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10 **UNITED STATES DISTRICT COURT**
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

12 H. RAY LAHR,) Case No. 03-08023 AHM (RZx)
13)
14 Plaintiff,) **PLAINTIFF'S STATEMENT OF**
15 v.) **GENUINE ISSUES IN OPPOSITION**
16) **TO CIA MOTION FOR PARTIAL**
17 NATIONAL TRANSPORTATION) **SUMMARY JUDGMENT**
18 SAFETY BOARD, *et al.*)
19 Defendants.)
20)

21 Date: October 31, 2005
22 Time: 10:00. a.m.
23 Place: Courtroom 14, 312 N. Spring
24 Street, Los Angeles, CA 90012
25 Judge: Honorable A. Howard Matz

26 Plaintiff submits this statement of genuine issues, under L.R. 56-2, setting
27 forth issues of material fact necessary to be litigated. Facts 1-73 below correspond
28 to the facts and supporting evidence presented in the statement of uncontroverted
facts filed by the CIA. These facts are followed by additional material facts and
supporting evidence also showing genuine issues.

1 Citations to numbered exhibits refer to the instant opposition to CIA
2 summary judgment, and citations to exhibit letters refer to plaintiff's record in his
3 opposition to the NTSB's motion for summary judgment.

4 MOVING PARTY'S ALLEGED
5 UNCONTROVERTED FACTS

RESPONSE

7 1. TWA Flight 800, a Boeing 747-100,
8 exploded in flight and crashed into the
9 Atlantic Ocean off Long Island on the
10 night of July 17, 1996.

1. Plaintiff agrees that this is
undisputed.

11
12 2. The explosion of TWA Flight 800
13 precipitated a criminal investigation by
14 the Federal Bureau of Investigation
15 (FBI) and a civil investigation by the
16 National Transportation Safety Board
17 (NTSB). [Bur. Decl. ¶ 50] [Moye Decl.
18 ¶ 11]

2. Plaintiff denies that this is
undisputed. The FBI did not conduct a
good faith "criminal investigation." Its
function was to withhold evidence,
misrepresent evidence, alter and
removed debris from the reconstruction
hanger, ban evidence from presentment
at public hearings, including all
eyewitness testimony. Supporting
affidavits are cited in plaintiff's
statements 74 through 78 below.

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23
24 3. During the criminal investigation,
25 dozens of eyewitnesses reported having
26 seen "a 'flare or firework' ascend and
27 culminate in an explosion. [Bur. Decl. ¶
28 50]

3. Plaintiff denies that this is
undisputed. [**D** Donaldson Aff. Bates
101 Ex 16 NTSB Exhibit 4A Witness
Group Factual Report (based on 458 of
the FBI's 736 302s): "Of the 183

[eyewitnesses] who observed a streak of light... 96 said that it originated from the surface."] (Note: NTSB withheld this exhibit from its public docket.)

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6 4. "[I]nternational terrorism is an
7 authorized CIA [Central Intelligence
8 Agency] area of analysis."

4. Plaintiff agrees that this is undisputed.

9
10 5. Accordingly, the FBI asked the CIA
11 to try to determine as part of its
12 investigation whether the "flare or
13 firework" was a missile. [Bur. Decl. ¶
14 50 nn. 5, 14]

5. Plaintiff denies that this is undisputed. The FBI asked the CIA to assist in its efforts to obfuscate eyewitness accounts. [X Lahr Aff. Bates 303-05 Ex 1 (April 30, 1999, Transcript of CIA Briefing to NTSB Witness Group): "CIA ANALYST # 1: The conclusion that the eyewitnesses were only seeing the burning aircraft was made at 10:00 p.m. at night on the 30th of December 1996.... [A]s I was sitting behind the computer.... There was a realization... that you can explain what the eyewitnesses are seeing with only the burning aircraft.... I immediately alerted... the FBI... We wanted them to be aware of this so that they could start proceeding with the investigation..."

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2 6. The task of making such a
3 determination was assigned within the
4 CIA to weapons analysts within the
5 Directorate of Intelligence (DI) Office
6 of Weapons, Technology and
7 Proliferation (OWTP).

