

EXHIBIT 1

(Deposition of Michael Isikoff)

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

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 STEVEN J. HATFILL, M.D., :
 :
 Plaintiff, :
 :
 v. : No. 1:03-CV-01793
 :
 JOHN ASHCROFT, et. al, :
 :
 Defendants. :
 -----X

Washington, D.C.

Monday, March 27, 2006

Deposition of

MICHAEL ISIKOFF

a witness, called for examination by counsel for
 Plaintiff, pursuant to notice and agreement of
 counsel, beginning at approximately 11:05 a.m., at
 Harris Wiltshire & Grannis, L.L.P., 1200 18th
 Street, NW., Washington, D.C., before Mark Mahoney
 of Beta Court Reporting, notary public in and for
 the District of Columbia, when were present on

behalf of the respective parties:

1 Q Did any of your sources tell you
2 that you were the only news outlet that was
3 getting the dog information?

4 A I don't remember that.

5 Q And you understand the distinction
6 I'm drawing between you, as journalists,
7 knowing what's been out there and what's been
8 reported and what hasn't, versus a source
9 telling you, I'm giving you something that no
10 one else has.

11 A I don't recall a source saying
12 that, no.

13 Q And do you know whether any of Mr.
14 Klaidman's sources said that to him?

15 A I would have no -- there's no point
16 in asking me about his conversations with his
17 sources because I know nothing about them.

18 Q The body of the article in Exhibit
19 92A begins with the sentence, "The dogs,
20 purebred bloodhounds with noses a thousand
21 times more sensitive than a human's, were
22 barking and howling and straining at their

1 leashes." Where and when did that scene take
2 place?

3 A I believe it took place during the
4 course of the search of Dr. Hatfill's
5 apartment.

6 Q Did you witness that?

7 A No.

8 Q Did one of your coauthors witness
9 that?

10 A I don't know. Not that I'm aware
11 of.

12 Q Did you learn that from a source?

13 A I remember learning parts of that,
14 and I believe Dan Klaidman learned parts of
15 that.

16 Q What part of that did you learn?

17 A I don't -- I can't sort it out for
18 you.

19 Q Was any of this information
20 disclosed to you by a source to whom you did
21 not promise anonymity?

22 A No.

1 Q Was the information disclosed to
2 you by at least one FBI or DOJ source to whom
3 you did promise anonymity?

4 A Yes.

5 Q Was it one source or more than one
6 source?

7 A For that particular information, it
8 would have been one source that I can recall.

9 Q And was that source an FBI source?

10 A Can I consult with counsel, please?

11 Q Sure.

12 (Recess)

13 THE WITNESS: A DOJ source.

14 BY MR. GRANNIS:

15 Q Let's call that Source A, okay?

16 A Okay.

17 Q So Source A was a DOJ source?

18 A Correct.

19 Q What did Source A tell you?

20 A I asked Source A about the search
21 and the tip we had from Klaidman's source
22 about the dogs, and he confirmed it and

1 A Not that I'm aware of, no.

2 Q Was there ever a time when you
3 considered whether to report any of the
4 others and decided against it, or did it just
5 not happen?

6 A I never picked up that the
7 investigative interest in them was intense
8 enough to justify writing a story about it.

9 Q And how would you know that?

10 A I just never picked it up from any
11 of my sources.

12 Q Did you ask your sources about
13 another named individual?

14 A I certainly asked my sources on
15 multiple occasions about developments in the
16 case and various leads that they might have
17 been pursuing and alternative suspects, yes.

18 Q Did you ever ask any of your
19 sources about another named individual?

20 A I don't recall.

21 Q In the second and third sentences,
22 we have, "In place after place, the dogs had

1 no reaction." However, then skipping a bit,

2 "the dogs immediately became agitated."

3 That's from Source A, the agitated part.

4 A Right.

5 Q Is the "in place after place, the

6 dogs had no reaction," is that also from

7 Source A?

8 A Again, either partly from Source A

9 or partly from Klaidman's source.

10 Q How many conversations with Source

11 A would you have had in reporting for this

12 article?

13 A Probably one, possibly two.

14 Q And how would those conversations

15 have taken place? Would they be in person,

16 by phone, in writing?

17 A By phone.

18 Q So Source A is telling you the dogs

19 became agitated at Hatfill's apartment.

20 A Yes.

21 Q But you don't remember whether

22 Source A told you what happened at other

1 people's apartments.

2 A No.

3 Q In the following sentence after
4 "they became agitated," we have "'They went
5 crazy,' says one law-enforcement source."

6 A Yes.

7 Q Is that Source A?

8 A I'm not sure. It could be, or it
9 could be Klaidman's source. We just don't
10 have a specific recollection of that.

11 Q You say "We don't have a specific
12 recollection"?

13 A Well, I did have a brief discussion
14 with Danny about this, yes.

15 Q And so neither of you -- and you
16 say not Mr. Klaidman either -- remembers the
17 source of that quotation.

18 A We aren't sure whether that was my
19 source or his source.

20 Q But it would have been one of
21 the --

22 A Two sources, yeah.

1 Q And was that a source, either way,
2 to whom one of you promised anonymity?

3 A Well, I can't speak for him, but
4 since my conversation with my source was
5 under that condition, if it was mine, then,
6 yes.

7 Q All right, in the fifth and sixth
8 sentences, "The agents also brought the
9 bloodhounds to the Washington, D.C.,
10 apartment of Hatfill's girlfriend and to a
11 Denny's restaurant in Louisiana where Hatfill
12 had eaten the day before. In both places,
13 the dogs jumped and barked, indicating they'd
14 picked up the scent." When and where did the
15 Denny's part of this take place?

16 A I don't know.

17 Q You didn't witness that.

18 A I didn't witness it.

19 Q Is that based on your reporting or
20 the reporting of a Newsweek colleague?

21 A I suspect that the Denny's part is
22 from somebody else.

1 Q Why do you suspect that?

2 A Because I just don't have an
3 independent recollection of having a
4 conversation about that.

5 Q Do you have a guess of which one of
6 these other nine people it might be from?

7 A Klaidman.

8 Q What was your reaction on hearing
9 that bloodhounds had sniffed a gauze pad and
10 tracked the scent to a Denny's where a person
11 had eaten the day before?

