



week of April 5, 2004 counsel conducted physical examinations of the evidence at the Birmingham FBI offices. Defense counsel was able to put off their physical examination because the United States previously provided imaged copies of everything they were entitled to under the Federal Rules of Criminal Procedure, which were very generously construed.

The United States went to great effort and expense to provide to defense counsel with imaged, Bates stamped copies of both documentary and physical evidence in a searchable electronic form. The vast majority of material was produced in searchable electronic form in order to expedite defense counsel's review of the material. The imaged copies were turned over serially, as soon as the contractor hired by the United States completed each series, rather than holding imaged copies until the entire production was complete. The United State's computer specialist was made available to defense counsel to assist them in the set up and use of their own computer system.

Disclosures were made primarily between June, 2003 and February, 2004. These disclosures included not only a large number of FBI 302s (memorandum of interview), but also laboratory reports and summaries of expert witnesses. The United States has meet every deadline set out in the Amended Scheduling Order of December 30, 2003. By August, defense counsel will have had almost all of the discovery in the case for more than 6 months and much of it for much longer.

Defense counsel claim that they are unable to file necessary motions and adequately prepare for trial because they haven't received the laboratory experts' bench notes. This

issue is not a grounds for continuance, because in part the defense is responsible for the delay. The defense originally asked for copies of the bench notes in a letter to Assistant United States Attorney William R. Chambers on January 9, 2004. Mr. Chambers responded in a letter, asking that the request be made in the form of a motion. At that time, the United States did not believe the disclosure of bench notes was required in this case. Defendant did not file a motion requesting the bench notes until April 8, 2004. That motion explained why the defendant needed the bench notes. After further consideration, the United States agreed to disclose the notes. Gathering, scanning and Bates- stamping the bench notes is now underway and disclosure should be made within 4 weeks of the date this response is filed.

The defense does have copies of the laboratory examinations and summaries of what the experts will testify about. This material should provide sufficient information for defense counsel to at least file any motions to suppress they deem appropriate. It is very unlikely that the bench notes will provide any information different from the information contained in the laboratory examination reports. This issue is not a grounds for continuance.

## **II. Evidence from Atlanta Bombings**

In their motion for continuance, defense counsel assert that they must review and investigate the evidence surrounding the Atlanta bombings. They state,

“other than the prosecutors’ statements and *the rules of evidence*, there is nothing to prevent the government from attempting to prove that Mr. Rudolph committed all four bombings.”(emphasis added)

The United States does not plan to introduce any evidence regarding the Atlanta bombings in its case-in-chief. That statement is supported by the fact that none of the expert witness summaries produced by the United States mention any of the Atlanta bombings. Additionally, the United States has not filed a notice of intent to introduce any of the Atlanta bombing evidence under Federal Rules of Evidence, Rule 404(b). The United States has stated on numerous occasions, however, that it reserves the right to respond to any issue concerning the Atlanta bombings that is interjected into the case by the defense, subject to the rules of evidence.

The United States does not anticipate introducing evidence from the Atlanta bombings in the punishment phase of the case. This statement is supported by the fact that the death penalty notice filed by the United States makes no mention of the Atlanta bombings as aggravating factors. Again, the United States reserves the right to respond to any issue concerning the Atlanta bombings that the defense interjects in the penalty phase.

Even though the Atlanta bombings are not charged in the present indictment and the evidence relating to them won't be introduced by the United States in either the guilt or penalty phases of the trial, the United States agreed to the defendant's request to produce discovery relating to those bombings. Again, the United States produced the vast majority of that discovery in searchable electronic form. Those disclosures were made primarily between December, 2003 and February, 2004.<sup>2</sup> A small number of supplemental

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<sup>2</sup>Dates and descriptions of Atlanta discovery productions are set out in Attachment A.

productions have followed since. By August, defense counsel will have had almost all of the discovery in the case for more than 6 months and much of it for much longer. The defense has had adequate time to review the Atlanta material.

If the defense is requesting a continuance based upon their belief that the United States is going to introduce evidence of the Atlanta bombings, then they are mistaken. For all the reasons stated above the United States does not intent to introduce such evidence, unless the defense interjects it into the trial. If the defense is requesting a continuance for some other reason related to discovery, then they should be required to make a showing of how the information is material to their defense.