8
9 7. DI is the component of the CIA that
10 "analyzes, interprets, and forecasts
11 foreign intelligence issues and world
12 events," and produced "finished
13 intelligence reports for dissemination to
14 the policy makers in the United States
15 Government."

16
17 8. OWTP was a predecessor of the
18 Office of Transnational Issues (OTI).

19
20 9. Relying principally on materials
21 furnished by the FBI, including
22 eyewitness reports, radar tracking data
23 and certain NTSB observations
24 regarding the Cockpit Voice recorder,
25 the analysts were able to reconstruct the
26 approximate flight path of TWA Flight
27 800 from the instant its recordings
28 ended until it struck the water. [2nd

6. Plaintiff agrees that the CIA's "task"
was assigned to its Office of Weapons,
Technology and Proliferation.

7. Plaintiff agrees that this is
undisputed.

8. Plaintiff agrees that this is
undisputed.

9. Plaintiff denies that this is
undisputed. The government deleted
Radar and FDR data indicating missile
fire, deleted portions of the videotape of
the debris on the ocean floor, and Radar
disproves the zoom-climb conclusion.
[E Stalcup Aff. Bates 126 ¶ 4: "The
last sweep of the River Head Radar
shows the four data points deleted and a

1 Bur. Decl. ¶ 4]
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pied wedge right where flight 800 was, and that's where any missile would have been that was going to hit it. Now that data has been completely deleted.... It's just deleted... that's not something that happened by itself." [L Speer Aff. Bates 186-87 ¶ 30: "And so we're watching these videotapes of the bottom of the ocean and I notice that the time clock stops in a given run.... they're gaps in the time clock.... And I said, 'Well look at the gaps in the time clock here. There's no reason for those gaps to occur unless the tape has been edited. I want to see the unedited version.' 'No,' was the response." [BB Schulze Aff. Bates 467-68, ¶¶ 3, 5-6: "I have devoted between 1200 and 1500 hours reviewing the entire collection of the NTSB Reports and other official NTSB documents related to the TWA Flight 800 Cockpit Voice Recorder (CVR) and the Flight Data Recorder (FDR) Accident Tapes.... Detailed analysis performed by me in conjunction with my peers of the NTSB's reports on the flight parameter data from the very end of the FDR tape revealed a clear and

1 aircraft separated from the fuselage
2 within four seconds after the aircraft
3 exploded. [2nd Bur. Decl. ¶ 4]
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18 12. The analysts further concluded that,
19 about 20 seconds after the explosion, a
20 fireball erupted and the aircraft went
21 into a steep and rapid descent,
22 producing an increasingly visible fire
23 trail. [2nd Bur. Decl. ¶ 5]
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aerodynamic information. [**D**
Donaldson Aff. Bates 114 Ex 21
(Boeing Nov. 18, 1997 press release):
"[B]oeing was not involved in the
production of the video shown today,
nor have we had the opportunity to
obtain a copy or fully understand the
data used to create it. While we
provided basic aerodynamic information
to assist in the CIA's analysis of the
airplane's performance, we are not
aware of the data that was used to
develop the video. The video's
explanation of the eyewitness
observations can be best assessed by the
eyewitnesses themselves."]

12. Plaintiff denies that this is
undisputed. [**D** Donaldson Aff. Bates
63 ¶ 76: "[T]he biggest problem with
the CIA scenario and that is the time it
would take to hit the water. It would
take at least 54 seconds after reaching
17,000 for the aircraft to hit the water
assuming it reaches a terminal velocity
of 450 ft/sec. But it is only visible on
radar for another 20 seconds. Where
was the aircraft for those extra 34

seconds? There is only one conclusion. It was already in the water because there never was a "zoom climb."]

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5 13. About 42 seconds after the
6 explosion, the aircraft's left wing
7 separated, releasing unburned fuel
8 which subsequently ignited in a cascade
9 of flames, and approximately seven
10 seconds later, the debris hit the water.
11 [2nd Bur. Decl. ¶ 5]

13. Plaintiff denies that this is undisputed. [D Donaldson Aff. Bates 63 ¶ 76: "[T]he biggest problem with the CIA scenario and that is the time it would take to hit the water. It would take at least 54 seconds after reaching 17,000 for the aircraft to hit the water assuming it reaches a terminal velocity of 450 ft/sec. But it is only visible on radar for another 20 seconds. Where was the aircraft for those extra 34 seconds? There is only one conclusion. It was already in the water because there never was a "zoom climb."]

