

# **EXHIBIT C**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**PETER BISTRAN**  
43 Louse Point Rd.  
East Hampton, NY 11937

**Civil Action No.: 21-cv-1086**

**Plaintiff**

**v.**

**FEDERAL BUREAU OF  
INVESTIGATION**  
935 Pennsylvania Avenue NW  
Washington, D.C. 20535

**Defendant.**

**COMPLAINT**

1. It has been over six years since Plaintiff Peter Bistran (“Plaintiff”) first submitted his request for documents under the Freedom of Information Act (“FOIA”) to the Federal Bureau of Investigation (“FBI” and/or “Defendant”) (“FOIA Request”). To date, Plaintiff has not received a single page of the 8,734 documents which have been identified as potentially responsive. Accordingly, Plaintiff brings this action to compel compliance with FOIA and to obtain the records to which he is entitled under the law.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C § 552(a)(4)(B).

3. Venue is proper pursuant to 5 U.S.C. § 552(a)(4)(B).

## PARTIES

4. Plaintiff is a private citizen residing in the State of New York whose FOIA Request to the FBI has been pending since January 5, 2015.

5. Defendant is an agency of the executive branch of the Federal Government of the United States. Defendant is headquartered at 935 Pennsylvania Avenue NW, Washington, DC 20535. Defendant has possession, custody, and control of the records that Plaintiff seeks.

## FACTUAL ALLEGATIONS

### **Plaintiff's Six-Year Pending FOIA Request**

6. On January 5, 2015, Plaintiff sent a FOIA Request to Defendant via email seeking “all materials pertaining to [Plaintiff]” for use in connection with a civil case that he has been litigating against the United States Government (“Government”) since 2008 (“Civil Case”).<sup>1</sup> *See* Exhibit A.<sup>2</sup> Defendant acknowledged receipt of Plaintiff's FOIA Request, which was assigned Request No. 1319503-000, on January 13, 2015. *See* Exhibit B.

7. On June 12, 2015, Defendant notified Plaintiff via letter that it had located “11,300 pages of records potentially responsive to the subject of [Plaintiff's] request,” and requested confirmation that Plaintiff was willing to pay the associated duplication fees. *See* Exhibit C. Plaintiff sent the requested confirmation on June 25, 2015. *See* Exhibit D at ¶ 3.

8. Over the next three years, Plaintiff awaited the results of his FOIA Request as his Civil Case moved forward. His patience went unrewarded—Defendant failed to produce a single document during this period.

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<sup>1</sup> *Bistran v. Levi*, Case No. 2:08-cv-03010 (E.D. Pa. 2008).

<sup>2</sup> All referenced Exhibits are annexed hereto.

9. In fact, Plaintiff did not hear from Defendant again until September 17, 2018. This time, Defendant stated that it had identified “approximately 8,734 pages” of potentially responsive records (apparently down from the 11,300 pages identified in June 2015), and asked whether Plaintiff would consider narrowing the scope of his FOIA Request. *See* Exhibit E.

10. On September 27, 2018, Plaintiff notified Defendant that he remained interested in obtaining all of the responsive records. *See* Exhibit F. Defendant acknowledged Plaintiff’s continued interest via letter dated September 28, 2018. *See* Exhibit D.

11. Notwithstanding the fact that more than three years had already passed since the submission of Plaintiff’s FOIA Request, Defendant’s letter proceeded to inform Plaintiff that his FOIA Request would “remain in the large-track backlog until its assignment to our FOIA Processing Units.” Plaintiff was assured, however, that his “request will be processed as interim releases of approximately 500 pages per CD[.]”. *See id.*

12. Unfortunately, Defendant’s assurance proved to be nothing more than an empty promise. Despite Plaintiff providing further confirmation of his desire to obtain all responsive records, Defendant has yet to produce even a single page, much less any interim releases of 500 pages. Indeed, the most that Plaintiff has been able to gather from Defendant is an estimated completion date of November 2021 (and at this rate, even that is doubtful). *See* Exhibit G.

13. After six years and counting of patiently awaiting production, Plaintiff can afford to wait on Defendant no longer. The records Plaintiff seeks have become increasingly important to his Civil Case, which is currently in the discovery phase of a retrial. With the discovery period ending on May 11, 2020, Plaintiff’s window of opportunity is rapidly closing.

14. Plaintiff has accordingly retained undersigned counsel to assist him in obtaining the records to which he entitled under the law. As part of these efforts, and in an attempt to avoid

litigation, counsel contacted Defendant via email on March 18, 2021 to demand the immediate release of the 8,734 pages of records potentially responsive to Plaintiff's request, and the rolling release of any records still pending review. *See* Exhibit H.

15. In an email reply on the following day, Defendant declined to offer the immediate production of any records, and made no reference to an estimated date of completion. In fact, Defendant went so far as to state that "none of the material has been reviewed yet by a FOIA analyst[.]" Considering that Plaintiff's request has been pending with Defendant for over six years, such an assertion is both shocking and outrageous. *See* Exhibit I.

### **FOIA-Stamped Records Uncovered Through Civil Litigation**

16. While awaiting Defendant's FOIA production, Plaintiff was simultaneously litigating his ongoing Civil Case against the Government. Plaintiff's claims in that case arise from two brutal attacks he suffered in 2006 at the hands of his fellow inmates while in pretrial detention at the Federal Detention Center in Philadelphia.

17. Through a Motion to Compel, Plaintiff discovered that the Government had unlawfully withheld important evidence from him that the Court found "would have likely changed the outcome of the trial." The Court thus granted Plaintiff's Motion for a New Trial on certain claims and reopened the trial record for others, noting the Government's failures in the "presentation and timely production of evidence" and determining that the Government had acted in bad faith. *See* Exhibit J.

18. Of particular relevance here, included among the unlawfully withheld evidence was file a prepared by Defendant regarding one of the attacks against Plaintiff. *See* Exhibit K.

19. Incredibly, the file, which was scanned by Defendant's Records Management Division on October 22, 2015, contains a cover page demonstrating that it had been prepared in response to Plaintiff's FOIA request. *See id.* at 3.

20. Specifically, the cover page: (1) lists Plaintiff's former counsel as the requester; (2) bears the same identification number as Plaintiff's request; and (3) states that "[t]he following documents appearing in FBI files have been reviewed under the provisions of [FOIA]." *See id.*

21. This not only stands in direct contraction to Defendant's recent assertion that "none of the material has been reviewed yet by a FOIA analyst," but appears to serve as conclusive proof that Defendant had responsive records ready for production within months of Plaintiff's request, but nevertheless withheld those records from Plaintiff for over six years.

## **CAUSE OF ACTION**

### **COUNT I**

#### **(Violation of FOIA, 5 U.S.C. § 552)**

22. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

23. As a federal agency, Defendant is generally required under FOIA to make a "determination" on public records requests within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i).

24. Defendant may extend that 20-working-day timeline to 30 working days if "unusual circumstances" delay its ability to search for, collect, examine, and consult about the responsive documents. *Id.* § 552(a)(6)(B).

25. Once a determination has been made, Defendant must make the records "promptly available." *Id.* § 552(a)(3)(A), (a)(6)(C)(i).

26. Defendant has violated FOIA by failing to make a determination as to Plaintiff's request within the statutorily prescribed time limit, and by unlawfully withholding records responsive to Plaintiff's request.

27. Accordingly, Plaintiff is entitled to an order compelling Defendant to release, as soon as possible, any records responsive to Plaintiff's request.

**REQUESTED RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Enjoin Defendant from continuing to improperly withhold records responsive to Plaintiff's request;
- B. Order Defendant to immediately produce to Plaintiff any and all non-exempt records or portions of records responsive to Plaintiff's request, as well as a *Vaughn* index of any records or portions of records withheld due to a claim of exemption.
- E. Provide for expeditious proceedings in this action;
- F. Award Plaintiff his costs and reasonable attorneys' fees incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- G. Grant Plaintiff such other relief as the Court may deem just and proper.

Dated: April 20, 2021

Respectfully submitted,

/s/John R. Sandweg  
John R. Sandweg (DC Bar No. 1027208)  
Daniel Schnapp (pro hac vice pending)  
Christopher Hotaling (pro hac vice pending)  
NIXON PEABODY LLP  
799 Ninth Street, NW, Suite 500  
Washington, D.C. 20001  
(202) 585-8189 (telephone)  
(877) 743-5914 (facsimile)  
[jsandweg@nixonpeabody.com](mailto:jsandweg@nixonpeabody.com)  
[dschnapp@nixonpeabody.com](mailto:dschnapp@nixonpeabody.com)  
[chotaling@nixonpeabody.com](mailto:chotaling@nixonpeabody.com)

*Counsel for Plaintiff Peter Bistran*





# **EXHIBIT A**

**SCOTT A. HODES, ATTORNEY AT LAW**

POST OFFICE BOX 42002  
WASHINGTON, DC 20015  
WWW.INFOPRIVACYLAW.COM

MEMBER DC AND MD BARS

INFOPRIVACYLAW@YAHOO.COM

(301) 404-0502

January 5, 2015

David M. Hardy  
Chief, FOIA Section  
170 Marcel Drive  
Winchester, VA 22602-4843

Via email (foiparequest@ic.fbi.gov)

FOIA Act Request

Dear Mr. Hardy:

This is a request for information for material maintained by the FBI under the Freedom of Information Act on behalf of my client, Peter Bistran. A copy of Mr. Bistran's privacy waiver is attached.

Mr. Bistran seeks all material pertaining to him. For your information, Mr. Bistran's federal case numbers are (Mr. Bistran seeks all records on himself and his request is not limited to these case numbers):

1. case number: 94-332-01
2. case number: 95-218-01
3. case number: 03-757-01
4. case number: 05-172-01

FBI agent Nancy O'Dowd was assigned to his case. Ms. O'Dowd was assigned to the Newtown Square Resident Agency.

He was prosecuted in the Eastern District of Pennsylvania.

Mr. Bistran seeks this information in electronic format if it exists.

Mr. Bistran promises to pay up to \$250 for this information. If the cost for this information exceeds this amount, please contact me as soon as possible.

If you are not the proper party to send this request to, please forward it to the correct party or let me know who to direct this request to.

● Page 2

January 5, 2015

If you have any questions concerning this request, feel free to contact me at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "SHodes", written over a light gray grid background.

Scott A. Hodes

attachments

# **EXHIBIT B**

U.S. Department of Justice



Federal Bureau of Investigation  
Washington, D.C. 20535

January 13, 2015

MR. SCOTT A. HODES  
ATTORNEY AT LAW  
POST OFFICE BOX 42002  
WASHINGTON, DC 20015

FOIPA Request No.: 1319503-000  
Subject: BISTRAN, PETER DAVID

Dear Mr. Hodes:

This acknowledges receipt of your Freedom of Information/Privacy Acts (FOIPA) request to the FBI.

