- are there not</p> <p>12 any documents that don't have a name or a phone</p> <p>13 number on them or a company name on them?</p> <p>14 A. All the documents that are placed in our</p> <p>15 files have to have a title. So it will run the</p> <p>16 title of the investigation. In the body of the</p> <p>17 document, it explains something that has occurred</p> <p>18 throughout the investigation.</p> <p>19 So there may be names in there that need</p> <p>20 to be indexed or not. Like I say, it's up to the</p> <p>21 person that generated the document to mark it for</p> <p>22 indexing for future retrievability.</p> | <p style="text-align: right;">Page 45</p> <p>1 Q. But do they describe in detail what</p> <p>2 should be mandatory indexing?</p> <p>3 A. Mandatory indexing, titles or subjects of</p> <p>4 the investigation.</p> <p>5 Q. What about names that are not subjects of</p> <p>6 the investigation, is that mandatory indexing?</p> <p>7 A. No, it is not. It's discretionary.</p> <p>8 Q. Okay. So is there -- is there any</p> <p>9 guideline that says anything beyond just an agent</p> <p>10 has discretion? Does it tell an agent how to</p> <p>11 exercise that discretion? Does it give them</p> <p>12 parameters?</p> <p>13 A. No.</p> <p>14 Q. So if there is a name on a sheet of paper</p> <p>15 and that name is not the subject of the</p> <p>16 investigation, it is purely up to the agent to</p> <p>17 decide whether or not to index that name?</p> <p>18 A. Right.</p> <p>19 Q. And if the agent didn't index that name,</p> <p>20 you'd have no way of searching that?</p> <p>21 A. Let me clarify. The agent has to mark it</p> <p>22 for indexing. They don't actually index it. It's</p> |

12 (Pages 42 to 45)

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1 the file clerk that indexes it.  
2 Q. Right, right.  
3 A. Okay. I just want to make sure you're  
4 following what I'm saying.  
5 Q. Right, no, and I appreciate that. I'm  
6 actually envisioning that there is a file clerk who  
7 types in or does something physically to the  
8 document to do the actual indexing part of it.  
9 A. Yes, yes.  
10 Q. My question was if the agent -- so if we  
11 have a document where there is a name on the  
12 document, the name is not the subject of the  
13 investigation, and the agent exercised discretion  
14 not to index that name, there would be no way to  
15 search for that, would there?  
16 A. No, not through the universal index.  
17 Q. Okay. And when you call the universal  
18 index, is there -- I just want to -- we've heard  
19 terms before in this case, I want to make sure I'm  
20 using the right term. Is there a particular name  
21 for that index?  
22 A. Currently we have an Automatic Case

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1 Support system that is made up of three databases.  
2 Q. That's the --  
3 A. And the universe -- excuse me?  
4 Q. I'm sorry, go ahead. Go ahead.  
5 A. The universal index is one of the  
6 databases.  
7 Q. Okay. Is that the ACS?  
8 A. Yes, it is.  
9 Q. Okay. And do you know if there's an  
10 acronym for the universal index?  
11 A. UNI.  
12 Q. Okay. Now, when we talked about in terms  
13 of the mandatory and the discretionary indexing, do  
14 you know if that's changed since 1995?  
15 A. No, I believe that that's been the same,  
16 yes.  
17 Q. And these are written guidelines?  
18 A. There are written guidelines. I haven't  
19 really looked them up lately. But there are some  
20 written guidelines. There's actually a very quick  
21 guideline sheet that's very small that we use to  
22 guide our agents in marking the indexing.

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1 Q. And as far as you know, the guidelines  
2 that you're talking about, the quick ones or the  
3 more detailed written ones, that is basically what  
4 you've described today?  
5 A. Yes.  
6 Q. Okay. Now, going back, we were talking  
7 about the process that takes place when a document  
8 is created by an agent. And we're up to the point  
9 where it may or may not be indexed.  
10 Then I believe you said if the main  
11 investigation file is in the -- is in San  
12 Francisco, the physical document is placed in the  
13 file; is that right?  
14 A. Yes.  
15 Q. Okay.  
16 A. Yes.  
17 Q. Are copies of that document ever sent to  
18 other offices?  
19 A. It could if there's a lead that needs to  
20 be addressed in another division.  
21 Q. Okay. So, for example, you're working  
22 out of San Francisco, you're investigating John

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1 Doe, but there's -- for some reason you think you  
2 also need to investigate him in Sacramento, is it  
3 possible you'd send a copy of that document to  
4 Sacramento?  
5 A. Yes.  
6 Q. Even in that situation, though, are you  
7 still keeping the original, both uploaded now as  
8 well as the original physical document in a file  
9 somewhere?  
10 A. Yes. The office of origin is the owner  
11 of the records and they keep an original of all of  
12 the documentation dealing with that case file.  
13 Q. And do they also keep -- I'm sorry. I  
14 keep interrupting you and I apologize.  
15 A. That's okay. Go ahead.  
16 Q. Well, please, finish your answer. I  
17 don't mean to interrupt your answer.  
18 A. No, I was finished.  
19 Q. Okay. Are they also keeping a copy of  
20 the version that the agent has marked up for  
21 indexing?  
22 A. Are you talking about the office of

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1 origin or the lead office?  
2 Q. The office of origin.  
3 A. Yes.  
4 Q. Okay. And does the agent keep a copy of  
5 the document?  
6 A. He could keep a copy. There's an agent  
7 copy that goes back to him, him or her.  
8 Q. So do agents keep files that are separate  
9 and apart from the -- I'm calling it the main file,  
10 but what I mean is the file that the file clerk is  
11 maintaining.  
12 A. The case agent, it's up to the case agent  
13 what he or she may want to do. A lot of the  
14 investigators keep working copies of information  
15 that they have generated with their case.  
16 But now as time has gone on and in  
17 October of 1996 as I have told you we have -- we  
18 can upload full text document retrieval to anything  
19 we generate. So there's a electronic version in  
20 the database.  
21 So I really -- I can't answer for an  
22 agent whether they maintain copies or not. In my

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1 administrative capacity I often keep working  
2 copies, but as time has gone on I don't want the  
3 paper anymore.  
4 Q. In your role, in your current role, have  
5 you come across any guidelines or any rules that  
6 talk about whether agents should be maintaining  
7 their own personal file on an investigation?  
8 A. No, I'm not aware of any rules.  
9 Q. Okay. Was there a practice in the San  
10 Francisco field office for agents to keep personal  
11 files of investigations?  
12 A. I can't answer that question.  
13 Q. Okay. And then I believe you said that  
14 for files where the main is in another office, San  
15 Francisco actually doesn't even keep a copy of the  
16 document; is that right?  
17 A. That is current procedure, after October,  
18 since October, 1996.  
19 Q. Okay. But are they still uploading it  
20 and indexing it?  
21 A. The document that is generated by San  
22 Francisco in response to a lead that they cover is

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1 serialized and uploaded in the San Francisco  
2 division; and then the paper, the original  
3 document, is sent to the office of origin.  
4 Q. Okay. Is the copy that the agent has  
5 marked up for indexing, is that kept in San  
6 Francisco or is that also sent to the office of  
7 origin?  
8 A. It is sent to the office of origin.  
9 Q. Okay. So there's no physical copy of the  
10 document that remains in San Francisco unless the  
11 agent keeps his or her copy?  
12 A. Yes.  
13 Q. Okay. If an agent takes personal notes,  
14 for example agent goes on an interview and takes  
15 notes which are then converted into a -- I  
16 apologize, I don't know the number, but maybe it's  
17 a 302.  
18 A. Yes.  
19 Q. What happens to those notes?  
20 MR. MCDANIEL: Objection, basis of  
21 knowledge.  
22 But you may answer.

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1 THE WITNESS: Based on my experience as a  
2 records person, oftentimes the agents will put  
3 their interview notes in what we call a 1A  
4 envelope. And it is placed in the file.  
5 BY MR. KHETAN:  
6 Q. Do you know when the process of the 1A  
7 envelope started?  
8 A. I have always known that process to be  
9 true in my Bureau career. So I've been here 30 --  
10 over 36 years.  
11 Q. Okay. And I'm certainly not going to ask  
12 you questions about what happened prior to 1970.  
13 So I don't need you to speculate or I don't even  
14 actually care about that.  
15 Again, focusing on the 1995 time period  
16 and forward, it is your understanding then that the  
17 1A system has been used since that time?  
18 A. Yes.  
19 Q. Okay. Is there ever a situation where an  
20 agent has notes that are not put in a 1A envelope?  
21 A. I -- I really don't know how to answer  
22 that.

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1 Q. And I -- that's a bad question.  
 2 A. I wouldn't know.  
 3 Q. Yeah, I appreciate that. I didn't mean  
 4 for you to try to guess what an agent does.  
 5 I guess what I'm asking is in your years  
 6 of experience and in your current role, as well as  
 7 when you were doing FOIA searches or responding to  
 8 FOIA requests, did you ever come across notes  
 9 outside of ones that are contained in a 1A  
 10 envelope?  
 11 A. Any written notes -- in my experience,  
 12 any written notes made by the investigator were  
 13 placed in a 1A envelope.  
 14 Q. Okay. If a file had -- if a file didn't  
 15 have notes but the agent took notes of an interview  
 16 or of his investigation, is it possible that the  
 17 agent would not have put those into or given those  
 18 to a file clerk to be indexed?  
 19 In other words, is there a procedure or  
 20 any protocol that you know of where an agent would  
 21 not give his or her notes to be put into the file  
 22 and instead would keep them in a personal file?

