

DATE: 01-26-2012
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REASON: 1.4 (c,d)
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ESPIONAGE

"A - Z"

12/10/09

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ESPIONAGE

"A-Z"

(December 14-18, 2009)

Monday 12/14

8:00am - 12:00pm

Elements of the Crime
Satisfying the Elements of the Crime

1:00pm - 5:00pm



Case Presentation

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Tuesday 12/15

8:00am - 5:00pm

Building an Espionage Case "A-Z"



Case Presentation

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(S)

Wednesday 12/16

8:00am - 12:00pm



1:00pm - 5:00pm

Statement Analysis



Case Presentation

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Thursday 12/17

8:00am - 12:00pm



1:00pm - 5:00pm

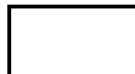


Case Presentation

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Friday 12/18

8:00am - 10:00pm



(FBIHQ) Presentation

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Helpful Hints

(Rules)

1) We are on the Quantico Marine Base: their rules apply (creds don't work)

- a. obey the speed limit (46mph in a 45mph zone gets you a ticket)
- b. seatbelts are required
- c. no cell phone use while driving...pull over if you must talk
- d. be careful of deer...they will dart out and ruin your day

2) CITC Space

- a. classified materials in classroom only, not in dorm rooms
- b. please leave cell phones/pagers, etc, in dorm room or on plastic chair in lobby
- c. red trash cans are for classified trash only
- d. books and tapes are for your use while here...please do not take them with you
- e. men's and women's restrooms are on the second floor (main lobby) in the hall towards the dorm rooms
- f. smoking is allowed on the second floor deck...no smoking is allowed in the Academy
- g. [] are available in the CITC office space
- h. computer access is in the CBT classroom...internet computers are in the library...do not try to hook laptops up to your dorm room phone line
- i. your badge will allow you access to the CITC space
- j. DO NOT discuss classified information outside the CITC space

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3) Academy Rules

- a. amenities: library (open 24/7); dining hall; board room; main side PX (w/student ID)
- b. no alcohol outside the boardroom
- []
- d. no smoking inside the Academy
- e. display Academy badge at all times
- f. dress code: business casual, no blue jeans, shorts, sandals, halter tops, etc
- g. gym attire ok if going directly from room to gym (men's locker room is closed)
- h. linen exchange is just past the gun cleaning room on the left
- i. please be courteous to the FBI police and follow their directions

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4) Friday Departure

- a. please vacate your room by 7:45am and do not return; prop the door open (cleaning)
- b. you may use the restrooms in the hallway
- c. you may put your luggage in your vehicle or the CITC lobby area
- d. please strip your bed and put the sheets, pillow case and towels in the bin by the elevator outside the CITC space on the third floor

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[Redacted]

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(as of 12/01/2009)

Robert Anderson, Jr.. Section Chief

FBIHQ Room 4825; 202-324-4552

[Redacted]

Assistant Section Chief

FBIHQ Room 4825; [Redacted]

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(U) ~~(S)~~ Mission.

To establish a strong interactive relationship with each field office working espionage investigations and provide them with strategic direction and operational guidance in order to prevent the loss or compromise of classified or sensitive information related to National Security, National Defense, or Critical Infrastructure of the United States.

(U) ~~(S)~~ Priorities

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[Redacted]

~~(S)~~ Section Structure

[Redacted] is currently organized [Redacted] which deals with specific espionage threats and concerns:

- (S) 1) [Redacted]
(S) 2) [Redacted]
3) [Redacted]
4) [Redacted]
5) [Redacted]

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Elements

Title 18, U.S.C. § 794

Gathering or delivering defense information to aid foreign government

- (a) Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by death or by imprisonment for any term of years or for life, except that the sentence of death shall not be imposed unless the jury or, if there is no jury, the court, further finds that the offense resulted in the identification by a foreign power (as defined in section 101(a) of the Foreign Intelligence Surveillance Act of 1978) of an individual acting as an agent of the United States and consequently in the death of that individual, or directly concerned nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large-scale attack; war plans; communications intelligence or cryptographic information; or any other major weapons system or major element of defense strategy.
- (b) Whoever, in time of war, with intent that the same shall be communicated to the enemy, collects, records, publishes, or communicates, or attempts to elicit any information with respect to the movement, numbers, description, condition, or disposition of any of the Armed Forces, ships, aircraft, or war materials of the United States, or with respect to the plans or conduct, or supposed plans or conduct of any naval or military operations, or with respect to any works or measures undertaken for or connected with, or intended for the fortification or defense of any place, or any other information relating to the public defense, which might be useful to the enemy, shall be punished by death or by imprisonment for any term of years or for life.
- (c) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy.
- (d)
- (1) Any person convicted of a violation of this section shall forfeit to the United States irrespective of any provision of State law—
- (A) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation, and
- (B) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation.
- For the purposes of this subsection, the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.
- (2) The court, in imposing sentence on a defendant for a conviction of a violation of this section, shall order that the defendant forfeit to the United States all property described in paragraph (1) of this subsection.
- (3) The provisions of subsections (b), (c) and (e) through (p) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853 (b), (c), and (e)–(p)) shall apply to—
- (A) property subject to forfeiture under this subsection;
- (B) any seizure or disposition of such property; and
- (C) any administrative or judicial proceeding in relation to such property, if not inconsistent with this subsection.
- (4) Notwithstanding section 524 (c) of title 28, there shall be deposited in the Crime Victims Fund in the Treasury all amounts from the forfeiture of property under this subsection remaining after the payment of expenses for forfeiture and sale authorized by law.

Title 18, U.S.C. – 794 (a)

Whoever with intent or reason to believe that it is to be used to the injury of the United States or advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate...to any foreign government or to any faction, or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document...or information relating to the national defense...

Elements of the Espionage Statute

- 1) Transmittal...of
- 2) National defense information...to
- 3) A foreign nation or agent of a foreign nation...with
- 4) Intent to harm the U.S. or aid a foreign nation

Title 18, U.S.C. – 794(a)

WHOEVER

Anyone, anywhere

WITH INTENT

Mental element, not just physical act

Must prove that it is knowing conduct and a higher mental element (conscious purpose)

Mental state ordinarily cannot be proven by direct evidence

All facts and circumstances in evidence which indicate state of mind will be considered

A persons actions speak to their intent (court rulings)

OR REASON TO BELIEVE (“or” = either, not both)

“Reason to believe” means that an ordinary person knowing the facts would have concluded, or should have concluded, that the information provided could be used for one of two specific reasons (see next paragraph)

THAT IT IS TO BE USED

Not “has been” or “was used” but “could be used” by any nation

TO THE INJURY OF THE UNITED STATES

Proof of injury (actual damage is not required)

OR ADVANTAGE OF A FOREIGN NATION

By any nation; proof of value (statistical advantage) is not required

COMMUNICATES, DELIVERS, TRANSMITS...OR ATTEMPTS

The physical act; attempted espionage is also covered

TO ANY FOREIGN GOVERNMENT OR FACTION, PARTY, MILITARY OR NAVAL FORCE WITHIN A FOREIGN COUNTRY WHETHER RECOGNIZED OR UNRECOGNIZED

Knowledge that information is going to a specific foreign nation must be proven from a legal, criminal law perspective

OR TO ANY REPRESENTATIVE, OFFICER, AGENT, EMPLOYEE, SUBJECT OR CITIZEN THEREOF

The transmitter/recipient must be shown as acting on behalf of the foreign government

EITHER DIRECTLY OR INDIRECTLY

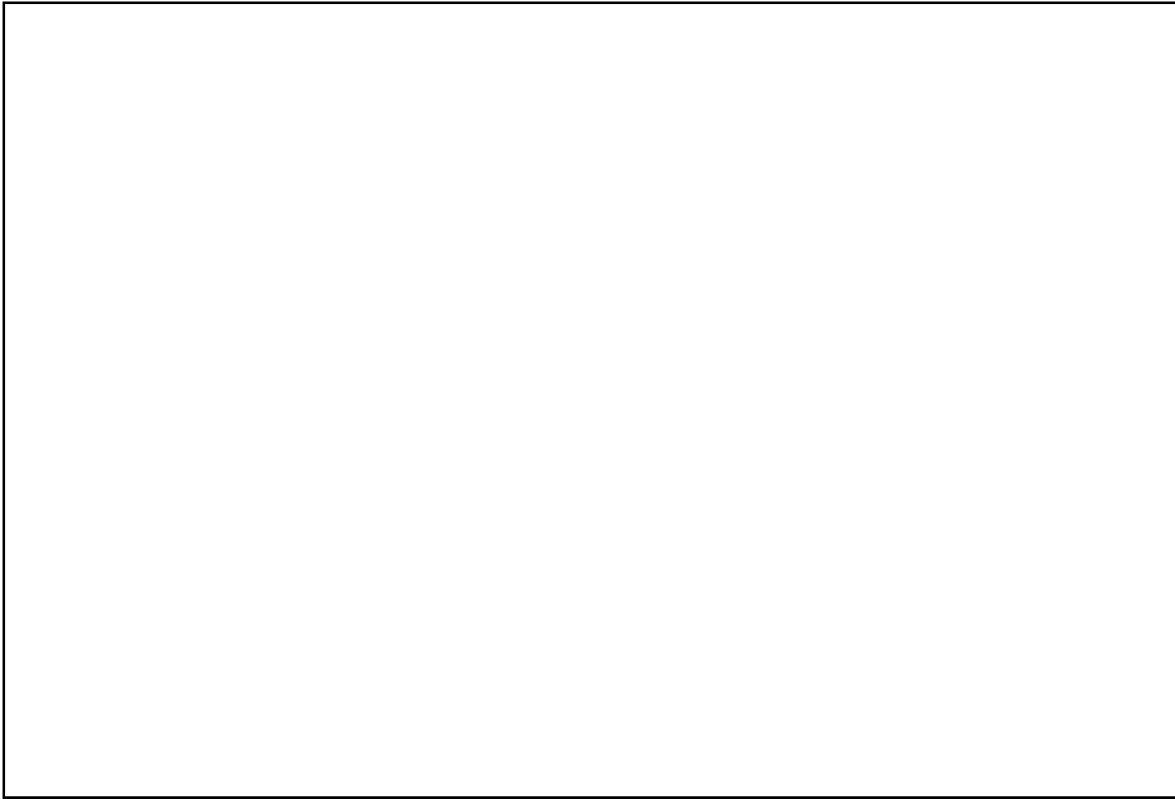
One who acts either directly or indirectly for the benefit of a foreign government is an “agent or representative of a foreign government” within the meaning of the statute

INFORMATION RELATING TO THE NATIONAL DEFENSE

National Defense Information – a generic concept of broad connotation. The information need only be directly and reasonably related to the defense of our nation. It is not necessary that the information be vitally important

ESPIONAGE

ELEMENTS OF THE CRIME "CLOSING THE GAPS"



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Title 50, U.S.C. – 783

783(b) Communication of classified information by Government officer or employee

It shall be unlawful for any officer or employee of the United States or of any department or agency thereof, or of any corporation the stock of which is owned in whole or in major part by the United States or any department or agency thereof, to communicate in any manner or by any means, to any other person whom such officer or employee knows or has reason to believe to be an agent or representative of any foreign government or an officer or member of any Communist organization as defined in paragraph (5) of section 782 of this title, any information of a kind which shall have been classified by the President (or by the head of any such department, agency, or corporation with the approval of the President) as affecting the security of the United States, knowing or having reason to know that such information has been so classified, unless such officer or employee shall have been specifically authorized by the President, or by the head of the department, agency, or corporation by which this officer or employee is employed, to make such disclosure of such information.

What It Means

IT SHALL BE UNLAWFUL FOR ANY OFFICER OR EMPLOYEE OF THE U.S. OR OF ANY DEPARTMENT OR AGENCY THEREOF...

Applies only to U.S. Government employees.

TO COMMUNICATE IN ANY MANNER OR BY ANY MEANS...

The law prohibits the knowing transmittal per se.

ANY INFORMATION OF A KIND CLASSIFIED BY THE PRESIDENT (OR BY THE HEAD OF ANY U.S. DEPARTMENT, AGENCY...) AS AFFECTING THE SECURITY OF THE UNITED STATES...

The individual communicating the information must know it to be classified. Classified information in the meaning of the Statute means at the time of the communication, the information was for reasons of national security, specifically designated by a U.S. Government Agency, and person authorized to do so, for limited or restricted dissemination or distribution. National security information includes certain protected/restricted information concerning the national defense, foreign relations and a variety of other areas.

UNLESS SPECIFIC AUTHORIZATION FOR SUCH COMMUNICATION SHALL FIRST HAVE BEEN OBTAINED FROM THE HEAD OF THE DEPARTMENT, AGENCY...HAVING CUSTODY OF OR CONTROL OVER SUCH INFORMATION.

The communication of the information has not been specifically authorized and the person receiving is not authorized to receive it.

TO ANY OTHER PERSON WHOM SUCH OFFICER OR EMPLOYEE KNOWS OR HAS REASON TO BELIEVE TO BE AN AGENT OR REPRESENTATIVE OF ANY FOREIGN GOVERNMENT...

Must prove the person communicating the information knows or has reason to believe the recipient is an agent or representative of a foreign nation and acting on that nation's behalf.

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ESPIONAGE INVESTIGATION

Investigation, data base checks & leads to consider

Note - this list is not all inclusive

Preliminary & Full Investigations

ACS

General Indices (WFO card files)

Confidential Indices

Elsur Indices

[Redacted]

DMV check for auto information

NCIC, WALES, NLETS

*see data base check list for additional databases to considering checking

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[Redacted]

Internet sites - residential addresses and telephone #s

Public Library resources

[Redacted]

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Lexus-Nexus

Savannah (FD-809a), Pocatello, or Butte (FD-809) records checks

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[Redacted]

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Military Records - St. Louis Federal Records Center

Former Federal Employees - St. Louis

Current Federal Employees - US Govt. Agency or Boyer, PA

Local Police Checks - DC, PG County, Park Police, etc.....