12 MR. BAINE: Wait -- did you just
13 say that the dogs "tracked the scent to a
14 Denny's"?

15 MR. GRANNIS: Identified the scent
16 at a Denny's.

17 MR. BAINE: Oh, okay, that's a
18 little different, then.

19 THE WITNESS: I don't recall having
20 a reaction one way or the other.

21 BY MR. GRANNIS:

22 Q You don't recall that information

1 Q Do you believe that the dogs were
2 sniffing the letters?

3 A No.

4 Q What's your understanding of what
5 the dogs did here?

6 A Prior to when they were taken into
7 the apartment?

8 Q Yes, and the Denny's part.

9 A I don't know.

10 Q And you believe Mr. Klaidman would
11 be the person that we'd talk to about this
12 Denny's piece.

13 A I would start with him, yeah.

14 Q Did you and Mr. Klaidman, when you
15 discussed the "they went crazy" quotation,
16 did you discuss the rest of this paragraph?

17 A No.

18 Q So you didn't discuss anything
19 about Denny's?

20 A No.

21 Q Now, so far, we're at the end of
22 this paragraph. Have we seen anything that

1 came from one of your sources other than

2 Source A so far?

3 A No.

4 Q If you became convinced that this
5 dog story was bogus and your sources knew it,
6 would you still honor your promise of
7 confidentiality?

8 A And they knew it at the time that
9 they had the conversation with me?

10 Q Yes.

11 A Well, if I thought that the source
12 was deliberately lying to me at the time, I
13 would be greatly concerned, yes.

14 Q And would you consider disclosing
15 the source's identity?

16 A Well, the first thing I would do, I
17 would need to see why I thought that was --
18 what the grounds for that were, and then I
19 would confront the source for an explanation
20 of what had happened.

21 Q Was your agreement with Source A
22 expressly conditioned on Source A not

1 deliberately lying to you?

2 A Oh, that's implicit in every
3 conversation I have.

4 Q The next paragraph of 92A says,
5 "After months of frustration, the Feds
6 believed they were finally on the verge of a
7 breakthrough." Which Feds is that?

8 A The Feds conducting the
9 investigation.

10 Q So that would be the FBI and DOJ?

11 A Yes.

12 Q What was your basis for reporting
13 that?

14 MR. BAINE: I'm going to object to
15 the way you put these questions, Mark.
16 Because as the witness has explained, he's
17 not the byline on this story. He contributed
18 to it. What that means is he didn't really
19 write it. So when you ask, what was his
20 basis, that assumes that he wrote the
21 sentence.

22 MR. GRANNIS: Okay, fair enough.

1 BY MR. GRANNIS:

2 Q Was this sentence based on any of
3 your reporting?

4 A In a general way, yeah. But
5 whether -- the precise language was not mine.

6 Q Did you write any of Exhibit 92, or
7 would Exhibit 92 have been done primarily by
8 one or a couple of authors based on, you
9 know, information coming in from many places?

10 A The latter.

11 Q So is there any sentence --

12 A The language in here is -- the
13 language of the story is not mine. Some of
14 the information in the story would have come
15 from my reporting.

16 Q So did you provide any information
17 for this story to substantiate the
18 proposition that the Feds believed they were
19 finally on the verge of a breakthrough?

20 A Well, to the extent that the Feds
21 believed that the dog incident was allowing
22 them to -- was a potential breakthrough in

1 the investigation, then I guess in that
2 sense, you know, some of my reporting helped
3 inform the wording of that sentence.

4 Q And was that some of your reporting
5 on information you got from Source A or from
6 another source?

7 A Well, there were a number of
8 sources that I spoke to for this story, so it
9 would have been the totality of those
10 sources.

11 Q So how many other sources would you
12 say provided you with information which you
13 contributed to the team to substantiate the
14 idea that the Feds believed they were on the
15 verge of a breakthrough?

16 A Well, that means -- Source A would
17 clearly be the primary one. There may have
18 been aspects from a couple of other sources,
19 but since I don't specifically recall what my
20 conversations with them were at this point, I
21 don't know.

22 Q Well, can we call those couple of

1 other sources B and C?

2 A Sure.

3 Q Are B and C --

4 MR. BAINE: You're assuming there
5 are two others -- are you speaking --

6 MR. GRANNIS: "Couple" was the
7 witness's word --

8 BY MR. GRANNIS:

9 Q Are there two or are there more
10 than two?

11 A There may have been more than two,
12 but two that I can think of at the moment.

13 Q Well, is Source B a DOJ source?
14 Obviously, you have to pick one and call that
15 one B now.

16 MR. BAINE: When you say "DOJ
17 source," you mean was Source B employed at
18 the Department of Justice when he was
19 speaking to Mr. Isikoff. That's what that
20 means, right?

21 MR. GRANNIS: Yes.

22 THE WITNESS: May I consult for a

1 second?

2 MR. GRANNIS: Yes..

3 (Recess)

4 BY MR. GRANNIS:

5 Q I believe when we broke, Mr.
6 Isikoff, I had asked you whether Source B was
7 a current or former employee of DOJ.

8 A FBI.

9 Q And was Source B employed by the
10 FBI at the time of his conversation with you?

11 A Yes..

12 Q Can you recall anything that Source
13 B told you about the investigation that's
14 reflected in Exhibit 92?

15 A I believe Source B made the
16 comment, "Richard Jewell looms large around
17 here. We've got to be very careful."

18 Q And that's about two-thirds of the
19 way down page 2?

20 A Correct.

21 Q So Source B is the person described
22 here as "an FBI official" in that sentence,

1 is that correct?

2 A Correct.

3 Q Is that the only information in
4 this article that came from Source B?

5 A I don't recall.

6 Q All right, well, going back to
7 where we were on page 1, we were looking at
8 the sentence, "After months of frustration,
9 the Feds believed they were finally on the
10 verge of a breakthrough." So did Source B
11 provide any information to you that would
12 help to substantiate that proposition?

13 A I don't recall.

14 Q Was there a Source C that may have
15 provided information relevant to "After
16 months of frustration, the Feds believed they
17 were finally on the verge of a breakthrough"?