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1 A. No, I'm not aware of that.  
 2 Q. When you respond to FOIA requests do you  
 3 ever go back to the agent that did the  
 4 investigation and ask him or her for his personal  
 5 file?  
 6 A. Well, you know, it's been some time since  
 7 I processed that. There's been a lot of ground in  
 8 between. But yes, I recall when I had a question  
 9 about something that I would consult with the case  
 10 agent.  
 11 Q. And in consulting with case agents, did  
 12 you ever find that they maintained personal files  
 13 of investigations?  
 14 A. No. It has been my experience that  
 15 people keep working copies or working papers, but  
 16 it's not a duplicate file and it's really up to the  
 17 employee and it's not something that I monitor or  
 18 is it in my job responsibilities to monitor.  
 19 Q. Okay. And just to be clear, I realize I  
 20 was using the term "personal file." But when you  
 21 say that sometimes agents kept working copies, I  
 22 was interpreting that to mean that that would be

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1 sort of a personal file.  
 2 Is that not how you were interpreting the  
 3 use of the term?  
 4 A. I just personally would not caption it as  
 5 a personal file.  
 6 Q. Okay, fair enough.  
 7 A. Because we're in an environment of an  
 8 employer, so nothing's personal at this point if  
 9 it's in government space.  
 10 Q. That's fair. Let me try the question  
 11 again then.  
 12 In responding to FOIA requests, either  
 13 when you were doing FOIA searches or in your  
 14 current role where I believe you do -- you said  
 15 that you help process some FOIA searches, do you  
 16 ever ask an agent for his or her working copies  
 17 related to an investigation?  
 18 A. No.  
 19 Q. Why not?  
 20 A. My current involvement is a facilitator  
 21 to retrieve documents for the people in records  
 22 management that currently process FOIA. It's

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1 strictly to facilitate a retrievability and that is  
 2 all.  
 3 My experience in FOIA would be to  
 4 retrieve documents through the search of our index  
 5 record and deal with those documents that were  
 6 retrieved. The only time an agent would be  
 7 consulted is if there was some sensitivity to  
 8 perhaps the investigation, not what was retrieved.  
 9 Q. So you would never go to the agent to  
 10 ask, hey, do you have any interview notes that you  
 11 didn't give us?  
 12 A. No.  
 13 Q. Now, you've been using the term that you  
 14 facilitate for these FOIA requests.  
 15 Exactly what is it that you're doing  
 16 currently?  
 17 A. The whole FOIA process has changed in the  
 18 last few years and is no longer done in the field  
 19 office. Records management has taken on that  
 20 responsibility. And they have set up a facility in  
 21 Winchester, Virginia, and these individuals are the  
 22 ones that process the Freedom of Information and

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1 Privacy Act requests.  
 2 Q. Now, how are they able --  
 3 A. If they need -- excuse me?  
 4 Q. I'm sorry, go ahead.  
 5 A. If during their responsibilities they  
 6 find that there's a record in San Francisco that  
 7 they may need to review, or a file that they may  
 8 need, then all we're doing is sending the file back  
 9 to them so they can do their job.  
 10 Q. So you're physically sending them the  
 11 file. Are you -- are you reviewing the file to  
 12 determine if there's any responsive documents?  
 13 A. No. I am facilitate -- the requests come  
 14 in to me as the supervisor and I send them on to  
 15 the closed file supervisor, the person that works  
 16 in closed files, to determine -- to retrieve the  
 17 file or the document and send it to the requester.  
 18 The requester meaning the FBI employee that has  
 19 requested it.  
 20 Q. Who's in Winchester, Virginia?  
 21 A. Yes.  
 22 Q. So when did this change occur where all

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1 FOIA requests were handled out of Winchester?  
 2 A. You know, I -- it's not really my realm.  
 3 Records are my realm of responsibility, but the  
 4 FOIA process, I have not been really involved in  
 5 for 20 years. So, you know, all I can tell you is  
 6 that within the last couple of years our employees  
 7 that used to process FOIA requests have not done  
 8 that.  
 9 Q. So does San Francisco no longer have any  
 10 employees who process FOIA requests?  
 11 A. No, we do not. The process has changed.  
 12 It's been -- it's done at headquarters in RMD.  
 13 Q. Okay. So now when you get a request, is  
 14 it always saying a request for a particular file or  
 15 a particular serial number?  
 16 A. The request is for San Francisco's  
 17 documents.  
 18 Q. You mean the physical documents?  
 19 A. Yes.  
 20 Q. Now, why would -- why would anyone need  
 21 that if they're on the ACR?  
 22 A. ACS.

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1 Q. I'm sorry, ACS, I apologize. Why would  
 2 anyone need the physical file?  
 3 A. If we're office of origin, they would  
 4 need the -- they would have to process the file  
 5 document. They don't process -- but most of the  
 6 things that they ask for are old documents that are  
 7 not in the system, the ACS system.  
 8 Q. So we're talking about before 1996,  
 9 October of '96?  
 10 A. Right.  
 11 Q. Okay. Let's talk about that period of  
 12 time before October of '96.  
 13 When a document was created was it  
 14 uploaded and indexed within days, months, or was it  
 15 all done after the investigation was over?  
 16 A. Now, could you clarify? Did you say  
 17 before 1996?  
 18 Q. I did. So before the system of the ACS  
 19 had started -- well, actually, now that I ask that  
 20 question, it doesn't make sense.  
 21 I guess what I want to know is since the  
 22 system of uploading onto the computer, how quickly

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1 does that happen? Is that happening within days or  
 2 is that happening once the investigation is  
 3 completely done?  
 4 A. It's never done at the conclusion of the  
 5 investigation. It's as the investigation is  
 6 occurring documentation is generated and it is  
 7 placed in the file as soon as we can get it in the  
 8 file.  
 9 Q. Okay. And was it your experience that  
 10 this would happen within a month, a year?  
 11 A. During what time frame are you referring  
 12 to?  
 13 Q. I'm really interested in the '95 to '96  
 14 time frame.  
 15 A. Well, it depends. I mean it depends on  
 16 the investigation, how involved it is, how much  
 17 paper is being generated. One thing that is always  
 18 a problem in San Francisco is our staffing level.  
 19 And our file clerks, we're limited on the people  
 20 that we have, so oftentimes we do have backlogs.  
 21 But I can't put a number on what happened  
 22 in 1995 and how long it took to put documents in



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1 the file. I can't even try to answer that.

2 Q. Well, the staffing problem that you're

3 talking about, is that recent or is that -- are you

4 talking about in the '90s?

5 A. It is ongoing. It's a historical problem

6 for San Francisco because San Francisco is a high

7 cost-of-living area.

8 Q. Okay.

9 A. And our file clerks aren't -- I mean the

10 pay is a lower level, so there's a lot of turnover.

11 Q. Okay. Let's talk about during that '95,

12 '96 time period, what was the process for numbering

13 files? In other words, did someone in your

14 department or in your area, would they decide what

15 number would be assigned to a particular file?

16 MR. MCDANIEL: Just for clarification --

17 THE WITNESS: No, at that time, prior to

18 ACS we had FOIMS, I don't know if you've heard that

19 term, Field Office Information Management System.

20 And when you opened a case file, the computer --

21 there was a process in order to open a case file

22 and the computer would give you a file number. It

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1 was generated automatically.

2 BY MR. KHETAN:

3 Q. Okay. And did that change then in

4 October of '96?

5 A. No, that part did not change.

6 Q. Okay. So actually it's the computer then

7 who assigns a file number?

8 A. Yes.

9 Q. Okay. For subfiles, who decides what

10 number will be assigned to a particular subfile?

11 A. Well, subfiling, although we're trying to

12 standardize it, it's kind of based on how the

13 investigation is going and the need to create

14 subfiles.

15 Q. Fair enough.

16 A. So it's --

17 Q. I'm sorry, go ahead.

18 A. So it's based on, like I said, how the

19 investigation is going and maybe the case agent

20 with concurrence of the squad supervisor would

21 recommend that we create subfiles so that the

22 information can be in a more logical organization.

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1 Q. And was that the practice in 1995, '96?

2 A. Yes.

3 Q. Okay. So file clerks would not decide

4 whether or not something deserves a subfile?

5 A. No.

6 Q. Have you ever in your capacity decided

7 whether or not something would deserve a subfile?

8 A. No, but oftentimes I'm asked for my what

9 I think, based on my experience with records.

10 Q. And what -- well, is there some kind of

11 guideline that the San Francisco field office uses

12 to determine whether or not something deserves a

13 subfile?

14 A. There's -- headquarters has developed a

15 standardized subfile list which most field

16 office -- it's a guide, it's only a guide. And

17 depending on whether your investigation, if it's

18 similar to what the guide is, then there's subfiles

19 that have abbreviations that all field offices

20 would use.

21 And on occasion you might have an

22 investigator and the squad supervisor that may want

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1 to deter from that guideline. And that, we have

2 done that.

3 Q. Well, does the subfile list that you're

4 talking about that headquarters has developed, was

5 that in place in '95, '96?

6 A. I believe so.

7 Q. Does that contain the actual subfile

8 number or abbreviation that should be assigned to

9 the subfile?

10 A. It suggests, yes, what that abbreviation

11 would be.

12 Q. And is that based on -- so, for example,

13 would it say something like use the abbreviation SF

14 when your document pertains to Sandra Figoni, is it

15 that specific?

16 A. No, not that specific. It's general.

17 I'll give you an example. Exhibits 1A, exhibits,

18 it would be 1A. So exhibits would be the general

19 category, and the code would be 1A.

20 Q. And so if we were trying to find or if we

21 saw a file number, it would say something like

22 123456789-1A?

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1 A. Yes.

2 Q. Okay. Do you know if the -- does the

3 number 1575, does that have any significance in

4 terms of these subfiles?

5 A. No.

6 Q. What about SO?

7 A. SO?

8 Q. Yes.

9 A. I'm not familiar.

10 Q. Do you know if that means special

11 operations?