Professional Organizations

[Redacted]

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WFO

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[Redacted]

(S)

Trash Cover

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(S) [redacted] ther US Govt. Agencies in many cases records checks:

Name check

review personnel file

review "soft" personnel file

review security files

review polygraph files

identifv any other types of "files" or records which pertain to subject

(S) [redacted]
review medical file (usually only by designated FBI specialist)
review special activities files
determine any alias identities of subject
review travel vouchers, travel funds advances

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(S) [redacted]
obtain financial disclosure statements
determine where checks are deposited
Sick and Annual leave records
badge records - ins/outs
badge photo (include dated photos)
determine if they have an assigned parking place or how they get to work

(S) [redacted] US Govt employment of other family members

(S) [redacted] *[SPIN is the name of the search. It can provide
copies of documents written by or to subject. SPINs are conducted with 'parameters'
which narrow the field of information to the needs of your case]*

Identify co-workers, friends, associates, neighbors, etc.... for possible future interview.

Vehicle identification information

Descriptive data from records or surveillance

CCTV

Computer audits

(S) *[Full investigations: consider audit subject's usage of [redacted] and
other classified systems. [redacted] 'SPIN' searches.]*

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[redacted]
Normally does not need renewed, especially on a PI.. In 120-days will cover a full billing cycle
so you will be able to determine financial institutions, credit card companies being used by
subject, phone services, etc. [redacted]

(many of these records are retained for limited time frame, therefore, request ASAP)

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Physical Surveillance -

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Full Investigations:

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OTHER ISSUES:

Chronologies of investigation; administrative activities, other...

Evidence submission

FD-302s copies (5) All interviews in 65 cases should be written as 302s

Subfiles - list

Briefing acknowledgment forms (**bigot list**)

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PERSONNEL TASKING:-

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- Liaison with other agency (subject employer?) (badges, badge swipes, floor plans, commo, records, personnel records, security records, telephone records, assets)
- Covert entries of office (operational plan/approval [redacted])
- Covert entries of residence (operational plan/approval [redacted])
- Covert entry of vehicle(s) (operational plan/approval, acquisition of similar vehicle, [redacted])

- Corroboration of Source Information
- Select interviews of co-workers
- Telephone records (residential, cell, beeper - add to chrono)

Trash Cover - renewal and chronology

Mail Cover [redacted]

Laboratory Coordination if necessary

- HQ approval to interview 65 subject, to include protect

Coordination with other squads and Field Offices

(travel [redacted] etc..)

Administrative (coordinate with FBIHQ, Legats, budget, equipment, supplies, space, undercover

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proposal, bigot list, ACS, review FD-302 for leads and quality control)

Other investigative options:

Identify/locate documents to which subject had access

Document/corroborate method subject volunteered

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Handwriting samples - original communications drafted by subject, etc...

DNA samples

Fingerprints

Case budget

Legal issues - ELSUR, fisa, leases, purchases, court documents, forfeiture, searches of mail, property, DOJ coordination

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Sensitive sources tasking - FBIHQ ☐ etc...

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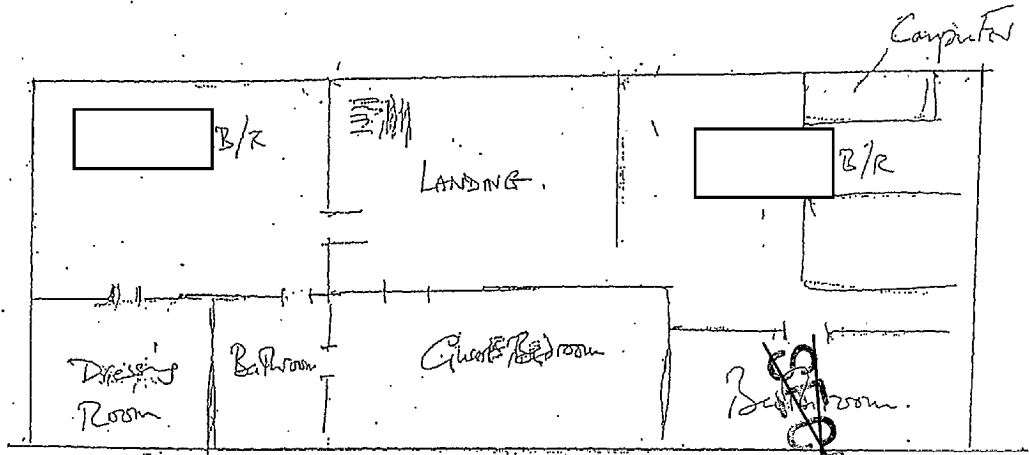
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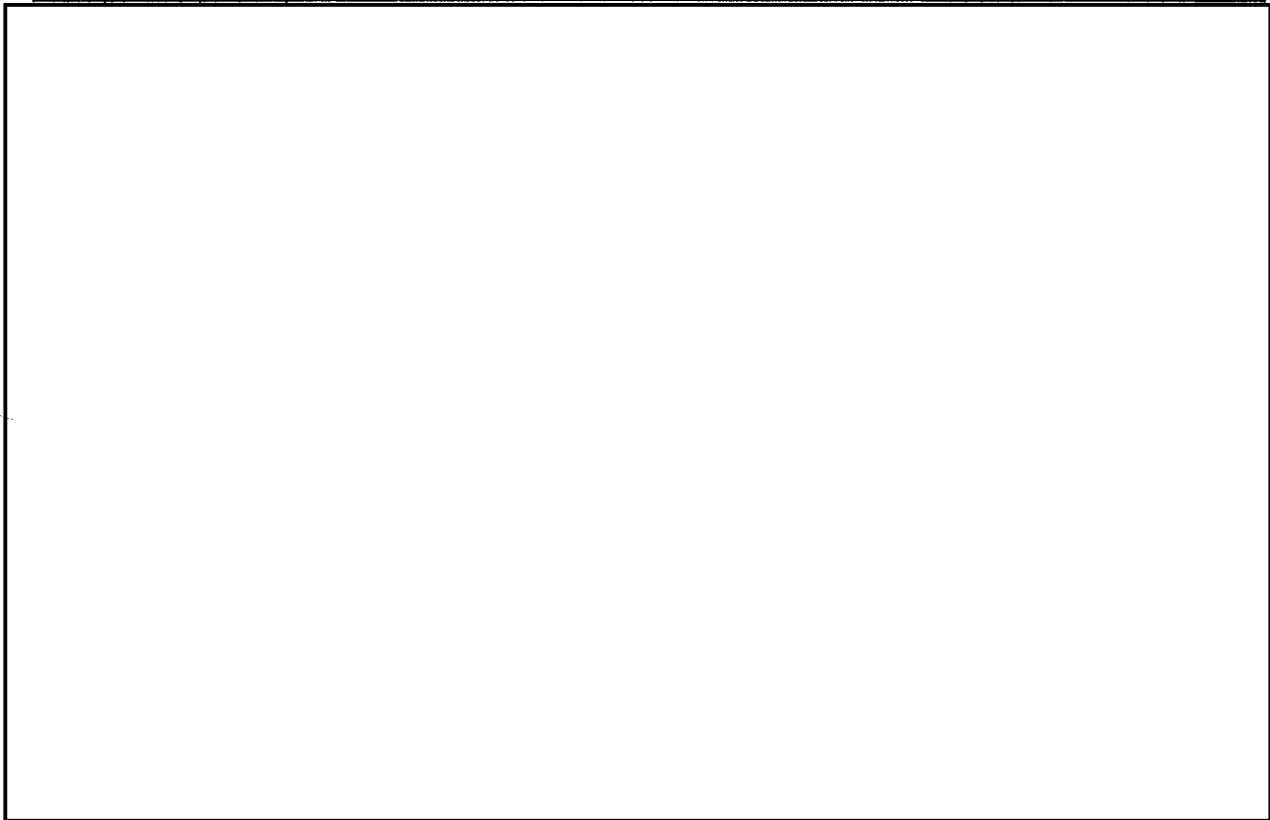
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Investigative Responsibility



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* Superseded by 28 USC §433 if the subject is "employed by or assigned to a U.S. diplomatic mission abroad." This statute requires that the FBI supervise all espionage investigations involving U.S. diplomatic missions abroad.

Note: The MOU may be superseded by 50 USC §402a, granting jurisdiction to the FBI with respect to all persons except persons subject to the UCMJ. This statute requires, *inter alia*, all Executive Branch departments and agencies to report espionage leads to the FBI.

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Section 20-17: (U) Damage Assessments

A. (U) The NFIPM Glossary (No. 63) defines Damage Assessment as:

"An evaluation of a compromise in terms of lost intelligence information, sources, and/or methods, which may describe and/or recommend measures to minimize damage and to prevent future compromises."

(U) The National Counterintelligence Executive's CI defines Damage Assessment as:

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"Systematic analysis that determines the impact of a compromise of classified information on the National Security of the United States."



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F. (U) Agencies affected by espionage or unauthorized disclosures should be cautioned not to prematurely conduct or document assessments of damage caused by compromises or disclosures that are under investigation.

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TESTIMONIAL CONSIDERATIONS

(Prepared by SA)

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Law enforcement officers are typically the star witnesses for the government in a criminal trial. As such, aggressive defensive counsel will typically subject law enforcement officers through withering cross examinations designed to diminish their credibility in the eye of the jury. To do this, defense counsel will accuse, exploit seemingly irrelevant details, bait, raise their voice, huff, scoff, squint, roll their eyes, approach and crowd the witness, demand yes/no answers, wave exhibits around, pose compound or hypothetical questions, interrupt and cut off answers to questions, and generally look to anger, confuse, tire, or humiliate the witness.

The law enforcement officer should also contemplate the atmospherics of a trial. The majesty of the courtroom. The looming and all powerful judge. The solemn taking of the oath. The restrictive confines of the witness box. Speaking into a microphone and hearing your voice oddly amplified by its tinny speakers. The court reporter typing every word you say. The attentive glare of listening jurors. The presence of the defendant. The crowded gallery. The sometimes melodramatic movements of defense counsel. The conspicuous presence of the media. Persons entering and exiting the courtroom. Reactions from the defendant or their counsel, family, or friends to testimony demonstrating their guilt. Giving extended testimony before being accorded a break. Interrupting objections from defense counsel, or the absence of objections from the government when the law enforcement officer is being cross examined and wants help. Periodic instructions from the judge. All of these events and more -- the atmospherics of trial -- can conspire to distract an unprepared witness.

Of course, pre-trial preparation is important. Review all the appropriate 302s and evidentiary material relating to your testimony. Defense counsel will often exploit indecision on even trivial facts. Excessive equivocation will diminish jurors' impression of the law enforcement officer. Interact with other agents who have testified. Consult with your CDC, particularly if you are concerned about some legal issues surrounding your testimony. Set up a moot court session or structured role playing, especially when testifying in a prominent case. The heat and light of cross examination is difficult to prepare for without such preparation.

Earnest and confident, poised and helpful, likeable and professional, these are the characteristics that make a law enforcement officer into an effective witness. An introduction to some of the testimonial considerations that will produce effective testimony follows:

1. Meet with the AUSA before you testify. We are a team with the AUSAs. To make the team work, we must know each other's expectations, and reach a comfort level with each other about what is expected to occur at trial. Do not wait for others to arrange it -- reach out to the AUSA yourself and request a meeting, because when you are on the stand it is your reputation for professionalism that is on the line. Make sure you understand exactly what areas the AUSA will cover with you at trial. Make sure the AUSA is aware of the important information you hold so that information is not inadvertently omitted from trial. A meeting assures that the AUSA knows everything that you know and can properly plan to ask you about it at trial. Lastly, if practicable, surveil the actual courtroom you will be testifying in so that you are familiar with your surroundings and know where to go when you are called as a witness.

2. Be earnest. In most jurisdictions, jurors respect law enforcement officers, none more so than FBI agents. Effecting an earnest air only enhances our credibility with jurors, promoting a "just the facts" credo that makes the testimony objectively credible and without prejudice. When defense counsel gets mad and makes some points, be earnest. When the questions drone on, and the government does not object to badgering or inappropriate questions, be earnest. When the judge admonishes you, be earnest.

Practically, this means maintaining a steady, helpful tone of voice. Maintain good eye contact with counsel and, during your answer, with jurors. Listen attentively to the entirety of the lawyers' questions. Be polite to everyone in court. For the prepared agent, being earnest is the most important characteristic to successful testimony.

3. Be deferential and polite to counsel and the judge. When the judge or counsel start to talk, stop what you are saying and then respond. Crosstalk and raising one's voice only detracts from a professional presentation. If you are cut off, trust the AUSA to object or to get your full answer out on re-direct examination. Being polite, deferential, and earnest will help the credibility of the agent with jurors. Avoid being argumentative for it may offend jurors and the judge. Be strong, be confident, and endeavor to answer fully, but always do so in a way that is deferential and polite to the judge and counsel.

4. Take short pauses before answering questions. A short pause before answering allows you to gather your thoughts before answering. The extra moment helps the witness marshal all the important information. The short pause promotes answers with an economy of words that are not rambling. Consistent use of the short pause, on direct and cross examination, will help to take some of the fire out of machine gun cross examination questions.

5. Avoid shows of anger or frustration when testifying. Often defense counsel will attempt merely to anger or frustrate the agent. This diminishes the credibility of the agent in the eyes of the jurors. It tends to make the agent seem like a partisan with an agenda, instead of an objective investigator. Trust the AUSA to protect or rehabilitate you on re-direct examination. No matter what happens, save any anger or frustration for outside the courtroom.