### **III. The Defense Suggests No New Trial Dates**

The motion to reconsider the trial date suggests no new trial date that would be acceptable to the defense. They do not state how much time they will need to adequately prepare their defense. It appears that defense counsel are seeking an indefinite continuance. Defense counsel should provide the Court with a trial date that would satisfy them. They should not be allowed to leave the new trial date open, so that should the Court continue the trial to a future date, the defense can object to the new date.

### **IV. Victim and Witness Considerations.**

While the United States recognizes the defendant's need to adequately review and investigate the evidence against him, this need must be weighed against the needs of the victims and the community to have this case tried in a fair and expeditious manner. The

United States expects to call a substantial number of witnesses at the trial of this case. Each witness has set aside considerable amounts of time in order to be available to testify at the trial. Many of the witnesses will have to travel to Birmingham or to other locations outside the state, in the event of a change of venue. Travel and lodging plans have been and are being made based on the current trial date. Many witnesses have already had to make work, travel, school, and vacation plans around the current trial date.

Any additional delay also impairs the ability of the United States to provide the jury with evidence. The bombing in Birmingham happened more than 6 years ago. At least 3 witnesses who might have been called by the United States have died.

The victims in this case have made special arrangements and plans to attend the entire trial. They have lived with this case for more than six years, primarily because Rudolph was a fugitive for more than 5 years. The trial will afford the victims some much needed closure. They deserve to have the trial brought to a conclusion as quickly as possible.

## **V. Discussion of the Law**

Trial courts have broad discretion on matters of continuances. Only an unreasoning and arbitrary insistence upon expeditiousness in the face of a justifiable request for delay violates the right to assistance of counsel. Morris v. Slappy 461 U.S. 1 (1983); Hays v. Alabama F.3d 1492 (11<sup>th</sup> Cir. 1996). In deciding whether the defense has adequate preparation time the court should consider the following factors: the amount of time available, the likelihood of prejudice, the accused's role in shortening the time period, the

degree of complexity of the case, and the availability of discovery from the prosecution. United States v. Davis, 967 F.2d 516 (11<sup>th</sup> Cir. 1992), *reh'g granted on other grounds*, 30 F.3d 108 (1994). Looking at the factors to be considered, the amount of time between the arraignment and trial is approximately 14 months. That is more than adequate time for the trial of a straight forward case such as this one. The defendant has not demonstrated how he would be prejudiced by an August 2<sup>nd</sup> trial. This case is complex only in the sense that there will be some scientific evidence presented. That evidence will deal with explosives, fingerprints, handwriting, and medical matters (autopsy and physical injury evidence). That type of evidence is fairly common in the practice of criminal law, both in state and federal courts. Experienced trial counsel on the defense team have most likely dealt with this type of evidence many times over their respective careers and this evidence should pose no new challenges for them. Lastly, the United States has been very forth coming with discovery in this case.

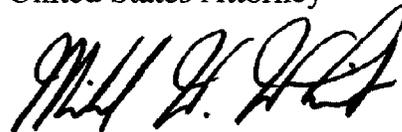
The Court has substantial discretion in granting a continuance on the basis of the return of a superseding indictment. The defendant must show substantial prejudice to demonstrate abuse of that discretion. United States v. Key, 76 F.3d 350 (11<sup>th</sup> Cir. 1996). The defendant has not made a showing of substantial prejudice. There was a superseding indictment in this case, but it made no new factual allegations, merely identified aggravating factors. The superseding indictment was returned on June 26, 2003. It is very unlikely that Rudolph can show any substantial prejudice here.

## **VI. Conclusion**

As of August 2, 2004, the defense team will have had approximately 14 months to prepare for trial. The defense team consists of seven highly qualified lawyers, the majority of whom have extensive criminal law and capital crimes experience. The team also has at its disposal other investigative and paralegal resources supplied by the court. This is a straight forward case about the murder of a police officer and the serious injury to a nurse. While scientific evidence will play an important role in the trial, it will only be one segment of the evidence presented. The United States submits that 14 months is more than adequate time, under the circumstances, for the defense team to prepare for the trial. The United States strongly and vigorously opposes any continuance in this case. However, should this Honorable Court make a determination that the trial must be continued, the United States requests that a such ruling be made as soon as possible. The United States owes a duty to the victims and to the witnesses to give them ample opportunity to make any necessary arrangements to attend the trial, while at the same time maintaining their daily routine with as little inconvenience to them as possible.

Respectfully submitted this 28<sup>th</sup> day of May, 2004.