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20 14. The eyewitness sightings of greatest
21 concerns – those that raised the
22 possibility that the aircraft had been
23 struck by a missile – took place after the
24 aircraft exploded. [2nd Bur. Decl. ¶ 6]

14. Plaintiff denies that this is undisputed. The two eyewitnesses featured in the video-animation unequivocally reject its depiction, as do airborne eyewitnesses, and all others, and all witnesses who saw a projectile saw it traveling at supersonic speed. Supporting affidavits are cited in plaintiff's statements 87 through 92

below.

1
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3 15. Accordingly, the analysts concluded
4 that the eyewitnesses saw a Boeing 747
5 in various stages of crippled flight, not a
6 missile. [2nd Bur. Decl. ¶ 6]

15. Plaintiff denies that this is
undisputed as the analysts knew that
missile fire was the initiating cause of
the disaster. [C Hill Aff. Bates 43-44, ¶
17: "On more than one occasion during
these proceedings [press conferences] I
heard [former Chief, Joint Chiefs of
Staff] Admiral Moorer express his
opinion publicly and with members of
the press present that it was a missile
that brought TWA-800 down..."] [E
Stalcup Aff. Bates 129-30: "*TWA Flight*
800 Probable Cause Announced, "A
surface-to-air missile, launched from the
ocean off the coast of Long Island rose
up and exploded at or near TWA Flight
800." [Q Gross Aff. Bates 211 ¶ 7:
"When I saw photographs of the left
side, with that large indentation forward
of the wing, then I immediately was
curious, what in the world could cause it
to be dented in. It would have to be
something external to the aircraft." [U
Perry Aff. Bates 251 ¶ 38: "[I]t was so
clear, and it was so vivid, was so
obvious that what was happening was

1 that this plane was being assaulted..."]
2 [X Lahr Aff. Bates 369 ¶ 8 Ex 10
3 (April, 2000, *International Association*
4 *of Machinists and Aerospace Workers*
5 submission to NTSB final Report):
6 "Approximately nineteen (19) holes in
7 the fuselage below the L3 door that
8 appear to originate from the exterior of
9 the aircraft."
10

11 16. This conclusion was incorporated
12 into a video produced by the CIA and
13 shown to the public by the FBI on
14 November 18, 1997. [2nd Bur. Decl. ¶
15 6]

16 16. Plaintiff agrees that this is
17 undisputed.

18 17. The CIA subsequently obtained
19 additional data from the NTSB and
20 continued to refine its analysis. [2nd
21 Bur. Decl. ¶ 6]

22 17. Plaintiff denies that the CIA
23 "refine[d] its analysis." Plaintiff avers
24 that defendant generated records after
25 the broadcast of the zoom-climb
26 animation to try and justify its already-
27 released final disposition. The CIA
28 generated many additional records after
the public release of its zoom-climb
analysis to try and justify its conclusion,
including analysis performed *after*
plaintiff's submission of his FOIA
request. [3 Schulze Aff Bates 97 ¶ 69:

"This computer program is one of the major CIA records sought by the subject FOIA. This 2004 program was generated after the 2003 FOIA request!"]

18. However, the CIA did not issue a final report because its conclusion that the eyewitnesses did not see a missile did not change. [2nd Bur. Decl. ¶ 6]

18. Plaintiff denies that this is undisputed. The CIA's November 1997 video-animation was its "final report" under the FOIA.

19. By letters dated October 8, 2003, plaintiff submitted requests to the NTSB and CIA under the Freedom of information Act (FOIA), 5 U.S.C. § 552, for certain records pertaining to the explosion of TWA Flight 800.

19. Plaintiff agrees that this is undisputed.

20. Broken into 105 sub-requests, the request to the CIA sought "all records upon which [the] released aircraft flight path conclusion was based."

20. Plaintiff agrees that this is undisputed.

21. By letter dated October 20, 2003, the CIA acknowledged receipt of plaintiff's request.

21. Plaintiff agrees that this is undisputed.

22. On November 6, 2003, plaintiff

22. Plaintiff agrees that this is

1 commenced this action to compel undisputed.
2 production of the records he had
3 requested from the NTSB and CIA.