12 A. I don't know.

13 Q. Now, you also said that sometimes the

14 office will diverge from this subfile list. In

15 what --

16 A. Yes.

17 Q. In what manner would that happen?

18 A. It would be based on the agent's

19 recommendation, with concurrence from the squad

20 supervisor, and they would request that subfiles be

21 opened and would identify what the subfiles would

22 be.

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1 Q. And would they assign a number to it as

2 well?

3 A. No. If it was -- if it was already on

4 the standardized list, we would use that. And if

5 it was not, then we -- we'd have to determine what

6 kind of abbreviation we'd use, or if we would open

7 it at all.

8 Q. Okay. Well, if you determined that you

9 would open it and it's not on the standardized

10 list, how do you determine what number to assign it

11 or what abbreviation to assign it?

12 A. Just based on conferring with each other

13 and the most logical abbreviation.

14 Q. Okay.

15 A. But it would be documented in the file

16 what -- for example, if you did caption a subfile

17 as SO, somewhere in the file it would identify what

18 that is.

19 Q. Does the notation S1575, does that have

20 any significance?

21 A. No, not to me.

22 Q. Does the abbreviation S by itself, does

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1 that have any significance?

2 A. As a subfile, is that what you're asking?

3 Q. Right. So if you had a file number,

4 123456789, dash S, dash a number, what would that S

5 mean?

6 A. It could mean anything. And that's the

7 whole purpose of trying to standardize and try to

8 stick to a list, which the Bureau has tried to do.

9 So, you know, I don't know, I don't know what to

10 tell you.

11 Q. No, that's fair, that's fair.

12 In terms of writing on the documents,

13 will file clerks ever make notations on the

14 documents themselves?

15 A. It is general practice for the file clerk

16 to write on the bottom of the document the whole

17 file number and the serial number. And the purpose

18 of that is when you maintain the original file, if

19 you are looking for a particular serial, that file

20 number and the document number is located at the

21 bottom of the file so it's easily -- that you can

22 review it easily and go on from one document to the

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1 next.

2 Q. Is that --

3 A. As far as marking up the document, other

4 than that, at one time our procedure for indexing

5 was to mark the name by putting a line through it

6 that you did index it. And the file clerk would do

7 that.

8 There was also a stamp that was used in

9 the past that showed that someone serialized,

10 indexed, or filed the document. It's not something

11 we currently use now, but in the past we have used

12 that, where they would initial, the file clerk

13 would initial if they indexed, serialized, or filed

14 a document. So other than that, they really would

15 not mark the document.

16 Q. You had said a minute ago that, forget

17 about the stamp, but that sometimes that they would

18 put the file number and the serial number on the

19 bottom of the document.

20 Is that what we might see --

21 A. Yes.

22 Q. -- on the bottom right-hand corner of the

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1 document?  
2 A. Yes.  
3 Q. Is it typically on the first page of the  
4 document?  
5 A. Yes.  
6 Q. So if it was a 20-page document, it  
7 wouldn't necessarily have to be on every page?  
8 A. No.  
9 Q. Okay. What if -- well, do you assign a  
10 serial to every single document?  
11 A. Most of the time there is a separate  
12 serial. We try to stress from the record side that  
13 every document should have a serial number.  
14 Sometimes there's attachments and so a document  
15 could be considered one serial with several  
16 attachments.  
17 Q. If a subfile only had a handful of pages  
18 and there was multiple documents, would you still  
19 put a serial to each of those documents?  
20 A. It's common practice that each document  
21 should have a serial number. But it depends on the  
22 type -- what the document is, if they have

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1 attachments, like I just said.  
2 Q. Well, does somebody make a determination  
3 as to whether or not to serialize the document?  
4 A. Anything that goes in the file is  
5 serialized.  
6 Q. So how would it ever happen, though, then  
7 that you could have a document that's not  
8 serialized, unless it was an attachment to another  
9 document?  
10 A. Could you repeat that? I'm not really  
11 clear on what you're asking.  
12 Q. Yeah. What I'm trying to understand,  
13 though, is if what you're telling me is that every  
14 document that goes into a file gets a separate  
15 serial number, I thought you just told me a few  
16 minutes ago that it is possible that you could have  
17 a document, a file with multiple documents where  
18 some of the documents don't have serial numbers.  
19 And I'm trying to understand how that would ever  
20 happen then.  
21 A. Well, you know, there could be a letter  
22 that was sent to the FBI with enclosed are multiple

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1 documents regarding whatever. And they could be  
2 separate letters. But when the file clerk put it  
3 in there, they could have just given the  
4 transmittal letter one serial and all the  
5 attachments are attached but they're not serialized  
6 separately.  
7 Q. Okay. So then the only time, though,  
8 that that would happen is if the documents are  
9 attachments to another document?  
10 A. Yes.  
11 Q. Otherwise every single document should  
12 have a separate serial number?  
13 A. Yeah, I would say that that's true.  
14 Q. And was that the practice in 1995 and  
15 '96?  
16 A. Yes.  
17 Q. Did you have any responsibility or any  
18 oversight of the files that were maintained for the  
19 Unabomber investigation?  
20 A. I was in -- in 1995 and '96, I was in my  
21 current position. So yes.  
22 Q. What was your role as it relates to that

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1 investigation?  
2 A. My role as it relates to that  
3 investigation would be, like any investigation in  
4 the FBI, generally for records and supervising  
5 people that processed the records and put them in  
6 the files.  
7 Q. Okay. Well, we've talked quite a bit  
8 about how you supervise people who process records  
9 and maintain the files.  
10 Is any of that different for the  
11 Unabomber investigation?  
12 A. The process for maintaining and  
13 processing records was the same, is the same for  
14 any investigation.  
15 Q. Okay. My understanding, and tell me if  
16 I'm wrong, is that the Unabomb investigation was  
17 initiated not by the San Francisco office, but by a  
18 different office. Is that incorrect?  
19 A. I can't say that that's incorrect. I  
20 don't know.  
21 Q. Okay.  
22 A. All I do know is that the case was open

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1 for 19 years as different bombings in various  
 2 locations, and it was determined to have a link,  
 3 which San Francisco became the office of origin.  
 4 Q. I was just going to ask you that. You  
 5 talked before about how if a document is created  
 6 after it's been uploaded, if the file of origin is  
 7 a different office then you would send the original  
 8 to that other office.  
 9 For the Unabomb investigation, were the  
 10 documents being kept in San Francisco?  
 11 A. The process that I described that you are  
 12 asking the question about is current practice.  
 13 Q. What would --  
 14 A. And in 1990 --  
 15 Q. You were just -- you were about to answer  
 16 my question.  
 17 What was it before 1996 as it relates to  
 18 the Unabomb investigation?  
 19 A. In 1994, '95, '96, that was prior to  
 20 uploading, full text document retrieval. The  
 21 office of origin, we still maintain the file, but  
 22 if there were a lead that went to another division,

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1 then they could maintain a lead file on the same  
 2 subject.  
 3 Q. Okay. And that's true for the Unabomb  
 4 investigation?  
 5 A. Well, I would think that a lead office  
 6 would maintain records if they -- if they did  
 7 investigation on the Unabomb case. But the  
 8 original document would have to be sent to the  
 9 office of origin.  
 10 Q. And for the Unabomb investigation, was  
 11 the office of origin San Francisco?  
 12 A. Yes.  
 13 Q. Okay. So the physical files for the  
 14 Unabomb investigation are maintained by San  
 15 Francisco even today?  
 16 A. Yes, they are.  
 17 Q. Okay.  
 18 MR. MCDANIEL: Can we take a break?  
 19 MR. KHETAN: Yeah, why don't we take a  
 20 five-minute break.  
 21 THE WITNESS: Okay.  
 22 (Recess taken at 2:32 p.m.)

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1 (Deposition resumed at 2:44 p.m.)  
 2 (Mr. McDaniel is not present.)  
 3 BY MR. KHETAN:  
 4 Q. Why don't we start back up.  
 5 We were talking about specifically the  
 6 Unabomber investigation. I believe we left off  
 7 with you saying that San Francisco field office was  
 8 maintaining the files for that investigation; is  
 9 that right?  
 10 A. Yes.  
 11 Q. Was there any kind of computer system  
 12 that was being used for the files for the Unabomber  
 13 investigation?  
 14 A. The computer system, we did not have  
 15 authority to not use ACS and FOIMS. So any find of  
 16 indexing had to be put in the central recordkeeping  
 17 system, which FOIMS was and ACS currently is.  
 18 There was a database that was used called  
 19 ZY Index for the Unabomb case. But it was not a  
 20 duplicate index. It was a way to manage all the  
 21 paper that was coming in. I don't really know a  
 22 lot about that database, so I really can't answer

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1 if you have any more specific questions about that.  
 2 Q. Well, I appreciate that. And I'll try  
 3 not to get into anything that you don't know.  
 4 But let me start by asking you again, you  
 5 said the ZY database, is that just what it was  
 6 called?  
 7 A. It was called ZY Index.  
 8 Q. ZY, was that Z-Y?  
 9 A. Z-Y, yes.  
 10 Q. Did that stand for something?  
 11 A. I don't know. It was an off-the-shelf  
 12 program.  
 13 Q. Okay. Do you know why the -- I'm sorry.  
 14 I apologize. I keep doing that to you because  
 15 we've got this lag time and so I keep thinking  
 16 you're done and you're not. I don't mean to  
 17 interrupt you. I apologize.  
 18 A. That's all right.  
 19 Q. Do you know why they were using the ZY  
 20 Index, as opposed to what I understand is being  
 21 used by every other office, which is the ACS?  
 22 A. They weren't using it in place of not

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1 using ACS, because there's a requirement -- there  
2 was no exemption from that one investigation not to  
3 index and put things in FOIMS and ACS. And like I  
4 say, I don't know in what capacity because I did  
5 not use that database and I'm not really familiar  
6 with it.  
7 Q. So you don't know, for example, what --  
8 if it's not duplicative of what's on ACS, what is  
9 on the ZY Index?  
10 A. Yes, I don't know. I can't really go in  
11 detail at all.  
12 Q. Do you know if the ZY, if it's indexed  
13 the same way with full -- you know, full text  
14 search, the way that the ACS is?  
15 A. I do not know.  
16 Q. Who would know that?  
17 A. I don't know.  
18 Q. Is the ZY Index, is that on a laptop or a  
19 mainframe somewhere in San Francisco?  
20 A. I believe it's on -- it's not on the  
21 mainframe. It's on a stand-alone.  
22 Q. So it can still be accessed today?