18 A Yes.

19 Q Was Source C a current or former
20 employee of DOJ?

21 MR. BAINE: I'm going to object to
22 that question. Maybe you can break it down.

1 investigators wondered whether loss of a
2 security clearance by Dr. Hatfill had "left
3 him bitter enough to do something drastic"?

4 A I don't recall.

5 Q Let's move to the next paragraph.

6 "Something else about Hatfill caught their
7 eye" -- that's the FBI? "Their eye,"
8 that's --

9 A FBI, DOJ.

10 Q "Agents surveilling his apartment
11 watched him as he pitched loads of his
12 belongings into a dumpster behind his
13 apartment building -- getting rid of
14 evidence, some agents wondered." Did any of
15 your reporting provide the basis for that?

16 A I do remember having a discussion
17 about that with Source A.

18 Q And what did Source A tell you
19 about that?

20 A I don't remember the specifics, but
21 something to this effect.

22 Q Well, did A tell you, for example,

1 that agents had been surveilling Dr.

2 Hatfill's apartment?

3 A I don't specifically remember that,
4 but I think -- if I recall, it was generally
5 known that agents were surveilling Hatfill at
6 that point.

7 Q And did Source A tell you --

8 A In fact, I think his spokesman
9 publicly talked about how the agents were
10 following him all over the place.

11 Q You recall that happening before
12 August 1, 2002?

13 A I don't remember the dates, I
14 remember having a conversation with Mr.
15 Connolly about how agents were following him
16 all over the place.

17 Q Do you recall when that occurred?

18 A No.

19 Q And did Source A specifically tell
20 you that agents had seen Dr. Hatfill pitching
21 "loads of his belongings into a dumpster"?

22 A I don't remember what details

1 Source A provided. I remember generally
2 Source A telling me about concerns about him
3 trying to unload things into a dumpster.

4 Q You do remember Source A telling
5 you about those events --

6 A I have a vague recollection of it.
7 I do not remember any specifics at all.

8 Q Had Source A seen that himself?

9 A I don't know.

10 Q How did Source A get the
11 information?

12 A I don't know.

13 Q Just look at the tail end of that
14 "getting rid of evidence, some agents
15 wondered." Are the agents that we're talking
16 about FBI agents?

17 A Law enforcement agents, certainly.

18 Q Are they FBI agents?

19 A Well, I think there were other than
20 FBI agents on the team, so it might have
21 incorporated other than FBI agents.

22 Q Do you mean to tell me that your

1 information doesn't go to what FBI agents
2 thought, it only goes to what other sorts of
3 agents thought?

4 A No.

5 Q Did any of your reporting form the
6 basis for this proposition that "some agents
7 wondered" whether Dr. Hatfill was getting rid
8 of evidence?

9 A Well, to the extent that, as I said
10 before, I had a general -- a vague
11 recollection of having a general discussion
12 with Source A about this matter, to that
13 extent, it could have contributed to the
14 information that led to the -- to that
15 sentence.

16 Q Do you have a recollection of
17 having a general discussion of this topic
18 with any of your other sources?

19 A No.

20 Q So out of all of your sources that
21 you used for reporting on the anthrax
22 investigation, this information would have

1 come only from Source A, if it came from any
2 of your reporting at all.

3 A Well, certainly for this article,
4 yes.

5 Q In the next sentence, which goes
6 over onto the next page, Exhibit 92 says,
7 "the dogs and the dumpsters led agents to
8 obtain a criminal search warrant for
9 Hatfill's apartment to turn up the heat."
10 Did any of your reporting form the basis for
11 that sentence?

12 MR. BAINE: Which part of it? Any
13 part of it?

14 MR. GRANNIS: Any part of it.

15 THE WITNESS: Yeah, my conversation
16 with Source A would have been -- formed part
17 of that, yes.

18 BY MR. GRANNIS:

19 Q What part would Source A have told
20 you?

21 A That the dumpster issue and the
22 dogs issue were important in the decision to

1 do a -- to get a search warrant.

2 Q Did Source A tell you that the dogs
3 and the dumpster provided the grounds for the
4 search warrant?

5 A No.

6 Q Did Source A tell you that the
7 criminal search warrant was obtained "to turn
8 up the heat"?

9 A I don't remember those words being
10 used. I do remember that part of the
11 investigative strategy at that point, I
12 believe, was "to turn up the heat" on Dr.
13 Hatfill in hopes that he might break down and
14 confess to agents.

15 Q And who was the source for that
16 information?

17 A I -- you know, Source A and perhaps
18 some others.

19 Q How many others?

20 A I don't remember.

21 Q Do you remember other FBI or DOJ
22 sources --

1 for the search warrant was.

2 A I believe -- the story says that
3 the dogs and the dumpster led agents to get
4 the search warrant.

5 Q All right, now, there's a quotation
6 here in this paragraph, and the quotation is
7 "'When you see how the dogs go to everything
8 that connected him, you say, "Damn!'" says a
9 law enforcement official." Was that law
10 enforcement official a source we've already
11 discussed as A, B, or C?

12 MR. BAINE: I think he's already
13 testified to that.

14 THE WITNESS: No.

15 BY MR. GRANNIS:

16 Q This --

17 A Yes.

18 Q Yes, he's a law enforcement
19 official?

20 A Yes.

21 Q Okay, is it the same law
22 enforcement official as -- I'm sorry, I'm

1 missing it. Which letter is this law
2 enforcement official? Which source is this?

3 A I believe this is Source A.

4 Q This is Source A. Do you know if
5 Source A observed the behavior of the dogs at
6 the apartment?

7 A I do not.

8 Q Do you know what Source A's basis
9 for knowing about the dogs was?

10 A Specifically, no.

11 Q All right, the next paragraph
12 contains information about what "the Feds"
13 found during the search. Did your reporting
14 lead to any of the facts disclosed in this
15 paragraph of the article?

16 A I believe so.

17 Q Okay, which facts?

18 A The fact that they didn't find
19 anything linking Hatfill to the crime.

20 Q Who told you that?

21 A Source A.

22 Q Did Source A also tell you that lab

1 tests of the findings were ongoing?

2 A Yes.

3 Q Did you have any source for that
4 other than Source A?

5 A Possibly Source B.

6 Q Two paragraphs later, you say,
7 "Officials have been particularly careful to
8 point out that Hatfill is one of 'around 12'
9 people they are looking at." And then at the
10 end of that paragraph, we have the quote from
11 the FBI official, and you said that was
12 Source B at the end, is that right?