4
5 23. By order dated and filed May 13, 23. Plaintiff agrees that this is
6 2004, the Court extended through undisputed.
7 February 28, 2005 the time of the CIA
8 "to complete its processing of the CIA-
9 originated records (not requiring third
10 agency coordination) responsive to
11 plaintiff's requests."

12
13 24. By stipulation and order dated and 24. Plaintiff agrees that this is
14 filed July 13, the Court struck all but 17 undisputed.
15 of the 105 sub-requests contained in
16 plaintiff's request to the CIA.

17
18 25. The Office of Information 25. Plaintiff agrees that this is
19 Management services, Public undisputed.
20 Information Programs Division (PIPD),
21 is the initial reception point for all FOIA
22 requests.

23
24 26. The CIA does not maintain a 26. Plaintiff agrees that this is
25 single, centralized record system. undisputed.

26
27 27. Accordingly, each FOIA request 27. Plaintiff agrees that this is
28 that the CIA receives is reviewed by undisputed.

1 PDIC to determine "which directorates
2 of the CIA might reasonably be
3 expected to possess records that [might]
4 be responsive to [the] request.

5
6 28. In this case, plaintiff sought "the
7 underlying information on which an
8 analytic product was based."

28. Plaintiff agrees that this is
undisputed.

9
10 29. Accordingly, PDID determined that
11 DI was the sole component "reasonably
12 likely to possess responsive records"
13 and directed DI to conduct "all
14 appropriate record searches."

29. Plaintiff agrees that this is
undisputed.

15
16 30. DI responded by conducting a
17 search of its automated records system.

30. Plaintiff agrees that this is
undisputed.

18
19 31. When this search proved
20 unproductive, OTI was directed by the
21 office of the DI Information Review
22 Officer (DI/IRO), the official who
23 "task[s] and coordinate[s] record
24 searches within the DI," to conduct a
25 separate search for records.

31. Plaintiff agrees that this is
undisputed.

26
27 32. This search was a manual search of
28 "office and individual analyst files,

32. Plaintiff agrees that this is
undisputed.

1 including local databases, e-mail, and
2 desk files" for "information on the
3 TWA-800 project as a whole."
4

5 33. Conducted "[u]nder the direction of
6 a senior OTI weapons analyst (who was
7 one of the principle analysts on the
8 TWA-800 team)," this search resulted in
9 the assembly of a group of records
10 dealing with the "TWA-800 project."
11

33. Plaintiff agrees that this is
undisputed.

12 34. These records were forwarded to
13 the office of the DI/IRO, where they
14 were searched manually for responsive
15 material.
16

34. Plaintiff agrees that this is
undisputed.

17 35. The records were searched a second
18 time after reviews of the records for
19 purposes of their possible release
20 production information indicating that a
21 second search was warranted.
22

35. Plaintiff agrees that this is
undisputed.

23 36. The CIA did not search for records
24 responsive to the sub-requests into
25 which plaintiff had broken his requests.
26

36. Plaintiff agrees that this is
undisputed.

27 37. Most of the sub-requests were
28 unintelligible, did not describe records

37. Plaintiff denies that this is
undisputed. The request "reasonably

1 in terms that were meaningful to the
2 CIA, or sought records that could only
3 be found at the NTSB, if there. [Bur.
4 Decl. n. 5]

describes" the records sought under 5
U.S.C. § 552 (a)(3)(A)(i). [See FOIA
request in Defendant's *Notice of Filing
and Vaughn Index* p. 75 "These requests
are to be read as to be made both
6 categorically and specifically."] [And
7 see 3 Schulze Aff. Bates 106-110 § IV.
8 Chart: Summary of FOIA requests and
9 deficiencies]

10
11 38. Accordingly, the CIA focused on
12 plaintiff's overarching request for "all
13 records upon which [the] publicly
14 released aircraft flight path climb
15 conclusion was based," as explicated by
16 the sub-requests.

38. Plaintiff agrees that this is
undisputed. [3 Schulze Aff Bates 49 ¶
19: "[T]he CIA stated "nearly 100
documents" were in effect found to be
only 41 contextual documents."]