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1 A. I believe we can.  
2 Q. Okay. Well, in your -- in your years, in  
3 the last 18 or so years, or since the ZY Index was  
4 used, have you ever been asked to locate something  
5 that's on the ZY Index?  
6 A. I have not been asked, no.  
7 Q. Have you ever supervised any kind of  
8 search done on the ZY Index?  
9 A. No, I have not.  
10 Q. Was there any directive to file clerks as  
11 to put search documents on the ZY Index?  
12 A. There was a process for the people that  
13 worked on the case, but I don't -- I don't know  
14 what that was. Because the requirement was still  
15 to index into ACS, to serialize into ACS. It  
16 didn't replace the requirement to use the central  
17 recordkeeping system.  
18 Q. So were there separate documents kept on  
19 the ZY in --  
20 A. No, no. No separate documentation.  
21 Q. I guess I'm not -- I don't understand  
22 then. If it's not separate documentation, doesn't

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1 it have to be duplicative then?  
2 A. I don't really understand what you're  
3 saying.  
4 Q. Maybe my question was unclear, my prior  
5 question.  
6 When I say separate documentation, I mean  
7 were there some documents on ACS and some documents  
8 on ZY?  
9 A. My interpretation of a document is what  
10 an investigator has documented regarding the  
11 investigation. So that's what I answered to  
12 documentation.  
13 Q. So could there be anything else other  
14 than that related to an investigation that would be  
15 on the ZY?  
16 A. It was a different way, and I am not an  
17 expert on this, but the ZY Index was a different  
18 way to retrieve the same documents. But in what  
19 capacity, I cannot go into any detail. I do not  
20 know.  
21 Q. Okay. So the documents themselves then  
22 were duplicative?

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1 A. The documents were the same. Is that  
2 what you mean by duplicative? I don't --  
3 Q. Yes. And I -- maybe I misheard you  
4 before. I thought before you said that they were  
5 not duplicative. And that's why I was asking you  
6 these questions.  
7 It sounds like what you're saying is the  
8 ZY Index contained at least some component of what  
9 was contained on the ACS, maybe not all but some?  
10 A. It was a retrievability database in some  
11 way. So I'm -- I can't be any more specific than  
12 that.  
13 Q. And I understand that. I just want to  
14 make sure, though, are we talking about retrieving  
15 the same documents that are on ACS, or different  
16 documents?  
17 A. Yes, yes, the same.  
18 Q. Okay, all right. Now, the ACS system I  
19 believe you said didn't go up until October of '96?  
20 A. Yes.  
21 Q. So what happened to documents related to  
22 the Unabomb investigation that were created prior

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1 to that time?

2 A. In 1996 when we went to full text

3 document retrieval and the enhancements that ACS

4 provided our recordkeeping system, we did not -- we

5 did not -- Unabomb case was not implemented in that

6 upgrade of ACS. Indexing, case management, that

7 type of thing was done on ACS, but we did not

8 upload documents for full text document retrieval

9 in ACS.

10 Q. And does that --

11 A. The hierarchy -- go ahead.

12 Q. No, you go ahead. You were talking about

13 the hierarchy.

14 A. The hierarchy determined with the amount

15 of documentation that we had on the Unabomb case

16 and to all of a sudden create from a day one

17 concept, because that's what we did with every

18 other pending investigation, you did a day one

19 concept, you didn't go back to the beginning and

20 try to upload documents, it went from that day

21 forward, that would create too much confusion for

22 the Unabomb case.

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1 So uploading, it was approved by

2 headquarters, suggested by the management in San

3 Francisco and approved by headquarters not to

4 upload, start the uploading in midstream of the

5 Unabomb investigation.

6 Q. So none of the Unabomb investigative

7 files can be full text searched?

8 A. In ACS, yes.

9 Q. Well, in any -- forget about ACS, but in

10 any computer format can they be full text searched?

11 A. I don't know, I really don't know if the

12 ZY -- I'm not sure about. Like I said, the

13 capabilities of ZY is outside of my realm.

14 Q. Do you know -- do you know when the ZY

15 Index was put into place?

16 A. I don't recall.

17 Q. Was it done just for the Unabomb

18 investigation?

19 A. Yes.

20 Q. Do you know if it was before or after

21 October of 2005?

22 A. 2005?

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1 Q. I'm sorry, October of 1995. Let me try

2 that again.

3 Was the ZY Index, was that initiated

4 after October of 1995?

5 A. I don't recall.

6 Q. Okay. Well, let's assume that the ZY --

7 let me take that back.

8 Do you know if, regardless of when the ZY

9 Index was created, were things uploaded onto the ZY

10 for documents that had been created before ZY was

11 created?

12 That was a horrible question. Let me try

13 that again.

14 Let's say that the ZY Index was started

15 in April of 2006. Do you know if there were any

16 efforts made in your office to take documents

17 created in October of 1995 and upload them onto ZY,

18 or was it going to be as of the date of creation we

19 will now begin to upload?

20 A. Okay. In your question, you stated

21 October of 1996. I'm confused. And then you

22 bounced back to '96. So --

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1 Q. The dates that I'm using, I'm purely --

2 they're hypothetical. What I was trying to do is

3 an example where the ZY is created after is

4 document is created.

5 Is there any effort made to go back and

6 upload that document that was created before ZY

7 came into existence?

8 A. I'm really not following what you're --

9 could you rephrase it or something?

10 Q. Sure.

11 A. I'm not following this.

12 Q. Let's assume that the ZY Index was

13 started in April of 2006. Okay? And let's assume

14 a document was created in October of 1995.

15 Was there some directive to your file

16 clerks to go back and take all documents related to

17 the Unabomb investigation, documents created before

18 the ZY Index was started, and to upload them onto

19 the ZY so that the ZY has all Unabomb files?

20 A. If you're talking about the process of ZY

21 Index, I cannot answer your questions. If you're

22 asking about implementation of ACS, it is a day one

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1 concept. We do not go back, now that we have the  
 2 capability of uploading documentation, we don't go  
 3 back to old documentation within that pending file  
 4 and upload it.  
 5 Q. And who would know more specific about  
 6 the question I just asked with regards to the ZY  
 7 Index?  
 8 A. I don't know.  
 9 Q. Is there somebody in San Francisco who's  
 10 in charge of the ZY Index?  
 11 A. No, it's no longer used.  
 12 Q. Well, when it was being used, was there  
 13 someone in charge of it?  
 14 A. There were several people that used it.  
 15 Q. How did you search for documents in  
 16 response to a FOIA request if they had been created  
 17 prior to ACS?  
 18 A. Prior to ACS, as I stated previously, we  
 19 had FOIMS. And FOIMS was an index database and it  
 20 was case management to a certain extent, no full  
 21 text document retrieval.  
 22 So searches were made, prior to October

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1 search?  
 2 A. Well, we still have mandatory indexing  
 3 for subjects of investigation. It's probably an  
 4 easier retrievability than full text.  
 5 If you do a text search you're doing a  
 6 global text search so there's several thousands and  
 7 thousands of documents it could be possibly  
 8 searching. So your response time using the  
 9 universal index would be faster --  
 10 Q. Okay.  
 11 A. -- given a name and descriptive data and  
 12 so forth.  
 13 Q. I would -- I might be able to agree with  
 14 that. But to give me a better gauge of this, can  
 15 you estimate for me how long it takes to do an  
 16 index search? I mean are we talking about several  
 17 days?  
 18 A. No. On the computer?  
 19 Q. Yes.  
 20 A. It could be -- you type in a name or  
 21 whatever you're interested in with parameters and  
 22 you get a response within seconds or --

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1 of '96, it was a electronic database, and they were  
 2 searched through our FOIMS system. FOIMS was  
 3 implemented in 1986 with those capabilities.  
 4 Prior to that, we had a manual system  
 5 with three-by-five index cards that were typed by  
 6 the file clerks and filed in alphabetical order in  
 7 a manual index system.  
 8 Q. Okay. Let's talk about when the FOIMS  
 9 system was active.  
 10 Were the Unabomb investigation files,  
 11 were those being done under the FOIMS system?  
 12 A. Yes, they were.  
 13 Q. Okay. And so is that the process you  
 14 described before, where an agent would circle or  
 15 highlight or underline index names or companies?  
 16 A. Yes. And it's currently being used.  
 17 Marking of indexing currently is used as well.  
 18 Q. Although now you have full text search.  
 19 A. This is true, but we still have  
 20 requirements to index records.  
 21 Q. Do you know why you still index records  
 22 using a name if you could just do a full text

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1 Q. And if you did a full text search, do you  
 2 know how long that would take?  
 3 A. It depends on how many -- what the key  
 4 words are. Because it's not just a name that you  
 5 might search.  
 6 Q. Right.  
 7 A. And if the name is common, and what it  
 8 will do is identify the documents where the name  
 9 appears. Whereas the universal index will refer  
 10 you to a case file and/or a document and it will  
 11 give you some general information regarding  
 12 whatever was data loaded into that record. If it  
 13 was an individual, if the file clerk data loaded it  
 14 in their date of birth, their Social Security  
 15 number, a physical description, Social Security  
 16 number, then you can actually look at that index  
 17 record.  
 18 Q. And I wouldn't be able to do that on the  
 19 full text search?  
 20 A. The full text search will retrieve  
 21 documents where the name appears. So you could  
 22 come up with -- if you have John Brown or someone,

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1 it could come up with 10,000 responses and then  
2 you'd have to look at all the records to determine  
3 which one you're really interested in.  
4 Q. Well, what if it weren't such a common  
5 name? What if it were a name like Negley, I mean  
6 can you estimate how long it would take to do the  
7 full text search there?  
8 A. I couldn't tell you. It would depend on  
9 how many -- and this isn't the case, because we  
10 didn't have full text, we don't have full text at  
11 the time that this request was made.  
12 Q. I thought you said the full text search  
13 was -- came into place in 1996.  
14 A. Yes, it was. But we didn't do full text  
15 on the Unabomb case.  
16 Q. I understand -- I understand that.  
17 But -- well, were you involved in the search for  
18 responsive documents for Mr. Negley's FOIA request?  
19 A. No, I was not.  
20 Q. Okay. Are you aware when that request  
21 was made?  
22 A. No, I was not.