13 A Yes.

14 Q Is Source B also the source for the
15 first part of that, that there are "'around
16 12' people" that the officials are still
17 looking at?

18 A I don't remember.

19 Q Can you think of anyone else who
20 might have provided that information to you?

21 A No.

22 Q All right, on page 3 in the second

1 paragraph, Exhibit 92A states, "When agents
2 began asking around the scientific community,
3 one name kept popping up: Steven Hatfill."

4 Do you see that?

5 A What paragraph are you on?

6 Q The second paragraph.

7 A I do.

8 Q In that first sentence there, did
9 your reporting provide any basis for that
10 statement?

11 A I don't think so.

12 Q Do you know whose reporting that
13 might have come from?

14 A Somebody else at Newsweek.

15 Q And when you say "somebody else,"
16 can you narrow it down any further than that?

17 A Well, one of the authors of the
18 article or -- yeah, one of the authors of the
19 article. I mean, there were a number of
20 names on the article.

21 Q Did you ever have any of your
22 sources on the anthrax investigation speak to

1 you about Dr. Hatfill's name coming up in FBI
2 interviews with witnesses?

3 A No.

4 Q Did any source of yours ever talk
5 to you about the properties of the anthrax
6 powder?

7 A Yeah.

8 Q And was that one of the sources
9 we've already talked about?

10 A No, I remember having a number of
11 discussion with scientists and experts on
12 anthrax -- and this is over the course of
13 time -- to try to understand what the nature
14 of the anthrax was.

15 Q How did you learn the names of
16 scientists to talk to about the anthrax
17 investigation? Were those given to you by
18 FBI or DOJ sources, or sources close to the
19 investigation?

20 A No.

21 Q Was that just sort of general
22 research in the field --

1 who recently passed away, was our Africa
2 correspondent, so he may have contributed
3 some of the reporting from Africa.

4 Q On page 4, did any of the
5 highlighted material near the top of page 4
6 come from FBI or DOJ sources?

7 MR. BAINE: Well, to his knowledge
8 -- as far as you know.

9 BY MR. GRANNIS:

10 Q As far as you know.

11 A You mean, the paragraph, "When the
12 Feds first began looking"?

13 Q Yes.

14 A Yes.

15 Q Which information from that
16 paragraph came from one of your sources?

17 A Well, I don't recall with any
18 detail. I have a general recollection of
19 asking one of my sources about the novel.

20 Q Okay, which source did you talk to
21 about the novel?

22 A I believe I talked to Source A

1 about it.

2 Q And did Source A tell you that the
3 novel was discovered on Hatfill's computer
4 hard drive?

5 A I -- either Source A told me or I
6 had heard that and confirmed it with the
7 source.

8 Q Source A would have confirmed it
9 for you.

10 A Yes.

11 Q What about the characterization as
12 that novel as "intriguing, but inconclusive"?
13 Would that also have come from Source A, or
14 is that --

15 A Again, could have been what I had
16 heard elsewhere or one of my colleagues heard
17 elsewhere, and then I confirmed with the
18 source.

19 Q Anything else in that paragraph
20 that you discussed with any of your sources?

21 A Not that I recall.

22 Q Before we take a quick break, I

1 of the information you're interested in came
2 from his source.

3 Q All right, well, let's start with
4 the second sentence. "Earlier this year,
5 acting on a tip, FBI divers recovered a
6 plastic container from the depths of an
7 ice-covered pond near Frederick." Is the
8 fact that FBI divers were acting on a tip, is
9 that a fact that came from one of your
10 sources or one of Mr. Klaidman's?

11 A I believe it had first been
12 reported in The Washington Post.

13 Q Did Newsweek have any other basis
14 for reporting that separate from what the
15 Post had reported?

16 A I think after the Post reported it,
17 I and Klaidman and perhaps others at the
18 magazine checked in with sources to see what
19 was up, and I remember, I have a general
20 recollection of having done so.

21 Q Were you able to confirm with any
22 of your sources that the FBI was acting on a

1 tip when they recovered that plastic
2 container?

3 A I believe I was, yeah.

4 Q Do you remember whether you
5 confirmed that with Source A?

6 A I do not have a specific
7 recollection of it, but it is certainly
8 possible I did.

9 Q Do you have a specific recollection
10 of confirming it with any one particular
11 source?

12 A No.

13 Q Could it also have been Source B?

14 A Yeah, it is possible.

15 Q Would you be able to say just from
16 the nature of what you'd be looking for in
17 terms of confirmation that you were
18 definitely able to confirm that with an FBI
19 or DOJ source, even if you don't recall
20 specifically which one?

21 A Either I or Danny -- I'm sure one
22 of us did.

1 Q Would you have repeated this
2 information from the Post if you were unable
3 to confirm it without saying, the Post
4 reported that, et cetera?

5 A No.

6 Q All right, leaving the tip aside,
7 what about the fact that the divers recovered
8 a plastic container? Was any of your
9 reporting the basis for that piece of this
10 sentence?

11 A Again, I have only the vaguest
12 recollection of this. It had been reported
13 in The Washington Post. I remember, you
14 know, generally having conversations after
15 the Post article -- what was going on, what
16 was up, what to make of this.

17 Q So, you know, I've separated that
18 sentence into two halves, but it sounds to me
19 like you're saying it was all one
20 conversation, you know, where you were trying
21 to confirm the whole thing that the Post
22 reported. Is that a fair statement?

1 A Yeah, sure.

2 Q So you would have confirmed what
3 the Post reported with some FBI or DOJ
4 source -- maybe A, maybe B -- but you have no
5 specific recollection. Is that right?

6 A Correct. Yeah.

7 Q At the end of the first paragraph,
8 Exhibit 102A states, "While some
9 law-enforcement officials are taking the
10 novel theory seriously, others have dismissed
11 it as fantasy." Now, this is the theory that
12 the anthrax was manipulated somehow
13 underwater, is that right?

14 A Right.

15 Q Did any of your reporting form the
16 basis for the statement that "some
17 law-enforcement officials" were taking the
18 underwater theory seriously?