17
18 39. The above searches resulted in the
19 identification of approximately 100
20 responsive records." [Bur. Decl. ¶ 25]

39. Plaintiff denies that this is
undisputed. Defendant's June 20, 2005
index identifies 28 records and its
August 16 index identifies two records.

21
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23 40. Each record was reviewed to
24 determine "what information, if any,
25 could be released to [p]laintiff."

40. Plaintiff agrees that this is
undisputed.

26
27 41. Thirty-two of the records had been
28 created by agencies other than the CIA.

41. Plaintiff denies that this is
undisputed. Plaintiff cannot possibly

1 [Bur. Decl. ¶ 25]
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respond to this alleged "fact" until the CIA in good faith files a decipherable Vaughn index and identifies the records to which it refers. [3 Schulze Aff Bates 51 ¶ 24: "On August 16 the CIA redundantly re-filed some of the previously submitted records along with two totally new documents and a Vaughn Index Chart, which is reprinted below – after CIA typo errors correction. From that chart it was theoretically possible to identify which justifications for withholdings in the 24 *Document Disposition Index* pages. But it was not possible to entirely correlate the CIA's index with the records produced because the CIA...] [Id. Bates 107 ¶ 85: Characterizing production as "CIA's Rubik Cube Format of Submitted Records." [Id. Bates 48 ¶ 19: "(2) Multi-page documents do not contain any page numbers, (3) MORI numbers have frequently been assigned in reverse chronological order... (6) The latest DOCUMENT INDEX, JUN 20, 2005, does not include all previously submitted MORI numbers."] [Id. Bates

1 50 ¶ 22: "Multiple different records
2 contained the same MORI Nos., and in
3 some cases the same record content was
4 spread out in pages with different MORI
5 Nos."] [**Id.** Bates 55-65 ¶¶ 30-39:
6 Identifying ten records that are nowhere
7 identified in CIA Vaughn index; 27
8 different MORI DocID numbers.] [**Id.**
9 Bates 53 ¶ 30; Bates 59 ¶ 34; Bates 66 ¶
10 41: Identifying multiple MORI DocID
11 numbers in single record] [**Id.** Bates 67
12 ¶ 43; Bates 69 ¶ 45; Bates 72 ¶ 46;
13 Bates 74 ¶ 48; Bates 77 ¶ 55; Bates 82 ¶
14 56; Bates 83 ¶ 57; Bates 84 ¶ 58; Bates
15 84 ¶ 59; Bates 86 ¶ 60; Bates 69 ¶ 45:
16 Listing a single MORI DocID number
17 in multiple records] [**Id.** Bates 87 ¶ 61;
18 Bates 88 ¶ 62: Record identified in
19 Vaughn index but not produced in
20 August 16, 2005 production] [**Id.** Bates
21 52 ¶ 24(C): "Omitted from August 16
22 production: Records which the CIA
23 produced in February."] [**Id.** Bates 53 ¶
24 29(3): "A Doc. with MORI number
25 1147400 listed in the CIA Tab A
26 paragraph appears to have been "Denied
27 in Full" without supportive entry into
28 the Vaughn Index list."] [**Id.** ¶ 30:

1 "These document records have been
2 redacted by removing an unknown
3 number of important pages which
4 thereby requires that this record/s be
5 listed in the Vaughn Index."] **Id.** Bates
6 64 ¶ 39: "Without page numbers it is
7 impossible to determine the exact
8 number of missing pages"] **Id.** Bates
9 103 ¶ 76: "Based on textual
10 discontinuity and the lack of page
11 numbers, there are an unknown number
12 of missing pages from this document."]
13 **Id.** Bates 107 ¶ 85(a): "The CIA
14 August chart purports to identify 26
15 records, numbered 41 through 70 (24
16 records), supposedly the records already
17 produced, and the last two, numbered 16
18 and 17, for the two sets of additional
19 records produced. The chart is
20 incomplete, misleading, and had to be
21 deciphered." (Compare 2nd Bur. Decl.
22 ¶ 8: "A true and correct copy of the
23 records withheld in part, as released to
24 plaintiff, is attached hereto as Exhibit A.
25 For purposes of clarity...")

26
27 42. These records were referred to their
28 agencies of origin for review and direct

42. Plaintiff agrees that this is
undisputed.

1 response to plaintiff.