- Your request has been received at FBI Headquarters for processing.
- Your request has been received at the [ \_\_\_\_\_ Resident Agency / \_\_\_\_\_ Field Office] and forwarded to FBI Headquarters for processing.
- We are searching the indices to our Central Records System for the information responsive to this request. We will inform you of the results in future correspondence.
- Your request for a fee waiver is being considered and you will be advised of the decision at a later date.
- The subject of your request is currently being processed for public release. Documents will be released to you upon completion.
- Please check for the status of your FOIPA request at [www.fbi.gov/foia](http://www.fbi.gov/foia) by clicking on **Check the Status of Your FOIPA Request under Records Available Now** located on the right side of the page. Status updates are adjusted weekly. The status of newly assigned requests may not be available until the next weekly update. If the FOIPA has been closed the notice will indicate that appropriate correspondence has been mailed to the address on file.

The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

Sincerely,

David M. Hardy  
Section Chief,  
Record/Information  
Dissemination Section  
Records Management Division

# EXHIBIT C

U.S. Department of Justice



Federal Bureau of Investigation  
Washington, D.C. 20535

June 12, 2015

MR. SCOTT A. HODES  
ATTORNEY AT LAW  
POST OFFICE BOX 42002  
WASHINGTON, DC 20015

FOIPA Request No.: 1319503-000  
Subject: BISTRAN, PETER DAVID

Dear Mr. Hodes:

This is in reference to your Freedom of Information/Privacy Acts (FOIPA) request.

By letter dated January 5, 2015, you indicated your willingness to pay \$250.00. The Federal Bureau of Investigation (FBI) has located 11,300 pages of records potentially responsive to the subject of your request. By DOJ regulation, the FBI notifies requesters when anticipated fees exceed \$25.00.

Please be advised that you are statutorily entitled to the first 100 pages free of charge. If the release is made on Compact Disc (CD), you will receive the cost equivalent (\$5.00) as a credit.

If all potentially responsive pages are released on CD, you will owe \$340.00 in duplication fees (23 CDs at \$15.00 each, less \$5.00 credit for the first CD). Releases are made on CD unless otherwise requested. Each CD contains approximately 500 reviewed pages per release. The 500 page estimate is based on our business practice of processing complex cases in segments.

Should you request that the release be made in paper, you will owe \$559.00 based on a duplication fee of five cents per page. See 28 CFR §16.10 and 16.49.

The FBI located approximately \_\_\_ CDs consisting of audio and video files that are potentially responsive to the subject of your request. If all of the potentially-responsive media is released, you will owe \$\_\_\_\_\_ (\_\_\_ CDs at \$15.00 each, less \$5.00 credit for the first CD).

CDs will not be sent to a correctional institution. You will only qualify for CD releases if an alternate address is provided.

You will owe approximately \$\_\_\_ in international shipping fees.

Please remember this is only an estimate, and some of the information may be withheld in full pursuant to FOIA/Privacy Act exemption(s). Also, some information may not be responsive to your subject. Thus, the actual charges could be less.

Requester Response

No payment is required at this time. However, you must notify us in writing within thirty (30) days from the date of this letter of your format decision (paper or CD). You must also indicate your preference in the handling of your request in reference to the estimated duplication fees from the following four (4) options:

- I am willing to pay estimated duplication/ international shipping fees up to the amount specified in this letter.
- I am willing to pay duplication fees of a different amount. If applicable, I am willing to pay International shipping fees.

Please specify amount: \_\_\_\_\_

- Provide me 100 pages or the cost equivalent (\$5.00) free of charge. If applicable, I am willing to pay International shipping fees.
- Cancel my request.

If we do not receive your duplication format decision and/or estimated duplication fee selection within thirty (30) days of the date of this notification, your request will be closed. Include the FOIPA Request Number listed above in any communication regarding this matter.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S. C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You have the opportunity to reduce the scope of your request; this will accelerate the process and could potentially place your request in a smaller processing queue. This may also reduce search and duplication costs and allow for a more timely receipt of your information. The FBI uses a multi-queue processing system to fairly assign and process new requests. Simple queue cases (50 pages or less) usually require the least time to process.

Please advise in writing if you would like to discuss reducing the scope of your request and your willingness to pay the estimated search and duplication costs indicated above. Provide a telephone number, if one is available, where you can be reached between 8:00 a.m. and 5:00 p.m., Eastern Standard Time. Mail your response to: Work Process Unit; Record Information/Dissemination Section; Records Management Division; Federal Bureau of Investigation; 170 Marcel Drive; Winchester, VA 22602. You may also fax your response to: 540-868-4997, Attention: Work Process Unit.

For questions regarding our determinations, visit the [www.fbi.gov/foia](http://www.fbi.gov/foia) website under "Contact Us." The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

Sincerely,



David M. Hardy  
Section Chief,  
Record/Information  
Dissemination Section  
Records Management Division



# **EXHIBIT D**

U.S. Department of Justice



Federal Bureau of Investigation

Washington, D.C. 20535

September 28, 2018

Mr. Scott A. Hodes  
Attorney at Law  
P.O. Box 42002  
Washington, DC 20015

FOIPA Request No.: 1319503-000  
Subject: Bistran, Peter David

Dear Mr. Hodes:

Reference is made to your Freedom of Information/Privacy Acts (FOIPA) request for FBI records concerning Peter David Bistran. This letter will serve to document your email exchange with my representative on September 27, 2018.

My representative explained that your request was currently in the large track of our multi-track backlog of unassigned FOIA requests. This track contains requests for records in excess of 950 pages and assignments from this queue to our FOIA Processing Units are typically delayed for a significant amount of time. My representative indicated that the FBI located approximately 8,734 pages related to your subject and you were offered the opportunity to reduce the scope of your request to accelerate its assignment for processing. You indicated that you would like all responsive files processed at this time. Also you advised that you were willing to wait to have the files processed. Your request will remain in the large-track backlog until its assignment to our FOIA Processing Units.

Your request will be processed as interim releases of approximately 500 pages per CD, and by fax dated June 25, 2015, you agreed to pay all fees associated with your request. We certainly appreciate your consideration in this matter and solicit your continued patience.

If you have further questions, please do not hesitate to contact my representative at 540-868-4894. You may also submit questions via the [www.fbi.gov/foia](http://www.fbi.gov/foia) website under "Contact Us." The FOIPA Request Number listed above has been assigned to your request. Please use this number in all correspondence concerning your request.

Sincerely,

David M. Hardy  
Section Chief  
Record/Information  
Dissemination Section  
Information Management Division

*Handwritten note:*  
Handled directly by P. Smith 9/15/18

# **EXHIBIT E**

Sent: Monday, September 17, 2018 3:58 PM

To: 'infoprivacylaw@yahoo.com' <infoprivacylaw@yahoo.com>

Subject: FOIA Request #1319503-000

Good afternoon Mr. Hodes,

Reference is made to your Freedom of Information Act (FOIA) request # 13139503-000 for FBI records concerning Peter David Bistran. The FBI has located approximately 8,734 pages that are potentially responsive to your request. Once requests go over a certain size, usually in the 50-100 page range, they become increasingly complex, greatly slowing down the time required for processing. Generally the larger the file, the longer it takes to process. Given our current workload and staffing levels, it may be a very long time before you would begin to receive material from this request.

We contact requesters with requests of this size to see if there might be a way to possibly narrow the scope. Is this something you might be willing to consider? If so, please contact us in response to this email or by phone and we can discuss this possibility. We appreciate your patience and hope to hear from you soon.

Sincerely,

Negotiation Team

FOIA Support Unit

Information Management Division

Federal Bureau of Investigation

540-868-4894

Status check? Please contact Public Information Officer at foipaquestions@fbi.gov.

# EXHIBIT F

**From:** Scott Hodes [mailto:infoprivacylaw@yahoo.com]  
**Sent:** Thursday, September 27, 2018 1:13 PM  
**To:** FBI.FOIPA.NEGOTIATION <FBI.FOIPA.NEGOTIATION@FBI.GOV>  
**Subject:** Re: FW: FOIA Request #1319503-000

At this point my client is still interested. If he decides he wants to negotiate we will contact you.

Scott's Website: [www.infoprivacylaw.com](http://www.infoprivacylaw.com) Scott's blog: <http://thefoiablog.typepad.com>

On Thursday, September 27, 2018, 1:10:56 PM EDT, FBI. FOIPA. NEGOTIATION <FBI.FOIPA.NEGOTIATION@FBI.GOV> wrote:

Good afternoon Mr. Hodes,

We have attempted to reach you by the prior email on September 17 and by voicemail on the 19th. This is an inquiry to see if you are still interested in the processing of this request, and if so, would you consider narrowing the scope. Please see the email below which provides more details about your request.

Thank you for your time and consideration of this inquiry. With these older cases, if there is no response back from our initial contact, after 30 days we do close the FOIA request and will send a letter at that time about closing the FOIA. We do look forward to hearing from you.

Respectfully,

Negotiation Team

FOIA Support Unit

Information Management Division

Federal Bureau of Investigation

540-868-4894

Status check? Please contact Public Information Officer at [foipaquestions@fbi.gov](mailto:foipaquestions@fbi.gov).

-----Original Message-----

From: FBI.FOIPA.NEGOTIATION

# EXHIBIT G



Peter Bistran &lt;pbistran@gmail.com&gt;

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**RE: [EXTERNAL EMAIL] - FOIA STATUS ON REQUEST 1319503**

1 message

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**FBI.FOIPA.NEGOTIATION** <FBI.FOIPA.NEGOTIATION@fbi.gov>  
To: Peter Bistran <pbistran@gmail.com>

Thu, Aug 20, 2020 at 11:04 AM

Good morning Mr. Bistran,

Thank you for your email. The current estimated date of completion for your request is November 2021.

Best regards,

FBI FOIA Negotiation Team

Information Management Division

fbi.foipa.negotiation@fbi.gov

540-868-1695

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**From:** Peter Bistran <pbistran@gmail.com>  
**Sent:** Wednesday, August 19, 2020 11:53 AM  
**To:** FBI.FOIPA.NEGOTIATION <FBI.FOIPA.NEGOTIATION@FBI.GOV>  
**Subject:** [EXTERNAL EMAIL] - FOIA STATUS ON REQUEST 1319503

FBI Negotiation Team:

I am sending this email inquiring about the status of the 8,734 pages you have confirmed locating as per my request. When do you believe I can anticipate being in receipt of them?

Looking forward to hearing back from you by email or you may call me at 631-903-5509.