ALICE H. MARTIN  
United States Attorney



MICHAEL W. WHISONANT  
Assistant United States Attorney

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing has been served on the defendant by mailing a copy of same this date, May 28, 2004, by First Class, United States mail, postage prepaid, to his attorneys of record:

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## Attachment A

### **I. Significant dates related to the Birmingham case.**

- |                   |   |
|-------------------|---|
| January 29, 1998  | A bomb exploded at the New Woman All Women Health Care Clinic in Birmingham Alabama, killing Birmingham Police Officer Robert Sanderson and seriously injuring nurse Emily Lyons. |
| January 30, 1999  | A material witness warrant was issued for Eric Robert Rudolph and Rudolph fled.   |
| November 15, 2000 | Eric Robert Rudolph was indicted.   |
| May 31, 2003      | Eric Robert Rudolph was arrested.   |
| June 6, 2003      | Eric Robert Rudolph was arraigned. Counsel was appointed.   |
| June 26, 2003     | A superceding indictment was returned against Eric Robert Rudolph, which simply added aggravating factors.  |
| November 17, 2003 | Death penalty certification hearing held in Washington, D.C.  |
| December 11, 2003 | United States filed notice of intent to seek the death penalty.   |
| December 12, 2003 | A scheduling order was issued. Trial was set for August 2, 2004.  |
| December 30, 2003 | An amended scheduling order was issued  |

### **II. Significant dates related to Birmingham disclosures.**

- |               |   |
|---------------|---|
| June 6, 2003  | Rule 16 discovery production:<br>A. CD(s) containing images of 15,000+ reports of interviews (FBI 302s) were produced. The FBI 302s were not Bates stamped. Copies were provided to the defense to make early disclosure of information. These same FBI 302s were provided later with Bates stamps. |
| June 12, 2003 | Rule 16 discovery production:<br>CD(s) containing images of FBI 302s which were not Bates stamped were produced. These CDs included replacements for some of the CDs provided on June 6, 2003, which were unreadable.   |

August 18, 2003

Rule 16 discovery production:  
40 loose leaf binders, containing photographs pertaining to the Birmingham crime scene, the search of defendant's residence, truck and storage facility were produced.

November 3, 2003

Rule 16 discovery production:  
A. CD(s) containing images of items/documents provided by or used with witnesses; photographs were produced. Bates Numbers BH-1A-0001 to 0329.

B. CD(s) containing images of bulky evidence; notebooks of cataloged physical evidence were produced. Bates numbers BH-1B-0001 to 20780.

C. CD(s) containing images of grand jury and court-ordered documents were produced. Bates numbers BH-1C-0001 to 1875.

D. CD(s) containing images of a tape log were produced. Bates numbers BH-1D-0001 to 336.

E. CD(s) containing images of interview memos, including statements of the defendant were produced. Bates numbers BH-302-0001 to 46702.

F. CD(s) containing images of BATF laboratory reports were produced. Bates numbers BH-AM-0001 to 6501.

G. CD(s) containing images of complaints, warrants and affidavits were produced. Bates numbers BH-CWA-0001-0186.

H. CD(s) containing images of summary reports and electronic communications were produced. Bates numbers BH-EC-0001 44472.

I. CD(s) containing images of FBI laboratory reports were produced. Bates numbers FBL-0001-0231.

J. CD(s) containing images of memorandums of non-testimonial agent action were produced. Bates BH-IN-0001 to 18275.

K. CD(s) containing images of miscellaneous documents were produced. Bates numbers BH - MIS-0001 to 1015.

L. CD(s) containing images of other law enforcement reports

concerning the investigation into the Birmingham bombing were produced. Bates numbers BH-OLE-0001 to 0260.

M. CD(s) containing images of FBI lead sheets were produced. Bates numbers BH-RS-0001 to 9317.

N. CD(s) containing images of FBI files organized by persons of interest were produced. Bates numbers BH-SUS-0001 to 3548.

January 30, 2004

Rule 16 discovery production:

A. Cassette tapes, video tapes and tape logs were produced. Bates numbers BH-1A-0331 to 0378 and 20781 to 20869.

B. Cassette tapes and/or video tapes were produced. Bates numbers BH-1D-0337 to 0339 and 0341 to 471 and 0473 to 0487.

February 17, 2004

Rule 16 discovery production:

A. Video tapes of surveillance/security cameras from Highland Avenue Texaco Station were produced. Bates numbers BH-1B-20870 to 20895.

