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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 DARRYL CHERNEY,

13 Plaintiff,

14 v.

15 THE FEDERAL BUREAU OF
16 INVESTIGATION, *et al.*,

17 Defendants.

Case No. C-91-1057 CW (JL)

DECLARATION OF DENNIS
CUNNINGHAM

IN SUPPORT OF PLAINTIFF'S
OBJECTION TO DESTRUCTION OF
EVIDENCE...

18 1. If called as a witness in this matter, I, Dennis Cunningham, would testify as follows:

19 2. I am an attorney licensed to practice law throughout the State of California and before
20 this Court. I am counsel for Plaintiff in the above-captioned case.

21 3. I am informed and believe that the settlement agreement reached in this case included
22 the provision that the government notify plaintiffs before it destroyed any evidence in the case.
23 Exhibit 1 hereto is a true and correct copy of an email from AUSA R. Joseph Sher so notifying
24 plaintiffs. I am thus informed and believe that absent intervention by this Court, the United
25 States, by and through the FBI, will forever destroy the remains of the Oakland and Cloverdale
26 bombs, and possibly, the "LP Screws Millworkers sign" apparently left by the bomber(s) at
27 Cloverdale, and with this destruction the last best chance for solving the mystery of *Who Bombed*
28 *Judi Bari*.

1 4. Exhibit 2 hereto contains true and correct copies of photographs related to the
2 Oakland car bombing on May 24, 1990, including both crime scene photographs, evidence
3 photographs, and a photograph depicting FBI Special Agent and lab examiner David Williams
4 modeling a demonstration device in Judi Bari's blown up Subaru.

5 5. Exhibit 3 hereto contains true and correct copies of documents related to the
6 Cloverdale bombing, including photographs from the scene and evidence photographs; an FBI
7 Airtel dated 5/31/90 announcing the FBI's pickup of the Cloverdale device from Sonoma County
8 officials and referencing a fingerprint of value; a 5/26/90 article in the Santa Rosa Press
9 Democrat discussing the two bombings; and the FBI Crime Laboratory's 6/13/90
10 acknowledgement of receipt and inventory of the Cloverdale components, further mentioning the
11 fingerprint.

12 6. I am informed and believe that despite the fact that the FBI acknowledged that it had
13 obtained a usable fingerprint from the Cloverdale evidence, the FBI never sincerely followed up
14 in trying to establish who the fingerprint belonged to, or never disclosed the results if it did. The
15 same can be said of DNA testing. That is, I am informed and believe that the government either
16 never conducted any DNA testing of the Cloverdale and Oakland bomb components, or if it did,
17 it has kept this fact and any results secret.

18 7. Exhibit 4 hereto is a true and correct copy of the "Lord's Avenger Letter," and a copy
19 of the envelope bearing a postmark of May 29, 1990 and addressed to reporter Mike Geniella of
20 the Santa Rosa Press Democrat. The parties generally agree that the Lord's Avenger either built
21 or had intimate knowledge concerning the construction of both the Cloverdale and Oakland
22 bombs, and that in any event, the same person(s) probably assembled both bombs.

23 8. The evidence was in conflict as to whether Sonoma County Sheriff's deputies
24 followed protocol in alerting the FBI to the Cloverdale bombing at the time, though I recall that
25 an OPD spokesman informed the press shortly after the bombing in Oakland that they were
26 looking into the (attempted) bombing in Cloverdale as a possible related act of terrorism by
27 Earth First. However, it was at least clear from the record that the FBI only expressed public
28 interest in the Cloverdale bomb and dispatched agents to collect it, and examined it, after the
Lord's Avenger letter surfaced, as the documents in Exhibit 3 hereto, and may more, show.

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9. Exhibit 5 hereto is a true and correct copy of an FBI summary (not clearly dated) of the FBI's claimed suspicions, however unwarranted, in the Judi Bari case, and a copy of an op-ed piece in the New York Times written by Judi Bari, which the FBI attached to its summary.

10. Exhibit 6 hereto is a true and excerpt from plaintiffs' trial exhibit list, filed on or about 3/28/02. It reflects that we listed among our trial exhibits the remains of both the Cloverdale and Oakland bombs, along with photos of the bombs and fragments, and the "LP Screws Millworkers" sign. Plaintiffs made various use of this evidence at trial, including by showing photos or reports (or in the case of the Oakland bomb, the physical evidence) to witnesses and/or the jury, and by moving certain items into evidence.

11. Exhibit 7 hereto is a true and correct copy of the United States' objections to plaintiffs' exhibit list.

12. Exhibit 8 hereto is a true and correct excerpt from Plaintiffs' Motion for Certification re Qualified Immunity (i.e. that defendants were not entitled to qualified immunity), filed on or about March 18, 1997. It still contains one of our most cogent collected analyses of case, and the evidence demonstrating the government's attempt to frame, chill, discredit, and neutralize Judi Bari, Darryl Cherney, Redwood Summer, and Earth First.

13. Exhibit 9 hereto contains a selection of news articles which include various repetitions of the FBI and Oakland Police line that Judi Bari and Darryl Cherney were the only or primary suspects in the bombing. This is a tiny sample of the total number of articles (to say nothing of TV news reports, documentaries, feature stories, etc) about the bombing and the trial.

14. On June 11, 2002, the Jury returned a historic, \$4.4 million verdict in plaintiffs' favor, awarding roughly 80% of this sum for violation of plaintiffs' First Amendment rights, thereby vindicating our core claim.

15. I swear under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge, except as to those matters stated on information or belief, and as to those matters, I believe them to be true.

Sworn and subscribed to at San Francisco, CA on August 4, 2010.


DENNIS CUNNINGHAM