Best regards,

Peter Bistran



# EXHIBIT H

**From:** Ingram, James <[jingram@nixonpeabody.com](mailto:jingram@nixonpeabody.com)>  
**Sent:** Thursday, March 18, 2021 8:21 PM  
**To:** FBI.FOIPA.NEGOTIATION <[FBI.FOIPA.NEGOTIATION@FBI.GOV](mailto:FBI.FOIPA.NEGOTIATION@FBI.GOV)>  
**Cc:** Sandweg, John <[jsandweg@nixonpeabody.com](mailto:jsandweg@nixonpeabody.com)>  
**Subject:** [EXTERNAL EMAIL] - FOIA Request #1319503-000

FOIA Negotiation Team:

Our firm has been retained by Mr. Peter Bistran in connection with FOIA Request #1319503-000. More than six years have passed since Mr. Bistran submitted this request, and he now stands to suffer substantial and irreparable harm if the records sought are not immediately produced. We therefore write to demand the immediate release of all records responsive to Mr. Bistran's request. To the extent any such records have yet to be reviewed, we demand they be released on a rolling basis, as quickly as possible.

As you are aware, Mr. Bistran submitted his request on January 5, 2015. The FBI has identified 8,734 pages of responsive records. Both counsel for Mr. Bistran and Mr. Bistran himself have on several occasions confirmed his desire to obtain all such records. Despite these confirmations, the FBI has yet to produce a single document. Mr. Bistran has been exceedingly patient throughout this entire process; however, he can afford to wait no longer.

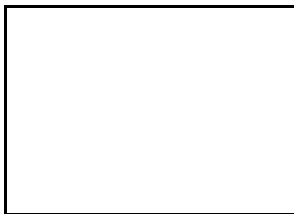
Mr. Bistran's request seeks records to be used in connection with an ongoing civil action he is litigating before the U.S. District Court for the Eastern District of Pennsylvania. Recently, the Court granted Mr. Bistran a new trial in the case, and has ordered discovery to be completed by May 11, 2021. The records Mr. Bistran has requested contain information that is vital to his success in this litigation—whether it be in present settlement negotiations or the upcoming trial. It is thus clear that his failure to immediately obtain the records responsive to his request will cause him to suffer substantial and irreparable harm.

In light of the foregoing, we repeat our demand for the immediate release of the 8,734 pages of records responsive to Mr. Bistran's request. Any records still pending review should be released to on a rolling basis, as quickly as possible. There has been more than enough time for Mr. Bistran's request to be processed, and if Mr. Bistran continues to be deprived of his rights to the records sought, he is prepared to pursue any and all remedies available under the law.

We look forward to hearing from you soon.

Sincerely,

James Ingram  
cc: John Sandweg



**James A. Ingram**  
Associate  
j Ingram@nixonpeabody.com  
T 212-940-3071 | C 202-878-2665 | F 844-923-1390  
Nixon Peabody LLP | Tower 46 | 55 West 46th Street | New York, NY 10036-4120  
nixonpeabody.com | @NixonPeabodyLLP

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# EXHIBIT I

**From:** FBI.FOIPA.NEGOTIATION@FBI.GOV  
**Sent:** Friday, March 19, 2021 1:29 PM  
**To:** Ingram, James  
**Subject:** RE: FOIA Request #1319503-000

Dear Mr. Ingram,

Thank you for forwarding the completed DOJ-361 from Mr. Bistran. As you noted in your previous email, there are approximately 8734 potentially responsive pages in Mr. Bistran's request, which places the request in the extra-large processing track. Please see the information below regarding estimated times to complete requests in each track:

- Small track requests (0-50 pages) current average time is approximately 4 months to complete;
- Medium track requests (51-950 pages) current average time is approximately 29 months to complete;
- Large track requests (951-8000 pages) current average time is approximately 60 months to complete; and
- Extra-large track requests (over 8000 pages) current average time is approximately 84 months to complete.

Both through his former attorney and directly with the negotiation team, Mr. Bistran has declined to reduce the scope of his request to place it in a smaller, possibly faster processing track. Should he wish to possibly reconsider, he would be welcome to make another request for additional material upon completion of his negotiated request. While none of the material has been reviewed yet by a FOIA analyst and we are limited in what we can say about it, we can tell you that it runs in date from 1989-2011. The quickest way for Mr. Bistran to receive a release would be to narrow the scope to place the request in the small track, then make another request once that small track request was completed. He would be welcome to keep requesting material if he wished. We only ask that he wait until he receive his final release from the negotiated request before making a new request. Otherwise because they share the same material, the requests would be combined, and it may make the difference between being in the small versus the medium or the medium versus the large track.

If he might be willing to entertain that idea, we could structure 50 pages around a date range within the overall date range of 1989-2011. If he were interested in the first 50 pages, we could process that, or the last 50 pages. We do process at the document level, which means that if we were to reach page 50 and be in the middle of a document, the page count would end with the last page of the preceding document, so the page count may be slightly lower. We do try to get as close to 50 pages as possible, though.

Please let us know how you would like to proceed.

Best regards,

FBI FOIA Negotiation Team  
Information Management Division  
[fbi.foipa.negotiation@fbi.gov](mailto:fbi.foipa.negotiation@fbi.gov)  
540-868-1695

Status Checks: <https://vault.fbi.gov/fdps-1/@@search-fdps> | [foipaquestions@fbi.gov](mailto:foipaquestions@fbi.gov)

For additional information, please visit the [www.fbi.gov/foia](http://www.fbi.gov/foia) website.

COVID-19 Impact: The Records Information/Dissemination Section (RIDS) is operating at reduced staffing levels amidst the ongoing COVID-19 national emergency. We appreciate your patience and understanding as we work to release as much information, to as many requesters as possible, as this emergency continues.

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**From:** Ingram, James <jingram@nixonpeabody.com>  
**Sent:** Friday, March 19, 2021 11:09 AM  
**To:** FBI.FOIPA.NEGOTIATION <FBI.FOIPA.NEGOTIATION@FBI.GOV>  
**Cc:** Sandweg, John <jsandweg@nixonpeabody.com>  
**Subject:** [EXTERNAL EMAIL] - RE: FOIA Request #1319503-000

Hello –

Attached is Mr. Bistrrian’s completed privacy waiver. Please let us know if you require any additional information.

Thank you,  
James

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**Sent:** Friday, March 19, 2021 8:07 AM  
**To:** Ingram, James <[jingram@nixonpeabody.com](mailto:jingram@nixonpeabody.com)>  
**Subject:** RE: FOIA Request #1319503-000

[EXTERNAL E-MAIL]

Good morning Mr. Ingram,

Thank you for your email. Before we can discuss Mr. Bistrrian’s FOIA request with you, we need to have a completed privacy waiver (DOJ-361) on file. Downloadable copies are available at [fbi.gov](http://fbi.gov). Under Services, go to Information Management/Freedom of Information/Privacy Act/Requesting FBI Records. Under Option 2, you will find a link to the DOJ-361.

Once Mr. Bistrrian has completed the form, you are welcome to email it to this address.

Best regards,

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Status Checks: <https://vault.fbi.gov/fdps-1/@@search-fdps> | [foipaquestions@fbi.gov](mailto:foipaquestions@fbi.gov)

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# **EXHIBIT J**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PETER BISTRIAN

Plaintiff,

v.

WARDEN TROY LEVI, *et al.*,

Defendants.

CIVIL ACTION NO. 08-3010

**MEMORANDUM OPINION**

Rufe, J.

February 5, 2021

Plaintiff Peter Bistrian sued the federal government and several individual officers at the Federal Detention Center (“FDC”) in Philadelphia for failing to protect him from two attacks by fellow inmates during his pretrial detention. Bistrian brought the claims against the officers under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*.<sup>1</sup> These claims were tried to a jury, which did not find the officers liable.<sup>2</sup> Bistrian timely moved for a new trial as to Defendant James Gibbs under Federal Rule of Civil Procedure 59, and has also moved to compel discovery. For the reasons stated below, Bistrian’s motion for a new trial is granted and his motion to compel is granted in part and denied in part.

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<sup>1</sup> 403 U.S. 388 (1971).

<sup>2</sup> Plaintiff also brought claims against the government under the Federal Torts Claim Act, alleging that the correctional staff of the FDC acted negligently in failing to protect him from a second attack. The FTCA claims were tried to the Court. *See* [Doc. No. 489].



## I. BACKGROUND<sup>3</sup>

### A. Factual Background

Defendant James Gibbs was a Special Investigation Services (“SIS”) Lieutenant at the FDC from 2004 to 2007.<sup>4</sup> The SIS oversaw investigations of disciplinary infractions within the FDC and monitored and investigated gang activity.<sup>5</sup>

From April through June of 2006, the SIS and FBI were monitoring two Secure Housing Unit (“SHU”) inmates who were considered very dangerous: Kaboni Savage and Steven Northington.<sup>6</sup> Savage was a “drug kingpin” in Philadelphia, and Northington was his co-defendant and part of his drug ring.<sup>7</sup> Savage was suspected of ordering a firebombing in retaliation against an informant in which six of the informant’s relatives were killed.<sup>8</sup> The SIS and FDC staff were aware of these allegations.

In 2006, Plaintiff Peter Bistran was a pretrial detainee at the FDC,<sup>9</sup> who had been placed in the SHU for violating telephone privileges.<sup>10</sup> While in the SHU, Bistran served as an orderly, a job which allowed him to be out of his cell from around 6 a.m. until after dinnertime to help correctional officers serve meals and clean.<sup>11</sup>

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<sup>3</sup> The Court assumes familiarity with the facts of this case, which are reviewed in detail in prior opinions of this Court. *See e.g.*, *Bistran v. Levi*, No. 08-3010, 2020 WL 1435079 (E.D. Pa. Mar. 24, 2020); *Bistran v. Levi*, No. 08-3010, 2020 WL 6951048 (E.D. Pa. Aug. 21, 2020).

<sup>4</sup> Gibbs Testimony, Trial Tr. July 16, 2019, at 193.

<sup>5</sup> Jezior Testimony, Trial Tr. July 10, 2019, at 233.

<sup>6</sup> Gibbs Testimony, Trial Tr. July 17, 2019, at 95–96; Jezior Testimony, Trial Tr. July 11, 2019, at 92, 150–51; Dodrill Testimony, Trial Tr. July 12, 2019, at 96.

<sup>7</sup> Jezior Testimony, Trial Tr. July 10, 2019, at 235–36.

<sup>8</sup> Gibbs Testimony, Trial Tr. July 16, 2019, at 196–97; Gibbs Testimony, Trial Tr. July 17, 2019, at 95.

<sup>9</sup> Bistran Testimony, Trial Tr. July 9, 2019, at 44–45.

<sup>10</sup> *Id.* at 45.

<sup>11</sup> *Id.* at 46–47.