B. Audio cassette tape of a consensual recording was produced. Bates number BH-1B-340.

C. Audio cassette tape of a recorded meeting was produced. Bates number BH-1B-472.

February 20, 2004

Rule 16 discovery production:

A. CD(s) containing images of items/documents provided by or used with witnesses and photographs were produced. Bates number BH-1A-0330.

B. CD(s) containing images of interview memorandums were produced. Bates number BH-302-46703 to 46763.

C. CD(s) containing images of photographs made by an BATF expert were produced. Bates numbers BH-ABL-0460 to 1480.

D. CD(s) containing images of BATF laboratory reports were produced. Bates numbers BH-ABL-1481-3055.

E. CD(s) containing images of BATF lead sheets were produced. Bates numbers BH-AM-0001 to 6501.

F. CD(s) containing images of complaints, warrants and affidavits

were produced. Bates numbers BH-CWA-0187 to 0250.

G. CD(s) containing images of summary reports and electronic communications were produced. Bates numbers BH-EC-44473 to 45060.

H. CD(s) containing images pertaining to outside experts were produced. Bates numbers BH-EXP-0001 to 0339.

I. CD(s) containing images of photographs made by medical expert were produced. Bates numbers BH-EXP-0340-0402.

J. CD(s) containing images of FBI laboratory reports were produced. Bates numbers BH-FBL-0232 to 0234.

K. CD(s) containing images of miscellaneous documents were produced. Bates numbers BH-MIS-1016 to 1096.

March 2, 2004      Defense counsel examined evidence at the BATF laboratory in Atlanta, Georgia.

April 5-15, 2004      Defense counsel examined 1A files and physical evidence located at the FBI office in Birmingham

### **III. Significant dates related Atlanta disclosures:**

December 1, 2003      Discovery production:

- A. CD(s) containing images of documents pertaining to the requests to conduct electronic surveillance were produced. Bates numbers AT-1D-0001 to 0118.
- B. An audio cassette tape and video cassette were produced. Bates number AT-1D-119 to 120.
- C. CD(s) containing images of FBI and BATF laboratory reports were produced. Bates numbers AT-LAB-0001 to 2980.
- D. CD(s) containing images of materials related to sketches were produced. Bates numbers AT-SKE-0001 to 2087.
- E. CD(s) containing images of FBI files organized by persons of interest were produced. Bates numbers AT-SUS-0001 to 35173.

December 29, 2003  
& January 14, 2004      Discovery production:

- A. CD(s) containing images of items and documents provided by or used with witnesses and photographs were produced. Bates numbers AT-1A-0001 to 30373.
- B. CD(s) containing images of bulky evidence; notebooks of cataloged physical evidence were produced. Bates numbers AT-1B-0001 to 20605.
- C. CD(s) containing images of interview memoranda were produced. Bates numbers AT-302-0001 to 102811.
- D. CD(s) containing images of complaints, warrants and affidavits were produced. Bates numbers AT-CWA-0001 to 311.
- E. CD(s) containing images of interview memoranda and reports pertaining to defendant were produced. Bates numbers AT-ERR-0001 to 15317.
- F. CD(s) containing images of memoranda of non-testimonial agent action were produced. Bates numbers AT-IN-0001 to 6320.
- G. CD(s) containing images of National Response Team Reports were produced. Bates numbers AT-NRT-0001 to 0176.
- H. CD(s) containing images of Technical Analysis Group reports were produced. Bates numbers AT-TAG-0001 to 18276.
- I. CD(s) containing images of summary reports and electronic communications were produced. Bates numbers AT-EC-0001 to 32095.
- J. CD(s) containing images of FBI lead sheets were produced. Bates numbers AT-RS-0001 to 31329.

January 30, 2004

Discovery production:

- A. CD(s) containing images of items and documents provided by or used with witnesses, photographs and inventory were produced. Bates numbers AT-1A-30374 to 30988.
- B. CD(s) containing images of bulky evidence; notebooks of cataloged physical evidence were produced. Bates numbers AT-1B-20606 to 22463.
- C. CD(s) containing images of inventory of Grand Jury and Court ordered documents were produced. Bates numbers AT-1C-0001 to 0019.

D. CD(s) containing images and hard copies of inventories of electronic recordings submitted by members of the public and the media concerning the Atlanta bombings were produced. Bates numbers AT-1D-2074 to 2175.

