

Exhibit A

NYT FOIA for Shooting Incident Review Team reports

Charles Savage [savage@nytimes.com]

Sent: Tuesday, November 03, 2009 4:01 PM

To: FOIPA_Request

FOIA Request Form

Requester's Name:

Charlie Savage

Address:

c/o The New York Times

1627 I Street NW

Washington, DC 20006

Phone Number (optional):

202-862-0317

E-Mail (optional):

savage@nytimes.com

Subject:

Copies of all Shooting Incident Review Team reports completed between Jan. 1, 1999, and the present. If practicable, I request that these documents to be provided in electronic file form rather than on paper.

In order to help to determine status to assess fees, select:

I am a representative of the news media and this request is made part of news gathering and not for commercial use.

Enter media name:

The New York Times

Select type of Media:

Newspaper

Purpose:

News gathering about FBI shooting incidents.

Enter maximum amount you are willing to pay:

\$100 without further correspondence

Explanation for a request for a waiver of fees:

I request a waiver of fees because I am a representative of the news media and this request is made as part of news gathering.

Additional Comments:

Thank you for your assistance. Please do not hesitate to call if I can be of any help in clarifying or facilitating this request.

Charlie Savage

The New York Times, Washington Bureau

Office: 202-862-0317

Fax: 202-862-0427

Cell: 202-369-6653

Exhibit B



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

November 13, 2009

MR. CHARLES SAVAGE
THE NEW YORK TIMES
1627 I STREET NORTHWEST
WASHINGTON, DC 20006

FOIPA Request No.: 1139615- 000
Subject: SHOOTING INCIDENT REVIEW
TEAM REPORTS COMPLETED JANUARY
1, 1999

Dear Mr. Savage:

- This acknowledges receipt of your Freedom of Information-Privacy Acts (FOIPA) request to the FBI. The FOIPA number listed above has been assigned to your request.
- For an accurate search of our records, please provide the complete name, alias, date and place of birth for the subject of your request. Any other specific data you could provide such as prior addresses, or employment information would also be helpful. If your subject is deceased, please include date and proof of death.
- To make sure information about you is not released to someone else, we require your notarized signature or, in place of a notarized signature, a declaration pursuant 28 U.S.C. § 1746. For your convenience, the reverse side of this letter contains a form which may be used for this purpose.
- If you want the FBI's Criminal Justice Information System (CJIS) to perform a search for your arrest record, please follow the enclosed instructions in Attorney General Order 556-73. You must submit fingerprint impressions so a comparison can be made with the records kept by CJIS. This is to make sure your information is not released to an unauthorized person.
- We are searching the indices to our Central Records System for the information you requested, and will inform you of the results as soon as possible.
- Processing delays have been caused by the large number of requests received by the FBI. We will process your request(s) as soon as possible.

Your request has been assigned the number indicated above. Please use this number in all correspondence with us. Your request for a fee waiver is being considered and you will be advised as to its status at a later date. Your patience is appreciated.

Very truly yours,

David M. Hardy
Section Chief,
Record/Information
Dissemination Section

Exhibit C



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

March 16, 2010

MR. CHARLES SAVAGE
THE NEW YORK TIMES
1627 I STREET NORTHWEST
WASHINGTON, DC 20006

Request No: 1139615-000

Subject: SHOOTING INCIDENT REVIEW
TEAM REPORTS COMPLETED

Dear Mr. Savage:

The purpose of this letter is to advise you of the status of your pending Freedom of Information/Privacy Acts (FOIPA) request at the Federal Bureau of Investigation (FBI). Currently the FBI is searching for, retrieving, scanning, and evaluating files that may be responsive to your request. Many factors may contribute to the time required to process your request; however, the greatest single factor is the number of documents associated with your request.

Once your files have been evaluated as potentially responsive, your request will be forwarded to the "perfected backlog", where your request will wait for assignment to an analyst.

You may inquire as to the status of your request by calling the FBI's FOIPA Public Information Center at 540-868-4593.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. Hardy", is positioned above the typed name.

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

Exhibit D



David McCraw
Vice President and
Assistant General Counsel

620 6th Avenue
New York, NY 10018

tel 212.556-4031
fax 212.556-4834
mccraw@nytimes.com

March 29, 2010

VIA FACSIMILE (540-868-4995)

David M. Hardy
Section Chief
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843

Re: Request No. 1139615 - Freedom of Information Act ("FOIA") Appeal

Dear Mr. Hardy:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, this letter constitutes an administrative appeal of the constructive denial by the Federal Bureau of Investigation ("FBI") of a FOIA request submitted by reporter Charles Savage of The New York on Nov. 3, 2009.

Mr. Savage requested copies of all Shooting Incident Review Team reports completed between Jan. 1, 1999 and the present. A copy of the request is enclosed. On March 16, 2010, Mr. Savage received a response from the FBI merely advising him that the agency is searching for and evaluating files. It is our understanding, however, that these files were recently the subject of an internal administrative review, and we know of no reason why there would be a delay in copying them and making them available.

Under 5 U.S.C. § 552(a)(6)(A)(i), an agency has twenty days to respond to a FOIA request, either by producing documents or setting forth the exemptions that apply and justify withholding. The FBI's twenty-day deadline passed some three months ago. We thus appeal the agency's constructive denial of the request and ask that the FBI promptly provide us with records responsive to our request.

#48645v1

#48645v1

Exhibit E



U.S. Department of Justice

Office of Information Policy

Telephone: (202) 514-3642

Washington, D.C. 20530

MAY 4 2010

David E. McCraw, Esq.
The New York Times Company
620 8th Avenue
New York, NY 10018

Re: Appeal No. 2010-1679
Request No. 1139615
CS:DEB

Dear Mr. McCraw:

You attempted to appeal from the failure of the Federal Bureau of Investigation to respond to your request for access to records.

Department of Justice regulations provide for an administrative appeal only after there has been an adverse determination by a component. See 28 C.F.R. § 16.9 (2009). As no adverse determination has yet been made, there is no action for this Office to consider on appeal. Indeed, the Freedom of Information Act itself contemplates the filing of a lawsuit by the requester, rather than an administrative appeal, when an agency has failed to respond to a request within the statutory time limits. See 5 U.S.C. § 552(a)(6)(C)(i).

We have forwarded your letter to the FBI. I suggest that you contact it directly to inquire about the status of your request. You may appeal any future adverse determination made by the FBI.

Sincerely,

Anne D. Work
Acting Senior Counsel
Administrative Appeals Staff

By: *CSmith*

Caroline Smith
Attorney-Advisor

FBI

Exhibit F

Argall, Dennis J. (RMD) (FBI)

From: Savage, Charles [savage@nytimes.com]
Sent: Thursday, July 08, 2010 9:58 AM
To: Argall, Dennis J. (RMD) (FBI)
Subject: RE: hi, you two need to hook up

Good morning Dennis –

Kate Schweit tells me their study is looking at SIRT reports dating back to Jan. 1, 1993. So, as we discussed, to harmonize with that effort I would like to make my modified/replacement FOIA request for SIRT reports from 01/01/93 to the present. I appreciate your offer to let me reformulate the request without losing my position in line.

Also, to memorialize what we discussed, I would like to reduce the scope of my request to include only the synopsis/summary sections of those reports, the "E.C." (electronic communication) by the review panel containing its findings about each incident, and any section of the SIRT that contains concerns identified by investigators.

It's my understanding from Kate that the universe of reports in this time period is about 200. The synopsis sections tend to be about three pages long, and the EC's are (I believe) even shorter.

(You noted yesterday that the FBI could seek to withhold the investigator-concerns section, if such a thing exists, under the FOIA exception for pre-decisional deliberations; as that is a discretionary rather than mandatory exception, I would request that it not do so in this instance but understand that is a possible outcome.)

Thanks very much, and please do not hesitate to contact me if I can be of assistance in further clarifying this matter.