Bistran testified that one day, while he was outside his cell working as an orderly, an inmate slid a note from his cell to Bistran in the hall under the cell door. The inmate directed Bistran to deliver the note to another cell, which he did.<sup>12</sup> Three or four days later, another note was slid to Bistran under the same door, and Bistran brought it to an officer's attention.<sup>13</sup> These notes were between Northington and Savage. Bistran testified that the officers instructed him to continue to pass between the two any notes he received. Bistran was told that when he received a note, he was to bring it to an SIS officer, who would make a photocopy of it and then return the original to Bistran for delivery.<sup>14</sup>

According to Bistran, on one occasion, the officers mistakenly returned to Bistran an envelope containing the photocopy instead of the original, which he unknowingly delivered to Northington.<sup>15</sup> When Northington received the envelope, and discovered that it contained a photocopy, he drew the obvious conclusion that Bistran was cooperating with the officers.<sup>16</sup> Bistran testified that soon after the "yelling and screaming started from Northington's cell . . . we're going to f'ing kill you, you're a rat, you're a snitch, you turned on us . . . the threats started in, non-stop from that point."<sup>17</sup>

As Scott Dodrill, the Northeast Regional Director of the Bureau of Prisons in 2006, testified, any inmate who was discovered to have informed or cooperated against Savage or

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<sup>12</sup> *Id.* at 49–50.

<sup>13</sup> *Id.* at 50–51.

<sup>14</sup> *Id.* at 55–57. Defendant Gibbs testified that he had no knowledge of the note-passing arrangement. Gibbs Testimony, Trial Tr. July 16, 2019, at 208.

<sup>15</sup> Bistran Testimony, Trial Tr. July 9, 2019, at 69.

<sup>16</sup> *Id.* at 70.

<sup>17</sup> *Id.*

Northington would be in danger.<sup>18</sup> Eight weeks after Bistran had delivered the wrong envelope, prison officials placed Northington and Bistran in the same recreation pen together. Northington and several of his associates attacked Bistran and brutally beat him.<sup>19</sup>

The FTCA claims were based upon a second assault. Three and a half months after the Northington attack, Aaron Taylor, another inmate in the SHU, attacked Bistran in the recreation pen with a weapon fashioned from one of the disposable razors regularly given to inmates for shaving. This second assault was unrelated to the Northington assault.<sup>20</sup>

## **B. Procedural Background**

Bistran brought claims under *Bivens* and the FTCA. Under *Bivens*, Bistran brought failure-to-protect claims against Defendant James Gibbs and other individual officers alleging that they were deliberately indifferent when they placed him in a recreation pen with Northington. Under the FTCA, Bistran brought claims against the United States, alleging that the negligence of the correctional staff led to the attack by Taylor. Bistran's claims were bifurcated; his *Bivens* claims were tried to a jury and his FTCA claims were tried to the Court.

The *Bivens* claims were tried to a jury in July 2019. At trial, Defendant Gibbs testified that although he did not impose a separation order to keep Northington away from Bistran, he did take other steps to protect Bistran, including removing him from his position as an orderly and checking in with Bistran during his daily rounds to investigate the situation.<sup>21</sup> Gibbs

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<sup>18</sup> Dodrill Testimony, Trial Tr. July 12, 2019, at 86, 100. Dodrill's testimony was by deposition, excerpts of which were read to the jury.

<sup>19</sup> Bistran Testimony, Trial Tr. July 9, 2019, at 90–92, 95–104.

<sup>20</sup> Taylor was convicted of one count of assault with a deadly weapon, 18 U.S.C. § 113(a)(3), for the attack. *See United States v. Taylor*, Crim. No. 07-288 [Doc. No. 189] (E.D. Pa. Dec 3, 2010).

<sup>21</sup> Gibbs Testimony, Trial Tr. July 17, 2019, at 80–81.

testified that he did not impose a separation order because he was concerned that it would place a “spotlight” on Bistran.<sup>22</sup> He also testified that he believed the steps he did take would keep Bistran safe.<sup>23</sup>

The jury found that Bistran was facing a substantial risk of serious harm at the time of the attack and that Gibbs had actual knowledge of the substantial risk. However, the jury did not find that Gibbs had been deliberately indifferent to the risk Bistran faced.<sup>24</sup> On April 21, 2020, Bistran moved for a new trial as to Defendant Gibbs.<sup>25</sup>

The FTCA claims were tried to this Court in August 2019.<sup>26</sup> After both sides had rested, but before closing arguments, it was discovered that relevant evidence had not been disclosed by the Government.<sup>27</sup> A supplemental round of discovery was permitted, and the Court held that it was appropriate to reopen the trial record and allow consideration of newly-produced, highly relevant evidence.<sup>28</sup> The Court also noted the “failures by the government in the presentation and timely production of evidence,” and determined that the government had destroyed highly-relevant evidence in bad faith.<sup>29</sup> This Court noted that “an extraordinary number of . . . evidentiary irregularities have plagued this litigation.”<sup>30</sup> Unfortunately, the evidentiary irregularities were compounded.

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<sup>22</sup> *Id.* at 82–83, 98–101.

<sup>23</sup> *Id.* at 81–82.

<sup>24</sup> *See* Verdict Form [Doc. No. 394].

<sup>25</sup> *See* Pl.’s Mot. New Trial as to James Gibbs [Doc. No. 462].

<sup>26</sup> *See generally, Bistran*, 2020 WL 6951048 (Findings of Fact and Conclusions of Law).

<sup>27</sup> *Bistran v. Levi*, 448 F. Supp. 3d 454, 482 (E.D. Pa. 2020).

<sup>28</sup> *See id.* at 485–91.

<sup>29</sup> *Id.* at 496; *see also id.* at 481.

<sup>30</sup> *Id.* at 463.

On May 8, 2020, Bistran filed a motion to compel.<sup>31</sup> The motion stated that after the Court issued its March 24, 2020 Order, Bistran sent a letter to the government requesting the FBI review their file on Taylor. On April 21, 2020, the government informed Bistran that it had discovered relevant documents related to the FTCA claim that had not been previously produced.<sup>32</sup> On April 27, 2020, Bistran requested that the government review the FBI files in connection with the *Bivens* claims.

In June 2013, Bistran sent a *Touhy*<sup>33</sup> request to multiple governmental agencies, including the FBI, seeking evidence related to both attacks.<sup>34</sup> In response, the FBI searched the overarching Kaboni Savage case file (which included investigations of Northington) and identified two FBI Form 302s mentioning Bistran.<sup>35</sup> These documents were produced on August 7, 2013.<sup>36</sup> The government also produced various other documents related to the attacks, and the parties agreed to a stipulation and an affidavit by FBI Agent Kevin Lewis, the agent assigned to the Savage investigation.<sup>37</sup> The government did not agree to conduct any additional discovery in response to Bistran's April 27, 2020, request, asserting that it had made "a reasonable search for

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<sup>31</sup> See Pl.'s Mot. to Compel United States to Review FBI Docs. and to Produce Relevant Docs. [Doc. No. 465].

<sup>32</sup> See *id.* at 2–3. These additional documents were highly relevant to Bistran's FTCA claim, but like the evidence here, were not discovered until after the trial.

<sup>33</sup> See *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

<sup>34</sup> United States' Resp. to Pl.'s Mot. to Compel [Doc. No. 471] at 4.

<sup>35</sup> *Id.* at 5. FBI Form 302s record information that may become testimony, such as the contents of an interview or the receipt of a record. *Id.* at 5 n.2.

<sup>36</sup> *Id.*

<sup>37</sup> See e.g. *Touhy* Response dated August 7, 2013 [Doc. No. 471-9]; Letter from Paul Kaufman to Richard Bazelon (Mar. 24, 2016) [Doc. No. 471-22]; see also P-069 (Lewis Stipulation).

documents under the circumstances” and that it would not “redo the discovery that was discussed and negotiated at length in 2015.”<sup>38</sup>

After Bistran had moved to compel, the FBI nevertheless discovered additional, relevant evidence. In 2006, the FBI had created an additional file, separate and apart from the overarching Kaboni Savage case file, specifically related to the Northington attack on Bistran.<sup>39</sup> In 2013, when Bistran sent the initial *Touhy* request, this other file had not been searched because “at the time, the responsible individuals did not realize there was a separate file.”<sup>40</sup> The file the FBI had made for its investigation of Northington’s assault on Bistran was not searched in connection to this case until May 2020, eight years after Bistran’s initial request and ten months after the *Bivens* trial had concluded.

On May 20, 2020, the FBI informed Plaintiff of the file’s existence and produced the file in its entirety. The government explained that “had we been aware of it, we would have produced the Northington file . . . when we produced the other documents responsive to the *Touhy* request.”<sup>41</sup> Bistran argues that this newly discovered evidence provides additional reasons for granting a new trial as to Defendant Gibbs.<sup>42</sup>

## II. LEGAL STANDARD

Under Rule 59(a), “[a] new trial may be granted to all or any of the parties and on all or part of the issues . . . for any of the reasons for which new trials have heretofore been granted in

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<sup>38</sup> Letter from Landon Jones to Richard Bazelon (May 4, 2020) [Doc. No. 477-1] at 19, 20.

<sup>39</sup> See Letter from Landon Jones to Richard Bazelon (May 20, 2020) [Doc. No. 477] at 7.

<sup>40</sup> *Id.* at 8.

<sup>41</sup> *Id.* at 9. Plaintiff has continued to pursue the Motion to Compel despite the government’s production.

<sup>42</sup> See Reply in Supp. Mot. for New Trial [Doc. No. 481] at 10–12.

actions at law in the courts of the United States,” and “[t]he authority to grant a new trial resides in the exercise of sound discretion by the trial court.”<sup>43</sup>

For a new trial to be granted based on newly-discovered evidence, a court looks to the standard under Rule 60(b)(2).<sup>44</sup> Under this standard, the new evidence must: “(1) be material and not merely cumulative, (2) could not have been discovered before trial through the exercise of reasonable diligence and (3) would probably have changed the outcome of the trial.”<sup>45</sup> However, a party requesting a new trial “bears a heavy burden.”<sup>46</sup>

### III. DISCUSSION

#### A. A new trial must be granted based on the newly-discovered evidence.

Plaintiff argues that two pieces of evidence undercut the defense presented by Gibbs and necessitate a new trial:

- a) Akano interview notes – Handwritten notes from an FBI agent’s interview with Correctional Officer Kehinde Akano. These interview notes describe the attack and state that the attack was the “first time both [Northington and Bistran] in cell together.”<sup>47</sup>
- b) Stop Snitching photographs – A series of color photographs of a sign Northington had placed in his cell window before the attack reading “Stop Snitching.”<sup>48</sup> Similar photographs were produced by the BOP in 2015 as part of

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<sup>43</sup> *Wagner by Wagner v. Fair Acres Geriatric Ctr.*, 49 F.3d 1002, 1017 (3d Cir. 1995).

<sup>44</sup> *See Compass Tech., Inc. v. Tseng Labs., Inc.*, 71 F.3d 1125, 1130 (3d Cir. 1995).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* (quoting *Plisco v. Union R. Co.*, 379 F.2d 15, 17 (3d Cir.1967)).

<sup>47</sup> Akano Interview Notes [Doc. No. 477-1] at 49–50.