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3 43. These records that had been created
4 by the CIA were reviewed by the CIA
5 on a line-by-line basis.

43. Plaintiff agrees that this is
undisputed.

6
7 44. Certain of these records contained
8 information obtained from other
9 agencies.

44. Plaintiff agrees that this is
undisputed.

10
11 45. In a process known as
12 "coordination," this information was
13 forwarded to those agencies for review
14 and response to the CIA.

45. Plaintiff agrees that this is
undisputed.

15
16 46. Except for six records that have
17 been withheld pending the completion
18 of coordination, the review of the
19 records created by the CIA has resulted
20 in the release of all "reasonably
21 segregable, non-exempt" material. [Bur.
22 Decl. ¶ 7 & n. 3] [2nd Bur. Decl. ¶ 18]

46. Plaintiff denies that this is
undisputed. Plaintiff denies that this is
undisputed. [3 Schulze Aff Bates 106 ¶
84: "These six documents contain 66
pages... These estimated 15,000 to
20,000 words are being withheld most
likely because they are the critical
evidentiary components which, if
released to the public, would provide a
sturdy foundation for citizen destruction
and ridicule of the CIA TWA FL 800
work product."

1 47. Including two records referred to
2 the CIA by the NTSB, and one record
3 returned to the CIA after being referred
4 to the FBI, the CIA has withheld 26
5 records in part and six in their entirety.
6 [Bur. Decl. ¶¶ 7, 12, 14, 25] [2nd Bur.
7 Decl. ¶¶ 7, 18]

47. Plaintiff denies that this is
undisputed. Plaintiff cannot possibly
respond to this alleged "fact" until the
CIA in good faith files a decipherable
Vaughn index and identifies the records
to which it refers. [3 Schulze Aff Bates
107 ¶ 85(a): "The CIA August chart
purports to identify... supposedly the
records already produced... [and] two
sets of additional records produced. The
chart is incomplete, misleading, and had
to be deciphered."] See response to
paragraph 41 above, reciting that the
CIA produced records without
corresponding Document ID numbers,
assigned MORI Doc ID numbers in
reverse chronological order, produced at
least 10 records not listed on its Vaughn
index, identified records in its Vaughn
index not produced in its August 16
filing, apparently denied in full a record
not listed in its Vaughn index, removed
pages from records, produced two
records with multiple MORI Doc ID
numbers, and produced 11 sets of
records with duplicate MORI Doc ID
numbers.

1 48. The record returned to the CIA after
2 being referred to the FBI is a record
3 analyzing statements of eyewitnesses.
4

5 49. In withholding records of portions
6 of records, the CIA has relied on FOIA
7 Exemptions 3, 4, 5, 7(C), and 6.
8

9 50. Except for the records withheld in
10 their entirety, most of the withholdings
11 have been minimal.
12

13 51. The CIA has relied on
14 FOIA Exemption 3, 5 U.S.C. § 552
15 (b)(3), and 50 U.S.C. 403g to withhold
16 the names of CIA employees; the
17 acronym of a CIA component; and an
18 intelligence method not involved in that
19 portion of the CIA's analysis relating to
20 the "publicly released aircraft flight path
21 climb conclusion." [Bur. Decl. ¶¶ 26-
22 27, 31 & DI at 41, 44-48, 50-53, 54, 58,
23 60-62, 64-66, 68-70] [2nd Bur. Decl. ¶¶
24 10-12 & DI at 16] [2nd Bur. Decl. ¶¶
25 10-12 & DI at 16.]
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48. Plaintiff agrees that this is
undisputed.

49. Plaintiff agrees that this is
undisputed.

50. Plaintiff agrees that of the records
produced, the volume of the
withholdings have been minimal.

49. Plaintiff denies that this is
undisputed. Plaintiff cannot possibly
respond to this alleged "fact" until the
CIA in good faith files a decipherable
Vaughn index and identifies the records
to which it refers. [3 Schulze Aff Bates
107 ¶ 85(a): "The CIA August chart
purports to identify... supposedly the
records already produced... [and] two
sets of additional records produced. The
chart is incomplete, misleading, and had
to be deciphered."] See response to
paragraph 41 above, reciting that the
CIA produced records without
corresponding Document ID numbers,
assigned MORI Doc ID numbers in

reverse chronological order, produced at least 10 records not listed on its Vaughn index, identified records in its Vaughn index not produced in its August 16 filing, apparently denied in full a record not listed in its Vaughn index, removed pages from records, produced two records with multiple MORI Doc ID numbers, and produced 11 sets of records with duplicate MORI Doc ID numbers.