6. Be professional. Of course we are all professional in our conduct as agents, but professionalism in trial turns on small matters and requires projecting a confident air from the moment you enter the courtroom. When entering, avoid a tentative approach -- walk assuredly to where you are sworn in. Acknowledge the jurors with a nod of your head or a smile as you approach or get settled in to the witness box. Offer the judge a similar acknowledgment, or a good morning type greeting if appropriate. Do not be a microphone mouse -- speak clearly into the microphone. Get seated and move the microphone to accommodate a professional posture. Many a tentative witness does not move the microphone or their seat appropriately, effecting a contorted or hunched position when talking into the microphone that appears weak and less effective. Avoid the furrowed brow, the pursed lips, the arms folded across your chest, which are perceived as defensive and stand-offish. Sit straight and maintain good eye contact with the attorneys and the jurors as you answer. Avoid verbal tics such as "uhh," "umm," and "like."

Lastly, recall that you are a Special Agent of the FBI. You carry an honorable badge of office and you have worked hard to be in this position of service to the country. You are Lady Justice's balance and you are her sword. We are the key witnesses. A trial is a forum of truth where we out wrongdoers -- it is our time. Welcome the trial, and let your professionalism, your confidence, and your service to country shine.

7. Be responsive to questions. Avoid long and rambling answers -- they distract and confuse jurors, and jurors will eventually stop listening to you. After a question is posed, take a short pause, and endeavor if possible to say yes or no at the outset of your answer and then explain. Give the answer first whenever you can and then support it with the accompanying explanation. If you sense that you are giving a string of long answers, be mindful to convey new information without going in circles. Some open ended questions from the AUSA may require longer narrative answers, and in those instances make sure you are conveying information in an orderly, chronological fashion, and that you are moving forward and not repeating yourself.

8. Freely make elegant concessions. Good defense counsel will work for an "A-hah!" moment where they challenge you with something that was not done or that was done incorrectly. Often these moments are on points that we would perceive as irrelevant. When asked, admit a mistake or an inaction. Then explain why it was not important, was inadvertent, or was not part of investigative protocol. Do not strike a defensive posture or be unwilling to concede a mistake or an inaction, otherwise you will seem evasive and will empower the defense to cast it as a bigger deal than it is. Remember that the AUSA will get a chance to let you explain yourself on re-direct examination. And remember to keep your poise and open body language after making your elegant concession.

9. If you don't know, say "I don't know." We are smart seasoned law enforcement officers with formidable resumes. So it is little wonder that law enforcement officers often hate to say "I don't know." Part of being honest and earnest when you testify, of being human, is simply answering "I don't know," to some questions. Do not make up cute answers, and do not engage in a rambling obfuscation. Simply say "I don't know."

10. "What makes you so *special*, Special Agent?" Some defense counsel like to ask this silly question right out of the box to punch you in the nose and get a cheap snicker out of the jury. Think about your answer ahead of trial so you are not hit off stride. Director Mueller recently made mention of a Special Agent's response to such a question, it went: "It's special to me." Other possible answers include: "That's the title we are given." "When President Theodore Roosevelt created the FBI we were enacted under a special law of Congress, and, therefore, were titled Special Agents by law."

11. Don't believe the hype. Trials can often have a bounty of pomp and circumstance. The wood and marble courtroom, the raised bench of the judge, the ornate tables of counsel, the grandiose light fixtures, the plush carpeting, and the coy look of play-it-close-to-the-vest jurors, the combined majesty of the law can distract a witness from the task at hand. Let all the atmospherics melt away, be smooth, and focus on the conversation you are having with the lawyers and jurors. You are simply relating true facts so that the jury and judge can do their part. This approach will help eliminate any pre-game jitters.

TELEPHONE CALL

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WIFE ANSWERS

[REDACTED]

DECLASSIFIED BY 65179/DMH/BAW/STP/bls
ON 01-27-2012

WIFE ASKS WHO'S CALLING

[REDACTED]

HE IS NOT HOME -

[REDACTED]

[REDACTED]

b6
b7C
b7E

IF HE CANNOT TALK NOW

[REDACTED]

UK TELEPHONE NUMBER

[REDACTED]

~~SECRET~~

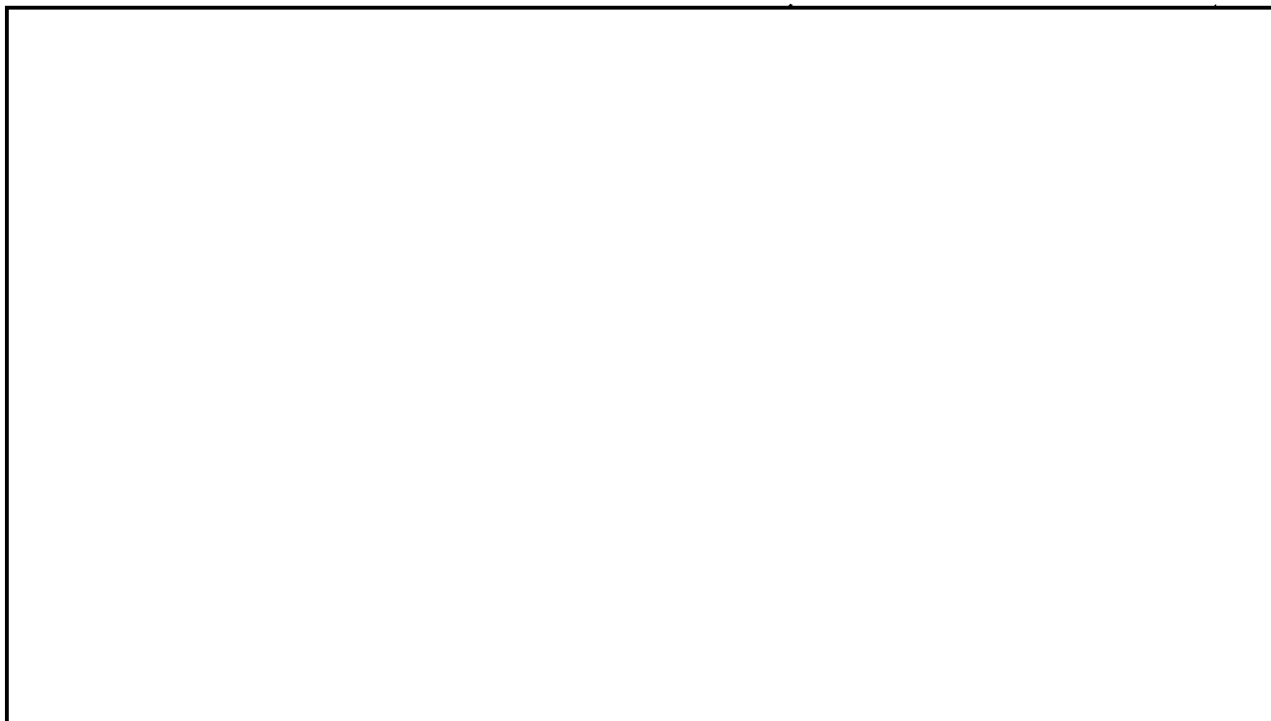
ACLURM043562

FBI-1-042462

SUBJECT ANSWERS - OR - COMES TO THE PHONE



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b7C
b7E



b6
b7C
b7E

2

[REDACTED] (D)
[REDACTED] (SP)

~~SECRET~~

b6
b7C
b7E

Prologue:

(U) (S) This is [REDACTED] calling on behalf of the FBI. I am about to call [REDACTED]
[REDACTED] at telephone [REDACTED] The time is approximately 3:20 am. and the date is
September 5, 1998.

Women answers phone and says something unintelligible.

b6
b7C

D - Hello

UNSUB Woman - ya

D- [REDACTED] ?

UNSUB Woman - Yes um wait a minute and I

D- OK thank you

SP- Hello

D - Hello, [REDACTED] ?

SP - Yes

D - [REDACTED] ?

SP - Yes

D - [REDACTED]
SP [REDACTED]
D - [REDACTED]
[REDACTED]

SP - ahhh

D - [REDACTED]
SP- [REDACTED]
D - [REDACTED]

b6
b7C

~~SECRET~~

A Four-Domain Model for Detecting Deception

An Alternative Paradigm for Interviewing

By JOE NAVARRO, M.A.



For 30 years, the literature on interviewing has emphasized the use of both verbal and nonverbal cues in detecting deception during the interview process.¹ Much of that emphasis paralleled the immense amount of research during that same time period in the area of psychology and the study of nonverbal behavior. Unfortunately, many people still misinterpret a significant amount of nonverbal behavior as indicative of

deception when, in fact, it just may be nervousness or such behavior as face touching that also can indicate honesty.²

Repeated studies have shown that traditional methods of detecting deception during interviews succeed only 50 percent of the time, even for experienced law enforcement officers.³ In spite of this, investigators still need the ability to test the veracity of those they interview. To do so, investigators require

a model that incorporates research with empirical experience to differentiate honesty from deception. They can use an alternative paradigm for detecting deception based on four critical domains: comfort/discomfort, emphasis, synchrony, and perception management.

Comfort/Discomfort

Comfort is readily apparent in conversations with family members and friends. People sense when



Special Agent Navarro is assigned to the FBI's Tampa office and also serves in the FBI's National Security Division's Behavioral Analysis Program.

“
***In interviewing
 and detecting
 deception,
 synchrony plays
 an important role.***
 ”

others have a good time and when they feel comfortable in their presence. Experiencing comfort in the presence of strangers becomes more difficult, especially in stressful situations, such as during an interview. A person's level of comfort or discomfort is one of the most important clues interviewers should focus on when trying to establish veracity. Tension and distress most often manifest upon guilty people who must carry the knowledge of their crimes with them. Attempting to disguise their guilt places a distressing cognitive load on them as they struggle to fabricate answers to what otherwise would be simple questions.⁴

When comfortable, an individual's nonverbal behavior tends to mirror the other person present.⁵ For example, if one person leans forward, the other tends to do so as well. Or, if one leans to the side with hands in pockets and feet crossed, the other person may do the same. Subconsciously, people demonstrate their comfort with whom they are talking. When

touched, people may touch back to emphasize a point. Some may display their comfort more openly, such as showing more of their torso and the insides of their arms and legs. People who speak the truth more often display comfort because they have no stress to conceal nor do they have guilty knowledge to make them feel uncomfortable.⁶

While seated at a table, people comfortable with each other will move objects aside so that nothing blocks their view. Over time, they may draw closer so that they do not have to talk as loud, and their breathing rhythm, tone of speech, pitch, and general demeanor will become similar.

Subtleties of comfort contrast with discomfort. People show discomfort when they do not like what is happening to them, what they are seeing or hearing, or when others compel them to talk about things that they would prefer to keep hidden. People first display discomfort physiologically—heart rates quicken, hairs stand up, perspiration increases, and breathing

becomes faster. Beyond the physiological responses, which are automatic and require very little thinking, people primarily manifest discomfort nonverbally instead of vocally. They tend to move their bodies by rearranging themselves, jiggling their feet, fidgeting, or drumming their fingers when scared, nervous, or significantly uncomfortable.⁷

If, while the interviewer remains relaxed and poised, the interviewee continually looks at the clock, sits tensely, or does not move (“flash frozen”), the interviewer may discern a lack of comfort even though everything may appear normal to the untrained eye.⁸ Interviewees show discomfort when they repeatedly talk about finalizing the interview or when disruptions appeal to them.

People tend to distance themselves from those with whom they feel uncomfortable. Even while sitting side by side, people will lean away from those with whom they feel uncomfortable, often moving either their torsos or their feet away or toward an exit, which nonverbally exhibits displeasure.⁹ These actions can occur in interviews due to the subject matter discussed. Likewise, people create artificial barriers with either their shoulders and arms or with inanimate objects in front of them. For example, by the end of one interview, a very uncomfortable and dishonest interviewee had built a little barrier in front of himself using soda cans, pencil holders, and various documents, ultimately planting a backpack on the table between himself and the interviewer. At the time, the interviewer did not

recognize the subject's obvious intent of creating a barrier.

Other clear signs of discomfort include rubbing the forehead near the temple region, squeezing the face, rubbing the neck, or stroking the back of the head with the hand.¹⁰ Interviewees often will show their displeasure by rolling their eyes out of disrespect; picking lint off themselves (preening); talking down to the interviewer; giving short answers; becoming resistant, hostile, or sarcastic; or displaying "micro gestures" with indecent connotations, such as "giving the finger."¹¹

Eyes also serve as formidable communicators of discomfort, yet investigators often ignore them during interviews. People use their eyes as a blocking mechanism similar to folding their arms across their chest or turning away from those with whom they disagree. In a similar response, when people do not like something they hear, they usually close their eyes as if to block out what they just heard. They do this subconsciously and so often that others do not pay attention to it in day-to-day affairs. People may close their eyes before touching or rubbing them as if to further block or relieve themselves of what they just heard. Interviewers can capitalize on this behavior by noting when interviewees block with their eyes. This may point to questions that trouble the subject or to issues with which they are struggling. In most cases, eye blocking proves extremely accurate in highlighting issues problematic to the interviewee. Additionally, when people feel troubled or frustrated or they have a subdued temper tantrum, their

eyelids may close or flutter rapidly as an expression of their sentiment.¹² Research also has shown that when people are nervous or troubled, their blink rate increases, a phenomenon often seen with liars under stress.¹³ In one case where investigators closely videotaped the interviewee, observers in another room catalogued the subject's blink rate increase from 27 times per minute to 84 times a minute during stressful questions. Investigators should consider all of the eye manifestations that fall under the comfort/discomfort domain as powerful clues to how subjects register information or what questions prove problematic.

“

***Subtleties of
comfort contrast
with discomfort.***

”

When interpreting eye contact, however, many misconceptions still exist. Little or no eye contact is perceived erroneously by some as a classic sign of deception, especially during questioning, while the truthful should "lock eyes." This may be accurate for some but not for all. For instance, research shows that Machiavellian¹⁴ people actually will increase eye contact during deception.¹⁵ This may occur because they know that many interviewers look for this feature. Also, some

people learned to look down or away from parental authority as a form of respect when questioned or scolded. Investigators should remain aware of changes in eye contact and eye behavior during interviews. They should establish the interviewee's default pattern of eye behavior during benign questioning then look for changes or indicators of discomfort as the interview progresses, which often gives clues to deception.