<sup>48</sup> Color Photographs [Doc. No. 477-1] at 55.

the investigation report on the attack, but the previously produced photographs were of such low quality that the sign was not visible.<sup>49</sup>

*1. The newly discovered evidence would likely have changed the outcome of the trial.*

The jury found that Bistran was facing a substantial risk of serious harm. The jury also found that Gibbs had actual knowledge of that fact. However, the jury determined that Gibbs had not failed to take reasonable measures to prevent the attack, and therefore, had not been deliberately indifferent to Bistran's substantial risk.<sup>50</sup>

Bistran's core argument was that Gibbs was deliberately indifferent because, knowing the danger Bistran faced, he chose not to place a separation on Bistran and Northington.<sup>51</sup> Gibbs testified that there had been no separation in place, and implied that Bistran would have been in danger from Northington's associates had there been one. Gibbs stated that "Steven Northington had a lot [of] co-defendants in SHU, in all the floors. So if I put a keep away on Bistran and Northington the spotlight would have totally been on Peter Bistran."<sup>52</sup> The newly-discovered evidence undercuts these contentions.

a. The Akano interview notes

FBI Special Agent Stephen Heaney lead the investigation into Northington's assault on Bistran. As part of the investigation, Special Agent Heaney interviewed Correctional Officer

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<sup>49</sup> On May 6, 2015, Bistran requested "color versions of all pictures contained in or relating to Jezior's June 30, 2006 report of Steven Northington's assault on Mr. Bistran." *Touhy* Letter from Richard Bazelon dated May 6, 2015 [Doc. No. 471-15] at 4–5. Although these photographs fall within that request, the government "understood this aspect of the Touhy request as being directed to the BOP," and the FBI did not search for or produce any evidence. *United States' Resp. to Pl.'s Mot. to Compel* [Doc. No. 471] at 7 n.4.

<sup>50</sup> *See* Verdict Form [Doc. No. 394]; *see also* Jury Charge, Trial Tr. July 24, 2019, at 34, 36.

<sup>51</sup> Bistran Closing Argument, Trial Tr. July 23, 2019, at 30–31, 41.

<sup>52</sup> Gibbs Testimony, Trial Tr. July 17, 2019, at 82–83.



Kehinde Akano, who was a witness to the attack.<sup>53</sup> Special Agent Heaney took notes of the interview. The last line states “- first time both in cell together.”<sup>54</sup> From the context, this apparently refers to Northington and Bistran being placed in a recreation pen together on the day of the attack.

Prior to Northington’s discovery of Bistran’s cooperation and threats, Bistran and Northington had occasionally been placed in a recreation pen together.<sup>55</sup> But at trial, it was in dispute as to whether the two had shared a recreation pen in the eight weeks between Northington’s threats and the attack. The Akano interview notes suggest that they had not. The notes further suggest that the reason they had not shared a recreation pen was because of a separation order.<sup>56</sup>

Had the jury seen the interview notes, or heard testimony from Akano about the notes, it reasonably could have concluded that a separation was placed between Northington and Bistran in response to Northington’s treats against Bistran. The jury could have reasonably concluded that, on the day of the attack, Gibbs was deliberately indifferent in either ending or ignoring the separation and placing Northington and Bistran together.

Additionally, it is likely that the jury credited Gibbs’s testimony in finding that he was not deliberately indifferent. At trial, Gibbs testified to the steps he took to keep Bistran safe, why he did not impose or maintain a separation between the inmates, and that he believed that Bistran was safe at the time of the attack. But the notes call his testimony into question. If, as the

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<sup>53</sup> United States’ Sur-Reply in Opp. Pl.’s Mot. to Compel [Doc. No. 486] at 5.

<sup>54</sup> Akano Interview Notes [Doc. No. 477-1] at 50.

<sup>55</sup> See Bistran Testimony, Trial Tr. July 10, 2019 at 229–230.

<sup>56</sup> The statement “first time both in cell together” suggests awareness of the threats against Bistran and that the correctional officers had not been placing Northington and Bistran in a recreation cell together.

notes suggest, the two inmates had been previously kept apart, Gibbs's trial testimony would have been contradicted and his "spotlight" justification undermined. The jury could have reasonably found Gibbs's testimony about keeping Bistran safe as not credible.

b. The color photographs of the "Stop Snitching" sign

The BOP report on the Northington attack states that "[p]rior to the assault inmate Northington placed a sign on the window of his cell 823 North reading 'Stop Snitching.'"<sup>57</sup> Officer Jezior also testified that the sign was posted before the assault.<sup>58</sup> But Gibbs was evasive as to his knowledge of the sign:

Q: And so, did you understand from that that at the time of the assault Northington had posted on his cell door window a sign "stop snitching?"

A: Through this investigation I did, yes.

Q: And what did you learn about how long that sign had been up?

A: Well, I didn't do the investigation.

Q: Did you ask anybody how long the sign had been up?

A: I didn't do the investigation.

Q: Did you see the sign when it was up?

A: What I know of this is Northington used to do that, yes.

...

Q: How often do people walk by the cell doors of the inmates in the SHU?

A: Twice an hour.

Q: And that's the -- and who does -- who walks by to check on the inmates twice an hour?

A: The SHU officers.

Q: Who report to the lieutenant, the SHU lieutenant, correct?

A: Yes, sir.

Q: And aren't they required to look through the narrow slot window in the door to see what the inmate is doing?

A: Yeah, they have to look through the window and see what they're doing.<sup>59</sup>

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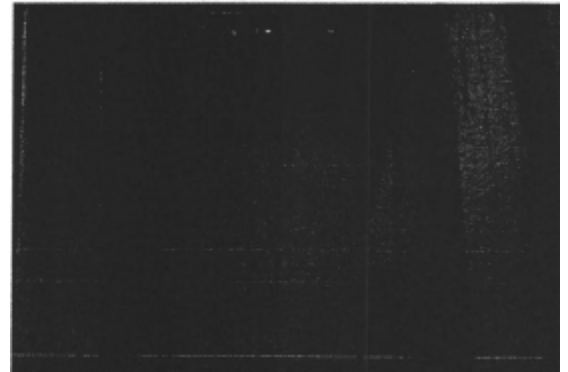
<sup>57</sup> Jezior Report on Northington Assault, P-043 at 9.

<sup>58</sup> Jezior Testimony, Trial Tr. July 11, 2019, at 144.

<sup>59</sup> Gibbs Testimony, Trial Tr. July 17, 2019, at 66-67.

The pictures previously produced by the BOP are of such low quality that the sign is illegible. The newly discovered photographs clearly show the sign, and its prominence. Based on these photographs, it seems unlikely that anyone passing by, let alone the SHU officers who report to Gibbs and were required to walk by the cell doors and look through the slot windows to check on the inmates, would have failed to notice it.

Comparing the sets of photographs demonstrates that the recently-discovered photographs would have been far more helpful to the jury:



Photos of the “Stop Snitching” sign produced by the BOP and available at trial.<sup>60</sup>

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<sup>60</sup> See Jezior Report on Northington Assault, P-043 at 54



Newly-produced photos of the “Stop Snitching” sign from the Northington Attack File.<sup>61</sup>

The value of the color photographs in illustrating the nature of the sign is obvious. Had the jury viewed these photographs, it could have reasonably concluded that Northington had placed the sign on his door as a clear and direct threat against Bistran and that Gibbs was aware, or should have been aware, of this. The jury could have reasonably concluded that Gibbs was deliberately indifferent in putting the two in the same recreation pen given the threat projected by the sign.

Although Gibbs implied in his testimony that he was unaware of the “Stop Snitching” sign, he also testified that he personally made rounds in the SHU “every single day,” and that SHU officers walked by the cells of the inmates twice an hour and reported to the SHU lieutenant.<sup>62</sup> Had the jury seen the color photographs, it could have determined that Gibbs must

<sup>61</sup> See Color Photographs [Doc. No. 477-1] at 55.

<sup>62</sup> Gibbs Testimony, Trial Tr. July 17, 2019, at 67, 80.

have been aware of the “Stop Snitching” sign and that Gibbs’s testimony that he believed Bistran was safe at the time they were placed together lacked credibility.

The two pieces of newly-discovered evidence, both independently and in concert, would have likely changed the outcome of the trial.

2. *The newly-discovered evidence is not merely cumulative*

Defendant Gibbs argues that this evidence is cumulative of evidence presented at trial and does not justify granting a new trial.<sup>63</sup> Gibbs further argues that because Bistran testified that he had not been in a recreation pen with Northington between the time of the threats and the assault, the Akano interview notes merely reiterate already existing evidence.

At trial, it was disputed whether Bistran and Northington had previously shared a recreation pen. Bistran testified that they had not,<sup>64</sup> but on cross-examination, the jury was shown a segment of a video deposition in which Bistran stated that he could not remember if the two had shared a recreation pen.<sup>65</sup> Additionally, Gibbs’s attorney stated during opening statements that “Peter Bistran was going out to rec with the same inmates that he was passing notes between,”<sup>66</sup> and Gibbs testified that he had no information if the two had been in a pen together during the that time period.<sup>67</sup>

The Akano interview notes were taken soon after the Northington attack and were prepared by a disinterested party. As such, they are “different in both degree and kind” to

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<sup>63</sup> See Def. Gibbs’ Sur-Reply in Opp. Pl.’s Mot. for a New Trial [Doc. No. 487] at 7.

<sup>64</sup> See, e.g., Bistran Testimony, Trial Tr. July 9, 2019, at 80, 93.

<sup>65</sup> See Bistran Testimony, Trial Tr. July 10, 2019, at 145 (“Q: Are you sure you weren’t in the same rec cage, Mr. Bistran? / A: No. I -- like I said, I don’t really recall --”); see also Bistran Dep., D-188 at 142.

<sup>66</sup> Opening Statement of Syreeta Joyce Moore, Trial Tr. July 9, 2019, at 37.

<sup>67</sup> Gibbs Testimony, Trial Tr. July 17, 2019, at 98.

Bistran’s testimony at trial as an interested party.<sup>68</sup> The notes provide evidence pertaining to a material issue that was in dispute at trial and are not merely cumulative.<sup>69</sup>

3. *The newly-discovered evidence could not have been discovered prior to the trial*

Gibbs argues that Bistran could have discovered this new evidence prior to the trial.<sup>70</sup> The Court disagrees. Bistran sent a *Touhy* request to the government in 2013 seeking evidence from the FBI. Bistran sent another *Touhy* in 2015 specifically requesting the color photographs. Either request should have led to the production of this newly-discovered evidence. But this evidence was not produced, and in a letter sent 16 days prior to production, the FBI firmly denied that any additional evidence existed.<sup>71</sup> It was not until Bistran’s most recent motion to compel, which was filed because the government had failed to timely produce other relevant evidence, that the FBI discovered the Northington Attack File. The Court determines that Bistran could not have discovered this evidence prior to the trial.