-- Charlie

Charlie Savage
The New York Times, Washington Bureau

Office: 202-862-0317
Fax: 202-862-0427
Cell: 202-369-6653

From: Schweit, Katherine W. [mailto:Katherine.Schweit@ic.fbi.gov]
Sent: Wednesday, July 07, 2010 3:56 PM
To: Argall, Dennis J. (RMD) (FBI)
Cc: Savage, Charles
Subject: hi, you two need to hook up

7/8/2010

Exhibit G



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

August 03, 2010

MR. CHARLES SAVAGE
THE NEW YORK TIMES
1627 I STREET NORTHWEST
WASHINGTON, DC 20006

Request No: 1139615-000
Subject: SHOOTING INCIDENT REVIEW
TEAM REPORTS COMPLETED

Dear Requester:

The purpose of this letter is to advise you of the status of your pending Freedom of Information/Privacy Acts (FOIPA) request at the Federal Bureau of Investigation (FBI). Currently the FBI is searching for, retrieving, scanning, and evaluating files that may be responsive to your request. Many factors may contribute to the time required to process your request; however, the greatest single factor is the number of documents associated with your request.

Once your files have been evaluated as potentially responsive, your request will be forwarded to the "perfected backlog", where your request will wait for assignment to an analyst.

You may inquire as to the status of your request by calling the FBI's FOIPA Public Information Center at 540-868-4593.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D Hardy", is positioned above the typed name.

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

Exhibit H

Argall, Dennis J. (RMD) (FBI)

From: Oswald, Donald E.
Sent: Wednesday, September 01, 2010 7:45 AM
To: Argall, Dennis J. (RMD) (FBI)
Subject: Re: hi, you two need to hook up

Denny,

I'm at the retirement conference today and tomorrow, returning to work on Friday. Can it wait until then?
Don Oswald
Inspector
(202) 507-3770 (blkbry)

From: Argall, Dennis J. (RMD) (FBI)
To: Oswald, Donald E.
Cc: Schweit, Katherine W.
Sent: Wed Sep 01 07:42:54 2010
Subject: FW: hi, you two need to hook up

Don – I'm just returning from leave but if it is possible can we discuss this one today?
Thanks
Denny

From: Argall, Dennis J. (RMD) (FBI)
Sent: Wednesday, September 01, 2010 7:40 AM
To: 'Savage, Charles'
Cc: Schweit, Katherine W.
Subject: RE: hi, you two need to hook up

Charlie – the compilation report was in for review with the Inspection Division when I went on vacation last week – I need to check with the new Unit Chief to see where things are in the process. Once the report is approved, we'll process it for a FOIA release to you. Let me get some more information today and get back to you.
Denny

From: Savage, Charles [mailto:savage@nytimes.com]
Sent: Tuesday, August 31, 2010 5:10 PM
To: Argall, Dennis J. (RMD) (FBI)
Cc: Schweit, Katherine W.
Subject: RE: hi, you two need to hook up

Hi Dennis & Kate – Just checking in – what is the status of this process on the SIRT reports? Thanks!

-- Charlie

Charlie Savage
The New York Times
Washington Bureau

9/1/2010

Exhibit I



David McCraw
Vice President and
Assistant General Counsel

620 8th Avenue
New York, NY 10018

tel 212.556-4031
fax 212.556-4634
mccraw@nytimes.com

September 14, 2010

VIA FACSIMILE (540-868-4995)

Mr. David M. Hardy
Section Chief
Record/Information Dissemination Section
U.S. Department of Justice
170 Marcel Drive
Winchester, VA 22602-4843

Re: Request No. 1139615 – Freedom of Information Act (“FOIA”) Appeal

Dear Mr. Hardy:

On March 29, 2010, I wrote to you concerning a FOIA request (the “Request”) submitted by reporter Charles Savage of The New York Times to the Federal Bureau of Investigation on Nov. 3, 2009. I am now writing to find out the status of the response to that request. We have not heard from the Department since receiving an acknowledgement on March 16, 2010.

The Request seeks copies of all Shooting Incident Review Team reports completed between Jan. 1, 1999 and the present.

We look forward to your response.

Sincerely,

David E. McCraw

Exhibit J



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

September 27, 2010

MR. DAVID E. McCRAW
THE NEW YORK TIMES
620 8th AVENUE
NEW YORK, NY 10018

FOIA Request No.: 1139615-000
Subject: SHOOTING INCIDENT REVIEW TEAM
REPORTS COMPLETED JANUARY 1, 1993 TO
THE PRESENT

Dear Mr. McCraw

This letter is in response to your letter dated September 14, 2010, concerning the above Freedom of Information Act (FOIA) request submitted by The New York Times' reporter Charles Savage. There has been a considerable amount of internal coordination that is continuing to be conducted to satisfy this request. The information below is a time-line detailing the ongoing efforts that have been taken to address this FOIA request.

- March 17, 2010:** A status letter was mailed to Mr. Savage concerning his request.
- April 19, 2010:** Inspection Division advised the Records Management Division (RMD) that Assistant Director (AD) Kortan was working with the requester to narrow the scope of his request.
- May 25, 2010:** Inspection Division advised RMD that AD Kortan was in continued negotiations with The New York Times.
- June 22, 2010:** Inspection Division advised RMD that they were given a list of questions from The New York Times which were being addressed.
- July 8, 2010:** Mr. Savage sent an email to Assistant Section Chief (ASC) Argall notifying RMD that he had changed the scope of his request. The email indicated that he requests to receive the synopsis/summary sections, review panel Electronic Communications containing findings, and concerns identified by the investigators in Shooting Incident Review Team (SIRT) reports dated from January 1, 1993 to the present.
- August 3, 2010:** A status letter was mailed to Mr. Savage concerning his request.
- August 31, 2010:** Mr. Savage sent an email to ASC Argall inquiring on the status of his request. ASC Argall responded and subsequently he and Mr. Savage spoke on September 9, 2010, addressing several issues with the pending review of the report.

ASC Argall has been in continuous contact with Mr. Savage by email and telephone to keep him updated on the status of his request. Currently the Inspection Division is compiling responsive information from SIRT reports to send to RMD for FOIA processing.

Sincerely,

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

Exhibit K



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

November 03, 2010

MR. CHARLES SAVAGE
THE NEW YORK TIMES
1627 I STREET NORTHWEST
WASHINGTON, DC 20006

Request No: 1139615-000

Subject: SHOOTING INCIDENT REVIEW
TEAM REPORTS 1993-PRESENT

Dear Mr. Savage:

The purpose of this letter is to advise you of the status of your pending Freedom of Information/Privacy Acts (FOIPA) request at the Federal Bureau of Investigation (FBI). Currently your request is being reviewed by an analyst. The analyst will confirm that all records are responsive to your request and apply exemptions allowed under FOIPA. If your request is for sensitive national security information, then the records must undergo a systematic declassification review prior to application of FOIPA exemptions. Large requests take the longest time to be processed by an analyst.

You may inquire as to the status of your request by calling the FBI's FOIPA Public Information Center at 540-868-4593.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. Hardy", is positioned above the typed name.

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

Exhibit L



Federal Bureau of Investigation

Washington, D.C. 20535

November 18, 2010

MR. CHARLES SAVAGE
THE NEW YORK TIMES
1627 I STREET NORTHWEST
WASHINGTON, DC 20006

Subject: SHOOTING INCIDENT REVIEW TEAM REPORTS
COMPLETED JANUARY 1, 1993 TO THE PRESENT

FOIPA No. 1139615- 000

Dear Mr. Savage:

The enclosed documents were reviewed under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a. Deletions have been made to protect information which is exempt from disclosure, with the appropriate exemptions noted on the page next to the excision. In addition, a deleted page information sheet was inserted in the file to indicate where pages were withheld entirely. The exemptions used to withhold information are marked below and explained on the enclosed Form OPCA-16a:

Section 552

Section 552a

- Exemption grid with columns for Section 552 and Section 552a, including categories like (b)(1), (b)(2), (b)(3), (b)(7)(A-F), (b)(8), (b)(9), (d)(5), (j)(2), (k)(1-7).