19 A Yes.

20 Q And what source or sources provided
21 you with a basis for reporting that?

22 A I believe it's the FBI source who

1 simultaneously tells me others were
2 dismissing it as fantasy and then says, "It
3 got a lot of giggles."

4 Q So one FBI source there, the one
5 that you quote, is that Source B?

6 A It could be, yes.

7 Q If it's not Source B, though, it
8 was another FBI source.

9 A Correct.

10 Q Do you have in your memory right
11 now two different FBI Sources, one of them B
12 and one of them not B?

13 A Most likely it was B, but since I
14 don't specifically recall the conversation,
15 it's possible it was somebody else.

16 Q So if it wasn't B, you're saying
17 that it would have been an FBI source just
18 because it's listed here as "one FBI source."
19 You've attributed the quote to an FBI source.
20 Is that --

21 A Right, right.

22 Q And you wouldn't do that if it were

1 not an FBI source.

2 A I would not.

3 Q And again, I was only asking you
4 about the first half, about taking the novel
5 theory seriously. I was going to ask you
6 about the second half --

7 A It was an FBI source describing to
8 me that while some people took it seriously,
9 others didn't think that this was going to go
10 anywhere.

11 Q Now, in the second paragraph of the
12 article, Exhibit 102A actually discusses the
13 contents of the tip, that the first half says
14 the FBI was acting on, right?

15 A Correct.

16 Q Did any of your reporting lead to
17 the publication of this material --

18 A No, again, I think that's
19 Klaidman's. I may have bounced it off either
20 the FBI source or Source A. I don't
21 specifically recall.

22 Q If you had bounced it off of Source

EXHIBIT 2

(Deposition of Daniel Klaidman)

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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STEVEN J. HATFILL,      :
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      Plaintiff,       :
                        :
      v.                : CA No. 03-01793 (RBW)
                        :
JOHN ASHCROFT et al.,  :
                        :
      Defendants.     :
-----X

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Washington, D.C.

Thursday, May 4, 2006

Deposition of

DANIEL M. KLAIDMAN

a witness, called for examination by counsel for
Plaintiff, pursuant to notice and agreement of
counsel, beginning at approximately 10:11 a.m., at
the law offices of Harris Wiltshire and Grannis,
LLP, 1200 18th Street, NW., Washington, D.C., before
Mark Mahoney of Beta Court Reporting, notary public

in and for the District of Columbia, when were

present on behalf of the respective parties:

1 Q Now, I've heard that some news
2 organizations refuse to attend background
3 briefings.

4 Does Newsweek have a policy on
5 that?

6 A We attend background briefings.
7 There have -- there have been protests by
8 some, but we -- we do attend background
9 briefings.

10 Q Do you know if any of Newsweek's
11 reporting on the anthrax investigation came
12 from information that a Newsweek reporter
13 obtained from a background briefing?

14 MS. SHAPIRO: Objection to form
15 because I didn't even know of any background
16 briefings. Go ahead.

17 THE WITNESS: I don't know.

18 BY MR. GRANNIS:

19 Q Let's take a look at an exhibit
20 that's been previously marked as Defendant's
21 Exhibit 92A.

22 Does this appear to you to be a

1 true and correct copy of an article written
2 by you and Mark Miller for the August 12,
3 2002, Newsweek?

4 A Yes, it does.

5 Q To your knowledge, was any of the
6 reporting in this article based on the use of
7 anonymous sources?

8 A Yes.

9 Q And was any of the reporting based
10 on the use of anonymous sources who disclosed
11 information to you?

12 A Yes.

13 Q And would that be the DOJ source
14 that we spoke about earlier?

15 A Yes.

16 Q Just to keep things clear, who was
17 the DOJ source?

18 MR. BAINE: Objection on the basis
19 of privilege, as we've discussed on many
20 prior occasions. I advise you not to answer
21 that.

22

1 BY MR. GRANNIS:

2 Q And I assume that when your counsel
3 instructs you not to answer a question on
4 grounds of privilege, you're going to follow
5 that instruction, is that correct?

6 A Yes.

7 Q What I'd like to do is refer to
8 this source as DOJ-4.

9 Can we do that?

10 A Fine.

11 Q Can you just from looking at
12 Exhibit 92A, tell me what you learned for
13 this article from DOJ-4?

14 A Yes. The -- the bulk of what I
15 learned, possibly all of what I learned
16 that's in this article, although I'm not
17 completely sure about that, but I do know
18 that the bulk of what I learned from DOJ
19 Source 4 is the information -- some of the
20 information about the use of bloodhounds in
21 this investigation.

22 Q Do you remember when DOJ-4 told you

1 at -- at a restaurant, there was an incident
2 at Dr. Hatfill's girlfriend's apartment, and
3 -- and also the -- the apartment building of
4 Dr. Hatfill, so I can't remember specifically
5 which one that refers to, and it may be that
6 it refers to more than one specific scene.

7 Q Well, let me ask maybe a more
8 general question.

9 Did anyone from Newsweek witness
10 the dogs in action before the writing of
11 Exhibit 92A?

12 A No.

13 Q So, would you agree that this
14 appears to be an observation of the dogs in
15 action?

16 A A description of -- of -- of the
17 dogs in action.

18 Q And so, where would that come from?
19 Would that be from DOJ-4 or some other
20 source?

21 A Well, there are elements of this
22 story that I think are from DOJ Source 4,

1 particularly, the "barking...howling and
2 straining." The -- the characterization of
3 the -- of the bloodhounds, "noses a thousand
4 times more sensitive than a human's," I think
5 was not from DOJ Source 4.

6 Q Do you know where that was from?

7 A I believe that that comes from
8 research done for the story.

9 Q And let's just keep going here.
10 "Early last week, FBI agents on the trail of
11 last year's anthrax attacker turned to a
12 16th-century technology to help solve a
13 21st-century crime. Agents presented the
14 canines with 'scent packs' lifted from the
15 anthrax-tainted letters mailed to Senators
16 Tom Daschle and Patrick Leahy long since
17 decontaminated, hoping some faint, telltale
18 trace of the perpetrator's smell still
19 remained months after the fact."

20 What is a "scent pack?"

21 A It was a long time ago, and my
22 recollection is that there was some -- some

1 about the dogs came from FBI or DOJ files?