Emphasis

When people speak, they naturally incorporate various parts of their body, such as the eyebrows, head, hands, arms, torso, legs, and feet, to emphasize a point for which they feel deeply or emotionally. This movement proves important to investigators because, as a rule, people emphasize when genuine. Liars, for the most part, do not emphasize with nonverbals.¹⁶ They will think of what to say and how to deceive, but rarely do they think about the presentation of the lie. When compelled to lie, most people do not realize how much emphasis or accentuation enters into everyday conversations. For the interviewer, emphasis accurately reflects reality or the truth.¹⁷ When liars attempt to fabricate an answer, their emphasis looks unnatural or is delayed; they rarely emphasize where appropriate, or they choose to do so only on unimportant matters.

People accentuate both verbally and nonverbally in their interactions. They emphasize verbally through voice, pitch, tone, or repetition. On the other hand, they

emphasize nonverbally, which can prove even more accurate and useful to investigators. People who typically use their hands while speaking punctuate their remarks with hand gestures that emphatically illustrate or exclaim. They also may thrust forward, point, or pound the desk as they emphasize. Others accentuate with the tips of their fingers, either touching things or gesturing with them. Hand behaviors compliment speech, thoughts, and true sentiments.¹⁸ Raising eyebrows (eyebrow flash) or widening eyes also emphasizes a point.¹⁹

When interested, people lean their torsos forward and, often, employ gravity-defying gestures, such as raising up on the balls of their feet as they make a significant or emotionally charged point. While sitting down, some emphasize by raising the knee to highlight important points. Occasionally, people will add emphasis by slapping their knee as it comes up, indicative of emotional exuberance. Gravity-defying gestures symbolize emphasis and true sentiment, both of which liars rarely possess.

In contrast, people de-emphasize or show lack of commitment by speaking behind their hands or showing limited facial expression as if to control their countenance because they are not committed to what they are saying.²⁰ Deceptive people often show deliberative, pensive displays, such as touching fingers to their chin or stroking their cheeks, as though they still are thinking about something, rather than emphasizing the point they are making. They are evaluating what

they said and how it is being received, which is inconsistent with honest behavior.

Synchrony

In interviewing and detecting deception, synchrony plays an important role. Ideally, synchrony (e.g., harmony, congruence, and concordance) should occur between the interviewer and the interviewee; between what is said vocally and nonverbally; between the circumstances of the moment and what the subject is saying; and between events and emotions, including synchrony of time and space.



In an interview setting, the tone of both parties should mirror each other over time if synchrony exists.²¹ A certain amount of harmony occurs in speech patterns, sitting styles, touching frequency, and general expressions. An interviewer and subject "out of sync" become subtly palpable because each will sit differently, talk in a manner or tone dissimilar from the other, and possibly have expressions at

odds, if not totally disparate, with each other. These circumstances prohibit effective communication, an element pertinent to successful interviewing.

When interviewed, people who answer in the affirmative should have congruent head movement supporting what they say. Lack of synchrony often occurs when people say, "I did not do it," while nodding their heads up and down as if to say, "yes, I did." Or, when asked, "Would you lie about this?" their heads again bob up and down. Upon catching themselves in this faux pas, they then reverse their head movement. When observed, these instances are almost comical and amateurish. More often, a mendacious statement, such as "I did not do it," precedes a noticeably delayed and less emphatic negative head movement. These behaviors are not synchronous and, therefore, more likely to be equated with a lie.

Synchrony should occur between what is being said and the events of the moment. During a street interview, if the subject interjects with superfluous information or facts totally irrelevant, the officer should note the disharmony. The information and facts should remain pertinent to the issue at hand, the circumstances, and the questions. When the answers are asynchronous with the event and questions, officers may assume that something likely is wrong or the person is stalling for time to fabricate a story.

For instance, when parents report the alleged kidnapping of their infant, synchrony should occur between the event (kidnapping) and

their emotions. The complainant should be clamoring for law enforcement assistance, emphasizing every detail, feeling the depth of despair, showing an eagerness to help, and willing to retell the story, even at personal risk. When placid individuals make such reports, they appear more concerned with furnishing one particular version of the story, lacking consistent emotional displays or seem more concerned about their well-being and how they are perceived vis-a-vis the egregious event (alleged kidnapping of a loved one). These examples do not exhibit synchrony with circumstances and prove inconsistent with honesty.

Last, synchrony should exist between events, time, and space. A person who delays reporting a significant event, such as the drowning of a fellow passenger, or one who travels to another jurisdiction to report the event rightfully should come under suspicion. Additionally, interviewers should remain cognizant of subjects who report events that would have been impossible for them to observe from the vantage point from which they tell the story. People who lie do not think of how synchrony fits into the equation; yet, it plays a major role during interviews and the reporting of crimes.

Perception Management

Perception management occurs both verbally and nonverbally. During interviews, liars often use perception management, a concept with which psychopaths are well acquainted, to influence their intended targets of deception.²² For

instance, nonverbally, subjects will yawn excessively as if to show that they feel bored. If the person is sitting, they may slouch or splay out on a couch, stretch their arms, and cover more territory as if to demonstrate their comfort.

Verbally, liars will try to vocalize their honesty, integrity, and the implausibility of their involvement in committing a crime. They will try to "look good" to the interviewer.

**“
...investigators require
a model that
incorporates research
with empirical
experience to
differentiate honesty
from deception.”**

They may use perception management statements, such as “I could never hurt someone,” “Lying is below me,” “I have never lied,” “I would never lie,” or “I would never do such a thing,” all of which should alert investigators to the possibility of deception. Other statements, such as “to be perfectly frank,” “to be honest,” “to be perfectly truthful,” or “I was always taught to tell the truth,” are solely intended to influence the perception of the interviewer.²³

Other forms of perception management include attending the interview with someone of prominence in the community or a retinue of

so-called close friends. Further, subjects may self-medicate through the use of alcohol or prescription drugs to appear placid and content. They may change their clothing or hair styles to appear more genuine or more socially conventional.

In all of these examples, subjects attempt to manage the perception of the interviewer. People practice perception management every day, such as getting dressed for a date. However, when it manifests itself in an interview setting, investigators should recognize such efforts and question the intent.

Conclusion

The detection of deception remains a difficult task. Interviewers can enhance their ability to detect deception by focusing on four domains—comfort/discomfort, emphasis, synchrony, and perception management—rather than merely trying to detect traditional signs of deception, which, in some cases, may be misleading.²⁴ The research in this area over the last 20 years is unequivocal. Nonverbal behaviors, in and of themselves, do not clearly indicate deception.²⁵ However, when interviewers notice a display of discomfort and a lack of comfort, emphasis, synchrony, and perception management, a greater certitude for assessing deception exists.

Investigators can expect subjects to react poorly in one or two areas. But, to do so in all four domains indicates communication problems, which may originate from the interviewee's antipathy toward the interviewer or law enforcement or result from culpability, guilty knowledge, or

dishonesty. Regardless, in these cases, information likely did not flow freely from the interviewee, which rendered an interview of limited value or, worse, a complete fabrication. ♦

Endnotes

- ¹ Fred E. Inbau and et. al., *Criminal Interrogation and Confessions*, 4th ed. (Gaithersburg, MD: Aspen Publishers, Inc., 2001), ix.
- ² Charles V. Ford, *Lies! Lies! Lies!: The Psychology of Deceit* (Washington, DC: American Psychiatric Press, Inc., 1996), 200.
- ³ *Ibid.*, 217.
- ⁴ B.M. DePaulo, J.I. Stone, and G.D. Lassiter, *Deceiving and Detecting Deceit*, in *The Self and Social Life*, edited by B.R. Schlender, (New York, NY: McGraw-Hill, 1985), 323-370.
- ⁵ Mark L. Knapp and Judith A. Hall, *Nonverbal Communication in Human Interaction*, 3d ed. (Orlando, FL: Harcourt Brace Jovanovich, College Publishers, 1997), 277.
- ⁶ Paul Ekman, *Telling Lies: Clues to Deceit in the Marketplace, Politics, and Marriage* (New York, NY: W.W. Norton & Co., 1985), 185.
- ⁷ Gavin De Becker, *The Gift of Fear* (New York, NY: Dell Publishing, 1997), 133.
- ⁸ *Supra* note 5, 321.
- ⁹ *Supra* note 5, 320.
- ¹⁰ David G. Givens, *The Nonverbal Dictionary of Gestures, Signs & Body Language Cues* (Spokane, WA: Center for Nonverbal Studies, 1998-2002); <http://members.aol.com/nonverbal2/diction1.htm>
- ¹¹ *Supra* note 6, 101-103.
- ¹² Joe Navarro and John R. Schafer, "Detecting Deception," *FBI Law Enforcement Bulletin*, July 2001, 10.
- ¹³ *Supra* note 5, 467.
- ¹⁴ "Suggesting the principles of conduct laid down by Machiavelli; specifically marked by cunning, duplicity, or bad faith," *Merriam Webster's Collegiate Dictionary*, 10th ed., s.v. "Machiavellian."
- ¹⁵ R.E. Exline, J. Thibaut, C.B. Hickey, and P. Gumpert, *Visual Interaction in Relation to Machiavellianism and an Unethical Act*, in R. Christie and F.L. Geis (eds.), *Studies in Machiavellianism* (New York, NY: Academic Press, 1970).
- ¹⁶ David J. Lieberman, *Never Be Lied to Again* (New York, NY: St. Martin's Press, 1998), 37.
- ¹⁷ *Supra* note 6, 107.
- ¹⁸ *Supra* note 5, 277-284.
- ¹⁹ Desmond Morris, *Body Watching* (New York, NY: Crown Publishers, 1985), 61 and *supra* note 5, 68.
- ²⁰ *Supra* notes 5, 320, and 15, 37.
- ²¹ Robert B. Cialdini, *Influence: The Psychology of Persuasion* (New York, NY: William Morrow and Company, Inc., 1993), 167-207.
- ²² J. Reid Meloy, *The Psychopathic Mind: Origins, Dynamics, and Treatment* (Northvale, NJ: Jason Aronson, Inc., 1998), 139.
- ²³ *Supra* note 16, 46.
- ²⁴ *Supra* note 6, 162-189.
- ²⁵ *Supra* notes 2, 217, and 6, 98.

Example

Non-Disclosure Agreement

The undersigned acknowledges having been informed by Special gents of the Federal Bureau of Investigation (FBI) that the nature of the investigation to be discussed is a national security matter, of interest to the FBI, and has been designated NEED-TO-KNOW.

The undersigned understands any discussion of this matter beyond the confines of this interview may possibly jeopardize the investigation, and could be grounds for the undersigned's loss of security clearances and /or denial of future contracts.

Printed Name

Social Security Number

Signature

Date

Witness

Date

Witness

Date

~~SECRET~~
~~SECRET~~

United States District Court

EASTERN DISTRICT OF VIRGINIA

UNITED STATES OF AMERICA

UNDER SEAL

v.

CRIMINAL COMPLAINT

EARL EDWIN PITTS

CASE NUMBER:

(Name and Address of Defendant)

ALL INFORMATION CONTAINED

HEREIN IS UNCLASSIFIED

DATE 01-27-2012 BY 65179/DMH/BAW/STP/bls

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my
 knowledge and belief. From on or about July, 1987 - December, 1996 in Arlington and Stafford Counties in the
Eastern District of Virginia defendant(s) did, (Track Statutory Language of Offense)

commit a violation of Title 18, U.S.C. Section 794 (c), that is, with reason to believe that it would be used to the injury of the
 United States and the advantage of a foreign nation, Earl Edwin Pitts did unlawfully and knowingly conspire with others to
 communicate, transmit and deliver to representatives of a foreign government, specifically the U.S.S.R. and the Russian
 Federation, information relating to the national defense of the United States, and did overt acts to effect the object of said
 conspiracy, including but not limited to the following: Earl Edwin Pitts did travel on March 24, 1992 from National
 City, in the Eastern District of Virginia, to New York City; and did

commit a violation of Title 18, U.S.C. Section 794(a), that is, with reason to believe that it would be used to the injury of the
 United States and the advantage of a foreign nation, Earl Edwin Pitts did unlawfully and knowingly attempt to
 communicate, transmit and deliver to representatives of a foreign government, specifically the Russian Federation,
 information relating to the national defense of the United States; and did

commit a violation of Title 50, U.S.C. Section 783(a), that is, communication of classified information by Government
 official or employee; and did

commit a violation of Title 18, U.S.C. Section 641, that is, conveyance without authority of property of the United States.

Violation of Title 18 United States Code, Section(s) 794 (a) and (c), and 641, and Title 50, U.S.C. § 783(a)

I hereby state that I am a(n) Special Agent, FBI and that this complaint is based on the following facts:
Official Title

Continued on the attached sheet and made a part hereof: ☒ Yes ☐ No

- Randy L Bellows

to before me and subscribed in my presence,

Signature of Complainant

David G. Lambert, Special Agent

Federal Bureau of Investigation

on September 17, 1996at Alexandria, Virginia

(City and State)

by Les Jones, Jr.d Magistrate Judge

Title of Judicial Officer

Signature of Judicial Officer

~~SECRET~~

ACLURM043572

FBI042472

~~SECRET~~

United States District Court

EASTERN DISTRICT OF VIRGINIA

UNDER SEAL

UNITED STATES OF AMERICA

WARRANT FOR ARREST

v.