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13 52. None of the records, responsive to
14 plaintiff's FOIA request, from which the
15 names of CIA personnel have been
16 withheld has been released to the public
17 previously.

52. Plaintiff agrees that this is undisputed.

18
19 53. Even assuming, *arguendo*, that the
20 name identified in Bill Gertz & Rowan
21 Scarborough, *Inside the Ring*, Wash.
22 Times, Dec. 5, 2003, at A6, is a name
23 that the CIA is withholding in this case,
24 the association of that name with the
25 information contained in the records
26 responsive to plaintiff's request has not
27 been officially acknowledged. [2nd
28 Bur. Decl. ¶ 9]

53. Plaintiff denies that this is undisputed. [1 Lahr Aff Bates 31]: (Wash. Times article): Reciting the "Randolph M. Tauss... won an intelligence medal for his work on the crash." The withheld information contained in the records, the name Randolph M. Tauss, has been "officially acknowledged."

1
2 54. The CIA has relied on FOIA
3 Exemption 4, 5 U.S.C. § 552(b)(4), to
4 withhold certain information concerning
5 the "baseline mass properties,
6 aerodynamic and engine characteristics
7 of the Boeing Model 747-100 aircraft."
8

54. Plaintiff agrees that this is
undisputed.

9 55. Provided to the government
10 voluntarily by Boeing, this information
11 is part of the training simulator database
12 that Boeing has developed for Boeing
13 747-100's, 200's, and 300's (747
14 Classics).
15

55. Plaintiff agrees that this is
undisputed.

16 56. Information in this database used
17 for various purposes by Boeing and its
18 licensees, "including flight training,
19 aircraft certification, and engineering."
20

56. Plaintiff agrees that this is
undisputed.

21 57. "In providing these services, Boeing
22 competes with other companies and
23 enjoys a competitive advantage because
24 it is the sole source of the training
25 simulator data." [Breuhaus Decl. ¶ 18]
26
27
28

57. Plaintiff denies that this is
undisputed. [2 Hoffstadt Aff. Bates
37 ¶¶ 26, 28: "The fact that Boeing has
consented to the public sale of a CFD
model of a 747 Classic aircraft directly
contradicts this claim since this same
information can be obtained from the
CFD model with a high degree of

1 precision.... In fact it is safe to say that
2 the baseline lift coefficient of the 747
3 Classic has already been reproduced
4 numerous times by engineers using this
5 CFD model and software." [Id. Bates
6 39 ¶ 41: "Given the numerous facts
7 listed in Paragraph 40 above, a potential
8 competitor would immediately
9 recognize the futility of pursuing more
10 revenue by creating a 747 Classic
11 simulation training facility. Add to
12 these obstacles is the fact that Boeing
13 would maintain it's status as the
14 recognized and established authority and
15 preferred provider for these services due
16 to its position as the original developer
17 and manufacturer of the aircraft in
18 question." [X Lahr Aff. Bates 375-378
19 Ex. 13 (Boeing 747 series): Recounting
20 that Boeing placed the 747-100 in
21 service in 1969, 37 years ago, and has
22 been succeeded by the 747-200 in 1983,
23 the 747-300 in 1989, and the 777 in
24 1995.