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1 Q. Okay.  
2 A. I know nothing about your client.  
3 Q. Okay. Well, if I suggest to you that it  
4 was made in 2002, you would do a full text search  
5 then, or you'd be able to do a full text search,  
6 wouldn't you?  
7 A. We would not do a full text search.  
8 Q. But you would be able to, correct?  
9 A. You're getting into the process of FOIA.  
10 And it's not a search criteria to do electronic  
11 case.  
12 Q. I'm not sure I --  
13 A. When we reach --  
14 Q. I'm not sure I understand your answer.  
15 A. You're talking about searching  
16 electronic, the electronic case database in ACS --  
17 Q. Correct.  
18 A. -- for a case that never used that  
19 capability.  
20 Q. Well, and I think maybe that's where  
21 we're missing each other.  
22 You keep saying that, but that's only if

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1 you limit it to the Unabomber; am I correct?  
2 A. Well, it's not a normal -- well, I'm the  
3 wrong person to be asking the process of receiving  
4 a FOIA request during this 1992 or whatever, and  
5 how you go about doing the search.  
6 Q. I understand that. But I need to make  
7 sure that the record's clear, because you said some  
8 things that if you're not -- if you're not the  
9 right person to say them, then you shouldn't say  
10 them. So I want to make sure the record's clear on  
11 that.  
12 A. Okay. Then maybe you misunderstood.  
13 Q. Okay.  
14 A. Because you're asking about an ACS system  
15 and I'm trying to explain that. But then you're  
16 tying in, you're really tying in your situation and  
17 it's totally confusing the whole issue.  
18 Q. Right. And there may be some confusion.  
19 I can understand that. Let's try to clear that up.  
20 The request was done in 2002. A request  
21 for FOIA records related to an individual. Would  
22 it not be possible to do a full text search in 2002

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1 based on an individual's name?  
2 A. In ACS? In UNI?  
3 Q. A search for FBI records.  
4 A. A search for FBI records is done by using  
5 the index system.  
6 Q. Okay.  
7 A. The universal index system.  
8 Q. Why would you not do it using the full  
9 text search?  
10 A. I am not the person to ask about that.  
11 Q. Okay.  
12 A. You're getting into FOIA, and the system  
13 has changed from the time that I processed FOIA.  
14 Q. Okay. So I won't get into that. But I  
15 believe in your capacity as a records manager, you  
16 would know the answer to this, though.  
17 In 2002, is it possible to do a full  
18 record search based on an individual's name on the  
19 ACS?  
20 A. You could search -- your Electronic Case  
21 File is what you're asking. Is that what you're  
22 asking me?



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1 Q. Well, what are you calling the Electronic  
 2 Case File?  
 3 A. Is documents that are uploaded in the  
 4 system, it's actually searching the documents that  
 5 are uploaded into the ACS system, which started in  
 6 October of 1996.  
 7 Q. Right. And if I understood what you said  
 8 earlier, every document created since October of  
 9 '96 was uploaded onto ACS, correct?  
 10 A. Not the Unabomb case.  
 11 Q. You did -- correct.  
 12 A. I did clarify that.  
 13 Q. You did clarify that, not the Unabomb  
 14 case. Every other investigative file by the FBI,  
 15 every single document since October of 1996 was  
 16 uploaded onto the ACS, correct?  
 17 A. Not every single document is uploaded.  
 18 It's what the FBI generates. If we do a electronic  
 19 communication, a 302, an insert, it's uploadable.  
 20 There are some documents in our case files that  
 21 aren't uploadable, nor do we scan.  
 22 Q. What kind of documents would not be

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1 uploadable?  
 2 A. A 1A envelope, agent's written notes, we  
 3 talked about that before. We can't upload those.  
 4 We can place them in the file, identify what they  
 5 are and get a 1A number, but the full text or a  
 6 scanning capability is not what ACS is capable of  
 7 doing.  
 8 We could receive a letter from an outside  
 9 entity and that's not uploaded. It's serialized  
 10 into the file, it's described in that document, but  
 11 it is not uploadable or full text retrieval.  
 12 Q. Okay. Anything else?  
 13 A. Well, those are examples. There's  
 14 probably a lot of them, a lot of different  
 15 documents, but the key is, is what we generate we  
 16 have the capability of uploading. What I mean by  
 17 "we," is what the FBI generates during the course  
 18 of an investigation, we have the capability of  
 19 uploading.  
 20 Q. Okay.  
 21 A. And by no means is everything in a file  
 22 since October, 1996, uploaded.

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1 Q. Right. But the things that would not  
 2 have been uploaded would be categories like the 1As  
 3 or documents that were generated outside of the  
 4 FBI, correct?  
 5 A. Right.  
 6 Q. But all other documents generated within  
 7 the FBI would be uploaded?  
 8 A. Not all of them. It just depends. There  
 9 might be some sensitivity and it fits into a  
 10 different category or it's restricted document.  
 11 Anything secret or below can be uploaded. Anything  
 12 above that, we don't.  
 13 Q. So restricted documents would not be  
 14 uploaded?  
 15 A. Well, restricted documents, it depends on  
 16 the type of document it is. This gets into a can  
 17 of worms. So I -- I don't know. You're totally  
 18 confusing me.  
 19 Q. Well, I don't mean to confuse you, but  
 20 I'm afraid we need to get into that can of worms  
 21 here.  
 22 I need to have a better understanding

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1 then of what documents are not uploaded. Because I  
 2 was under the impression that everything was  
 3 uploaded. And if it's not, I need to know what  
 4 categories of things are not.  
 5 And what you've described to me are  
 6 handwritten notes like the 1A notes that are put in  
 7 an envelope; anything from outside of the FBI. You  
 8 just mentioned restricted documents. And so I need  
 9 to get a better understanding of what kind of  
 10 restricted documents are uploaded?  
 11 A. Well, anything top secret is not  
 12 uploaded --  
 13 Q. And who makes --  
 14 A. -- if it meets that level of  
 15 classification.  
 16 Q. Who makes a determination of whether or  
 17 not something is top secret or not?  
 18 A. It's based on the information contained  
 19 in the document.  
 20 Q. But is it the file agent that makes that  
 21 determination or is it the case agent that does it?  
 22 A. The file agent and a case agent, I don't

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1 know how you differentiate those people.  
 2 Q. I apologize. I said --  
 3 A. It's a squad --  
 4 Q. I'm sorry, I don't mean to interrupt you.  
 5 You're right, file agent is not the right term. I  
 6 mean file clerk, versus the case agent.  
 7 A. File clerk does not make that  
 8 determination. The classification of a document is  
 9 made by the case agent with concurrence of the  
 10 squad supervisor.  
 11 Q. Now, if a document is top secret and it's  
 12 not uploaded, is it still indexed?  
 13 A. I don't know.  
 14 Q. Well, in your -- in your capacity as a  
 15 person who maintains open files, don't you need to  
 16 know that? I mean aren't you curious what happens  
 17 to top secret documents? Don't you want to know  
 18 whether or not --  
 19 A. There's a separate way of maintaining top  
 20 secret documentation.  
 21 Q. Okay. What is that way?  
 22 A. With a -- it is maintained by the

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1 security officer and it is indexed -- not indexed,  
 2 it's serialized. The document's serialized and  
 3 then it's maintained separately. I don't believe  
 4 that we index anything on the document.  
 5 Q. Okay. But you said it is serialized,  
 6 though. So if it's serialized, is it still  
 7 searchable on the ACS?  
 8 A. It is not searchable because the  
 9 searchable database that you're referring to, ECF,  
 10 is based on documents being uploaded.  
 11 Q. Okay. Let me try it this way then.  
 12 What document -- what kinds of documents  
 13 are not searchable on the ACS? You've already  
 14 talked about 1As -- or let me take that back.  
 15 Is a 1A searchable on the ACS?  
 16 A. The 1A is not searchable in ECF.  
 17 Q. ECF being full text search?  
 18 A. ECF, Electronic Case File. Those are the  
 19 documents that are uploaded.  
 20 Q. Okay.  
 21 A. The database that maintains the records  
 22 for serializing a document, 1As, is called

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1 Investigative Case Management. That's the other  
 2 database part of ACS. So if you're looking for a  
 3 1A, there's reports you can get but you don't have  
 4 the text retrieval that you do with ECF and ICM.  
 5 Q. But can I search ICM using names or  
 6 terms? Are they indexed, in other words? Are  
 7 documents that --  
 8 A. No.  
 9 Q. -- are on ICM indexed?  
 10 A. Documents that are in ICM could be  
 11 indexed, but in order to retrieve it you go to UNI.  
 12 Q. Right. But if they're not indexed, how  
 13 would I search them?  
 14 A. If you are looking for a 1A, there are  
 15 some parameters, but some of the mandatory fields  
 16 would be file number, which you would have to have  
 17 a file number or you would have to have a date  
 18 range possibly. And you could get a report that  
 19 might be 500 pages long maybe based on that, and  
 20 you would actually have to go and retrieve to see  
 21 if that was what you were looking for.  
 22 Q. So if I got a file related to an

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1 individual and I didn't see any notes in there, I  
 2 would have a file number, I could then go to the  
 3 ICM and say give me all the 1As related to this  
 4 file number?  
 5 A. Yes.  
 6 Q. Okay. Is there anything other than 1As  
 7 contained in the ICM?  
 8 A. Lead management, when there's leads from  
 9 other offices and the assigning of the leads, the  
 10 type of lead it is, who it's assigned to.  
 11 The management of your case by opening  
 12 and assigning a case. The file clerk would go into  
 13 that database to open up a new case and there's  
 14 screens that have information on different screens  
 15 that have to be data loaded into that.  
 16 Q. Okay.  
 17 A. The squad supervisor can manage what's  
 18 assigned to their agents on their squad in the ICM  
 19 database.  
 20 Q. Okay. Any other documents on the ICM?  
 21 If we call the 1A which contains notes as a  
 22 document, any other documents on the ICM?