A new trial is “extraordinary relief which should be granted only where extraordinary justifying circumstances are present.”<sup>72</sup> These are extraordinary circumstances. Bistran diligently sought all the relevant evidence in the exclusive control of the government and it was

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<sup>68</sup> *Compass Tech.*, 71 F.3d at 1130; *see also Crowley v. Cooperstein*, No. 95-0194, 1996 WL 524101, at \*3 (E.D. Pa. Sept. 11, 1996) (“[T]he new evidence is the only corroborative evidence which has been introduced by the plaintiff. Thus, this evidence is not cumulative.”).

<sup>69</sup> Gibbs does not argue that the color photographs of the “Stop Snitching” sign would be cumulative. They are not. As discussed above, the photographs produced by the BOP and available at trial were essentially useless. The newly produced photographs would allow a jury to view the sign.

<sup>70</sup> *See* Def. Gibbs’ Sur-Reply in Opp. Pl.’s Mot. for a New Trial [Doc. No. 487] at 6–7.

<sup>71</sup> *See* Letter from Landon Jones to Richard Bazelon (May 4, 2020) [Doc. No. 477-1] at 20 (“The United States is . . . unwilling to engage in dozens of hours of document or other review on the chance that there is some unknown record of unknowable nature regarding heretofore unmentioned cooperation that no one has even suggested exists.”).

<sup>72</sup> *Bohus v. Beloff*, 950 F.2d 919, 930 (3d Cir. 1991) (citations omitted).

not until after the trial that the government discovered the Northington Attack File, despite it being in the government's possession for 14 years. Indeed, if not for Bistran's diligence after the FTCA evidence was discovered, this evidence would never have come to light.

The newly-discovered evidence, even if only withheld from Bistran through carelessness, is material, could not have been discovered by Bistran through reasonable diligence, and would have likely changed the outcome of the trial. It meets the heavy burden under Rule 60(b)(2), and therefore, the Court will grant a new trial under Rule 59(a)(1).<sup>73</sup>

### **B. Limited Additional Discovery is Reasonable**

Bistran has also moved for additional discovery in light of the newly-discovered evidence.<sup>74</sup> The Court has broad discretion to manage discovery.<sup>75</sup> It will consider the needs of the case, and weigh the burdens of production against the likely benefit when determining if additional discovery is appropriate.<sup>76</sup>

Bistran requests that the FBI and Office of the United States Attorney review all FBI files concerning the investigation, surveillance, or intelligence gathering related to Savage, Northington, or Bistran at the FDC in 2006. Bistran further requests depositions of Correctional Officer Kehinde Akano, Special Agent Stephen Heaney, William Jezior, and an FBI designated representative on the subject of records pertaining to this case.<sup>77</sup>

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<sup>73</sup> Bistran also argues that a new trial is warranted as to Gibbs because the jury's verdict was against the weight of the evidence and improper actions by Defendant Gibb's attorneys during opening and closing arguments. Pl.'s Mot. New Trial as to James Gibbs [Doc. No. 462] at 17–20, 21–23. Because the Court finds that a new trial should be granted based on the discovery of new evidence, it does not reach these arguments.

<sup>74</sup> See Pl.'s Reply to Gov.'s Opp. to Pl.'s Mot. to Compel [Doc. No. 477] at 17–24.

<sup>75</sup> See *Sempier v. Johnson & Higgins*, 45 F.3d 724, 734 (3d Cir. 1995).

<sup>76</sup> Fed. R. Civ. P. 26(b)(1).

<sup>77</sup> See generally, Proposed Order, Pl.'s Reply to Gov.'s Opp. to Pl.'s Mot. to Compel [Doc. No. 477] at 1–2.

As discussed above, there have been serious issues with evidence and discovery throughout this case. But after producing the Northington Attack File, the FBI took the following steps to identify any other potentially responsive documents:

- Re-performing the search of the overarching Savage investigative file for the term “Bistran” and separately for “bist\*.”
- Reviewed all substantive files from the main Savage case file serialized in 2006.
- Reviewed all 302s in the “D subfile,” entitled “Informant Reports,” of the Savage file.
- Searched across all files in Sentinel, the FBI’s document management system, for items containing “Peter” and “Bistran” and that were serialized in 2006.<sup>78</sup>

Considering these steps, the Court believes that there would be little benefit in examining for responsiveness all “handwriting, photographs, physical evidence, or documents that are not word searchable.”<sup>79</sup> Given the immense size of the Savage file, such an examination would be unduly burdensome. Similarly, the Court will not permit a deposition from a representative of the FBI as to the records, as the burden also outweighs any likely benefit.

However, the substance of the newly-discovered evidence will likely be at issue in Bistran’s new trial, and limited and targeted discovery is appropriate. The Court will allow Bistran to depose Correctional Officer Kehinde Akano on the topics of his interview with the FBI and any knowledge of a separation between Bistran and Northington. The Court will also allow Bistran to depose Officer Jezior on the topics of the “Stop Snitching” photographs and any knowledge of a separation. Finally, the Court will allow Bistran to conduct a limited

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<sup>78</sup> United States’ Resp. to Pl.’s Mot. to Compel [Doc. No. 471] at 8. The “\*” character is a wild card within their Boolean search system. The Sentinel search reviews all documents in the FBI’s electronic file.

<sup>79</sup> Pl.’s Reply to Gov.’s Opp. to Pl.’s Mot. to Compel [Doc. No. 477] at 19.



deposition of Special Agent Heaney on the topic of the Akano interview notes, unless the government produces an affidavit from the Special Agent authenticating the notes.

### III. CONCLUSION

The Court is fully aware of prolonged litigation of this case<sup>80</sup> and does not determine lightly that a new trial is necessary. Because the government's long-term failure to produce highly relevant evidence directly impacted the *Biven's* jury's verdict, the only just relief is to grant Plaintiff the opportunity to have his claims fully and fairly heard. An order will be entered.

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<sup>80</sup> This case has been before the Court for over twelve and a half years. It has included multiple motions to dismiss, multiple motions for summary judgment, two interlocutory appeals, two lengthy trials, post-trial litigation, and seemingly endless problems with discovery.

# EXHIBIT K

FD-245.1 (Rev. 1-4-99)

U.S. Department of Justice

File No. **PH 101151**

Volume Number \_\_\_\_\_  
Serials \_\_\_\_\_

**DO NOT DESTROY**  
FOIPA# 1319503-0

**Bureau  
of Investigation**

FBI - CENTRAL RECORDS CENTER

PH - PHILADELPHIA

Class / Case #	Sub	Vol.	Serial #
0090 101151		1	1 OPEN

7/10/676154



**90A**

Classification No. \_\_\_\_\_

**Field Office Criminal Investigative  
and Administrative Files**

FOIPA \_\_\_\_\_  
 NCIC \_\_\_\_\_  
 OCIS \_\_\_\_\_  
 Suicidal \_\_\_\_\_  
 Other \_\_\_\_\_

Armed and Dangerous \_\_\_\_\_  
 DO NOT DESTROY \_\_\_\_\_  
 ELSUR \_\_\_\_\_  
 Escape Risk \_\_\_\_\_  
 Financial Privacy Act \_\_\_\_\_

See also Nos. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*Closed 7/10/04  
Hessary 10/30/06*

All documents and  
photographs  
enclosed have been  
digitized.

Negatives and/or  
media have not  
been captured.

# ATTENTION

The following documents appearing in FBI files have been reviewed under the provisions of The Freedom of Information Act (FOIA) (Title 5, United States Code, Section 552): Privacy Act of 1974 (PA) (Title 5, United States Code, Section 552a): and/or Litigation

FOIA/PA                       Litigation                       Executive Order Applied

Requester: Scott Hedes  
Subject: Bistrrian, Peter David  
Computer or Case Identification Number: 1319503-0  
Title of Case: \_\_\_\_\_ Section 1  
\*File 90A-PH-101151  
Serials Reviewed: ALL

Release Location: \*File \_\_\_\_\_ Section \_\_\_\_\_

This file section has been scanned into the FOIPA Document Processing System (FDPS) prior to National Security Classification review. Please see the documents located in the FDPS for current classification action, if warranted.

File Number: \_\_\_\_\_ Section \_\_\_\_\_  
Serial(s) Reviewed: \_\_\_\_\_  
FOIPA Requester: \_\_\_\_\_  
FOIPA Subject: \_\_\_\_\_  
FOIPA Computer Number: \_\_\_\_\_

File Number: \_\_\_\_\_ Section \_\_\_\_\_  
Serial(s) Reviewed: \_\_\_\_\_  
FOIPA Requester: \_\_\_\_\_  
FOIPA Subject: \_\_\_\_\_  
FOIPA Computer Number: \_\_\_\_\_

File Number: \_\_\_\_\_ Section \_\_\_\_\_  
Serial(s) Reviewed: \_\_\_\_\_  
FOIPA Requester: \_\_\_\_\_  
FOIPA Subject: \_\_\_\_\_  
FOIPA Computer Number: \_\_\_\_\_

**THIS FORM IS TO BE MAINTAINED AS THE TOP SERIAL OF THE FILE, BUT NOT SERIALIZED.**

SCANNED BY DocLAB (RMD)  
DATE: 10-22-15  
LAST SERIAL: 2

## ATTENTION

**DO NOT REMOVE THIS FILE**

Northington.wpd

(Rev. 01-31-2003)

# FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 07/05/2006

To: Philadelphia

From: Philadelphia  
Squad 10

Contact: Stephen J. Heaney, 215-418-4145

Approved By: Carbonell Michael *MC*

Drafted By: Heaney Stephen J: sjh *sjh*

Case ID #: 90A-PH-101151-1 (Pending)

Title: STEVEN NORTHINGTON;  
TERRY WALKER;  
JELANI LEE;  
PETER BISTRIAN - VICTIM;  
IFPI - ASSAULT;  
06/30/2006;

ARMED AND DANGEROUS

Synopsis: Open new case and then close case.

Details: On Friday, June 30, 2006, inmate Peter Bistran, #03463-015, was assaulted in the Segregated Housing Unit (SHU) recreation area. Bistran suffered cuts and bruises which resulted in stitches over one of his eyes. SAs Stephen J. Heaney, and Keith Holdsworth were in the SHU during the time of the assault on an unrelated matter. SA Heaney contacted SA Steven McQueen, who responded to provide assistance. SAs Heaney and McQueen conducted interviews while SA Holdsworth conducted a crime scene investigation.

The investigation revealed that Bistran appeared to have been assaulted by Northington over a minor dispute. Bistran claimed that he was a conduit for passing notes between former inmate Kaboni Savage and Northington. Apparently Northington accused Bistran of not completing the job with regard to one note. Northington claimed the assault was provoked by a previous dispute, but he did not elaborate on the specifics of the argument. Northington also claimed that Bistran initiated the assault.