E. CD(s) containing images of interview memoranda were produced. AT-302-102812 to 103192.

F. CD(s) containing images of BATF lead sheets were produced. AT-AM-0001 to 18482.

G. CD(s) containing images of summary reports and electronic communications were produced. Bates numbers AT-EC-32096 to 32125.

H. CD(s) containing images of interview memoranda and reports pertaining to defendant were produced. Bates numbers AT-ERR-15318 to 17461.

I. CD(s) containing images of reports and memoranda prepared by experts were produced. Bates numbers AT-EXP-0001 to 0287.

J. CD(s) containing images of miscellaneous documents were produced. Bates numbers AT-MIS-0001 to 16370.

K. CD(s) containing images FBI lead sheets were produced. Bates numbers AT-RS-31330 to 32817.

L. CD(s) containing images of FBI files organized by persons of interest were produced. Bates numbers AT-SUS-35174 to 35768.

February 2, 2004

Discovery production:

A. Electronic recordings were produced (tapes submitted by members of the public and the media concerning the Atlanta bombings). Bates numbers AT-1D-2058 to 2073 and 2176 to 2177.

February 27, 2004

Discovery production:

A. Electronic recordings were produced. Bates numbers AT-1B-22464 to 22473.

B. Copies of photographs of cataloged physical evidence were produced. Bates numbers AT-1B-22474 to 22501.

C. CD(s) containing images of inventory records of cataloged

physical evidence were produced. Bates numbers AT-1B-22502 to 22548.

D. CD(s) containing images of miscellaneous documents were produced. Bates numbers AT-MIS-16371 to 17064.

May 11, 2004

Discovery production:

A. CD(s) containing images of information pertaining to the chain-of-custody for all campsites and the Atlanta bombing evidence were produced. Bates numbers AT-COC-0001 to 2760.

B. CD(s) containing images of previously classified interview memoranda were produced. Bates numbers AT-CLS-0001 to 0362.

May 12, 2004

Discovery production:

A. CD(s) containing images of summary reports and electronic communications were produced. Bates numbers AT-EC-32126 to 32190.

B. CD(s) containing images of items/documents provided by or used with witnesses and photographs were produced. Bates numbers AT-1A-30989 to 31818.

C. Enhanced images of Centennial Olympic Park were produced. Bates numbers AT-1A-31819 to 31821.

D. Cassette tape of 911 calls made around time of the Olympic Park bombing and two video cassettes were produced. Bates numbers AT-1B-22554 to 22557.

E. CD(s) containing images of inventory records of cataloged physical evidence were produced. Bates numbers AT-1B-22558 to 22698.

F. Photographs of Murphy, N.C. sites taken between 6/01/03 and 6/03/03 were produced. Bates numbers AT-1B-22699 to 22710.

G. Photographic enhancements were produced. Bates numbers AT-1C-0022 to 0088.

H. Image enhancements made to videotapes were produced. Bates numbers AT-1C-0089 to 0095.

I. CD(s) of image enhancements were produced. Bates numbers

AT-1C-0096 to 0103.

J. CD(s) containing images of documents pertaining to the requests to conduct electronic surveillance were produced. Bates numbers AT-1D-0001 to 0118.

K. CD(s) containing images of inventory of electronic recordings submitted by members of the public were produced. Bates numbers AT-1D-2178 to 2179.

L. CD(s) containing images of interview memoranda were produced. Bates numbers AT-302-103193 to 103262.

M. CD(s) containing images of previously classified interview memoranda were produced. Bates numbers AT-CLS-0363 to 0367.

N. CD(s) containing images of memoranda of non-testimonial agent action were produced. Bates numbers AT-IN-6321 to 6323.

O. CD(s) containing images of additional FBI and/or BATF laboratory reports were produced. Bates numbers AT-LAB-2981 to 3022.

P. CD(s) containing images of miscellaneous documents were produced. Bates numbers AT-MIS-17065 to 17754.

Q. CD(s) containing images of interview memoranda and reports pertaining to defendant were produced. Bates numbers AT-ERR-17462 to 17613.

R. CD(s) containing images of FBI files organized by persons of interest were produced. Bates numbers AT-SUS-35769 to 35772.

May 21, 2004

Discovery production:

A. CD(s) containing images of BATF chain-of-custody documents for physical evidence collected in connection with the investigations of the Atlanta bombings were produced. Bates numbers AT-COC-2761 to 3930.

May 6-7 , 2004

Defense counsel examine physical evidence located at an FBI storage facility located in Virginia. That evidence related to Atlanta crime scenes and defendant's camp sites.