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1 A. There's -- there's evidence management on  
 2 ICM. But per se documents are not on that  
 3 database.  
 4 Q. Right. But I would have -- again, using  
 5 my hypothetical, if I got a file number from some  
 6 other search, I was able to get a file number  
 7 related to an individual, I could go to the ICM to  
 8 determine whether or not there was a 1A; and if  
 9 there was, then I would go to the physical file and  
 10 I could retrieve the 1A, is that the process?  
 11 A. Yes, you would have to run a report.  
 12 Q. But it would give me whether or not  
 13 there's a 1A, correct, that report?  
 14 A. If you had a case file number, you could  
 15 see if there's any 1As for that particular file.  
 16 Q. Using the ICM?  
 17 A. Yes.  
 18 Q. Okay. So that's the ICM. Then you said  
 19 there's ACS, we talked about ACS a lot today.  
 20 A. ACS is the broad term --  
 21 Q. Okay.  
 22 A. -- for the three databases.

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1 Q. UNI is the database --  
 2 A. Pardon me?  
 3 Q. Is UNI the database that contains the  
 4 indexing that we've been talking about today?  
 5 A. Yes.  
 6 Q. And then ECF is what you do full text  
 7 search on?  
 8 A. ECF is the Electronic Case File which are  
 9 the documents that are uploaded in the system. And  
 10 you can do a search of documents.  
 11 Q. You can do a full text search of  
 12 documents?  
 13 MS. TOTH: Objection. We've been over  
 14 this over and over.  
 15 BY MR. KHETAN:  
 16 Q. We're going to have to keep going over it  
 17 until it's clarified, because there's been a lot of  
 18 confusion here. So I want to make sure that  
 19 everything's clear.  
 20 The ECF is the database that allows you  
 21 to do full text search; is that right?  
 22 A. Yes.

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1 Q. Okay. And the UNI is where you can do  
 2 indexing based on names or company names or  
 3 whatever words were circled or underlined by the  
 4 agent, correct?  
 5 A. Correct.  
 6 Q. Okay. Does the UNI contain the actual  
 7 documents also?  
 8 A. No. What it does is show you -- you can  
 9 look at the record, you can look at a list of  
 10 anything that's retrieved based on your search  
 11 criteria, and it will give you a listing. And then  
 12 you can pull up the actual index record. And then  
 13 you can look at what other identifying information  
 14 was data loaded in there, any miscellaneous  
 15 information, whatever the file clerk had at the  
 16 time they were data loading in or inputting the  
 17 information.  
 18 Q. But it's not the actual document, though?  
 19 A. No. It refers you to the document.  
 20 Q. Okay.  
 21 A. And you can toggle over, if it is  
 22 uploaded into the system, you can toggle over into

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1 ECF and possibly retrieve that document.  
 2 Q. Okay.  
 3 A. If it's in the system.  
 4 Q. Okay. And what San Francisco has, is  
 5 that viewable or can somebody in another office  
 6 access that information?  
 7 A. Yes.  
 8 Q. And is the same true that from San  
 9 Francisco, if I use UNI or ECF or any of the three  
 10 databases within the ACS, I'm not just getting San  
 11 Francisco, I'm getting all the offices?  
 12 A. Not with ICM.  
 13 Q. Okay.  
 14 A. With UNI, if you're doing a search and  
 15 something comes up in Los Angeles, it will identify  
 16 a Los Angeles number. And if that document was  
 17 uploaded, then you can view it.  
 18 Q. If it was uploaded on --  
 19 A. But the --  
 20 Q. I'm sorry. If it was uploaded on ECF,  
 21 you could view it?  
 22 A. Right.

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1 Q. So ECF and UNI are -- they do work within  
2 all the offices, assuming --  
3 A. Yes.  
4 Q. -- it's been uploaded? Okay.  
5 A. Yes.  
6 Q. And does that include the main office as  
7 well?  
8 A. When you -- are you referring to FBI  
9 headquarters?  
10 Q. Yes.  
11 A. FBI headquarters is not investigative  
12 entity, but if they have generated documentation,  
13 administrative documentation, yes, we would be able  
14 to -- if we searched a subject matter and came up  
15 with an HQ file and the document was uploaded, then  
16 we would be able to look at it.  
17 Q. Okay. So what initiated this  
18 conversation about these three different databases  
19 within ACS was me trying to get an understanding  
20 from you as to what records are not searchable.  
21 If I understand correctly, I can actually  
22 search, although it's in a slightly different way,

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1 retrieve it on UNI?  
2 A. Yes.  
3 Q. Now, you talked about restricted  
4 documents and you said top secret documents.  
5 Are those in any way searchable either on  
6 full text search or using the UNI search?  
7 A. Not full text. UNI, it would only be if  
8 something was indexed from that document. The  
9 document would be recorded in ICM only as being  
10 serialized.  
11 When we serialize a document and do not  
12 upload, there's certain descriptions of that  
13 document that's data loaded into ICM. It's to,  
14 from, some basic information about the document.  
15 We refer to those as attributes. So the to, the  
16 from, the date, perhaps the title of the case, the  
17 classification level, is recorded and it is given a  
18 serial number. But it is not uploaded in the  
19 system.  
20 Q. Okay. And the ICM, I think you said that  
21 one of the ways I could search the ICM was if I  
22 knew the file number; is that right?

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1 I can search to get the 1A. I just have to do it  
2 using a file number or some other identifier,  
3 correct?  
4 A. Right, yes.  
5 Q. You talked about letters that come in  
6 from outside of the FBI.  
7 Are those searchable in any of these  
8 three databases, the ECF, UNI, or ICM?  
9 A. Searchable in what way?  
10 Q. Either full text or using index.  
11 A. If the FBI San Francisco receives a  
12 letter from an outside agency, it needs to go to  
13 someone to determine where to file it. And it  
14 would have to be determined where it's going to be  
15 filed, marked for indexing, in order for it to be  
16 retrieved. It would not have full text retrieval.  
17 It was not generated by the FBI.  
18 Q. So absolutely categorically you're not  
19 going to get full text on those documents?  
20 A. No.  
21 Q. But if the case agent or a supervisor  
22 says I do want to index it, then you'd be able to

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1 A. You can search ICM -- it's really the  
2 case management of an investigation that that  
3 database is used. It's used to do the 1A envelopes  
4 as we spoke about earlier, about categorizing  
5 evidence, assigning leads to other field offices,  
6 and actually performing the functions of the file  
7 clerk of opening and assigning a case once the  
8 squad supervisor determines that we need to open an  
9 investigation. That's what that database is used  
10 for.  
11 Q. Right. I understand that. My question  
12 was different.  
13 My question is --  
14 A. I'm sorry.  
15 Q. Let's say that I have, using UNI, I have  
16 located a subfile that relates to a particular  
17 individual. I went and got the -- I got the  
18 documents from ECF so I've got whatever has been  
19 uploaded. But now I want to know are there any  
20 1As, are there any top secret documents that relate  
21 to that file or the individual who was a subject of  
22 that file.

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1 Can I go to ICM to determine that?  
 2 MS. TOTH: I'm going to have to object to  
 3 the top secret stuff.  
 4 THE WITNESS: Well, you could --  
 5 MS. TOTH: Excuse me. The top secret  
 6 documents, the filing for them is also classified.  
 7 MR. KHETAN: The filing of top secret  
 8 documents --  
 9 MS. TOTH: The management, yes.  
 10 MR. KHETAN: -- is classified?  
 11 MS. TOTH: Yes.  
 12 MR. KHETAN: On what basis?  
 13 MS. TOTH: So people don't know.  
 14 MR. KHETAN: How the FBI maintains those  
 15 files is classified? I mean and just for --  
 16 frankly, I don't care how the FBI does it for  
 17 everything else, but in the context of this case,  
 18 to the extent that there are any top secret  
 19 documents related to Mr. Negley, certainly the  
 20 government may withhold them under some exemption,  
 21 but we don't even get there because I don't know if  
 22 they exist or not.