492 page(s) were reviewed and 490 page(s) are being released.

- Document(s) were located which originated with, or contained information concerning other Government agency(ies) [OGA]. This information has been:
- referred to the OGA for review and direct response to you.
- referred to the OGA for consultation. The FBI will correspond with you regarding this information when the consultation is finished.

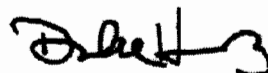
You have the right to appeal any denials in this release. Appeals should be directed in writing to the Director, Office of Information Policy, U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Number assigned to your request so that it may be easily identified.

The enclosed material is from the main investigative file(s) in which the subject(s) of your request was the focus of the investigation. Our search located additional references, in files relating to other individuals, or matters, which may or may not be about your subject(s). Our experience has shown,

when identified, references usually contain information similar to the information processed in the main file(s). Because of our significant backlog, we have given priority to processing only the main investigative file(s). If you want the references, you must submit a separate request for them in writing, and they will be reviewed at a later date, as time and resources permit.

See additional information which follows.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. Hardy", with a stylized flourish at the end.

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

Enclosure(s)

This is the first interim release for your FOIPA#. Future releases will be made as those pages are processed and become available for release. Your patience is appreciated.

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could be reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could be reasonably expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

Exhibit M



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

December 17, 2010

MR. CHARLES SAVAGE
THE NEW YORK TIMES
1627 I STREET NORTHWEST
WASHINGTON, DC 20006

Subject: SHOOTING INCIDENT REVIEW TEAM REPORTS
COMPLETED JANUARY 1, 1993 TO THE PRESENT.

FOIPA No. 1139615- 000

Dear Mr. Savage:

The enclosed documents were reviewed under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a. Deletions have been made to protect information which is exempt from disclosure, with the appropriate exemptions noted on the page next to the excision. In addition, a deleted page information sheet was inserted in the file to indicate where pages were withheld entirely. The exemptions used to withhold information are marked below and explained on the enclosed Form OPCA-16a:

Section 552		Section 552a
<input type="checkbox"/> (b)(1)	<input checked="" type="checkbox"/> (b)(7)(A)	<input type="checkbox"/> (d)(5)
<input checked="" type="checkbox"/> (b)(2)	<input type="checkbox"/> (b)(7)(B)	<input type="checkbox"/> (j)(2)
<input checked="" type="checkbox"/> (b)(3) _____	<input checked="" type="checkbox"/> (b)(7)(C)	<input type="checkbox"/> (k)(1)
<u>18 U.S.C. Section 2510-2520</u>	<input checked="" type="checkbox"/> (b)(7)(D)	<input type="checkbox"/> (k)(2)
_____	<input checked="" type="checkbox"/> (b)(7)(E)	<input type="checkbox"/> (k)(3)
_____	<input type="checkbox"/> (b)(7)(F)	<input type="checkbox"/> (k)(4)
<input type="checkbox"/> (b)(4)	<input type="checkbox"/> (b)(8)	<input type="checkbox"/> (k)(5)
<input type="checkbox"/> (b)(5)	<input type="checkbox"/> (b)(9)	<input type="checkbox"/> (k)(6)
<input checked="" type="checkbox"/> (b)(6)		<input type="checkbox"/> (k)(7)

757 page(s) were reviewed and **757 page(s)** are being released.

- Document(s) were located which originated with, or contained information concerning other Government agency(ies) [OGA]. This information has been:
 - referred to the OGA for review and direct response to you.
 - referred to the OGA for consultation. The FBI will correspond with you regarding this information when the consultation is finished.

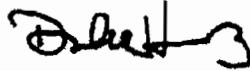
You have the right to appeal any denials in this release. Appeals should be directed in writing to the Director, Office of Information Policy, U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Number assigned to your request so that it may be easily identified.

The enclosed material is from the main investigative file(s) in which the subject(s) of your request was the focus of the investigation. Our search located additional references, in files relating to other individuals, or matters, which may or may not be about your subject(s). Our experience has shown,

when ident, references usually contain information similar to the information processed in the main file(s). Because of our significant backlog, we have given priority to processing only the main investigative file(s). If you want the references, you must submit a separate request for them in writing, and they will be reviewed at a later date, as time and resources permit.

See additional information which follows.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. Hardy".

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

Enclosure(s)

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could be reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could be reasonably expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

Exhibit N



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

December 20, 2010

MR. CHARLES SAVAGE
THE NEW YORK TIMES
1627 I STREET NORTHWEST
WASHINGTON, DC 20006

Subject: SHOOTING INCIDENT REVIEW TEAM REPORTS
COMPLETED JANUARY 1, 1993 TO THE PRESENT.

FOIPA No. 1139615- 000

Dear Mr. Savage:

The enclosed document was received under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a, and is being released to you in its entirety. This is in response to your FOIPA request noted above.

Please note that the search cut-off date for your original request was November 12, 2009, prior to the completion of this report. Subsequently, you made an amended request via e-mail on July 8, 2010, and at that time, the report was still in draft form. The report was not finalized until September 2010. Nevertheless, consistent with the President's Executive Memorandum "Transparency and Open Government," 74 Fed. Reg. 4685, 2009 WL 166656, and the Attorney General's Memorandum for Heads of Executive Departments and Agencies regarding FOIA (March 19, 2009), we are making a discretionary disclosure and releasing this report to you in full.

You have the right to appeal any denials in this release. Appeals should be directed in writing to the Director, Office of Information Policy, U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Number assigned to your request so that it may be easily identified.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. Hardy", is positioned below the "Sincerely yours," text.

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

Enclosure(s)

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could be reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could be reasonably expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

Exhibit O



Federal Bureau of Investigation

Washington, D.C. 20535

January 25, 2011

MR. CHARLES SAVAGE
THE NEW YORK TIMES
1627 I STREET NORTHWEST
WASHINGTON, DC 20006

Subject: SHOOTING INCIDENT REVIEW TEAM REPORTS
COMPLETED JANUARY 1, 1993 TO THE PRESENT.

FOIPA No. 1139615- 001

Dear Mr. Savage:

The enclosed documents were reviewed under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a. Deletions have been made to protect information which is exempt from disclosure, with the appropriate exemptions noted on the page next to the excision. In addition, a deleted page information sheet was inserted in the file to indicate where pages were withheld entirely. The exemptions used to withhold information are marked below and explained on the enclosed Form OPCA-16a:

Table with 3 columns: Section 552, Section 552a, and Section 552a. It lists various exemption codes such as (b)(1), (b)(7)(A), (d)(5), etc.

3 pages were reviewed and 3 pages are being released.

- Document(s) were located which originated with, or contained information concerning other Government agency(ies) [OGA]. This information has been:
referred to the OGA for review and direct response to you.
referred to the OGA for consultation. The FBI will correspond with you regarding this information when the consultation is finished.

You have the right to appeal any denials in this release. Appeals should be directed in writing to the Director, Office of Information Policy, U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Number assigned to your request so that it may be easily identified.

The enclosed material is from the main investigative file(s) in which the subject(s) of your request was the focus of the investigation. Our search located additional references, in files relating to other individuals, or matters, which may or may not be about your subject(s). Our experience has shown,

when ident, references usually contain information similar to the information processed in the main file(s). Because of our significant backlog, we have given priority to processing only the main investigative file(s). If you want the references, you must submit a separate request for them in writing, and they will be reviewed at a later date, as time and resources permit.

See additional information which follows.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. Hardy", with a stylized flourish at the end.