2 A I don't know.

3 Q You don't know. All right, now in
4 the first sentence, you picked out the
5 "barking" and the "howling" and the
6 "straining" as things that were definitely
7 told to you by DOJ-4.

8 Can you similarly point out any
9 particular elements of that next sentence
10 that came to you from DOJ-4?

11 A The sentence that begins?

12 Q "Early last week."

13 A Okay. I mean the general knowledge
14 that they -- that they FBI turned to this
15 technology. The information about the "scent
16 packs." Lifted -- lifted from the letters.
17 That all came from DOJ Source 4.

18 Q Now, let me ask you about the
19 phrase "Early last week."

20 First of all, in an article that
21 hits newsstands on August 4, with a
22 publication date of August 12, what would

1 part come from? In other words, was the
2 timing of the dog use also disclosed to you
3 by DOJ-4 or was that another source?

4 A I believe that was DOJ-4.

5 Q Now, I want to ask you about some
6 elements in the following paragraph, so if
7 you just take a moment and read the next
8 paragraph to yourself then we can talk about
9 it.

10 A Okay.

11 Q You've had a moment to read that?

12 A Yes.

13 Q "The agents...brought the dogs to
14 various locations frequented by a dozen
15 people they consider possible suspects."

16 Do you know when that happened?

17 A Around the same time, I don't know
18 specifically.

19 Q Was anyone at Newsweek an
20 eyewitness to any of that at any of these
21 dozen locations?

22 A No.

1 Q And maybe we can save a little
2 time. Is the reporting in this paragraph
3 based on information from DOJ-4?

4 A Yes. Largely.

5 Q Is it possible for you today to
6 identify the elements in the paragraph that
7 came from DOJ-4 or would you rather tell me
8 about a conversation you had with DOJ-4?
9 Whatever is going to be most efficient.

10 A Well, I -- I can just go through
11 it, I mean.

12 Q Okay.

13 A First sentence, taking the dogs to
14 the locations -- these locations frequented
15 by the people they consider suspects, that's
16 I believe from DOJ-4.

17 The specific locations, Dr.
18 Hatfill's apartment, the girlfriend's
19 apartment, the restaurant -- came from DOJ
20 Source 4.

21 There is one -- my -- my
22 recollection -- and my recollection is that

1 anything similar about any other named
2 individual that the anthrax investigation was
3 looking at?

4 A Well, I -- I believe I did at some
5 point. I can't recall now, but I -- I
6 believe I did at some point know about other
7 potential suspects.

8 Q By name?

9 A Well, that's what I can't recall.
10 I think it's possible. It's certainly not --
11 yeah, I do think it's possible that I knew --
12 I knew by name other potential suspects.

13 Q And would those be people whose
14 names were printed or not printed?

15 A Well, that's what I can't recall.

16 Q Do you recall a time when you
17 learned a suspect's name and withheld it?

18 A You're talking about in the anthrax

19 --

20 Q In the anthrax, yes.

21 A I don't recall.

22 Q Let me ask you about the phrase "In

1 place after place, the dogs had no reaction?"

2 Did your reporting provide the
3 basis for that statement?

4 A Yes.

5 Q And was that from DOJ-4 or some
6 other source?

7 A That was from DOJ-4. However, that
8 information, I think most of this information
9 was confirmed by -- by other sources in --
10 not mine, but I believe a lot of this was
11 confirmed by other sources in the story.

12 Q And would that include Mr.
13 Isikoff's source?

14 A Yes.

15 Q And how about Ms. Clift's source?

16 A I -- I believe so. I don't know
17 about the -- all -- every specific point, but
18 generally, this reporting was confirmed by
19 Mike Isikoff's source or sources and Eleanor
20 Clift's source.

21 Q All right. And I asked you about
22 "In place after place, the dogs had no

1 reaction." But that's sort of balanced out
2 later by in Dr. Hatfill's apartment, it says
3 here, "the dogs immediately became agitated,
4 Newsweek has learned."

5 Is that also DOJ-4?

6 A Yes.

7 Q Now, did you understand "the dogs
8 had no reaction" to mean that no scent of the
9 anthrax perpetrator was present?

10 A Well, I understood that that was
11 the investigative theory of the -- of the law
12 enforcement agents. I wasn't making any
13 judgment as to whether there was a scent
14 there or not, but that was their -- their
15 interpretation of the -- of the facts.

16 Q And conversely, the detail of "the
17 dogs immediately became agitated" in Dr.
18 Hatfill's apartment, that was given to you as
19 an unculpatory detail?

20 A But they believe that wasn't a lead
21 -- a strong lead.

22 Q And how was that interpretation of

1 the evidence presented to you? I mean what
2 did DOJ-4 say to you about this?

3 A I'm looking at the story. You
4 know, my recollection is that it was
5 interpreted as a, you know, a -- a lead -- a
6 possible breakthrough, but that a lot more
7 investigation had to be done, which I think
8 is reflected in the story.

9 Q And then after, you mention that
10 the location, Hatfill's girlfriend in the
11 Denny's restaurant in Louisiana. And that
12 continues, it says "In both places, the dogs
13 jumped and barked, indicating they'd picked
14 up the scent."

15 A Right.

16 Q Is that again from DOJ-4?

17 A Yes, yes.

18 Q Do you know where or when the
19 Denny's part of this took place?

20 A Where?

21 Q Well, other than in Louisiana, I --

22 A Yeah, yes.

1 Q -- guess when. It's in Louisiana

2 but --

3 A Yeah, I don't remember. I don't

4 remember.

5 Q I assume, again, that no one from

6 Newsweek, to your knowledge, witnessed --

7 A No.

8 Q Does this detail about the Denny's

9 -- well, let me back up.

10 A Yeah.

11 Q You seem to have three independent

12 sources for most of the information in this

13 paragraph, is that correct?

14 A Yes.

15 Q Do you recall whether that's

16 because you really felt this way the sort of

17 thing that you better check and double check?

18 In other words, the criteria we talked about

19 before from when you see --

20 A Right.

21 Q -- more corroboration, was there

22 anything in here that sort of tripped the

1 desired for extra corroboration?