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1 The only way I can know if they exist is  
 2 by finding out how are they maintained. I can't  
 3 imagine that that's top secret. She's not going to  
 4 tell me the contents of the documents.  
 5 MS. TOTH: But even the management of  
 6 them is outside of --  
 7 MR. KHETAN: Are you going to instruct  
 8 her not to answer that?  
 9 MS. TOTH: Well, if you just keep it to  
 10 the management, I don't mind.  
 11 MR. KHETAN: Absolutely. And I'm not  
 12 even getting into specifics of documents. So I'm  
 13 not going to talk to her about what the top secret  
 14 documents say, because I'm guessing she doesn't  
 15 know that anyway.  
 16 MS. TOTH: It seems like you're going  
 17 more and more that direction. I just want to  
 18 say --  
 19 MR. KHETAN: I'm not.  
 20 BY MR. KHETAN:  
 21 Q. And frankly, Ms. Figoni, correct me if  
 22 I'm wrong, you don't know the content of any

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1 documents that we're talking about, do you? I mean  
 2 do you know the contents of documents related to  
 3 Mr. Negley?  
 4 A. All I -- as we talked about earlier, were  
 5 those two documents.  
 6 Q. Absolutely.  
 7 A. That's all I'm aware of.  
 8 Q. Other than that, you have no knowledge  
 9 about documents related to Mr. Negley?  
 10 A. No, I do not.  
 11 MR. KHETAN: Okay. So she's not going to  
 12 know even if there are top secret or not. So I'm  
 13 certainly not going to be able to ask her about the  
 14 contents.  
 15 MS. TOTH: Well, you can still ask her.  
 16 I think you have been going down that path.  
 17 MR. KHETAN: Okay. Well, that's not my  
 18 intention. But I am going to ask you about the  
 19 management of it. And if you could read back the  
 20 last question before the objection.  
 21 (The reporter read back as requested.)  
 22 BY MR. KHETAN:

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1 Q. Okay. So my question is, I've gotten a  
 2 FOIA request, San Francisco field office gets a  
 3 FOIA request, they processed it, they've located a  
 4 subfile that relates to a particular individual.  
 5 But they need to get -- they need to know whether  
 6 there are any 1As or any top secret documents  
 7 related to that individual or that are part of that  
 8 file.  
 9 And I think what you've testified is  
 10 those things would not be on the UNI system, they  
 11 would be on ICM, correct?  
 12 A. I'm sorry, the air conditioning just  
 13 kicked on and I didn't hear you.  
 14 Q. That's okay. I'll try it again. And  
 15 tell me if you can't hear me.  
 16 San Francisco field office gets a FOIA  
 17 request, they processed it, they've located a  
 18 subfile that relates to a particular individual.  
 19 But because they've done this on the UNI, they have  
 20 not located any 1As or any top secret documents.  
 21 So the way -- the place for them to go is  
 22 the ICM, correct?

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1 A. That would not be my normal course of  
2 action. If the retrievability through UNI  
3 identifies a file which I retrieve, then anything  
4 in that file would be subject to what I would  
5 review. If there are any 1As, it would be  
6 maintained in that file.  
7 Q. That's a fair point. And I think what  
8 you're talking about is if you went and physically  
9 retrieved the actual file; is that right?  
10 A. Yes.  
11 Q. But in this day and age where you have  
12 everything on ACS, wouldn't you just go to ACS and  
13 get the file from there?  
14 A. Well, there again I think you're getting  
15 into FOIA requirements. The original file, the  
16 paper file, the office of origin file, is the true  
17 file. And not everything is in ACS.  
18 Q. Right.  
19 A. Electronic Case File only maintains what  
20 has been uploaded.  
21 Q. Right.  
22 A. It does record everything that's been

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1 placed in the file that's been serialized, it will  
2 show whether a document is uploaded or not, you can  
3 get an inventory of a file, but if you have a file  
4 that existed prior to those enhancements of ACS in  
5 October of '96, you won't have a full electronic  
6 version of an investigation.  
7 Q. Right. But for things that were -- for  
8 things that were created after October of '96, you  
9 are able to -- well, tell me if you can or can't.  
10 The inventory that you just mentioned  
11 that's on ECF, that includes -- it's inventory even  
12 of stuff that's not uploaded?  
13 A. Anything that's serialized, you can get  
14 an inventory of it based on what's been loaded in  
15 the system. It will tell you whether a document is  
16 uploaded or not.  
17 Q. Okay. But it will -- the inventory will  
18 include everything serialized, though?  
19 A. Yes.  
20 Q. Okay. And we talked before about 1As.  
21 1As are serialized then?  
22 A. Yes. But you have to get a report out of

Page 116

1 ICM for the 1As, as we spoke about earlier.  
2 Q. Right. But, and tell me if I'm wrong,  
3 but the inventory that I get off of ACS, would that  
4 not tell me that there is a 1A?  
5 A. You have to be more specific about. ACS  
6 is the general automated case management system.  
7 Q. You're right.  
8 A. What database are you referring to?  
9 Q. You're right. I misspoke. I meant ECF.  
10 The inventory that you described on ECF,  
11 will that give me -- on that inventory will it  
12 indicate to me whether or not there is a 1A if it  
13 has been serialized but not uploaded?  
14 A. I believe there is a field when you're  
15 doing the report that you can include 1As. I'm not  
16 a hundred percent sure. I believe you can.  
17 Q. Okay. Would that inventory tell me if  
18 there were any top secret documents that have been  
19 serialized but not uploaded?  
20 MS. TOTH: I'll object again. ACS only  
21 has up to secret.  
22 MR. KHETAN: She can still answer,

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1 though, correct?  
2 MS. TOTH: Yeah.  
3 BY MR. KHETAN:  
4 Q. You can still answer.  
5 A. Could you repeat it, please?  
6 Q. Sure. The ECF inventory that you just  
7 talked about, will that indicate if a top secret  
8 document exists, has been serialized, but not  
9 uploaded?  
10 A. It will show documents that are  
11 serialized and not uploaded, yes.  
12 Q. Okay. So actually I don't need to go to  
13 the ICM then, because it will -- because the ECF  
14 will actually tell me whether there are 1As and  
15 whether or not there are top secret documents?  
16 A. As I stated earlier, I believe you can  
17 include 1As.  
18 Q. Okay.  
19 A. I'm not a hundred percent sure, but I  
20 believe you can.  
21 Q. Let's say it does not. Let's say the  
22 inventory does not include a 1A and I need to go to

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1 the ICM?

2 A. There -- you can get a report in ICM.

3 Q. Okay. Now, how do I get that report? Do

4 I need to put in a file number or a case number?

5 A. Yes.

6 Q. A serial number?

7 A. You have to put in a file number.

8 Q. Can I do it with a serial number but no

9 case number?

10 A. No.

11 Q. Okay. So we've talked about 1As, we've

12 talked about documents created outside of the FBI,

13 and we've talked about top secret documents.

14 Are there any other documents that are

15 not uploaded onto the ECF?

16 And we're talking about categories of

17 documents. I don't need every single document that

18 may fall within a 1A. I'm talking more about

19 categories of documents.

20 A. No, there aren't.

21 Q. Okay.

22 A. Not that I --

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1 Q. Well, take --

2 A. I can't think of any others at this time.

3 Q. Okay. And I'm almost done here. So take

4 a moment to think about it if you need it.

5 Based on your 35 years of experience and

6 your last 18 --

7 A. 36.

8 Q. 36, sorry, and your last 18 in

9 management, are you aware of any other types of

10 documents that would not be uploaded onto the ECF?

11 A. I can't think of any other categories.

12 But simply put, the documents that we're capable of

13 uploading are what we generate. If it's a

14 WordPerfect document, if it's an E-mail that we can

15 save and upload, if it's generated here, those are

16 the types of documents that we can upload, our

17 FBI-generated documents.

18 Q. Just bear with me one second. I'm just

19 going through to see if I have any more questions.

20 A. Okay.

21 Q. I think you may have already answered

22 this, but just to make sure I want to ask you

Page 120

1 again.

2 Were you involved at all in searching for

3 responsive documents -- excuse me, for documents

4 responsive to Mr. Negley's FOIA request?

5 A. No, I was not.

6 Q. Did you get involved at all in assisting

7 the FBI as it relates to Mr. Negley's lawsuit,

8 other than through this deposition?

9 A. No, I was not involved.

10 MR. KHETAN: Why don't we go off the

11 record for two minutes, let me just look over the

12 rest of my notes. And I think I may be done.

13 THE WITNESS: Sure, okay.

14 (Recess taken at 3:41 p.m.)

15 (Deposition resumed at 3:42 p.m.)

16 BY MR. KHETAN:

17 Q. I just have a few more questions and then

18 we'll be done.

19 A. Okay.

20 Q. I had asked you before if file clerks

21 would ever put any kind of notations or would write

22 anything on documents, and you described to me a

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1 stamp that sometimes gets put on. And you also

2 said that sometimes file clerks will put the case

3 number or the serial number at the bottom of a

4 document.

5 Do you recall that?

6 A. Yes.

7 Q. Would -- would a file clerk ever write

8 something in the middle of the document, unrelated

9 to the filing of the document?

10 A. No, I don't think so. I don't know why

11 they would.

12 Q. Can I have you -- I'm sorry, go ahead.

13 You can finish your answer.

14 A. I wouldn't know why a file clerk would

15 write something on the document, other than what's

16 related to what they're doing, which is either

17 serializing it or indicating that they filed it

18 under the old system where we had the stamp.

19 That's the only time that a file clerk would write

20 on a document.