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

Enclosure(s)

This is an interim release consisting of a 1993 Shooting Incident Review Team Report that was not included in your original FOIPA#1139615 release. Please be advised that additional documents are currently being processed and will be released to you upon completion of our review process. Your patience is appreciated.

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could be reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could be reasonably expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

Exhibit P



February 16, 2011

MR. CHARLES SAVAGE
THE NEW YORK TIMES
1627 I STREET NORTHWEST
WASHINGTON, DC 20006

Subject: SHOOTING INCIDENT REVIEW TEAM REPORTS
COMPLETED JANUARY 1, 1993 TO THE PRESENT.

FOIPA No. 1139615- 001

Dear Mr. Savage:

The enclosed documents were reviewed under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a. Deletions have been made to protect information which is exempt from disclosure, with the appropriate exemptions noted on the page next to the excision. In addition, a deleted page information sheet was inserted in the file to indicate where pages were withheld entirely. The exemptions used to withhold information are marked below and explained on the enclosed Form OPCA-16a:

Section 552

Section 552a

- Exemption grid with checkboxes for (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), (b)(7)(A-F), (b)(8), (b)(9), (d)(5), (j)(2), (k)(1-7)

838 page(s) were reviewed and 838 page(s) are being released.

- Document(s) were located which originated with, or contained information concerning other Government agency(ies) [OGA]. This information has been:
- referred to the OGA for review and direct response to you.
- referred to the OGA for consultation. The FBI will correspond with you regarding this information when the consultation is finished.

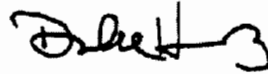
You have the right to appeal any denials in this release. Appeals should be directed in writing to the Director, Office of Information Policy, U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Number assigned to your request so that it may be easily identified.

The enclosed material is from the main investigative file(s) in which the subject(s) of your request was the focus of the investigation. Our search located additional references, in files relating to other individuals, or matters, which may or may not be about your subject(s). Our experience has shown,

when ident, references usually contain information similar to the information processed in the main file(s). Because of our significant backlog, we have given priority to processing only the main investigative file(s). If you want the references, you must submit a separate request for them in writing, and they will be reviewed at a later date, as time and resources permit.

See additional information which follows.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D Hardy".

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

Enclosure(s)

This release included the EC's (electronic communications) by the review panel relating to the previously disclosed SIRT reports.

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could be reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could be reasonably expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

Exhibit Q

NYT FOIA for assessment statistics

Charles Savage [savage@nytimes.com]

Sent: Wednesday, November 04, 2009 2:57 PM

To: FOIPA_Request

FOIA Request Form

Requester's Name:

Charlie Savage

Address:

c/o The New York Times
1627 I Street NW
Washington, DC 20006

Phone Number (optional):

202-862-0317

E-Mail (optional):

savage@nytimes.com

Subject:

Statistics on the aggregate results of assessments the FBI has conducted using the new authorities provided by the AG Guidelines that were put into effect in December 2008. Breaking down the numbers into each of the six types of assessments, how many were converted into predicated investigations (preliminary or full investigations) based upon information developed in those assessments and how many were closed? How many are still ongoing? Please provide the most up to date numbers available at the time the reply to this request is provided.

(Note: the existence of these statistics was referenced in the FBI's response to question 15 from Senator Feingold in the written questions for the record arising from the March 25, 2009, Senate Judiciary Committee hearing on oversight of the FBI. The FBI answers were sent to Congress on Sept. 15, 2009.)

In order to help to determine status to assess fees, select:

I am a representative of the news media and this request is made part of news gathering and not for commercial use.

Enter media name:

The New York Times

Select type of Media:

Newspaper

Purpose:

News gathering about FBI shooting incidents.

Enter maximum amount you are willing to pay:

\$100 without further correspondence

Explanation for a request for a waiver of fees:

I request a waiver of fees because I am a representative of the news media and this request is made as part of news gathering.

Additional Comments:

Thank you for your assistance. Please do not hesitate to call if I can be of any help in clarifying or facilitating this request.

Charlie Savage
The New York Times, Washington Bureau

Office: 202-862-0317
Fax: 202-862-0427
Cell: 202-369-6653

Exhibit R



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

December 11, 2009

MR. CHARLIE SAVAGE
THE NEW YORK TIMES
1627 I STREET, NW
WASHINGTON, DC 20006

FOIPA Request No.: 1140733- 000
Subject: STATISTICS OF RESULTS OF
ASSESSMENTS

Dear Mr. Savage:

- This acknowledges receipt of your Freedom of Information-Privacy Acts (FOIPA) request to the FBI. The FOIPA number listed above has been assigned to your request.
- For an accurate search of our records, please provide the complete name, alias, date and place of birth for the subject of your request. Any other specific data you could provide such as prior addresses, or employment information would also be helpful. If your subject is deceased, please include date and proof of death.
- To make sure information about you is not released to someone else, we require your notarized signature or, in place of a notarized signature, a declaration pursuant 28 U.S.C. § 1746. For your convenience, the reverse side of this letter contains a form which may be used for this purpose.
- If you want the FBI's Criminal Justice Information System (CJIS) to perform a search for your arrest record, please follow the enclosed instructions in Attorney General Order 556-73. You must submit fingerprint impressions so a comparison can be made with the records kept by CJIS. This is to make sure your information is not released to an unauthorized person.
- We are searching the indices to our Central Records System for the information you requested, and will inform you of the results as soon as possible.
- Processing delays have been caused by the large number of requests received by the FBI. We will process your request(s) as soon as possible.

Your request has been assigned the number indicated above. Please use this number in all correspondence with us. Your patience is appreciated.

Very truly yours,

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

Exhibit S



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

December 23, 2009

MR. CHARLIE SAVAGE
THE NEW YORK TIMES
1627 I STREET, NW
WASHINGTON, DC 20006

FOIPA Request No.: 1140733- 000
Subject: STATISTICS ON RESULTS
OF ASSESSMENTS

Dear Mr. Savage:

This responds to your Freedom of Information/Privacy Acts (FOIPA) request.

The material you requested is currently in draft form which is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(5). 5 U.S.C. § 552(b)(5) exempts from disclosure:

inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.

In applying this exemption, I have determined that the records responsive to your request are in draft form; that the documents are predecisional and deliberative; and that release of the information contained in these responsive records could reasonably be expected to interfere with the deliberative process.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be identified easily.

Enclosed for your information is a copy of the FBI File Fact Sheet.

Very truly yours,

A handwritten signature in black ink, appearing to read "D Hardy", is positioned above the typed name.

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

Enclosure

FBI FOIA/PRIVACY ACT FILE FACT SHEET

- The mission of the FBI is to protect and defend the United States against terrorist and foreign intelligence threats, to uphold and enforce the criminal laws of the United States, and to provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners.
- **The FBI does not keep a file on every citizen of the United States .**
- **The FBI was not established until 1908 and we have very few records prior to the 1920's.**
- **FBI files generally contain reports** of FBI investigations of a wide range of matters, including counterterrorism, foreign counter-intelligence, organized crime/drugs, violent crime, white-collar crime, applicants, and civil rights.
- The FBI does not issue clearances or nonclearances for anyone other than its own personnel or persons having access to FBI facilities. Background investigations for security clearances are conducted by many different Government agencies. Persons who received a clearance while in the military or employed with some other government agency should write directly to that entity.
- **An FBI identification record or "rap sheet" is NOT the same as an FBI "file"** - it is simply a listing of information taken from fingerprint cards submitted to the FBI in connection with arrests, federal employment, naturalization, or military service. The subject of a "rap sheet" may obtain a copy by submitting a written request to FBI, CJIS Division, Attn: SCU, Mod. D-2, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306. Each request must have proof of identity which shall consist of **name, date and place of birth and a set of rolled-ink fingerprint impressions** placed upon fingerprint cards or forms commonly utilized for applicant or law enforcement purposes by law enforcement agencies, plus **payment of \$18.00** in the form of a certified check or money order, payable to the Treasury of the United States.
- **The National Name Check Program (NNCP)** conducts a search of the FBI's Universal Index to identify **any** information contained in FBI records that may be associated with an individual and provides the results of that search to the requesting Federal, State or local agency. For the NNCP, a name is searched in a multitude of combinations and phonetic spellings to ensure all records are located. The NNCP also searches for both "main" and "cross reference" files. A main file is an entry that carries the name corresponding to the subject of a file while a cross reference is merely a mention of an individual contained in a file. The results from a search of this magnitude can result in several "hits" and "idents" on an individual. In each instance where UNI has identified a name variation or reference, information must be reviewed to determine whether it is applicable to the individual in question.
- **The Record/Information Dissemination Section/Freedom of Information-Privacy Acts (FOIPA)** search for records provides copies of FBI files relevant to a FOIPA request for information. FOIPA provides responsive documents to requesters seeking "reasonably described information." For a FOIPA search, the subject name, event, activity, business, or event is searched to determine whether there is an investigative file associated with the subject. This is called a "main file search" and differs from The National Name Check Program (NNCP) search.