CASE NUMBER:

EARL EDWIN PITTS

ALL INFORMATION CONTAINED

HEREIN IS UNCLASSIFIED

DATE 01-27-2012 BY 65179/DMH/BAW/STP/bls

To: The United States Marshal
and any Authorized United States OfficerYOU ARE HEREBY COMMANDED to arrest EARL EDWIN PITTS

Name

and bring him or her forthwith to the nearest magistrate to answer a(n)

Indictment ☐ Information ☒ Complaint ☐ Order of court ☐ Violation Notice ☐ Probation Violation Petition

charging him or her with (brief description of offense)

violation of Title 18, U.S.C. Section 794 (c), that is, with reason to believe that it would be used to the injury of the United States
and the advantage of a foreign nation, Earl Edwin Pitts did unlawfully and knowingly conspire with others to communicate,
transmit and deliver to representatives of a foreign government, specifically the U.S.S.R. and the Russian Federation,
information relating to the national defense of the United States, and did overt acts to effect the object of said conspiracy; andviolation of Title 18, U.S.C. Section 794(a), that is, with reason to believe that it would be used to the injury of the United States
and the advantage of a foreign nation, Earl Edwin Pitts did unlawfully and knowingly attempt to communicate, transmit and
deliver to representatives of a foreign government, specifically the Russian Federation, information relating to the national
defense of the United States; andviolation of Title 50, U.S.C. Section 783(a), that is, communication of classified information by Government officer or employee;
and

violation of Title 18, U.S.C. Section 641, that is, conveyance without authority of property of the United States.

violation of Title 18 United States Code, Section(s) 794 (c) and (a), and 641, and Title 50 U.S.C. § 783(a)Thomas Rawles Jones, Jr.United States Magistrate Judge

Name of Issuing Officer

Title of Issuing Officer

December 17, 1996

Date and Location

Signature of Issuing Officer

Bail fixed at \$ _____ by _____

Name of Judicial Officer

RETURN

This warrant was received and executed with the arrest of the above-named defendant at _____

DATE RECEIVED

NAME AND TITLE OF ARRESTING OFFICER

SIGNATURE OF ARRESTING OFFICER

DATE OF ARREST

~~SECRET~~

~~SECRET~~

THE FOLLOWING IS FURNISHED FOR INFORMATION ONLY:

DEFENDANT'S NAME: EARL EDWIN PITTS

ALIAS: _____

LAST KNOWN RESIDENCE: [REDACTED]

LAST KNOWN EMPLOYMENT: FEDERAL BUREAU OF INVESTIGATION, FBI ACADEMY, QUANTICO, VIRGINIA

PLACE OF BIRTH: UNITED STATES

DATE OF BIRTH: [REDACTED]

SOCIAL SECURITY NUMBER: [REDACTED]

HEIGHT: _____ WEIGHT: _____

SEX: MALE RACE: WHITE

HAIR: BROWN EYES: _____

CARS, TATTOOS, OTHER DISTINGUISHING MARKS: _____

ER: _____

COMPLETE DESCRIPTION OF AUTO: 1992 CHEVROLET S-10 PICK-UP TRUCK, VA: NVI-582,

1GCCS19R7N2148561; 1996 HONDA ACCORD SEDAN, VA: OXK-347, VIN: 1HGCD5636TA112429

INVESTIGATIVE AGENCY AND ADDRESS: DAVID G. LAMBERT, SPECIAL AGENT

FEDERAL BUREAU OF INVESTIGATION

~~SECRET~~

UNITED STATES V. EARL EDWIN PITTS

UNDER SEAL

Magistrate No. 96-_____-M

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT,
ARREST WARRANT, AND SEARCH WARRANTS

I, David G. Lambert, being duly sworn, depose and state
as follows:

1. I am presently employed as a Special Agent of the
Federal Bureau of Investigation (FBI) and am assigned to the
Washington Field Office in the District of Columbia. I have been
employed as an FBI Special Agent for approximately 9 years. I
have been assigned to foreign counterintelligence (FCI)
investigations for approximately 7 years. As a result of my
training and experience, I am familiar with the tactics, methods,
and techniques of foreign intelligence services and their agents.

2. This affidavit is in support of the following:

a. Complaint and Arrest Warrant for:

EARL EDWIN PITTS,

DOB: [REDACTED]

SSAN: [REDACTED]

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for the following violations of federal criminal
law:

- a. Conspiracy to Commit Espionage
(Title 18, United States Code, Section
794(c)); and
- b. Attempted Espionage
(Title 18, United States Code, Section
794(a)); and
- c. Communication of Classified Information by
Government Officer or Employee
(Title 50, United States Code, Section
783(a)); and

- d. Conveyance Without Authority of Government Property
(Title 18, United States Code, Section 641).

b. Application for Search Warrants for:

- 1) Premises known and described as a single family residence located at [REDACTED] (as more fully described in Attachment A), which is within the Eastern District of Virginia; and
- 2) Premises known and described as Room B-103, Building #9, Behavioral Science Unit, FBI Academy, Quantico Marine Base, Quantico, Virginia (as more fully described in Attachment B); which is within the Eastern District of Virginia; and
- 3) One 1992 Chevrolet S-10 Pick-up Truck, bearing Virginia registration NVI-582, VIN:1GCCS19R7N2148561, which based on recent observation by FBI Special Agents and surveillance personnel is presently located at [REDACTED] and [REDACTED]
- 4) One 1996 Honda Accord, bearing Virginia registration OXK-347, VIN:1HGCD5636TA112429; which based on recent observation by FBI Special Agents and surveillance personnel is presently located at [REDACTED] and [REDACTED]
- 5) One storage unit, numbered A425, located at Public Storage, 7400 Alban Station Boulevard, Springfield, Virginia, 22150 (as more fully described in Attachment C); and
- 6) One storage unit, numbered D13, located at U-Stor-It Mini Storage, 3662 1/2 Jefferson Davis Highway, Fredericksburg, Virginia, 22408 (as more fully described in Attachment D); and
- 7) One safety deposit box, numbered 114, located at the Central Fidelity Bank, 4230 Plank Road, Fredericksburg, Virginia, 22407.

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3. The information stated below is based on personal knowledge, training and experience, including training and experience I have gained while assigned to FCI investigations, and information provided to me by others as noted herein.

SUMMARY.

4. This affidavit concerns an investigation by the FBI into the compromise of FBI intelligence operations and information. During this investigation, I and others have conducted interviews, physical and electronic surveillance, financial analysis, and other forms of investigation.

5. The results of this investigation to date indicate there is probable cause to believe that:

a. EARL EDWIN PITTS (hereafter, "PITTS"), a United States citizen, is an agent of the Sluzhba Vneshney Rasvedi Rossii (hereafter, "SVRR"), which is the intelligence service of the Russian Federation. The SVRR is the direct successor of the Union of Soviet Socialist Republics' Committee for State Security, known hereafter as the "KGB". An agent of a foreign intelligence service is one, other than an intelligence officer or employee, who clandestinely and illegally acts on behalf of that service. Prior to being an agent of the SVRR, there is probable cause to believe PITTS was an agent of the KGB.

b. From in or about July, 1987, through the present, PITTS conspired with officers of the KGB and SVRR to commit espionage. This included numerous trips which PITTS made from

the Eastern District of Virginia to the New York area in connection with his espionage activities. From in or about October, 1992, to the present, to the best of my knowledge and belief, PITTS remained an agent of the SVRR in a dormant capacity.

c. During PITTS' espionage activities between 1987 and 1992, PITTS received from the KGB and SVRR in excess of \$224,000, including over \$100,000 set aside for PITTS in a "reserve" account (according to PITTS). -

d. From in or about August, 1995, through the present, PITTS attempted to commit espionage and committed numerous other violations of federal criminal law in connection with his contact with certain individuals who he believed were agents of the SVRR but who were, in fact, undercover personnel employed by, or operating on the instructions of, the FBI. During this "false flag" operation, described in greater detail below, PITTS gave persons he believed to be SVRR officers sensitive and SECRET classified documents related to the national defense, gave his "SVRR [FBI]" handlers personal, medical and family information about fellow FBI special agents, proposed strategies by which the SVRR might recruit additional agents, made plans to smuggle into the FBI Academy an SVRR technical expert, provided his "SVRR [FBI]" handlers an FBI cipher lock combination, an FBI key and his own FBI identification badge in order to facilitate the smuggling operation, stole from the FBI a handset to a telecommunications device used to transmit.

classified information, and divulged a variety of classified information to his "SVRR [FBI]" handlers. PITTS did this for money. During the "false flag" operation, PITTS accepted \$65,000 for his espionage activities and his attempt to compromise FBI intelligence activities.

BACKGROUND ON EARL EDWIN PITTS

6. EARL EDWIN PITTS is a United States citizen, presently employed as a Supervisory Special Agent of the FBI. PITTS is 43 years old and is an attorney. PITTS and his wife, Mary, were married in 1985. PITTS resides with his wife at a single family dwelling located at [REDACTED]
[REDACTED]

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7. On September 18, 1983, PITTS entered on duty with the FBI and, on September 19, 1983, took the following Oath of Office:

I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter.
So help me God.

8. On September 20, 1983, PITTS signed an FBI Employment Agreement, which included the following provisions:

That I am hereby advised and I understand that Federal law such as Title 18, United States Code, Sections 793, 794, and 798 ... prohibit loss, misuse, or unauthorized disclosure or production of national security

information, other classified information and other nonclassified information in the files of the FBI;

* * *

I understand that unauthorized disclosure of information in the files of the FBI or information I may acquire as an employee of the FBI could result in impairment of national security, place human life in jeopardy, or result in the denial of due process to a person or persons who are subjects of an FBI investigation, or prevent the FBI from effectively discharging its responsibilities. I understand the need for this secrecy agreement; therefore, as consideration for employment I agree that I will never divulge, publish, or reveal either by word or conduct, or by other means disclose to any unauthorized recipient without official written authorization by the Director of the FBI or his delegate, any information from the investigatory files of the FBI or any information relating to material contained in the files, or disclose any information or produce any material acquired as a part of the performance of my official duties or because of my official status.

* * *

That I understand unauthorized disclosure may be a violation of Federal law and prosecuted as a criminal offense....

9. On October 22, 1984, PITTS signed the Classified Information Nondisclosure Agreement, which reads in part:

I have been advised and am aware that direct or indirect unauthorized disclosure, unauthorized retention, or negligent handling of classified information by me could cause irreparable injury to the United States or could be used to advantage by a foreign nation. I hereby agree that I will never divulge such information unless I have officially verified that the recipient has been properly authorized by the United States Government to receive it or I have been given prior written notice of authorization from the United States Government Department or Agency (hereinafter Department or Agency) last granting me a security clearance that such

disclosure is permitted. I further understand that I am obligated to comply with laws and regulations that prohibit the unauthorized disclosure of classified information.

I have been advised and am aware that any breach of this Agreement may result in the termination of any security clearances I hold; removal from any position of special confidence and trust requiring such clearances; and the termination of my employment or other relationships with the Departments or Agencies that granted my security clearance or clearances. In addition, I have been advised and am aware that any unauthorized disclosure of classified information by me may constitute a violation of United States criminal laws, including the provisions of Sections 641, 793, 794, 798, and ... the provisions of Section 783(b), Title 50, United States Code, and the provisions of the Intelligence Identities Protection Act of 1982.

10. PITTS currently holds a "Top Secret" security clearance. From November 15, 1989 until November 18, 1996, PITTS held certain additional "code word" clearances for access to sensitive compartmented information.

11. Upon graduation from the FBI Academy, he was assigned to the FBI's Alexandria Field Office where he worked applicant, white collar crime, and narcotics investigations. PITTS was assigned to the Fredericksburg Resident Agency within the Alexandria Field Office from March 18, 1985 through January 2, 1987.

12. PITTS was assigned to the New York Field Office from January 3, 1987 to August 13, 1989. He worked FCI investigations, including investigations concerning KGB officials assigned to the (then) Soviet Mission to the United Nations.

13. In August, 1989 PITTS was promoted to Supervisory Special Agent and transferred to the Document Classification

Authority Affidavit Unit within the Operations Section of the Records Management Division at FBI Headquarters, in Washington, D.C. Upon assignment to the Records Management Division, PITTS was granted access to Sensitive Compartmented Information. In 1991, he was reassigned to the Security Programs Section, where he was responsible for supervising personnel security investigations.

14. On or about October 18, 1992, PITTS was transferred to the Legal Counsel Division at FBI Headquarters, where he worked in DNA Legal Assistance and was then assigned to civil litigation matters. PITTS worked in FBI office space located within a building at 601 Pennsylvania Avenue, N.W., Suite 750, Washington, D.C.

15. On or about January 23, 1995, PITTS began working the Behavioral Science Unit, FBI Academy in Quantico, Virginia, where he remains at present. Among his responsibilities at the FBI Academy is to conduct security briefings for FBI personnel.

16. Since PITTS' assignment to the FBI Academy, PITTS had no duty or responsibility that would have required or necessitated ongoing contact with Russian citizens in a foreign counterintelligence capacity. PITTS was not authorized in 1995 or 1996 to meet with agents of foreign counterintelligence services. In addition, PITTS was required by FBI policy and procedure to accurately and fully report such contacts, which he did not do.

17. This affidavit refers to information obtained from electronic surveillance, video surveillance and searches of various places and things. In each instance, the searches and surveillance described in this affidavit were authorized by court order, or by consensual monitoring.

ESPIONAGE-RELATED ACTIVITIES (1987-1992)

18. In January, 1987, PITTS began his duties with the New York Division, assigned to a squad responsible for various FCI investigations. Between January, 1987 and August, 1989, PITTS had access to a wide range of sensitive and highly classified operations. These included the following: recruitment operations involving Russian intelligence officers, double agent operations, operations targeting Russian intelligence officers, true identities of human assets, operations against Russian illegals, true identities of defector sources, surveillance schedules of known meet sites, internal policies, documents, and procedures concerning surveillance of Russian intelligence officers, and the identification, targeting and reporting on known and suspected KGB intelligence officers in the New York area.

19. In 1988, PITTS described his duties in New York as follows:

My current duties in NY include investigations concerning Soviet intelligence officers, Soviet establishments, Soviet emigres, espionage matters and developing assets. These duties have afforded me an

opportunity to investigate some highly complex and sensitive cases, including identification of Soviet intelligence officers, identifying Soviet efforts directed at the emigre community and participation in recruitment efforts.