2 A Well -- you know, we always -- we
3 try to have as much sourcing as -- as we can
4 for -- for stories about investigations. And
5 -- and particularly, as we discussed before,
6 when our sources are not speaking on the
7 record, when there isn't official
8 confirmation from the Justice Department, for
9 example, and so, in this particular case,
10 does it stand out as -- and I think I would
11 do this in a lot of different stories, but I
12 -- but -- but I, you know, I wanted further
13 corroboration and I want it certainly more
14 than one -- my one source.

15 Q Now, you mentioned before, I
16 believe you used the work breakthrough that
17 you --

18 A Potential.

19 Q Potential breakthrough --

20 A Or a possible breakthrough, yeah.

21 Q Okay. So, the first sentence right
22 after the paragraph we were looking at says

1 "After months of frustration, the Feds
2 believed they were finally on the verge of
3 breakthrough."

4 A Right.

5 Q The "breakthrough" part, is that
6 DOJ-4?

7 A Well, I -- I think it's DOJ-4 and
8 then -- and then, you know, confirmed by the
9 other sources, but from my -- yes, for me, it
10 was DOJ-4.

11 Q And let me just stop here because I
12 don't want to be hasty in limiting the number
13 of confirming sources to just Isikoff source
14 and Clift source.

15 Were there other confirming sources
16 that you're aware of that we should be
17 thinking about?

18 A Not that I'm aware of. Not that
19 I'm aware of.

20 Q How about the "months of
21 frustration part," is that something that
22 DOJ-4 said to you, it's been very

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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-----X
STEVEN J. HATFILL,      :
                        :
      Plaintiff,        :
                        :
      v.                : CA No. 03-01793 (RBW)
                        :
JOHN ASHCROFT et al.,  :
                        :
      Defendants.     :
-----X

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Washington, D.C.

Wednesday, April 19, 2006

Deposition of

ALLAN LENGEL

a witness, called for examination by counsel for Defendants, pursuant to notice and agreement of counsel, beginning at approximately 9:41 a.m., at the law offices of Harris Wiltshire & Grannis, L.L.P., 1200 18th Street, NW., Washington, D.C., before Mark Mahoney of Beta Court Reporting, notary public in and for the District of Columbia, when

were present on behalf of the respective parties:

EXHIBIT 3
(Deposition of Toni Locy)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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-----X
3 STEVEN J. HATFILL,      :
4           Plaintiff,    :
5           v.            : CA No. 03-01793 (RBW)
6 JOHN ASHCROFT et al.,  :
7           Defendants.  :
-----X

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Washington, D.C.

Friday, May 19, 2006

Deposition of

TONI LOCY

a witness, called for examination by counsel for
 Plaintiff, pursuant to notice and agreement of
 counsel, beginning at approximately 9:35 a.m., at
 the law offices of Harris Wiltshire and Grannis,
 LLP, 1200 18th Street, NW., Washington, D.C., before
 Mark Mahoney of Beta Court Reporting, notary public

in and for the District of Columbia, when were

present on behalf of the respective parties:

1 the basis for your assertion that this is the
2 FBI. I'm not looking for director, I'm not
3 looking for a nameplate.

4 A Generally speaking, it's where I've
5 seen them, and occasionally I've actually
6 seen credentials. But I can't remember if it
7 was specifically with these four people -- I
8 mean, if somebody pulls out their wallet, you
9 know, I know, and I -- but I can't tell you
10 specifically for these four whether that
11 happened.

12 Q Were your FBI sources or source
13 here people you had gotten to know
14 personally?

15 A What do you mean by "personally"?

16 Q I mean you'd recognize them on the
17 street, you know, and by name.

18 A Yes.

19 Q Did you have your FBI sources'
20 phone numbers?

21 A Yes.

22 MS. SHAPIRO: I'd object generally

1 to this line of questioning because I don't
2 think you have the foundation laid for any of
3 it because she testified that she didn't
4 remember who the sources were. I'm not sure
5 how this dialogue is proceeding.

6 That's my objection to form.

7 BY MR. O'DONNELL:

8 Q Are you generally familiar from
9 covering the FBI what exchanges, what
10 telephone exchanges FBI office numbers tend
11 to have.

12 A I forget what they are because I'm
13 not covering the FBI anymore, but I'm sure I
14 knew it at the time.

15 Q You knew at the time -- and again,
16 I'm not asking what exchange these folks had,
17 but did any of them have FBI exchanges?

18 A I don't remember.

19 Q At the time you wrote this, were
20 you careful to ensure that your FBI sources
21 were, in fact, people at the FBI?

22 A Yes.

1 A Yes.

2 Q Is this high-ranking FBI official
3 one of your anonymous sources for the story
4 that actually appeared as 103A?

5 A Yes.

6 MS. SHAPIRO: What paragraph are
7 you on? I'm sorry, I lost you.

8 MR. O'DONNELL: It's the bottom of
9 page 3 of 5, the last paragraph.

10 MS. SHAPIRO: It starts with
11 "Sources."

12 BY MR. O'DONNELL:

13 Q All right, I'd like you to turn to
14 4 of 5 and the top paragraphs. "Another top
15 FBI source says investigators know better
16 than to get excited about one of the many
17 theories examined. 'We have had too many left
18 turns," the source says. Did I read that
19 paragraph correctly?

20 A Yes.

21 Q And when you wrote "Another top FBI
22 source," did you mean this was somebody other

1 than the high-ranking official you had cited
2 in the previous paragraph?

3 A Yes, that's what it says.

4 Q And is this second FBI official
5 another one of your anonymous sources for the
6 article that came out as Exhibit 103A?

7 A Yes.

8 MS. SHAPIRO: This is missing a
9 page. Sorry, I'm missing the page that
10 you're talking about.

11 MR. O'DONNELL: Oh, I'm sorry.

12 MS. SHAPIRO: That's why I'm not
13 following.

14 MS. RICHARDSON: We're on the top
15 of page now, but I will get you a page 3.

16 MS. SHAPIRO: The page that we were
17 talking about with the high-ranking FBI
18 official is missing in this copy.

19 MS. RICHARDSON: I'm not very good
20 at copying, apparently.

21 MR. BERNIUS: Off the record. I've
22 seen dirty tricks before --

1 (Recess)

2 MR. O'DONNELL: Let the record
3 reflect that we gave Ms. Shapiro a copy of
4 exhibit that was missing page 3 of 5, and
5 we've corrected that.