**FOR GENERAL INFORMATION ABOUT THE FBI,
CHECK OUT OUR WEBSITE AT
<http://www.foia.fbi.gov>**

Exhibit T



RECEIVED

JAN 07 2010

David McCraw
Vice President and
Assistant General Counsel

December 30, 2009

Office of Information Policy

620 Eighth Avenue
New York, NY 10018

tel 212.556-4031
fax 212.556-4634

VIA FIRST CLASS MAIL

Director
Office of Information Policy
U.S. Dept. of Justice
1425 New York Ave. – Suite 11050
Washington, D.C. 20530-0001

Re: Freedom of Information Act (“FOIA”) Appeal (FOIPA Request No. 1140733-000)

To The Director:

On behalf of The New York Times, I hereby appeal the denial of a recent FOIA request from our reporter Charles Savage for statistics on the results of assessments from the Federal Bureau of Investigation. The request was denied under FOIA Exemption Five, 5 U.S.C. §552(b)(5), by a letter from David M. Hardy, dated December 23, 2009 (the “Denial,” attached). We believe the Denial’s invocation of Exemption 5 is contrary to law.

To come within Exemption 5, “materials must bear on the formulation or exercise of agency policy-oriented judgment.” *Petroleum Information Corp. v. U.S. Dept. of Interior*, 976 F.2d 1429, 1435 (D.C. Cir. 1992). Even then, factual information generally must be disclosed, and only opinions are exempt. *Petroleum Information*, 976 F.2d at 1434; *see also Grand Central Partnership, Inc. v. Cuomo*, 166 F.3d 473, 482 (2d Cir. 1999) (citing *EPA v. Mink*, 410 U.S. 73, 87-88 (1975) (holding that the deliberative process privilege does not apply to purely factual information). However, not all opinion falls within the privilege. The information or document to be withheld must be both “predecisional” and “deliberative.” *Grand Central*, 166 F.3d at 481. Thus, while the privilege at times may protect certain “recommendations, draft documents, proposals, suggestions, and other subjective documents,” *Grand Central*, 166 F.3d at 482, it is not enough for an agency show simply that the document at issue contains opinionated matter. The Second Circuit in *Grand Central* carefully spelled out the further requirements that apply before the privilege is properly invoked. First, the document must “reflect the personal opinions of the writer rather than the policy of the agency.” *Id.* (internal quotation and citation omitted). Second, it is the burden of the agency (i) to “pinpoint the specific agency decision to which the document correlates . . .” and (ii) “verify that the document precedes, in temporal sequence, the ‘decision’ to which it relates.” *Id.* Further, if the recommendation contained in the document is

ultimately adopted, it loses its protection as a deliberative process document under FOIA. *Afshar v. Dept. of State*, 702 F.2d 1125, 1143 n. 22 (D.C. Cir. 1983).

Here, the Denial justifies the use of Exemption 5 on the basis that the records are in draft form and states – in a conclusory fashion – that the records are “predecisional and deliberative.”

However, Mr. Savage’s request was directed at the statistical data contained in the records – in other words, for the factual components of the documents. Such factual material is not properly kept confidential under Exemption 5. The fact that the document containing the data is in draft form has no bearing on the question of whether factual information should be released. Factual information contained in records that are otherwise subject to Exemption 5 is disclosable via redaction under FOIA. Accordingly, even if the Denial is correct and the records are deliberative in nature, the statistics must still be provided to Mr. Savage.

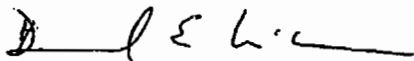
However, it is not clear that Exemption 5 applies at all. While the Denial facetly refers to the records as “predecisional and deliberative,” it makes no attempt to meet the legal standard set out above. It does not specify what policy is being reviewed or formulated. It does not place the documents into the context of any decision-making process. It does not attempt to show that these records reflect the personal opinion of an agency employee. To the extent these records are largely statistical, they would appear to be anything but deliberative and personal. They would instead seem to be the factual recordkeeping of an agency.

More generally, the Denial, in preventing prompt access to factual records documenting the performance of an agency, runs afoul of the principles of accountability and transparency adopted by the Obama Administration in its commitment to FOIA and open government in general. *See* Presidential Memorandum on the Freedom of Information Act, 74 Fed. Reg. 4683 (Jan. 21, 2009) (“In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public”); Attorney General’s Memorandum of March 19, 2009 (“Unnecessary bureaucratic hurdles have no place in the ‘new era of open Government’ that the President has proclaimed”); Sheryl Gay Stolberg, On First Day, Obama Quickly Sets a New Tone, N.Y. Times, January 22, 2009.

Because this appeal is made on behalf of a journalist working on a time-sensitive matter, we would appreciate prompt adjudication of this appeal.

Thank you for your consideration.

Sincerely,



David E. McCraw

enclosure

Exhibit U



U.S. Department of Justice

Office of Information Policy

Telephone: (202) 514-3642

Washington, D.C. 20530

JAN 13 2010

Mr. David E. McCraw
The New York Times Company
620 8th Avenue
New York, NY 10018

Re: Request No. 1140733

Dear Mr. McCraw:

This is to advise you that your administrative appeal from the action of the Federal Bureau of Investigation was received by this Office on January 7, 2010.

The Office of Information Policy has the responsibility of adjudicating such appeals. In an attempt to afford each appellant equal and impartial treatment, we have adopted a general practice of assigning appeals in the approximate order of receipt. Your appeal has been assigned number 2010-0811. Please mention this number in any future correspondence to this Office regarding this matter.

We will notify you of the decision on your appeal as soon as we can. If you have any questions about the status of your appeal you may contact me at the number above.

Sincerely,

A handwritten signature in black ink, appearing to read "Priscilla Jones", written in a cursive style.

Priscilla Jones
Supervisory Administrative Specialist

Exhibit V



U.S. Department of Justice

Office of Information Policy

Telephone: (202) 514-3642

Washington, D.C. 20530

JUL 8 2010

David McCraw, Esq.
The New York Times Company
620 Eighth Avenue
New York, NY 10018

Re: Appeal No. 2010-0811
Request No. 1140733
ADW:SRO

Dear Mr. McCraw:

You appealed on behalf of your client, Charles Savage, from the action of the Federal Bureau of Investigation on his request for access to statistics regarding assessments the FBI has conducted using new authorities granted to it by the Attorney General in December 2008.

After carefully considering your appeal, I am affirming the FBI's action on your client's request. The FBI properly withheld this information in its entirety because it is protected from disclosure under the Freedom of Information Act pursuant to 5 U.S.C. § 552(b)(5). This provision concerns certain inter- and intra-agency communications protected by the deliberative process privilege. The statistics requested are under review and have not yet been put into final form.