The July, 1987 Letter

20. In or about late July, 1987, a cooperating witness (hereafter, "CW"), who is known to be reliable and credible, received a letter addressed to the CW at the (then) Soviet Mission to the United Nations. At the time, the CW was a citizen of the Soviet Union assigned to the Soviet Mission to the United Nations. The letter provided surveillance information concerning the CW's recent activities.

21. Specifically, CW recalled that the letter received from the writer contained reference to a trip which CW had made to a New York City airport to meet two high-ranking KGB officials several days earlier. Review of FBI records indicates that on July 15, 1987 -- one week before it is believed the letter was sent to CW -- PITTS conducted surveillance on the CW at another New York City airport and later reported the surveillance in a memorandum classified SECRET.

22. Based on the foregoing, the CW concluded that the writer was an FBI employee. In the letter, the writer requested a meeting with the CW or, if the CW was not a KGB officer, with an actual KGB officer. (During the summer of 1987, several Special Agents on the counterintelligence squad to which PITTS was assigned wrongly concluded the CW was a senior KGB officer. PITTS, himself, told the CW in December, 1995, that he had chosen

the CW to meet with because the CW had been "misidentified" [as a KGB officer].)

23. The CW provided the letter to the Mission Security Officer, Vadim Voytenko (hereafter, "Voytenko"). Later, the CW met with Voytenko and Aleksandr Vasilyevich Karpov (hereafter, "Karpov").

24. Based upon investigation and analysis, Aleksandr Vasilyevich Karpov has been identified by the FBI as an officer of the SVRR and, formerly, the KGB. From 1987 through 1990, he was the New York Chief of Line KR. Line KR, the counterintelligence component of the KGB, was responsible for penetrating the intelligence and security services of foreign nations, including those of the United States, by human and technical means. The FBI was one of the intelligence/security services targeted by Line KR.

The Meeting at the New York Public Library

25. The CW was instructed by Voytenko to meet with the writer of the letter at the New York Public Library, located at Fifth Avenue and 42nd Street in New York City. The CW briefly met the writer inside the library, and then introduced the writer to Karpov.

26. Based upon statements made by PITTS during the "false flag" operation, information provided by the CW, and based upon PITTS' subsequent conduct and on other investigative activities, I believe that the writer of the letter to the CW was

PITTS and that PITTS was the U.S. intelligence officer who met with the CW and Karpov at the New York Public Library.

Disclosure of Classified Material

27. The meeting between Karpov and PITTS at the New York Public Library was the beginning of five years of active espionage activity by PITTS on behalf of the KGB and SVRR.

28. I believe that among the classified documents and information which PITTS conveyed to the ~~KGB~~ in the course of his espionage activity in return for money were the following:

a. A document known as the "Soviet Administrative List". The "Soviet Administrative List" was the FBI's computerized, alphabetical compilation of all Soviet officials posted or assigned to the United States. It is classified "SECRET" and is related to the national defense. The "SECRET" classification is applied to information whose unauthorized disclosure reasonably could be expected to cause serious damage to the national security. The list contains the names, dates of birth, posting, in-country/travel/out-country status, file number, FBI office of origin, FBI squad, FBI case agent, and the known or suspected intelligence affiliation of each Soviet official assigned to Soviet legations in the United States, including the Soviet Embassy in Washington, D.C., and the Soviet Mission to the United Nations in New York, New York.

PITTS was not authorized to deliver the "Soviet Administrative List" to any person not employed by the FBI nor to

any person within the FBI who did not have an official need to know the information contained in the list.

b. A letter to CW, then suspected by the FBI of being a KGB officer, containing surveillance information concerning CW. Specifically, PITTS disclosed classified SECRET information concerning FBI surveillance of CW.

c. SECRET information concerning an FBI asset who reported covertly on Russian intelligence matters.

Information Obtained in the "False Flag" Operation
Concerning PITTS' 1987-1992 Espionage Activity

29. The FBI conducted an analysis of PITTS' financial affairs and travel records and conducted additional investigation, including the debriefing of CW by the FBI. In or about August, 1995, a "false flag" operation was initiated. A "false flag" operation is an operation intended to persuade a target of the operation that he is working for one country when, in fact, he is working for another. The purpose of this "false flag" operation was to confirm PITTS' 1987-1992 suspected espionage activities and, most importantly, to determine what FBI information, projects and operations PITTS had compromised by divulging them to the KGB and SVRR during the course of his espionage activities.

30. Specifically, the "false flag" operation was designed to persuade PITTS through the use of the CW, and through the use of U.S. government personnel posing as SVRR officers, that he was being contacted again by the SVRR and then, in the

course of conducting current espionage-type activities, ascertain the scope and content of his past espionage activities. In fact, during the course of the "false flag" operation, PITTS made numerous incriminating statements concerning his prior espionage activities, including the following:

a. On or about September 8, 1995, PITTS wrote a letter to the person he believed to be his new SVRR handler in which he apologized for missing a meeting with his old SVRR handler in New York and stated that he was "very pleased to hear from you again."

b. In the same September 8, 1995 letter described above, PITTS indicated that he did not have information concerning a certain KGB official and stated: "Shortly after I last met with Alex, I left the operational side of the business and became more of an administrator and researcher." The reference to "Alex" is believed to be a reference to one of PITTS' SVRR handlers, Aleksandr Karpov.

c. In the same September 8, 1995 letter described above, PITTS stated: "I have no additional material to pass along as collections ceased when I missed your friend in New York."

d. On or about November 2, 1995, PITTS wrote a letter to the person he believed to be his SVRR handler. In this letter, PITTS made reference to "previous exchanges." (This letter was not in fact sent due to PITTS' discovery of a surveillance device.)

e. In the same November 2, 1995 letter, PITTS asked for \$35,000 to \$40,000 from "my account" to fund an escape plan. It is believed that this reference to "my account" is a reference to an account set up in Russia on PITTS' behalf.

f. On December 17, 1995, a telephone call took place between PITTS and the person he believed to be his SVRR handler. In that call, the "SVRR [FBI]" handler told PITTS that PITTS needed to have a face-to-face meeting with PITTS' "friend from Moscow." The "SVRR [FBI]" handler told PITTS that "you must come to the place where you first requested to meet in 1987." PITTS acknowledged that he remembered the place [the New York Public Library] and the section in the place where the 1987 meeting had occurred.

g. On December 28, 1995, a telephone call took place between PITTS and the person he believed to be his SVRR handler. The call concerned the fact that the meeting scheduled for earlier that day in New York had not taken place as planned. After the "SVRR [FBI]" handler told PITTS that his friend had been waiting in one section of the library for PITTS, PITTS stated that this section was "not where we first met" and that their first meeting had been in a different section of the library. I believe this is a reference to PITTS' first meeting with the CW in or about July, 1987.

h. In a December 29, 1995 meeting with a person he believed to be his SVRR handler, PITTS was asked if he had brought anything for the handler. PITTS said he had not because

"before" we were "never supposed to exchange two things." I believe this is a reference to the procedures PITTS used during his espionage activity between 1987 and 1992.

i. In the same December 29, 1995 meeting, PITTS said: "I feel very uneasy compared to last time, it's, uh, I'm, I'm much more out of, out of touch with what's going on." I believe this is a reference to PITTS' espionage activity between 1987 and 1992.

j. In the same December 29, 1995 meeting, the following exchange took place between an Undercover Officer ["UCO"], who was posing as an SVRR officer, and PITTS:

UCO: Edwin, does your wife know any about our present project?

PITTS: No, No. She doesn't know about any of the Projects, but she...

UCO: Did she know anything about the project when you worked with Alex in the old days in New York?

PITTS: No, unless she suspected. She has great deals of suspicions.

UCO: You had no problem with that then in New York at the time?

PITTS: No.

k. In the same December 29, 1995 meeting, the following exchange took place:

UCO: Do you remember the last date when you met Alex [Karpov]?

PITTS: No.

UCO: You don't? The year?

PITTS: Oh, the year? The year would have been, um, uh, 1988.

1. In the same December 29, 1995 meeting, the following exchange took place:

UCO: ... the money you got in the past...there was some doubt that you perhaps did not get all the money which was coming to you, to your account.

PITTS: No, I didn't. No... but,

UCO: No. You...

PITTS: But, I mean, I understand, we had to break contact.

UCO: Yeah, but I understand those people who did bring you money at the time or that money which was passed to you...

PITTS: Um Hum.

UCO: They, well, tried to reach us, establish to see if your account is up to date. We have an account, you know this?

PITTS: Um Hum. Yes.

UCO: Are you aware of the account?

PITTS: Well, Yeah, I've been told about it.

UCO: Yeah, did ever mention how much it is, in the account?

PITTS: Alex did, but I, I don't remember the amount.

UCO: You don't remember?

PITTS: No. I've tried to put those things out of my head.

m. On July 9, 1986, PITTS wrote a letter to the person he believed to be his SVRR handler, which reads in part:

If it is possible, please make payment for my most recent deliveries (or withdraw from my reserve account).....

n. On or about August 14, 1996, PITTS wrote a letter to the person he believed to be his SVRR handler, which reads in part:

Regarding my reserve, I do not know the amount and it is my understanding that you do not. When I last met with Alex, it was over 100,000.

o. In the same August 14, 1996, letter, PITTS stated that it might be appropriate for the SVRR to pay him out of his "reserves" because "much of the information I have recently provided is not of the quality I have provided in the past...."

p. On or about September 18, 1996, PITTS made additional statements in a letter to the person he believed to be ; SVRR handler concerning moneys he had received in the course of his espionage activities during the 1987 to 1992 time period. In this excerpt, PITTS made reference to an SVRR officer who handled PITTS after Aleksandr Karpov:

During the time I knew him, two payments were made but I can not remember if they were in round numbers. He never spoke of the size of the reserve fund or how much I was to expect in payment. * * * The greatest difficulty was the distance between our locations and the absence of an alternate means of communicating meeting dates and alternate dates. The distance and time between meetings made it impossible to plan for unforeseen circumstances. The nature of the information changed because of the type of work I was assigned. * * * I only met him two, or maybe three, times after my posting to Washington [in 1989].

q. On December 13, 1996, in a communication to the persons he believed to be his SVRR handlers, PITTS stated that he no longer had "direct access" to the files from his New York assignment (1987-1989) but "I believe I have provided you with everything that I was aware of."

r. In the same December 13, 1996 communication, PITTS stated that he wished "to draw on reserve funds" on January 6, 1997 and February 6, 1997. I believe this to be a reference to the Russian account set up on behalf of PITTS, as described above.

Trips to New York City in 1990-1992

31. In August, 1989, PITTS was transferred from the New York Field Office of the FBI to FBI Headquarters. Beginning in February, 1990, and continuing to October, 1992, PITTS made a series of nine brief trips to New York City, most of which were one day trips, all such trips taken to or from National Airport, in the Eastern District of Virginia. Financial analysis indicates a pattern of unusual monetary deposits following these trips. I believe that PITTS made all or most of these trips for the purpose of continuing his espionage activities.

Financial Analysis

32. The FBI has conducted a financial analysis of PITTS for the time period in which it is believed PITTS was actively involved in espionage activities on behalf of the KGB

and SVRR. This financial analysis indicates that PITTS acquired substantial money during this period of time which cannot be traced to legitimate sources of funds.

33. PITTS' only known source of substantial income during the period from 1987 to 1992 was from his employment and his wife's employment with the FBI. PITTS made frequent deposits of cash and/or money orders, not explained by his known income, into various accounts or as payments on credit card accounts. This activity was unusual as compared to PITTS' normal financial banking activity prior to July, 1987 and subsequent to June, 1992. Furthermore, examination of when money orders were purchased and when groupings of deposits were made, revealed a pattern linking such deposits to the dates of PITTS' New York trips.

34. From 1987 to 1992, these unexplained deposits and credit card payments resulted in an enhancement of PITTS' wealth by over one hundred thousand dollars, as follows:

<u>YEAR</u>	<u>TOTAL VALUE OF DEPOSITS</u>
1987	\$ 2,775.00
1988	5,024.48
1989	23,414.31
1990	35,520.00
1991	29,115.21
1992	<u>28,375.66</u>
TOTAL	\$ 124,224.66

This sum of money does not include any funds PITTS may have received which were not deposited into one of his accounts or

United States District Court
For The District of Columbia

UNITED STATES OF AMERICA

V.

ANA BELEN MONTES
DOB: 2/28/57

CRIMINAL COMPLAINT

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 01-30-2012 BY 65179/DMH/BAW/STP/bls
CASE NUMBER: 01 26-8

(Name and Address of Defendant)

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. On or about from October 5, 1996 to the present in Washington, D.C.

County, in the District of Columbia defendant(s) did, (Track Statutory Language of Offense)

conspired, confederated and agreed with persons known and unknown to violate 18 U.S.C. § 794(a), that is, to communicate, deliver and transmit to the government of Cuba and its representatives, officers and agents, information relating to the national defense of the United States, with the intent and reason to believe that the information was to be used to the injury of the United States and to the advantage of Cuba, and that Montes did acts to effect the objects of this conspiracy in the District of Columbia and elsewhere, all in violation of 18 U.S.C. § 794(c).

violation of Title 18 United States Code, Section(s) 794(c).

Further state that I am Steven A. McCoy, Special Agent with the Federal Bureau of Investigation, and that this complaint is based on the following facts:

See Attached Affidavit

Continued on the attached sheet and made a part hereof:

SA, Ronald L. Walutes, Jr. (202) 514-6966
came to before me and subscribed in my presence,

☒ Yes

☐ No

Signature of Complainant
Steven A. McCoy, Special Agent
Federal Bureau of Investigation

9/20/01

at

Washington, D.C.
City and State

Signature of Judicial Officer
John M. Facciola
U.S. Magistrate Judge

Signature of Judicial Officer

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA
V.