21 Q. And the old system where you had the

22 stamp, did that change in October of '96 also when

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1 the ACS system came up?  
2 A. Yes.  
3 Q. Okay. Could you take a look at --  
4 Ms. Toth had reviewed four pages with you, you  
5 described them earlier.  
6 A. Yes.  
7 Q. Could you take a look at the two-page  
8 document that's dated October 18th, 1995? We've  
9 previously marked that as an exhibit in other  
10 depositions, so I'm not going to do it here.  
11 A. Okay.  
12 Q. But could you just take a look at that  
13 and look towards the middle of that document, do  
14 you see the word "suspect 1575" written?  
15 MS. TOTH: Could I have a copy?  
16 MR. KHETAN: I may not actually have -- I  
17 don't think I have any extra copies. I'm not going  
18 to -- I'm not going to ask her any questions about  
19 the content. You're welcome to look off of that.  
20 MS. TOTH: Let me just see it.  
21 BY MR. KHETAN:  
22 Q. Do you see that, Ms. Figoni? It's

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1 A. But I have no control.  
2 Q. That's fair. But is there any protocol,  
3 practice, guideline for file clerks at the San  
4 Francisco field office to make such a notation on a  
5 file?  
6 A. Could you repeat that? I kind of lost  
7 you there.  
8 Q. Sure. What I'm trying to find out is was  
9 there a practice or is there a practice where file  
10 clerks are told when it is or is not appropriate to  
11 write something like that on a document?  
12 A. There is no practice, no instructions, no  
13 guidelines advising our file clerks in what -- when  
14 to and when not to write something. It's just not  
15 normally done by a file clerk.  
16 Q. Okay. And are you involved at all in  
17 assigning suspect numbers?  
18 A. No.  
19 Q. Do you know if that happens at the San  
20 Francisco field office?  
21 A. There is no -- there's nothing automatic  
22 based on the system, like when you open a file, a

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1 towards the middle of the document, it's a little  
2 faded, but it says "suspect 1575."  
3 A. It's handwritten?  
4 Q. Yeah, I'm sorry, handwritten, yes.  
5 A. Yes, yes.  
6 Q. Do you know whose --  
7 A. It's on the reference line.  
8 Q. Yes. Do you know whose handwriting that  
9 is?  
10 A. No, I don't.  
11 Q. Would a file clerk ever put something  
12 like that on a document?  
13 A. Not normally, they would not. I would  
14 think that if anybody, it would be someone in the  
15 squad supervisor or an agent reviewing the  
16 document.  
17 Q. You said "not normally." Was there some  
18 circumstance where they would?  
19 A. Well, anything can happen. I can't say  
20 that a file clerk has never written something on a  
21 document. That's why I said it that way.  
22 Q. No, that's fair.

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1 new case file in ACS, it's an automatic number.  
2 There is no such system that exists specifically  
3 for suspects under those same requirements.  
4 Q. Do you know --  
5 A. So if a -- go ahead.  
6 Q. No, no, I apologize. You were answering.  
7 Go ahead.  
8 A. So if an investigation on a particular  
9 squad gets into several suspects and whether they  
10 maintain their records or not, it would be up to  
11 them to number the cases that they open up.  
12 Q. Do you know if that was done for the  
13 Unabomb investigation?  
14 A. I do not know.  
15 Q. Okay. In your capacity in maintaining  
16 records during the time of the Unabomb  
17 investigation, were you or file clerks involved at  
18 all in any way in either assigning or in writing  
19 suspect numbers on files?  
20 A. I was not personally involved in  
21 maintaining records, processing records, in the  
22 Unabomb case file. There were people that worked



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1 for me under other supervisors that partook in  
 2 maintaining these records, but whether they were  
 3 involved in writing a suspect file or not, I don't  
 4 know.  
 5 Q. Okay. And just so that I'm clear, when  
 6 you say you weren't involved in maintaining those  
 7 files, you mean you personally did not maintain the  
 8 Unabomb investigative files, correct?  
 9 A. In my position, I do not normally on a  
 10 day-to-day basis process records in investigative  
 11 case files. It's -- at my level, it's not done.  
 12 How to go about processing records is in my realm  
 13 of responsibility, but the day-to-day filing and  
 14 maintenance of records is not my job  
 15 responsibility.  
 16 Q. Okay. And the how to go about it, you  
 17 did do that for the Unabomb investigation as well;  
 18 is that correct? Or was that carved out of your  
 19 job duties?  
 20 A. I had the same responsibilities I have  
 21 now in 1996.  
 22 Q. Okay. And there was no exception to the

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1 fact that it was a Unabomb investigation so we're  
 2 going to treat it differently?  
 3 A. It was treated differently and became a  
 4 major case because of the volume and the way the  
 5 investigation was done. But I still had  
 6 responsibility of the records portion during this  
 7 investigation.  
 8 Q. Okay. So it was not different in terms  
 9 of your supervisory authority over the files for  
 10 the Unabomb investigation?  
 11 A. Correct.  
 12 Q. Okay. Is there ever a time where the  
 13 same document or same set of documents is assigned  
 14 two serial numbers?  
 15 A. I can't say that it's never happened, but  
 16 it's a mistake.  
 17 Q. Why would it happen?  
 18 A. Carelessness on the file of a -- on the  
 19 part of a file clerk.  
 20 Q. What if one of the serials contained 45  
 21 pages and the other serial contained 55 pages, and  
 22 there were a lot of duplicates, why would that

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1 happen?  
 2 A. Someone was careless.  
 3 Q. But you're not aware of any file  
 4 management basis to do that, to create two serials  
 5 for some subset of documents that are duplicates of  
 6 another serial?  
 7 A. No. We try to avoid that.  
 8 Q. What if it were two separate offices, is  
 9 that possible then?  
 10 A. Of course.  
 11 Q. So you could have two offices with two  
 12 different serial numbers containing more or less  
 13 the same documents?  
 14 A. I really wouldn't categorize it as the  
 15 same document if it's in a different field office.  
 16 The process at the time was that a lead  
 17 office maintained a file on the investigation that  
 18 they conducted in that office. So they maintained  
 19 a paper copy of the investigation and the  
 20 documentation regarding that investigation. It was  
 21 also a requirement to send a copy to the office of  
 22 origin on the investigation.

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1 Q. Okay. But if we're within the same lead  
 2 office and you had two separate serials, would you  
 3 expect to see two serials with similar or identical  
 4 documents?  
 5 A. The lead office would always maintain a  
 6 copy of the response to the office of origin. So  
 7 yes, the lead office would have a copy of that  
 8 document and the original is sent to the office of  
 9 origin.  
 10 Q. Right. Ms. Figoni, my question obviously  
 11 wasn't clear.  
 12 There's only one office, there is no  
 13 office of origin and separate lead office, there's  
 14 only one office. Would you expect to see two  
 15 serials that contain the same documents?  
 16 A. In the same office?  
 17 Q. In the same office.  
 18 A. No.  
 19 Q. Would you expect to see, using my  
 20 hypothetical from before, one serial that has 45  
 21 pages and another serial that has 55 pages, but all  
 22 45 from the first serial are contained in the

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1 second serial?

2 A. That appears to be a mistake, if all

3 being the same and there's -- there could be

4 document -- if there's duplicates, are you saying

5 if there's like duplicate pages of page 2 and

6 duplicate pages of page 10 or something, then

7 that's obviously a mistake.

8 Q. No, and that's actually not what I'm

9 referring to. I'm referring to serial one contains

10 45 unique pages. Serial two contains those same 45

11 unique pages, but also contains an additional four

12 or five pages that are just not in serial one.

13 A. As a file records person, I would

14 question if the first 45 pages are exactly the same

15 in serial one as two, then why -- why are we filing

16 serial two, is there a mistake with serial one? I

17 would question that with the squad supervisor.

18 Q. Okay.

19 A. That's not routinely done.

20 MR. KHETAN: That's all I have. I

21 appreciate you taking the time to do this.

22 THE WITNESS: You're welcome.

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1 ACKNOWLEDGMENT OF DEPONENT

2 I, SANDRA A. FIGONI, do hereby acknowledge that

3 I have read and examined the foregoing one hundred

4 thirty-one (131) pages of testimony, and the same

5 is a true, correct and complete transcription of

6 the testimony given by me, and any changes and/or

7 corrections appear on the attached errata sheet

8 signed by me.

9

10

11

12

13 (Date) SANDRA A. FIGONI

14

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1 MS. TOTH: I have nothing.

2 MR. KHETAN: Thank you again.

3 ---

4 (Deposition concluded at 3:56 p.m.)

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1 ESQUIRE DEPOSITION SERVICES

2 1020 19th Street, Northwest

3 Suite 620

4 Washington, D.C. 20036

5

6 ERRATA SHEET

7 Case Name: Negley v. FBI

8 Witness Name: SANDRA A. FIGONI

9 Deposition Date: July 13, 2007

10 Job No.: 182040

11 PAGE LINE CORRECTION

12

13

14

15

16

17

18

19

20

21

22 Signature Date

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1 CERTIFICATE OF STENOTYPE REPORTER - NOTARY PUBLIC  
2  
3 I, Sara A. Watt, Registered Professional Reporter,  
4 the office before whom the foregoing deposition was  
5 taken, do hereby certify that the witness named  
6 herein was duly sworn by Mary Ann Kenney, Notary  
7 Public in California; that the foregoing transcript  
8 is a true, correct, and complete record of the  
9 testimony given; that said testimony was taken by  
10 me stenographically and thereafter reduced to  
11 typewriting by me; and that I am neither counsel  
12 for, related to, nor employed by any of the parties  
13 to this litigation and have no interest, financial  
14 or otherwise, in its outcome.  
15 IN WITNESS WHEREOF, I have hereunto set  
16 my hand and affixed my notarial seal.  
17  
18  
19 Sara A. Watt, Notary Public in  
20 and for the District of Columbia  
21 My Commission expires June 30, 2008.  
22

Page 135

1 Oliver W. McDaniel, Esquire  
2 Office of the U.S. Attorney  
3 555 4th Street, Northwest  
4 Washington, D.C. 20530  
5  
6 Re: Negley v. FBI  
7 Deposition of SANDRA A. FIGONI  
8 Dear Mr. McDaniel:  
9 Enclosed for review is your copy of the above  
10 referenced deposition. Please have the deponent  
11 read the copy of the transcript and sign the  
12 enclosed certificate of deponent. Also enclosed  
13 is an errata sheet which the deponent should use to  
14 note corrections and the reasons for such  
15 corrections. This and any additional errata sheets  
16 should be signed and dated by the deponent.  
17  
18 The deponent has thirty days in which to read  
19 and sign the transcript. After the deponent has  
20 reviewed the copy of the transcript, please return  
21 the certificate of deponent and any errata sheets  
22 to Esquire Deposition Service, 1020 19th Street,  
Northwest, Suite 620, Washington, D.C., 20036.  
Sincerely,  
Sara A. Watt