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001

E-mail: ogis@nara.gov
Telephone: 301-837-1996
Facsimile: 301-837-0348
Toll-free: 1-877-684-6448

If your client is dissatisfied with my action on your appeal, he may file a lawsuit in accordance with 5 U.S.C. § 552(a)(4)(B).

Sincerely,

A handwritten signature in black ink, appearing to read "Janice Galli McLeod". The signature is written in a cursive style with a large initial "J" and "M".

Janice Galli McLeod
Associate Director

Exhibit W



Federal Bureau of Investigation

Washington, D.C. 20535

December 1, 2010

MR. CHARLIE SAVAGE
THE NEW YORK TIMES
1627 I STREET, NW
WASHINGTON, DC 20006

Subject: STATISTICS OF RESULTS OF ASSESSMENTS

FOIPA No. 1140733- 001

Dear Mr. Savage:

The enclosed documents were reviewed under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a. Deletions have been made to protect information which is exempt from disclosure, with the appropriate exemptions noted on the page next to the excision. In addition, a deleted page information sheet was inserted in the file to indicate where pages were withheld entirely. The exemptions used to withhold information are marked below and explained on the enclosed Form OPCA-16a:

Table with 2 columns: Section 552 and Section 552a. Section 552 includes exemptions (b)(1) through (b)(6). Section 552a includes exemptions (d)(5) through (k)(7).

2 page(s) were reviewed and 2 page(s) are being released.

- Document(s) were located which originated with, or contained information concerning other Government agency(ies) [OGA]. This information has been:
- referred to the OGA for review and direct response to you.
- referred to the OGA for consultation. The FBI will correspond with you regarding this information when the consultation is finished.

You have the right to appeal any denials in this release. Appeals should be directed in writing to the Director, Office of Information Policy, U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Number assigned to your request so that it may be easily identified.

The enclosed material is from the main investigative file(s) in which the subject(s) of your request was the focus of the investigation. Our search located additional references, in files relating to other individuals, or matters, which may or may not be about your subject(s). Our experience has shown, when ident, references usually contain information similar to the information processed in the main file(s).

Because of our significant backlog, we have given priority to processing only the main investigative file(s). If you want the references, you must submit a separate request for them in writing, and they will be reviewed at a later date, as time and resources permit.

See additional information which follows.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. Hardy".

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

Enclosure(s)

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could be reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could be reasonably expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

Exhibit X



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

March 7, 2011

MR. CHARLIE SAVAGE
THE NEW YORK TIMES
1627 I STREET, NW
WASHINGTON, DC 20006

Subject: STATISTICS OF RESULTS OF ASSESSMENTS

FOIPA No. 1140733- 001

Dear Mr. Savage:

The enclosed documents were originally mailed to you under cover dated December 1, 2010. Upon further review, it has been determined that certain information can be released to you. The second page originally had material that was removed pursuant to Freedom of Information Act Exemptions (b)(2) and (b)(7)(E), 5 U.S.C. §§ 552 (b)(2) and (b)(7)(E). Those exemptions are now removed.

You have the right to appeal any denials in this release. Appeals should be directed in writing to the Director, Office of Information Policy, U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Number assigned to your request so that it may be easily identified.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D Hardy", is positioned below the "Sincerely yours," text.

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

Enclosure(s)

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could be reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could be reasonably expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

Exhibit Y

UNITED STATES DEPARTMENT OF JUSTICE
Federal Bureau of Investigation

Copy to:

Report of: SSA [redacted]
Date: April 6, 1993

Office: RICHMOND

Field Office File #: 62A RH-42577

Bureau File #:

Title: SHOOTING INCIDENT
RICHMOND DIVISION
MARCH 26, 1993

Character: ADMINISTRATIVE INQUIRY

Synopsis: Administrative inquiry initiated based upon a shooting incident which occurred at approximately 12:15 p.m. on 3/26/93. SA [redacted] is a 32 year old Special Agent who entered on duty with the FBI 4/4/88. She reported to the Richmond Division on 8/23/92, and has been assigned to Squad 3 (Drugs, Organized Crime, and Violent Crimes), since her arrival. On Friday morning, 3/26/93, Richmond SAs [redacted] and [redacted] accompanied by VIRGINIA STATE POLICE (VSP) Trooper [redacted] (a member of the Richmond FBI Fugitive Task Force), travelled to the Fort Lee United States Army Military Reservation at Petersburg, Va. The above personnel met with Criminal Investigative Division (CID) Investigator (Inv.) [redacted] SA [redacted] had been working with Inv. [redacted] on a Crime on a Government Reservation (CGR) - Murder for Hire case (70A RH-4256). In the process of working this case, the principal subject was arrested and incarcerated on unrelated charges. The potential victim had been interviewed by SA [redacted] and Inv. [redacted]. While in the process of completing the CGR investigation, SA [redacted] noticed some inconsistencies in the information provided by Inv. [redacted] source, an individual using the name [redacted]. After making appropriate NCIC inquiries, SA [redacted] determined that an individual by the name of [redacted] was wanted by New Jersey

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authorities for multiple counts of drug violations. The purpose of meeting at CID Headquarters was to determine the true identity of [redacted] and if he in fact was wanted by New Jersey authorities, to effect his arrest. As a member of the Richmond Fugitive Task Force, Trooper [redacted] could execute a state warrant and have the subject held for New Jersey authorities. It is noted that no Unlawful Flight warrant had been issued relative to [redacted]. Per previous agreement, Inv. [redacted]

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[redacted] called his source into the CID office on the morning of 3/26/93. SA [redacted] explained to subject [redacted] that information had been received indicating that he could possibly be [redacted] wanted by New Jersey authorities for numerous violations of state drug laws. [redacted] assured the personnel in the CID Office that he was not [redacted] and that there was some mistake. SA [redacted] told [redacted] that after fingerprint comparisons, if it was determined that he was not the subject wanted from New Jersey, he would be allowed to go free. Trooper [redacted] after fingerprinting the subject, made a determination that his fingerprints, compared with the known prints of [redacted] indicated that the two were identical. At this point, Trooper [redacted] and another CID Inv. [redacted] commenced a pat down in preparation for a strip search of the subject, SAs [redacted] and [redacted] retreated from the area of the fingerprinting table to partially obscure themselves behind a partition. This was done to allow the subject privacy for the strip search. Inv. [redacted] left the room at this time. At this point, [redacted] became violent, abusive, and vigorously resisted arrest. A struggle ensued during which [redacted] climbed onto a desk, was pulled to the floor, rose again, climbed onto the desk, and attempted to climb over a portable partition to escape the arresting personnel and to get at SA [redacted] SAs [redacted] and [redacted] realizing that the subject was resisting arrest, and obviously had not been strip searched, moved around from behind the partition to assist in the securing of [redacted]. During the scuffle, the partition was knocked to the floor, the camera was broken and numerous items of office equipment were strewn about the office. Trooper [redacted] was holding the subject's leg in an attempt to subdue him.