Interviews of witnesses to include Correctional Officer Kehinde Akano, and inmate Sang Tieu revealed that Northington initiated the assault when he punched Bistran in the face. SA

*open & close*  
*SA Heaney*

SEARCHED	INDEXED
SERIALIZED	FILED
JUL 20 2006	
FBI - PHILADELPHIA	

*5-4*  
*7/20/11*  
FBI 20-00481  
*7/5/06*

To: Philadelphia From: Philadelphia  
Re: 90A-PH-101151, 07/05/2006

Heaney telephonically contacted Supervisory AUSA Dave Webb regarding the circumstances of the assault for prosecution consideration. AUSA Webb declined to prosecute the case, and recommended it be adjudicated administratively by the Bureau of Prisons.

Based on the recommendation of AUSA Webb, SA Heaney recommends that this case be closed.

**ARMED AND DANGEROUS**

◆◆

- 1 -

## FEDERAL BUREAU OF INVESTIGATION

Date of transcription 07/10/2006

On June 30, 2006, a crime scene was processed at the FEDERAL DETENTION CENTER (FDC), 700 Arch Street, Philadelphia Pennsylvania, 19106. The scene was located on the 8th floor of the FDC, in recreation room 834 north.

Photographs, both digital and 35mm, were obtained of the scene by FDC- SIS Technician William Jezior with the assistance of SA Keith R. Holdsworth. The photo CD-ROM and 35 mm pictures will be maintained in the case file in a 1-A FD-340 envelope. Six (6) areas of blood spatter were identified and photographed with and without scale.

Items of recovered from the scene include the following:

1. One gray t-shirt
2. One orange shoe

The items recovered from the scene will be held and entered as evidence.

Investigation on 06/30/2006 at Philadelphia, Pennsylvania

File # 90A-PH-101151 -2 Date dictated 07/10/2006

by SA Keith R. Holdsworth:krh *KRH*



FDC 9-30-06.wpd

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 07/10/2006

On June 30, 2006, a crime scene was processed at the FEDERAL DETENTION CENTER (FDC), 700 Arch Street, Philadelphia Pennsylvania, 19106. The scene was located on the 8th floor of the FDC, in recreation room 834 north.

Photographs, both digital and 35mm, were obtained of the scene by FDC- SIS Technician William Jezior with the assistance of SA Keith R. Holdsworth. The photo CD-ROM and 35 mm pictures will be maintained in the case file in a 1-A FD-340 envelope. Six (6) areas of blood spatter were identified and photographed with and without scale.

Items of recovered from the scene include the following:

- 1. One gray t-shirt
- 2. One orange shoe

(X)  
JAH

The items recovered from the scene will be held and entered as evidence.

SEARCHED	INDEXED
SERIALIZED	FILED
JUL 12 2006	
FBI - PHILADELPHIA	

Investigation on 06/30/2006 at Philadelphia, Pennsylvania

File # 90A-PH-101151-2 Date dictated 07/10/2006

by SA Keith R. Holdsworth:krh

Heaney

FD-340a (Rev. 11-12-89)

(Title)

(File No.)

PH-101151-1A

Item	Date Filed	To be returned		Disposition
		Yes	No	

90A-PH-101151-1A  
1-2

SEARCHED INDEXED  
SERIALIZED FILED

FD-340 (Rev. 3-8-01)

Universal Case File Number 90A-PH-101151 - 7A1

Field Office Acquiring Evidence PH

Serial # of Originating Document \_\_\_\_\_

Date Received 6/30/06

From \_\_\_\_\_  
(Name of Contributor)

\_\_\_\_\_  
(Address of Contributor)

\_\_\_\_\_  
(City and State)

By: Stephen J. Heaney

To Be Returned  Yes  No

Receipt Given  Yes  No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e)  
Federal Rules of Criminal Procedure

Yes  No

Federal Taxpayer Information (FTI)

Yes  No

Title: Steven Northington;  
Terry Walker;  
Jelani Lee;  
Peter Bistran - Victim;  
IFPE - Assault;  
6/30/06;

Reference: \_\_\_\_\_  
(Communication Enclosing Material)

Description:  Original notes re interview of

Peter Bistran

Kehinde Akano

Jelani Lee

Jang Tiev

6/30/06

Jelani Lee

59565-066

78

---

6/30/06

Jang Tieu

185

59966-066

- Todd Henry

215-545-7100

AUSA Dave Fritche

DEA: FBI2020-00487

6/30/06

Peter Bistrich

03463-015

FBI

Nancy O'Dowd

- Wire Fraud

- Northampton

- Savage

- Bassil

- Fly

passing notes - communicating  
senior copying notes

6/30/06

Akano, Kehinde 215-726-6604  
 67 5833 Woodland Ave  
 Philly PA 19143

Approx 5 years - working  
 7A - 3P in the SUV  
 sitting in chair at your  
 post - all 6 recreation  
 areas drilled - approx 30  
 minutes in rec area -  
 in rec area #26 - 3 minutes  
 talking to others in other rec  
 area - Briston + Northington  
 were walking around in circles  
 getting exercise - suddenly  
 Northington ~~and~~ was walking  
 in front of Briston turned

around and punched Bistrain  
in the face - Bistrain then  
punched back - two other inmates  
jumped in and started punching  
Bistrain - you hit your  
alarm immediately - Bistrain  
pushed into fence - he then  
fell to ground - other two hit  
him a couple more times then  
backed off - Northington kept  
hitting him - other CO's arrived  
immediately ordered to ground -  
Northington then stopped assaulting  
Bistrain - Northington ~~also~~ remained  
standing - first time both in  
cell together

1A Envelope

Case ID: 90A-PH-101151

! PH 1 ! ORIGINAL NOTES RE INTERVIEW OF PETER BISTRAN, KEHINDE AKANO !  
! , JELANI LEE, SANG TIEU !

! PH 2 ! 1 CD ROM OF CRIME SCENE; PHOTO LOG OF CD-ROM !



FD-340 (7-19-00)

Universal Case File Number

90A-PH-101151 (1A2)

Field Office Acquiring Evidence

PH

Serial # of Originating Document

Date Received

6/30/2006

From

FDC - Philadelphia

(Name of Contributor)

700 Arch Street

(Address of Contributor)

Philadelphia PA

(City and State)

By

SA Holdsworth

To Be Returned

Yes

No

Receipt Given

No

Grand Jury Material - Disseminate Only Pursuant to Rule 6 (e) Federal Rules of Criminal Procedure

Yes

No

Federal Taxpayer Information (FTI)

Yes

No

Title:

Reference:

(Communication Enclosing Material)

Description:

Original notes re interview of

(1) CD-ROM of Crime Scene

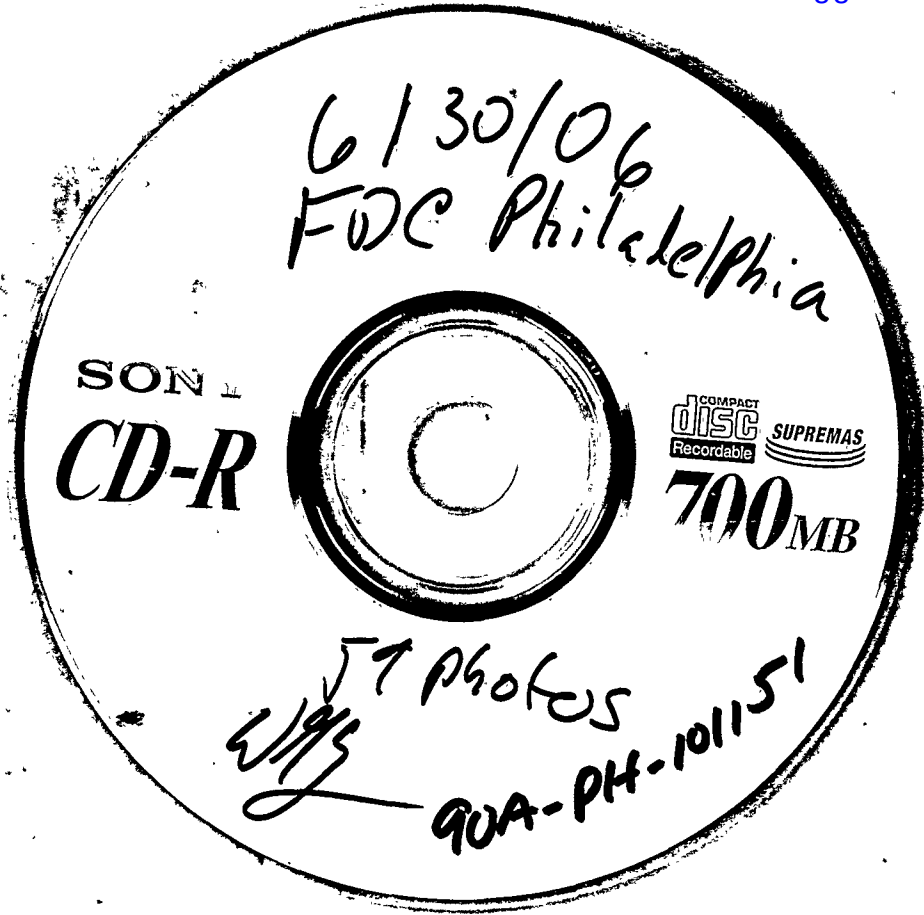
(2) Photo log of CD-ROM

(3) Photos from CD-ROM

**ITEM(S)  
CANNOT  
BE  
SCANNED**

**DESCRIPTION**

CA



6/30/06  
FDC Philadelphia

SONY  
CD-R

COMPACT  
disc  
Recordable SUPREMAS

700MB

57 photos  
WJS  
90A-PH-101151



ROLL# DIGITAL

PHOTOGRAPHIC LOG

PAGE 2 OF 2

GENERAL INFORMATION	CAMERA/FILM INFORMATION
DATE <u>6/30/2006</u>	CAMERA _____
CASE ID <u>90A - PH - 101151</u>	TYPE OF FILM _____
LOCATION <u>FDC - Philadelphia</u>	RATING _____
PREPARER/ASSISTANTS _____	REMARKS _____

PHOTO#	USE OF SCALE	DESCRIPTION OF PHOTOGRAPHIC SUBJECT / MISCELLANEOUS COMMENTS
1	---	
2	---	
3	---	
4	---	
5	---	
6	---	
7	---	
8	---	
39		#3 Blood Spatter
40		#4 Blood Spatter
41		#5 Blood Spatter
42		#6 Blood Spatter
43		Item #7 - Gray T-shirt
44		Overall 1-6 spatters
45		#1 Blood Spatter w/scale
46		#2 " " "
47		#3 " " "
48		#4 " " "
49		#5 " " "
50		#6 " " "
521		Entry door - cell 823N - cell of Steven Northington
522		Sign on 823N Cell window
523		Inmate Identifier - Steven Northington
524		Sang Tieu
525		Jelani Lee
526		Jelani Lee
527		Terry Walker
528		Terry Walker
529		Camacho
30		
31		
32		
33		
34		
35		
36		