ANA BELEN MONTES
DOB: 2/28/57

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 01-30-2012 BY 65179/DMH/BAW/STP/bls

WARRANT FOR ARREST

CASE NUMBER: C1 246

To: The United States Marshal
and any Authorized United States Officer

YOU ARE HEREBY COMMANDED to arrest ANA BELEN MONTES
Name

and bring him or her forthwith to the nearest magistrate to answer a(n)

☐ Indictment ☐ Information ☒ Complaint ☐ Order of Court ☐ Violation Notice ☐ Probation Violation Petition

charging him or her with (brief description of offense)

conspired, confederated and agreed with persons known and unknown to violate 18 U.S.C. § 794(a), that is, to communicate, deliver and transmit to the government of Cuba and its representatives, officers and agents, information relating to the national defense of the United States, with the intent and reason to believe that the information was to be used to the injury of the United States and to the advantage of Cuba, and that Montes committed acts to effect the objects of this conspiracy in the District of Columbia and elsewhere, all in violation 18 U.S.C. § 794(c).

in violation of Title 18 United States Code, Section(s) § 794(c). John M. Facciola
U.S. Magistrate Judge

Name of Issuing Officer

Title of Issuing Officer

Signature of Issuing Officer

Date and Location

Washington, D.C.

9/20/01

Bail fixed at \$ _____ by _____
Name of Judicial Officer

RETURN

This warrant was received and executed with the arrest of the above-named defendant at _____

DATE RECEIVED	NAME AND TITLE OF ARRESTING OFFICER	SIGNATURE OF ARRESTING OFFICER
DATE OF ARREST		

U.S. DISTRICT COURT BUILDING
WASHINGTON, D.C.

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 01-30-2012 BY 65179/DMH/BAW/STP/bls

SE ISSUE: ☒ Arrest ☐ Search ☐ Seizure

warrant for: ANA BELEN MONTES

Violation: ☐ D.C.C. ☒ U.S.C. Title: 18

Section(s): § 794 (c)

Ronald L. Walutes, Jr.

Assistant United States Attorney

(202) 514-6966

September 20, 2001

Date

Bond: Hold Without Bond

COMPLETE FOR ALL ARREST WARRANTS:

Following information must be provided for ALL arrest warrants and an original and duplicate of this form submitted to the Clerk's Office with the warrant papers.

Officer / Agent Name:

Special Agent

Badge Number:

Agency / Unit:

Federal Bureau of Investigation

4 Hour Telephone Number:

For officer/agent)

Pager Number:

For officer/agent)

b6
b7C

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT,
ARREST WARRANT, AND SEARCH WARRANTS

I, Stephen A. McCoy, being duly sworn, hereby state the following under penalty of perjury:

1. I am a Special Agent of the Federal Bureau of Investigation (FBI) and have been so employed for approximately 20 years. I am currently assigned to the Washington Field Office to a squad responsible for counter-intelligence relating to Cuba. I have worked in the counter-intelligence field for approximately 15 years and have worked specifically on counter-intelligence matters involving Cuba for the last 12 years. As a result of my experience in counter-intelligence investigations and foreign counter-intelligence training, I am familiar with the strategy, tactics, methods, tradecraft and techniques of the Cuban foreign intelligence service and its agents.

2. This affidavit is submitted in support of an application for a complaint and arrest warrant charging ANA BELEN MONTES with conspiracy to commit espionage, in violation of 18 U.S.C. § 794(c), and for applications for four (4) search warrants to search the following items and locations:

(1) the residence of ANA BELEN MONTES, such premises known and described as a cooperative apartment located at 3039 Macomb Street, N.W., apartment 20; Washington, D.C. 20008, and further described in Attachment A to this affidavit;

(2) - a red 2000 Toyota Echo, bearing vehicle identification number JTDT1231Y0007841 and District of Columbia license plate number 993 190, which is registered to ANA BELEN MONTES and anticipated to be within the District of Columbia;

(3) room C6-146A, 200 MacDill Boulevard, Washington, D.C. 20340, which is the office/work space assigned to ANA BELEN MONTES at the Defense Intelligence Analysis Center located on Bolling Air Force Base;

(4) safe deposit box #526 leased by ANA BELEN MONTES at Riggs Bank, N.A., Friendship Branch, 4249 Wisconsin Avenue, N.W., Washington, D.C.

3. Information in this affidavit is based on my personal knowledge and on information provided to me by other counter-intelligence investigators and law enforcement officers during the course of this investigation. Searches and various forms of surveillance have been conducted pursuant to the Foreign Intelligence Surveillance Act of 1978, as amended (FISA) and orders of the Foreign Intelligence Surveillance Court (FISC).

I. Background

4. ANA BELEN MONTES is a United States citizen born on February 28, 1957, on a U.S. military installation in Nurnberg, Germany. She graduated from the University of Virginia in 1979 and obtained a masters degree from the Johns Hopkins University School of Advanced International Studies in 1988. She is single and lives alone at 3039 Macomb Street, N.W., apartment 20, Washington, D.C. 20008, which residence is further described in Attachment A. She has registered in her name a red 2000 Toyota Echo, bearing vehicle identification number JTDT1231Y0007841 and District of Columbia license plate number 993 190, which is regularly parked in the vicinity of her residence, and which she regularly uses to commute to her place of employment.

5. MONTES is currently employed by the Defense Intelligence Agency (DIA) as a senior intelligence analyst. Her current office is at 200 MacDill Boulevard, located on Bolling Air Force Base, Washington, D.C. 20340. Her assigned office space is C6-146A. She has been employed by DIA as an analyst since September 1985. Since 1992, she has specialized in Cuba matters. She is currently the senior analyst responsible for matters pertaining to Cuba. During the course of her

employment, MONTES has had direct and authorized access to classified information relating to the national defense.

6. Records obtained from Riggs Bank reveal that MONTES has continually leased safe deposit box number 526 at Riggs Bank, N.A., Friendship Branch, 4249 Wisconsin Avenue, N.W., Washington, D.C. since September 2, 1993.

7. Classified information is defined by Executive Order No. 12,958, 60 Fed. Reg. 19,825 (1995), as follows: information in any form that (1) is owned by, produced by or for, or under the control of the United States government; (2) falls within one or more of the categories set forth in section 1.5 of the order (including intelligence sources and methods; cryptology, military plans, and vulnerabilities or capabilities of systems, installations, projects, or plans relating to the national security), and (3) is classified by an original classification authority who determines that its unauthorized disclosure reasonably could be expected to result in damage to the national security. Under the executive order, the designation "Confidential" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security. The designation "Secret" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security. The designation "Top Secret" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security.

8. In addition, Executive Order No. 12,958 provides that the secretaries of State, Defense and Energy are authorized to create "special access programs" upon certain specific findings including that the vulnerability of, or threat to, specific classified information is exceptional. Under such a

program, the safeguarding and access requirements to information covered by the program exceed those normally required for information at the same classification level.

9. Under 32 C.F.R. § 159a.9, Sensitive Compartmented Information (SCI) refers to information and material that requires special controls for restricted handling.

10. During her employment at DIA, MONTES has continuously held a security clearance and has had regular, authorized access to classified information. I know that a person who receives such clearances is required to be briefed on the procedures for properly handling classified information and the penalties for failing to do so, and that such a person must sign certifications of understanding and agreement in connection with those briefings. I have reviewed a "Classified Information Nondisclosure Agreement" (Standard Form 189) that MONTES signed on September 30, 1985. In that document MONTES acknowledged that she was aware that unauthorized disclosure of classified information could cause irreparable injury to the United States or could be used to advantage by a foreign nation, that she would never divulge such information to an unauthorized person, and that she understood that she was obligated to comply with laws and regulations that prohibit the unauthorized disclosure of classified information, and that she further understood such a disclosure could constitute a violation of United States criminal law including 18 U.S.C. § 794. I have also reviewed a "Security Briefing/Debriefing Acknowledgment" form signed by MONTES on May 15, 1997, briefing her into a Special Access Program (SAP). On this date, specifically in connection with this SAP, MONTES signed a Sensitive Compartmented Information Nondisclosure Agreement, in which she acknowledged that the unauthorized disclosure of SCI may violate federal criminal law, including 18 U.S.C. § 794, and that such disclosure could cause irreparable injury to the United States or be used to the advantage of a foreign nation.

II. MONTES's Toshiba Laptop Computer and Shortwave Radio

A. Communication From the Cuban Intelligence Service (CuIS) to MONTES via Shortwave Radio

11. Based on my knowledge and familiarity with the methodology of the Cuban intelligence service, I am aware that the CuIS often communicates with clandestine CuIS agents operating outside Cuba by broadcasting encrypted messages at certain high frequencies. Under this method, the CuIS broadcasts on a particular frequency a series of numbers. The clandestine agent, monitoring the message on a shortwave radio, keys in the numbers onto a computer and then uses a diskette containing a decryption program to convert the seemingly random series of numbers into Spanish-language text. This was the methodology employed by some of the defendants convicted last June in the Southern District of Florida of espionage on behalf of Cuba and acting as unregistered agents of Cuba, in the case of United States of America v. Gerardo Hernandez, et al., Cr. No. 98-721-CR-Lenard(s)(s). Although it is very difficult to decrypt a message without access to the relevant decryption program, once decrypted on the agent's computer the decrypted message resides on the computer's hard drive unless the agent takes careful steps to cleanse the hard drive of the message. Simply "deleting" the file is not sufficient.

12. Based on the evidence described below, I have concluded that MONTES was a clandestine CuIS agent who communicated with her handling CuIS officer in the manner described above.

13. A receipt obtained from a CompUSA store located in Alexandria, Virginia indicated that on October 5, 1996, one "Ana B. Montes" purchased a refurbished Toshiba laptop computer, model 405CS, serial number 10568512.

14. During a court-authorized surreptitious entry into MONTES's residence, conducted by the FBI on May 25, 2001, FBI agents observed in her residence a Toshiba laptop computer with the serial number set out above. During the search, the agents electronically copied the laptop's hard drive. During subsequent analysis of the copied hard drive, the FBI recovered substantial text that had been deleted from the laptop's hard drive.

15. The recovered text from the laptop's hard drive included significant portions of a Spanish-language message, which when printed out with standard font comes to approximately 11 pages of text. The recovered portion of the message does not expressly indicate when it was composed. However, it instructs the message recipient to travel to "the Friendship Heights station" on "Saturday, November 23rd." My review of a calendar indicates that November 23 fell on a Saturday in 1996; the next time thereafter November 23 falls on a Saturday is in 2002. Accordingly, this message was composed sometime before November 23, 1996, and entered onto MONTES's laptop sometime after October 5, 1996, the date she purchased it. Based on its content, I have concluded that it is a message from a CUS officer to MONTES.

16. Portions of the recovered message included the following: "You should go to the WIPE program and destroy that file according to the steps which we discussed during the contact. This is a basic step to take every time you receive a radio message or some disk."

17. During this same search, the agents also observed a Sony shortwave radio stored in a previously opened box on the floor of the bedroom. The agents turned on the radio to confirm that it was operable.—Also found was an earpiece that could be utilized with this shortwave radio, allowing the radio to be listened to more privately. Similar earpieces were found in the residences of the defendants in the Hernandez case, as described above in paragraph 11.

18. The recovered portion of the message begins with the following passage:

Nevertheless, I learned that you entered the code communicating that you were having problems with radio reception. The code alone covers a lot, meaning that we do not know specifically what types of difficulty you are having. Given that it's only been a few days since we began the use of new systems, let's not rule out that the problem might be related to them. In that case, I'm going to repeat the necessary steps to take in order to retrieve a message.

The message then describes how the person reading the message should "write the information you send to us and the numbers of the radio messages which you receive." The message later refers to going "to a new line when you get to the group 10 of the numbers that you receive via radio," and still later gives as an "example" a series of groups of numbers: "22333 44444 77645 77647 90909 13425 76490 78399 7865498534." After some further instruction, the message states: "Here the program deciphers the message and it retrieves the text onto the screen, asking you if the text is okay or not." Near the conclusion of the message, there is the statement "In this shipment you will receive the following disks: . . . 2) Disk "R1" to decipher our mailings and radio."

19. Further analysis of MONTES's copied Toshiba hard drive identified text consisting of a series of 150 5-number groups. The text begins, "30107 24624," and continues until 150 such groups are listed. The FBI has determined that the precise same numbers, in the precise same order, were broadcast on February 6, 1999, at AM frequency 7887 kHz, by a woman speaking Spanish, who introduced the broadcast with the words "Attencion! Attencion!" The frequency used in that February 1999 broadcast is within the frequency range of the shortwave radio observed in MONTES's residence on May 25, 2001.

B. Communication Between the CuIS and MONTES via Computer Diskette

20. Based on my knowledge of the methodology employed by the CuIS, I am aware that a clandestine CuIS agent often communicates with his or her handling CuIS officer by typing a message onto a computer, and then encrypting and saving it to a diskette. The agent thereafter physically delivers the diskette, either directly or indirectly, to the officer. In addition, as an alternative to sending an encrypted shortwave radio broadcast, a CuIS officer often will similarly place an encrypted message onto a diskette and again simply physically deliver the diskette, clandestinely, to the agent. Upon receipt of the encrypted message, either by the CuIS officer or the agent, the recipient employs a decryption program contained on a separate diskette to decrypt the message. The exchange of diskettes containing encrypted messages; and the use of decryption programs contained on separate diskettes, was one of the clandestine communication techniques utilized by the defendants in the Hernandez case described above in paragraph 11. Although it is difficult to decrypt a message without the decryption program, the very process of encrypting or decrypting a message on a computer causes a decrypted copy of the message to be placed on the computer's hard drive. Unless affirmative steps are taken to cleanse the hard drive, beyond simply "deleting" the message, the message can be retrieved from the hard drive.

21. Based on the evidence described below, I have concluded that MONTES was a CuIS agent who communicated with her CuIS handling officer by passing and receiving computer diskettes containing encrypted messages.