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SA [redacted] with handcuffs, attempted to secure the subject's one wrist. Both individuals were thrown clear by the subject and he proceeded toward SA [redacted] who at this point had drawn her service weapon, pointed it at the subject, and ordered him to stop. As the struggle ensued, [redacted] managed to escape the grasp of SAs [redacted] Trooper [redacted] and Inv. [redacted] proceeded toward SA [redacted] asking her repeatedly to shoot

him, because if he were returned to New Jersey authorities, he would be killed anyway. Realizing that the subject had escaped from all law enforcement personnel and was proceeding toward her, she became concerned for her personal safety and the safety of the others. SA [redacted] realized that this subject had an extensive criminal record and was becoming increasingly violent. She believed that if [redacted] were to grab her, he would wrestle her weapon from her and use it on either herself or the other law enforcement personnel. At this point, after repeated commands to stop, SA [redacted] discharged her nine millimeter Sig Sauer Model P226, Serial Number U367851. After firing her weapon, SA [redacted] observed that subject [redacted] immediately dropped to the floor, clutching his chest as though he had been shot. SA [redacted] later realized that [redacted] had not been hit and that the bullet struck a desk in the rear of the office. No one was injured or struck by this round. The Agents and another CID Inv. [redacted] who had just entered the room after the discharge of the weapon, subdued the subject, placing him in handcuffs and leg irons. The subject was immediately transported to the Petersburg, Virginia, CITY JAIL. [redacted] is a black male, date of birth [redacted] five feet seven inches, 140 pounds. He has FBI Number [redacted]. [redacted] has prior arrests for burglary, assault with a deadly weapon, disorderly conduct, sexual assault, and failure to appear. He had been convicted on the disorderly conduct charge, the remaining counts were dismissed. In regard to the charges resulting in the 3/26/93 arrest, [redacted] was wanted by the SUPERIOR COURT, Gloucester County, New Jersey, for multiple drug charges. He had been charged in a seven count indictment; three counts of possession, possession with intent to distribute, and distribution of cocaine, three identical counts regarding marijuana, and conspiracy. On 3/2/93, Assistant United States Attorney [redacted] Eastern District of Virginia Richmond, Va., orally authorized the arrest of [redacted] for assaulting a Federal officer and resisting arrest. On 3/30/93, a complaint was filed in UNITED STATES DISTRICT COURT, Richmond, charging [redacted] with assaulting a Federal officer and crime on a Government reservation - assault on VSP Trooper [redacted].

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DETAILS:

UNITED STATES DEPARTMENT OF JUSTICE
Federal Bureau of Investigation

Copy to:

Report of: ASAC Robert O. Laughlin Office: Newark
Date: 07/26/2001

Case ID #: 66F-NK-105245

Title: "Shooting Inquiry"
Report of Shooting Incident, Newark Division
07/13/2001, Administrative Matter

Character: ADMINISTRATIVE INQUIRY

Synopsis:

This inquiry was initiated subsequent to a shooting incident which occurred in East Orange, New Jersey during the afternoon of Friday, July 13, 2001. SA [redacted] (EOD: 07/05/98), accompanied by United States Customs Service (USCS) SA [redacted] who is assigned to a Newark Division Task Force, were investigating a potential stolen car ring based upon information provided to the Newark Division by the New Jersey State Police. Using a pretext of delivering license plates to the operator of a leased Mercedes-Benz E430, SAs [redacted] and [redacted] had arranged to meet the operator in the parking lot of a Rite Aid Pharmacy located at 543 Central Avenue, East Orange, New Jersey. The purpose of the meeting was to attempt to interview the vehicle's operator regarding the facts and circumstances of the vehicle lease. The NJSP had determined that the Drivers' Licenses used to effect the lease of the vehicles were fictitious and the Newark Division was investigating a Nigerian group engaged in similar activities which resulted in vehicles being fraudulently leased and eventually shipped out of the United States. There was no intention to effect either an arrest or seizure at this meeting. Two other vehicles, leased from the same Ohio dealership were recovered without incident on Thursday, 07/12/01 and during the morning of Friday, 07/13/01. Arriving first, SAs [redacted] and [redacted] waited for the vehicle operator at the Rite Aid parking lot, a location selected by the driver, later identified as [redacted], who arrived accompanied by a

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passenger. Subsequent to arriving, the passenger, who has since been identified as [redacted] exited the Mercedes-Benz. [redacted] remained in his vehicle with the driver's side front door open. As SAs [redacted] and [redacted] approached, [redacted] began to flee the scene and [redacted] placed the car in reverse, striking SA [redacted] with the door. Placing the car in forward, [redacted] struck SA [redacted] who landed on the hood of the car. While holding on, and continuing to identify himself, SA [redacted] drew his weapon, firing multiple shots into the vehicle's front windshield. As a result, [redacted] was struck in the arm and the Mercedes-Benz crashed into a parked car. [redacted] was apprehended, following a struggle, by SAs [redacted] and [redacted] with the assistance of two off-duty East Orange police officers.

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During the investigation period, interviews were conducted with SA [redacted] Police Officers [redacted], and [redacted] as well as Rite Aid Pharmacy manager [redacted] all of whom are witnesses to the events leading to this inquiry. As a decision is pending whether or not to present this matter to the Essex County, New Jersey Grand Jury, SA [redacted] has declined an interview at this time on the advice of counsel.

Details:

1. SSA [redacted] provided a signed sworn statement on 07/23/01. SSA [redacted] stated that he had been contacted by the NJSP regarding the fraudulent lease of four luxury vehicles from an Ohio automobile dealership. In order to assist the NJSP and determine whether or not the lessees of these vehicles were connected to a Nigerian group being investigated by the Newark Division for similar activities, SSA [redacted] assigned SA [redacted] and USCS SA [redacted] to follow up on the information provided by the NJSP. Between Thursday, 07/12/01 and the morning hours of Friday, 07/13/01, SA [redacted] and [redacted] had located and recovered two of the vehicles. During the afternoon of Friday, 07/13/01 SA [redacted] and [redacted] arranged to meet with the operator of a third vehicle using the pretext of delivering the permanent license plates the vehicle operator was seeking to acquire. SAs [redacted] and [redacted] were attempting to conduct an interview only; no arrest or seizure was planned. Subsequent to arriving at the pre-arranged meeting place, SA [redacted] became involved in a shooting incident after the vehicle operator struck SA [redacted] and SA [redacted] with the vehicle.

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2. SA [redacted] United States Customs Service, was interviewed and advised that he and SA [redacted] were assigned an investigation regarding the fraudulent lease of some motor vehicles. One of the lessees, who was cooperating, assisted in

the recovery of two vehicles. SAs [] and [] subsequently learned that the dealership where the vehicles were obtained had been receiving calls about permanent license plates for one of the vehicles. SAs [] and [] arrange a meeting with this individual on the pretext of delivering the license plates. It was their intention to interview the operator about the facts and circumstances of the lease. No arrest or seizure was planned or anticipated. Arriving at a pre-determined meeting site, SAs [] and [] approached the driver of a Mercedes-Benz E430. They asked if they might speak to him, at which time the driver placed the car in reverse, backing up at high rate of speed. SA [] was struck by the open front driver's side door. As SAs [] and [] continued to identify themselves, the driver placed the car in drive, eventually striking SA [] who landed on the hood of the vehicle. SA [] then drew his weapon, firing from the hood until the Mercedes-Benz crashed into two parked cars, resulting in SA [] being thrown from the vehicle's hood. SA [] and SA [] then attempted to subdue the driver, who was attempting to flee. This was eventually accomplished with the assistance of two off duty police officer. The passenger in the Mercedes-Benz fled the scene prior to the shooting incident.

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3. Police Officer [], East Orange Police Department, was interviewed and advised that on the afternoon of 07/13/01 he was off duty in front of a supermarket located at the corner of Cambridge Street and Central Avenue in East Orange. [] heard between four and five gunshots coming from the vicinity of the Rite Aid Pharmacy. He immediately took notice of a black male running from the area. He then saw a silver Mercedes-Benz crash into two parked cars in the Rite Aid parking lot. [] then saw a white male, wearing a police badge get up from the ground between the cars and another law enforcement officer wrestling with the Mercedes Benz driver. Leaving his position to offer assistance, [] noted that the person wrestling with the driver was identifying himself as a law enforcement officer. [] joined in the effort and with the aid of another off duty police officer, the suspect was restrained.