6 BY MR. O'DONNELL:

7 Q All right, Ms. Locy, I'd like you
8 to look at the top of page 4 of 5 -- let me
9 go back to where we were -- "Another top FBI
10 source says investigators know better than to
11 get excited about one of the many theories
12 examined. 'We've had too many left turns,'
13 the source says." Did I read that correctly?

14 A Yes.

15 Q And when you wrote "Another top FBI
16 source," did you mean somebody other than the
17 person referred to as "a high-ranking FBI
18 official" in the previous paragraph?

19 A Yes, that's what it says.

20 Q And is this other top FBI source
21 another one of your anonymous sources for the
22 article that came out as Exhibit 103A?

1 A Yes.

2 Q Going down to the fifth paragraph

3 --

4 A On which page?

5 Q Actually, drop that, withdraw the
6 question.

7 Do you have any doubt that the two
8 anonymous FBI sources you've testified about
9 in Exhibit 399, in fact, work for the FBI?

10 A No doubt.

11 Q Ms. Locy, who besides yourself
12 knows the identity of the anonymous FBI
13 sources that you used?

14 A I'm the only person who knows.

15 Q Ms. Locy, who -- what are the names
16 of your anonymous FBI sources that you used
17 in the anthrax coverage?

18 MR. BERNIUS: Objection, privilege.

19 BY MR. O'DONNELL:

20 Q And in particular, what are the
21 names of the sources referred to in Exhibits
22 103A and 399A?

EXHIBIT 4

(November 2001 *New York Times* article)

The New York Times

U.S.

A NATION CHALLENGED: THE INTELLIGENCE AGENCY; Secret C.I.A. Site in New York Was Destroyed on Sept. 11

By JAMES RISEN
Published: November 04, 2001

The Central Intelligence Agency's clandestine New York station was destroyed in the Sept. 11 attack on the World Trade Center, seriously disrupting United States intelligence operations while bringing the war on terrorism dangerously close to home for America's spy agency, government officials say.

The C.I.A.'s undercover New York station was in the 47-story building at 7 World Trade Center, one of the smaller office towers destroyed in the aftermath of the collapse of the twin towers that morning. All of the agency's employees at the site were safely evacuated soon after the hijacked planes hit the twin towers, the officials said.

The intelligence agency's employees were able to watch from their office windows while the twin towers burned just before they evacuated their own building.

Immediately after the attack, the C.I.A. dispatched a special team to scour the rubble in search of secret documents and intelligence reports that had been stored in the New York station, either on paper or in computers, officials said. It could not be learned whether the agency was successful in retrieving its classified records from the wreckage.

A C.I.A. spokesman declined to comment.

The agency's New York station was behind the false front of another federal organization, which intelligence officials requested that The Times not identify. The station was, among other things, a base of operations to spy on and recruit foreign diplomats stationed at the United Nations, while debriefing selected American business executives and others willing to talk to the C.I.A. after returning from overseas.

The agency's officers in New York often work undercover, posing as diplomats and business executives, among other things, depending on the nature of their intelligence operations.

The recovery of secret documents and other records from the New York station should follow well-rehearsed procedures laid out by the agency after the Iranian takeover of the United States Embassy in Tehran in 1979. The revolutionaries took over the embassy so rapidly that the C.I.A. station was not able to effectively destroy all of its documents, and the Iranians were later able to piece together shredded agency reports. Since that disaster, the agency has emphasized rigorous training and drills among its employees on how to quickly and effectively destroy and dispose of important documents in emergencies.

As a result, a C.I.A. station today should be able to protect most of its secrets even in the middle of a catastrophic disaster like the Sept. 11 attacks, said one former agency official. "If it was well run, there shouldn't be too much paper around," the former official said.

The agency's New York officers have been deeply involved in counterterrorism efforts in the New York area, working jointly with the Federal Bureau of Investigation and other agencies. Many of the most important counterterrorism cases of the last few years, including the bureau's criminal investigations of the August 1998 bombings of two United States Embassies in East Africa and the October 2000 bombing of the U.S.S. Cole in Yemen have been handled out of New York.

The United States has accused Osama bin Laden and his Al Qaeda terrorist network of conducting both of those attacks.

But United States intelligence officials emphasize that there is no evidence that the hijackers knew that the undercover station was in the World Trade Center complex.

With their undercover station in ruins, C.I.A. officers in New York have been forced to share space at the United States Mission to the United Nations, as well as borrow other federal government offices in the city, officials said. The C.I.A.'s plans for finding a new permanent station in New York could not be determined.

The agency is prohibited from conducting domestic espionage operations against Americans, but the agency maintains stations in a number of major United States cities, where C.I.A. case officers try to meet and recruit students and other foreigners to return to their countries and spy for the United States. The New York station, which has been led by its first female station chief for the last year, is believed to have been the largest and most important C.I.A. domestic station outside the Washington area.

The station has for years played an important role in espionage operations against Russian intelligence officers, many of whom work undercover as diplomats at the United Nations. Agency officers in New York often work with the F.B.I. to recruit and then help manage foreign agents spying for the United States. The bureau's New York office, at 26 Federal Plaza, was unaffected by the terrorist attack.

The destruction of the C.I.A.'s New York station has added to the intense emotions shared by many of its employees about the agency's role in the battle against terrorism. For some, the station's destruction served to underscore the failure of United States intelligence to predict the attacks.

In the immediate aftermath of the attacks, morale suffered badly within the C.I.A., some officials said, as the agency began to confront what critics have called an intelligence failure on the scale of Pearl Harbor.

But the terrorist attacks have also brought an urgent new sense of mission to the agency, which has been flooded with job applications as well as inquiries from former officers eager to return to work. Congress is pouring money into the agency's counterterrorism operations, and the C.I.A. seems poised to begin focusing its resources on terrorism in much the same way it once focused on the Soviet Union in the cold war.

The attacks were not the first in which the C.I.A. was directly touched by terrorists. In 1983, seven agency officers died in the suicide car bombing of the United States Embassy in Beirut. Among the others killed was the agency's station chief in Lebanon, William Buckley, who died in captivity after being kidnapped by terrorists in 1984, and Richard Welch, the agency's Athens station chief, who was shot to death by Greek terrorists in 1975.

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