22. The message described above that was contained on the hard drive of MONTES's laptop computer contained the following passage:

Continue writing along the same lines you have so far, but cipher the information every time you do, so that you do not leave prepared information that is not ciphered in the house. This is the most

sensitive and compromising information that you hold. We realize that this entails the difficulty of not being able to revise or consult what was written previously before each shipment, but we think it is worth taking this provisional measure. It is not a problem for us if some intelligence element comes repeated or with another defect which obviously cannot help, we understand this perfectly.-- Give "E" only the ciphered disks. Do not give, for the time being, printed or photographed material. Keep the materials which you can justify keeping until we agree that you can deliver them.-- Keep up the measure of formatting the disks we send you with couriers or letters as soon as possible, leaving conventional notes as reminders only of those things to reply to or report.

The message goes on to refer to a "shipment" that contains "Disk 'S1' - to cipher the information you send," and, as indicated in the previous section, to "Disk 'R1' to decipher our mailings and radio." Earlier in the message, there is a reference to "information you receive either via radio or disk."

23. During the court-authorized search of the residence on May 25, 2001, two boxes containing a total of 16 diskettes were observed. During a subsequent such search on August 8, 2001, a box containing 41 diskettes, later determined to be blank, were observed. Finally, records obtained from a Radio Shack store located near MONTES's residence indicate that MONTES purchased 160 floppy diskettes during the period May 1, 1993, to November 2, 1997.

III. Communication from MONTES to the CuIS by Pager

24. Based on my knowledge of the methodology employed by the CuIS, I am aware that a clandestine CuIS agent often communicates with his or her handling CuIS officer by making calls to a pager number from a pay telephone booth and entering a pre-assigned code to convey a particular message. This methodology was utilized by the defendants in the Hernandez case described above in paragraph 11.

25. Based on the evidence described below, I believe that MONTES has been communicating with her handling CuIS officer in this fashion.

26. In the same message copied from MONTES's hard drive that has been described earlier in this affidavit, there is a passage that states:

C) Beepers that you have. The only beepers in use at present are the following: 1) (917) [first seven-digit telephone number omitted from this application], use it with identification code 635. 2) (917) [second seven-digit telephone number omitted from this application]. Use it with identification code 937. 3) (917) [third seven-digit telephone number omitted from this application] Use it only with identification code 2900 . . . because this beeper is public, in other words it is known to belong to the Cuban Mission at the UN and we assume there is some control over it. You may use this beeper only in the event you cannot communicate with those mentioned in 1) and 2), which are secure.

Based on my experience and knowledge, I have concluded that the reference to "control over it" in the above passage refers to the CuIS officer's suspicion that the FBI is aware that this beeper number is associated with the Cuban government and is monitoring it in some fashion.

27. In addition, as described previously, the message on the laptop's hard drive includes a portion stating that the message recipient "entered the code communicating that you were having problems with radio reception." Based on the evidence described above, I have concluded this portion of the message indicates that MONTES at some point shortly prior to receiving the message sent a page to her CuIS officer handler consisting of a pre-assigned series of numbers to indicate she was having communication problems.

28. Based on evidence obtained during the FBI's physical surveillance of MONTES conducted between May and September 2001, I have concluded that MONTES continues to send coded pages to the CuIS. This evidence is described below in paragraphs 38 to 45.

III. MONTES's Transmission of Classified Information to the CuIS

29. The same message described above, as well as other messages recovered from the laptop's hard drive, contained the following information indicating that MONTES had been tasked to provide and did provide classified information to the CuIS.

30. In one portion of the message discussed above, the CuIS officer states:

What *** said during the meeting . . . was very interesting. Surely you remember well his plans and expectations when he was coming here. If I remember right, on that occasion, we told you how tremendously useful the information you gave us from the meetings with him resulted, and how we were waiting here for him with open arms.

31. I have replaced in this application with "****" a word that begins with a capital letter, which was not translated, and is in fact the true last name of a U.S. intelligence officer who was present in an undercover capacity, in Cuba, during a period that began prior to October 1996. The above quoted portion of the message indicates that MONTES disclosed the U.S. officer's intelligence agency affiliation and anticipated presence in Cuba to the CuIS, which information is classified "Secret." As a result, the Cuban government was able to direct its counter-intelligence resources against the U.S. officer ("we were waiting here for him with open arms").

32. The very next section in the message states:

We think the opportunity you will have to participate in the ACOM exercise in December is very good. Practically, everything that takes place there will be of intelligence value. Let's see if it deals with contingency plans and specific targets in Cuba, which are to prioritized interests for us.

33. I have concluded that the "ACOM exercise in December" is a reference to a December 1996 war games exercise conducted by the U.S. Atlantic Command, a U.S. Department of Defense

unified command, in Norfolk, Virginia. Details about the exercise's "contingency plans and specific targets" is classified "Secret" and relates to the national defense of the United States.

34. DIA has advised that MONTES attended the above exercise in Norfolk, as part of her official DIA duties.

35. In a separate message partially recovered from the hard drive of MONTES's Toshiba laptop, the message reveals details about a particular Special Access Program (SAP) related to the national defense of the United States, and states: "In addition, just today the agency made me enter into a program, 'special access top secret. [First name, last name omitted from this application] and I are the only ones in my office who know about the program." The details related about this SAP in this message are classified "Top Secret" / SCI.

36. DIA has confirmed that MONTES and a colleague with the same name as that related in the portion of the message described above were briefed into this SAP, together, on May 15, 1997.

Accordingly, I have concluded that the above message from MONTES to a CuIS officer.

37. In yet another message recovered from the laptop, there is a statement revealing that "we have noticed" the location, number and type of certain Cuban military weapons in Cuba. This information is precisely the type of information that is within MONTES's area of expertise, and is, in fact, an accurate statement of the U.S. intelligence community's knowledge on this particular issue. The information is classified "Secret." Accordingly, I have concluded that this message also is a message from MONTES to a CuIS officer.

FBI Physical Surveillance of MONTES and Telephone Records for May to September 2001

38. FBI physical surveillance of MONTES has shown a recent pattern of pay telephone calls by her to a pager number, a communication method that, as described above in paragraph 24, is

consistent with known CULS communications plans and operations. In each paragraph below that refers to MONTES driving, she was utilizing the Toyota described above in paragraph 2.

39. The FBI maintained periodic physical surveillance of MONTES during the period May to September 2001. On May 20, 2001, MONTES left her residence and drove to the Hecht's on Wisconsin Avenue, in Chevy Chase, Maryland. She entered the store at 1:07 p.m. and exited by the rear entrance at 1:27 p.m. She then sat down on a stone wall outside the rear entrance and waited for approximately two minutes. At 1:30 p.m., the FBI observed her walk to a pay phone approximately 20 feet from where she was sitting. She placed a one minute call to a pager number using a pre-paid calling card. At 1:45 p.m. she drove out of the Hecht's lot and headed north on Wisconsin Avenue toward Bethesda, Maryland. At 1:52 p.m. she parked her car in a lot and went into Modell's Sporting Goods store. She quickly exited the store carrying a bag and crossed Wisconsin Avenue to an Exxon station. She was observed looking over her right and left shoulders as she crossed the Exxon lot. At 2:00 p.m. she placed a one minute call from a pay phone at the Exxon station to the same pager number using the same pre-paid calling card. By 2:08 p.m., MONTES had walked back to her vehicle and was driving back to her residence where she arrived at 2:30 p.m.

40. On June 3, 2001, MONTES engaged in similar communications activity. She left her residence at approximately 2:30 p.m. and drove to a bank parking lot at the corner of Harrison Street, N.W. and Wisconsin Avenue, N.W. She exited her car at approximately 2:37 pm and entered a Borders Book Store on Wisconsin Avenue. She left the store approximately 40 minutes later. She then crossed Wisconsin Avenue to the vicinity of three public pay phones near the southern exit of the Friendship Heights Metro Station. At 3:28 p.m. she placed a one-minute call using the same pre-

paid calling card to the same pager number she had called on May 20, 2001. After a few minutes, she walked back to her car and drove to a grocery store.

41. Pursuant to court authorization, on August 16, 2001, the FBI searched MONTES's pocketbook. In a separate compartment of MONTES's wallet, the FBI found the pre-paid calling card used to place the calls on May 20, 2001 and June 3, 2001. In the same small compartment, the FBI located a slip of paper on which was written the pager number she had called. Written above this pager number was a set of digits that I believe comprise one or more codes for MONTES to use after calling the pager number, i.e., after contacting the pager, she keys in a code to be sent to the pager which communicates a particular pre-established message.

42. On August 26, 2001, at approximately 10:00 a.m., the FBI observed MONTES making a brief pay telephone call to the same pager number from a gas station/convenience store located at the intersection of Connecticut and Nebraska Avenues, N.W., in Washington, D.C.

43. On September 14, 2001, MONTES left work and drove directly to her residence. She then walked to Connecticut Avenue, N.W., in Washington, D.C., still wearing her business clothes, and made a stop at a dry cleaning shop. She then entered the National Zoo through the Connecticut Avenue entrance. She proceeded to the "Prairie Land" overlook where she stayed for only 30 seconds. She then walked further into the zoo compound and basically re-traced her route out of the zoo. At approximately 6:30 p.m. MONTES removed a small piece of paper or card from her wallet and walked to a public phone booth located just outside the pedestrian entrance to the zoo. MONTES then made what telephone records confirmed to be two calls to the same pager number she had called in May, June and August, as described above. The records reflect that the first call was unsuccessful, i.e., the call lasted zero seconds. According to the records, she made a second call

one minute later that lasted 33 seconds. Shortly after making these calls, MONTES looked at her watch and then proceeded to walk back to her residence.

43. On September 15, 2001, telephone records pertaining to the pre-paid calling card number on the card observed in her pocketbook on August 16, 2001, show that MONTES made a call to the same pager number at 11:12 a.m. that lasted one minute.

44. On September 16, 2001, MONTES left her residence in the early afternoon and took the Metro (Red Line) to the Van Ness - UDC station in Washington, D.C. She made a brief telephone call from a payphone in the Metro station at approximately 1:50 p.m., again to the same pager number.

45. MONTES is known to possess a cell phone. A cell phone was observed during a court-authorized search of her tote bag on August 16, 2001. In addition, during surveillance on September 16, 2001, MONTES was observed speaking on a cell phone. Furthermore, telephone records obtained in May 2001 confirm that she has subscribed to cell telephone service continually from October 26, 1996 to May 14, 2001. MONTES's use of public pay phones notwithstanding her access to a cell phone supports my conclusion that the pay phone calls described in this section were in furtherance of MONTES's espionage.

Probable Cause to Seize Documents, Materials and Computer Media

46. My experience has shown that individuals involved in espionage very often maintain copies of correspondence, draft documents and even classified government documents which are themselves of evidentiary value, along with evidence of criminal and other associations. This evidence includes directories, lists, news articles, photographs, travel and similar material. The items and materials utilized by persons engaged in espionage is further described in Attachment B.

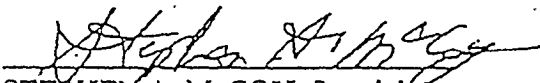
47. MONTES is known to have both a laptop and a desktop computer in her residence. In addition, she utilizes a desktop computer in her office in the DIAC. These computers may be attached to peripherals such as printers when the search warrants are executed. Searching these computer systems may require a range of data analysis techniques. In some cases, it is possible for the agents to conduct carefully targeted searches that can locate evidence without requiring a time-consuming manual search through unrelated materials that may be commingled with criminal evidence. Similarly, agents may be able to locate the materials covered in the warrant by looking for particular directory or file names. In other cases, however, such techniques may not yield the evidence described in the warrant. Criminals can mislabel or hide files and directories; encode communications to avoid using key words; attempt to delete files to evade detection; or take other steps designed to frustrate law enforcement searches for information. These steps all are anticipated to be applicable in this case. These steps may require agents to conduct more extensive searches, which can more easily be accomplished with equipment that cannot be brought to the search sites, such as scanning areas of the disk not allocated to listed files, or opening every file and scanning its contents briefly to determine whether it falls within the scope of the warrant. In light of these difficulties, your affiant requests permission to use whatever data analysis techniques appear necessary to locate and retrieve the evidence in the computers, diskettes, and peripherals that are located within the places and items to be searched, and to remove these items from the places to be searched so that the items may be searched more thoroughly.

Conclusion

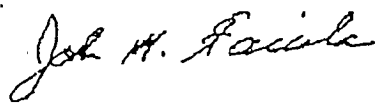
48. Based on the evidence described above, I believe probable cause exists that from on or about October 5, 1996, to the date of this affidavit, in the District of Columbia and elsewhere, ANA

BELEN MONTES, conspired, confederated and agreed with persons known and unknown to violate 18 U.S.C. § 794(a), that is, to communicate, deliver and transmit to the government of Cuba and its representatives, officers and agents, information relating to the national defense of the United States, with the intent and reason to believe that the information was to be used to the injury of the United States and to the advantage of Cuba, and that MONTES committed acts to effect the object of this conspiracy in the District of Columbia and elsewhere, all in violation of 18 U.S.C. § 794(c).

49. I further believe that probable cause exists that the items and locations described in Attachment A contain evidence, fruits, and instrumentalities relating to the above violation, which evidence fruits and instrumentalities are further described in Attachment B.


STEPHEN A. MCCOY, Special Agent
Federal Bureau of Investigation

SWORN TO AND SUBSCRIBED BEFORE ME THIS 20 DAY OF SEPTEMBER, 2001.


UNITED STATES MAGISTRATE JUDGE
John M. Facciola
U.S. Magistrate Judge

ATTACHMENT A

The residence of ANA BELEN MONTES is located at 3039 Macomb Street, N.W., apartment 20, Washington, D.C. 20008. 3039 Macomb Street, N.W., is titled "The Cleveland Apartments," and is a three story, red brick building. Apartment 20 is on the second floor and is the first door on the left.

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Serial Description ~ Unrecorded Serial

[illegible]

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