4. Police officer [] East Orange Police Department was interviewed and advised that he had been talking with off duty Police Officer []. Following the conversation, [] was walking towards his residence on Cambridge Street in East Orange, approximately one block from the Rite Aid Pharmacy. He heard four or five shots and headed back towards Central Avenue, where he thought the shots originated. [] saw a black male on the ground near a vehicle crash scene in the parking lot of a Rite Aid Pharmacy. [] observed two white males attempting to handcuff the suspect. The

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suspect continued resisting and it appeared to [redacted] that additional handcuffs would be needed given the suspect's size.

5. [redacted] the operator of the Mercedes-Benz involved in the shooting incident was interviewed and advised that he had spoken with [redacted] Wagner Lincoln-Mercury during the morning of 07/13/01 about license plates for a Mercedes-Benz E430 he had just leased. During the afternoon of 07/13/01, during the course of a three way conversation, [redacted] arranged to meet with [redacted] representatives (SAs [redacted] and [redacted] in the parking lot of the Rite Aid Pharmacy on Central Avenue in East Orange, NJ. [redacted] accompanied by another male, parked in the lot, next to the vehicle SAs [redacted] and [redacted] were in. [redacted] passenger, whom he identifies only by the first name [redacted] ran when SAs [redacted] and [redacted] asked him [redacted] to step out of the car. [redacted] put the car in reverse in an effort to flee. [redacted] then places the car in forward, continuing his attempt to flee the scene. [redacted] states that both men (SAs [redacted] and [redacted] are talking to him, but he can't hear them as his windows are up. Hearing gunshots, [redacted] ducks, losing control of his car, which crashes. [redacted] states he falls as he attempts to run. When "the agents" [redacted] words) ask him to get on the ground he complies and is handcuffed, but only on one hand, until an ambulance arrives.

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6. [redacted] manager of the Rite Aid Pharmacy, 543 Central Avenue, East Orange, NJ, was interviewed and advised that she had been standing in front of the store, conversing with a customer. [redacted] was facing that portion of the parking lot which faced a supermarket across the street. [redacted] stated that she saw two officers instruct the driver of a Mercedes-Benz to stop. The driver was non-compliant and an officer in a blue shirt grabbed the door handle. The driver placed the car in reverse, resulting in the officer in the blue shirt being dragged. Both officers called for the driver to stop but the driver moved forward, striking the second officer, who landed on the car's hood. The Mercedes-Benz continued moving forward, with the second officer on the car's hood. As the vehicle moved, [redacted] heard four or five gunshots. The Mercedes Benz then struck several parked cars, with [redacted] thinking the officer on the hood had been crushed between the cars. The driver then exited the Mercedes-Benz, refusing the officers' directions to get on the ground. The officers put the driver on the ground, attempting to place him in handcuffs. The suspect continued to struggle, with two East Orange police officers arriving to assist.

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66F-NK-105245

Newark Division File Review:

SA [REDACTED], EOD: 07/05/98 is a U.S. Army Veteran, GS-11, who has been assigned to the Newark Division since completing New Agents' Training during October, 1998. SA [REDACTED] received a Meets Expectations rating on his most recent performance appraisal and was the recipient of a cash incentive award during September, 2000. SA [REDACTED] has not been the subject of administrative action since his EOD.

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FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 12/14/2009

To: Inspection

Attn: AD Amy Jo Lyons

From: Inspection

Office of Inspections

Contact: [redacted]

Approved By: Lyons Amy Jo
Galligan Mary E

Drafted By: [redacted] :lrr

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Case ID #: 297-HQ-A1271895-D

Title: SHOOTING INCIDENT
PHILADELPHIA DIVISION
09/11/2009

Synopsis: The Shooting Incident Review Group (SIRG) reviewed a shooting incident that occurred on 09/11/2009, involving Special Agent (SA) [redacted]. While conducting a cellular telephone tracking operation, SA [redacted] fired two rounds from his Bureau-issued Glock Model 22, .40 caliber pistol at a subject who was backing a vehicle toward him and a local police officer. SIRG members recommended that no administrative action be taken against SA [redacted] as a result of his involvement in this shooting incident.

Administrative: Reference Electronic Communication of Supervisory Special Agent [redacted] dated 11/17/2009.

Details: This communication was prepared to furnish the analysis, comments, and recommendations of the SIRG with reference to the captioned shooting.

Details of the Shooting Incident

On 09/11/2009, Agents and Task Force Officers (TFOs) were conducting a cellular telephone tracking operation on fugitive, [redacted]. During the operation, [redacted] parked his vehicle and Detective [redacted] parked the tracking vehicle directly behind him. SA [redacted] and Detective [redacted] exited their vehicle while issuing commands to the subject. Detective [redacted] was positioned behind the rear passenger side of

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the subject vehicle and SA [redacted] was situated along the passenger side. In an attempt to seek cover, SA [redacted] repositioned himself to the rear passenger side forcing Detective [redacted] to the rear of the vehicle.

Attempting to prevent the subject from leaving the area, Detective [redacted] repositioned the tracking vehicle along the side of the subject's vehicle. [redacted] placed his car in reverse and backed toward Detective [redacted] and SA [redacted]. Believing both were in imminent danger of being injured or killed, SA [redacted] fired two rounds at the subject.

[redacted] was not struck by the fired rounds and fled the scene. His vehicle was recovered by local police and the two expended rounds were recovered from the rear of the vehicle.

On 12/03/2009, the SIRG met to discuss the above-captioned shooting incident. Acting Deputy Assistant Director Mary E. Galligan, Inspection Division (INSD), chaired the meeting and was a non-voting member. The following voting members were in attendance: Barry Kowalski, Special Legal Counsel, Civil Rights Division, USDOJ; [redacted] Trial Attorney, Criminal Division, USDOJ; Inspector Donald E. Oswald, Office of Inspections, INSD; Section Chief (SC) Ralph Butler, CD-1, Eurasian Section, Counterintelligence Division; SC David J. Johnson, Violent Crimes Section, Criminal Investigative Division; Unit Chief (UC) [redacted] Practical Applications Unit, TD; SSA [redacted] Evidence Response Team, Laboratory Division; SSA [redacted] CR-2, Washington Field Office; SSA [redacted] Firearms Training Unit, TD; SSA [redacted] Washington, Defensive Systems Unit, TD; and SSA [redacted] [redacted] Investigative Law Unit, Office of General Counsel. The following non-voting members were also in attendance: SC Linda M. Krieg, Internal Investigations Section, Inspection Division; UC [redacted] Inspection Management Unit (IMU), Strategic Analysis Section (SAS), INSD; Management and Program Analyst (MAPA) [redacted] IMU, SAS, INSD; and MAPA [redacted] [redacted] IMU, SAS, INSD.

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Observations and Recommendations of the SIRG

The SIRG reviewed the above synopsis incident with the intent to: (1) evaluate the application of deadly force; (2) provide the Director with an evaluative analysis, observations, and recommendations for corrective actions from an operational standpoint (if any); (3) provide recommendations

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concerning training and/or safety issues; and (4) provide recommendations for administrative action if deemed necessary.

SRG members unanimously agreed that the use of deadly force by SA [redacted] was justified and in conformance with the FBI's deadly force policy. This discussion resulted in the recommendation that no administrative action be taken against SA [redacted] as a result of his involvement in this shooting incident.

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LEAD(s):

Set Lead 1: (Action)

INSPECTION

AT WASHINGTON, DC

That no administrative action be taken against
SA [redacted] as a result of his involvement in this
shooting incident.

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1 - Mr. Pistole, Room 7142
1 - Ms. Caproni, Room 7427
1 - Mr. Kowalski, USDOJ
1 - Mr. [redacted] USDOJ
1 - Mr. Anderson, Room 4825
1 - Mr. Johnson, Room 3280
1 - Mr. [redacted] Quantico
1 - Mr. [redacted] Quantico
1 - Mr. [redacted] Quantico
1 - Mr. [redacted] Laboratory
1 - Mr. [redacted] WFO
1 - Ms. [redacted] Room 6387
1 - Mrs. [redacted], Room 3043

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