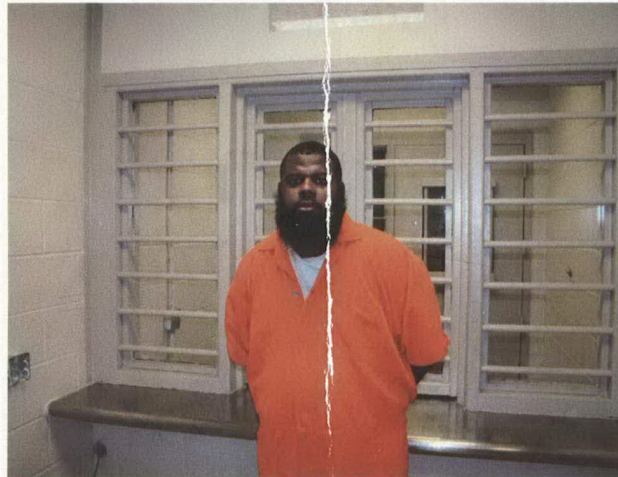
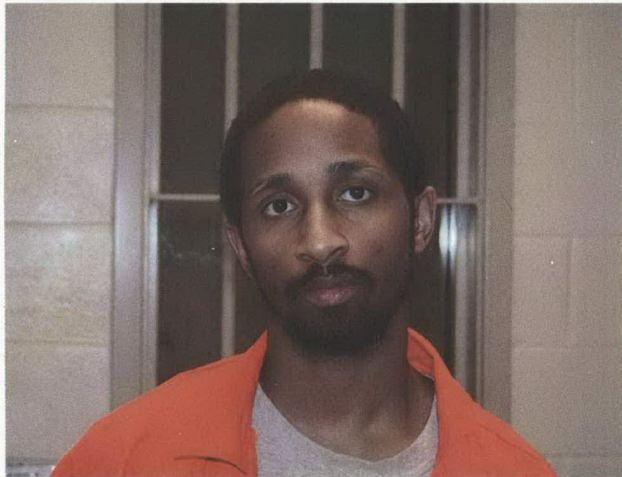
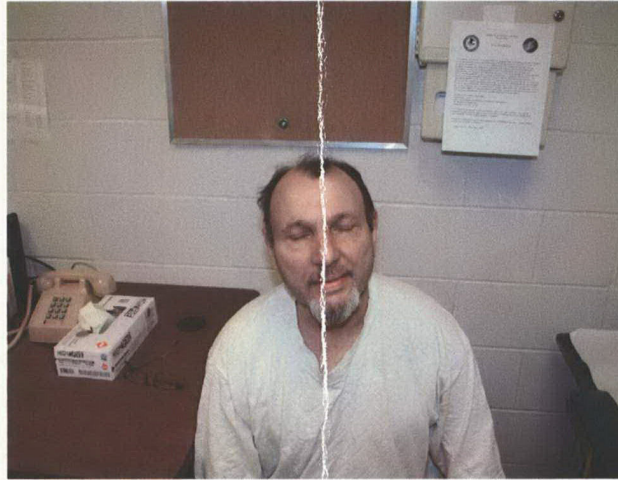
ROLL# DIGITAL

PHOTOGRAPHIC LOG

PAGE \_\_\_\_\_ OF \_\_\_\_\_

GENERAL INFORMATION	CAMERA/FILM INFORMATION
DATE <u>6/30/2006</u>	CAMERA _____
CASE ID <u>90A-PH-101151</u>	TYPE OF FILM _____
LOCATION <u>FDC-Philadelphia</u>	RATING _____
PREPARER/ASSISTANTS _____	REMARKS _____

PHOTO#	USE OF SCALE	DESCRIPTION OF PHOTOGRAPHIC SUBJECT / MISCELLANEOUS COMMENTS
1		Peter Bistran
2		Peter Bistran
3		Peter Bistran
4		" "
5		" "
6		" "
7		Peter Bistran - hands
8		" " "
9		" " "
10		Peter Bistran - (L) arm
11		" " "
12		Steven Northington
13		" "
14		" "
15		Steven Northington - hands
16		Steven Northington - left shoulder - rear
17		" " - hands
18		" " "
19		" " "
20		Steven Northington - rear / left shoulder
21		Steven Northington - hands
22		" " - (L) hand
23		" " "
24		Steven Northington - head
25		" " "
26		Recreation area 834 N door
27		" " " - from hallway
28		" " " - from doorway
29		" " " - " "
30		Recreation area 834 N - from far wall
31		# 2 Blood Spatter - floor
32		# 1 Blood spatter - floor/entry wall
33		# 3 Blood Spatter - entry wall/corner
34		# 4 wall Blood Spatter - entry wall
35		# 5 Blood spatter - entry wall
36		# 6 Blood Spatter - entry wall / down window
37		# 1 Blood Spatter
38		# 2 Blood spatter

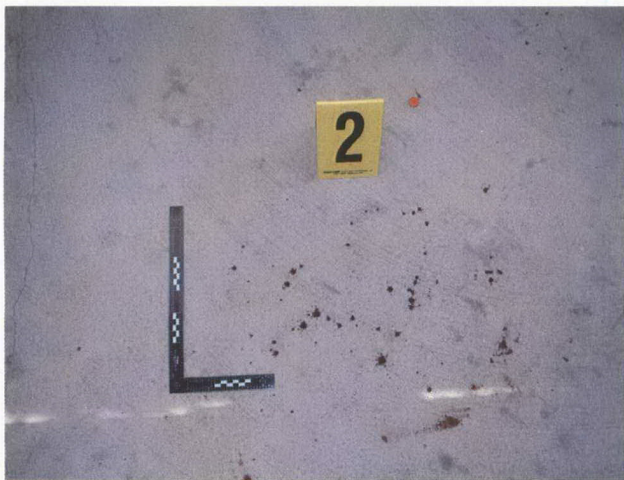


TERRY  
WAFFER

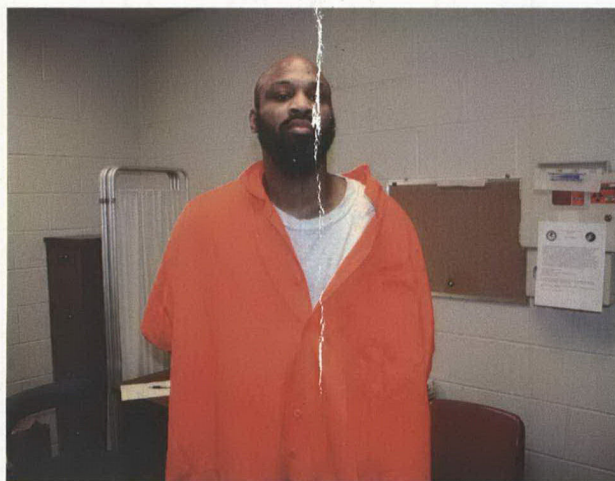
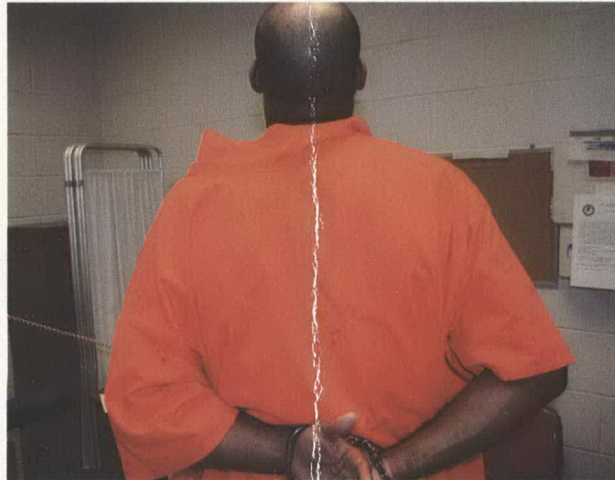
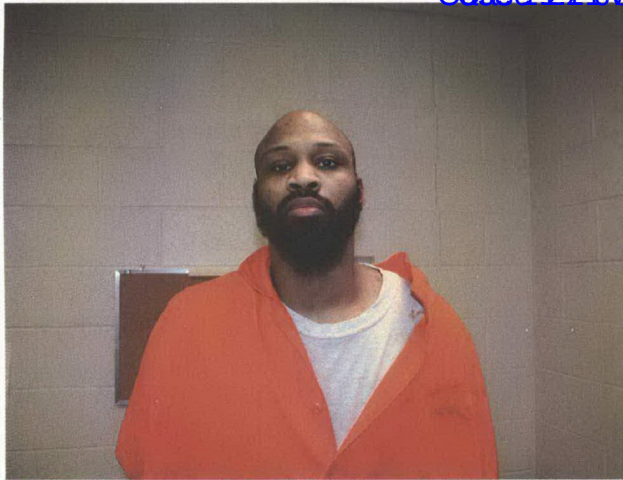
CAMACHO

LEE

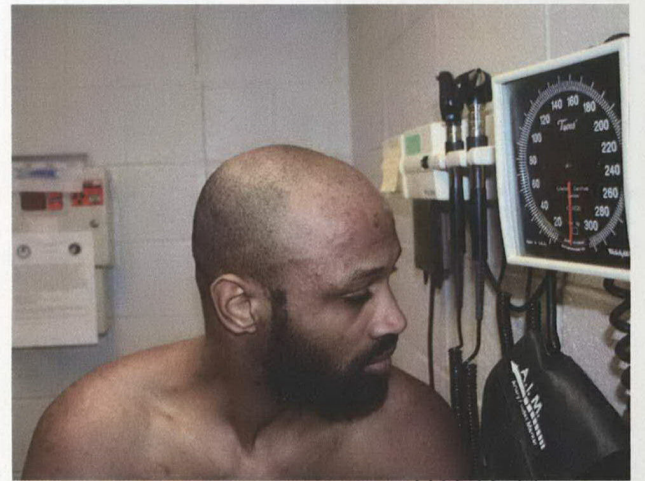
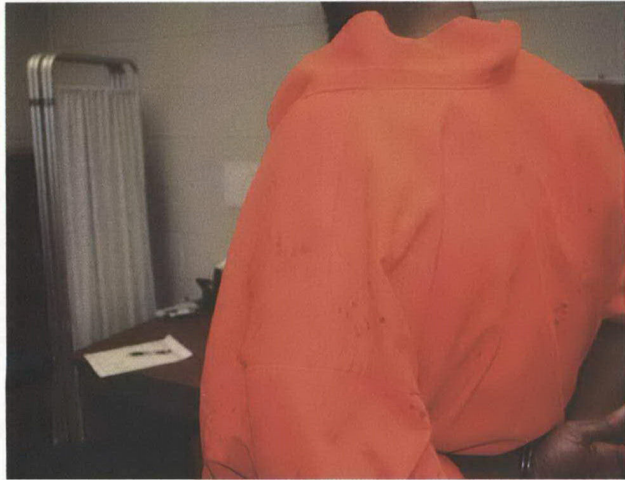




SANG  
TIEU







NORTHINGTON