25
26 58. A competitor wishing to "reproduce
27 Boeing's data and sell its own version of
28 Boeing's 747 Classic simulator data

58. Plaintiff agrees that this is
undisputed.

1 package would need to make an
2 investment in the order of the magnitude
3 of \$20 million in development costs."
4 [Breuhaus Decl. ¶ 15]

5
6 59. Free access to the withheld
7 information "would substantially assist
8 in this effort." [Breuhaus Decl. ¶ 15]

59. Plaintiff denies that this is
undisputed. [2 Hoffstadt Aff. Bates 32
¶ 4: "A computational fluid dynamics
(CFD) computer software program is a
common tool..."] [Id. Bates 33 ¶ 6:
"[CDF is widely used in the aerospace
field..."] [Id. Bates 34 ¶ 10: "The fact
that a CFD model of the 747 Classic is
available to the public makes it certain
that any aerodynamic data about this
configuration could be obtained
independently from Boeing, with a very
high degree of precision."] [X Lahr
Aff. Bates 282 ¶ 93: "[O]peration and
performance information is not
legitimately proprietary."] [X Lahr Aff.
Bates 271 ¶ 39: "Performance data of
the B747-100 is already in the public
domain."] [X Lahr Aff. Bates 285 ¶
122: "Aviation has progressed so far and
so fast since the B747-100 was on the
drawing board that it is hard to imagine
that Boeing would be hurt competitively

1 if the above information were
2 disclosed."

3
4 60. As a further matter, the CIA has
5 relied on Exemption 4 to withhold the
6 name of, and contact information for, an
7 employee of Boeing.

60. Plaintiff agrees that this is
undisputed.

8
9 61. Disclosure of this material would
10 make it easier for competitors of Boeing
11 to solicit the unauthorized disclosure of
12 the technical information concerning the
13 Boeing 747-100 that the CIA has
14 withheld. [Breuhaus Decl. ¶ 15] [See
15 Bur. Decl.]

61. Plaintiff agrees that this is
undisputed.

16
17 62. The CIA has relied on the
18 deliberative process privilege and FOIA
19 Exemption 5, 5 U.S.C. 552(b)(5) to
20 withhold certain materials created as a
21 part of the analysis that continued after
22 the CIA video concerning the explosion
23 of TWA Flight 800 was shown to the
24 public.

62. Plaintiff agrees that this is
undisputed.

25
26 63. One of the withholdings described
27 in ¶ 62 is an excerpt from six pages of
28 "analyst notes" dated December 2-4,

63. Plaintiff denies that this is
undisputed. Plaintiff cannot possibly
respond to this alleged "fact" until the

1 1997; these notes "includ[e]
2 mathematical calculations and reflect[]
3 daily work and consultations with other
4 analysts, regarding aerodynamics."
5 [Bur. Decl. DI at 44, 56-58] [2nd Bur.
6 Decl. ¶ 11, 17]

CIA in good faith files a decipherable
Vaughn index and identifies the records
to which it refers. [3 Schulze Aff Bates
107 ¶ 85(a): "The CIA August chart
purports to identify... supposedly the
records already produced... [and] two
sets of additional records produced. The
chart is incomplete, misleading, and had
to be deciphered."] See response to
paragraph 41 above, reciting that the
CIA produced records without
corresponding Document ID numbers,
assigned MORI Doc ID numbers in
reverse chronological order, produced at
least 10 records not listed on its Vaughn
index, identified records in its Vaughn
index not produced in its August 16
filing, apparently denied in full a record
not listed in its Vaughn index, removed
pages from records, produced two
records with multiple MORI Doc ID
numbers, and produced 11 sets of
records with duplicate MORI Doc ID
numbers.

25
26 64. A second of the withholdings
27 described in ¶ 62 is the entirety of an
28 18-page draft report, dated March 3,

64. Plaintiff denies that this is
undisputed. Plaintiff cannot possibly
respond to this alleged "fact" until the

1 1998, captioned "Dynamic Flight
2 Simulation"; this report contains
3 "analysis and preliminary conclusions
4 regarding further assessment of TWA
5 Flight 800." [Bur. Decl.] [DI at 57]
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26 65. A third of the withholdings
27 described in 62 is the entirety of a 17-
28 page draft report, dated March 17, 1998,

CIA in good faith files a decipherable
Vaughn index and identifies the records
to which it refers. [3 Schulze Aff Bates
107 ¶ 85(a): "The CIA August chart
purports to identify... supposedly the
records already produced... [and] two
sets of additional records produced. The
chart is incomplete, misleading, and had
to be deciphered."] See response to
paragraph 41 above, reciting that the
CIA produced records without
corresponding Document ID numbers,
assigned MORI Doc ID numbers in
reverse chronological order, produced at
least 10 records not listed on its Vaughn
index, identified records in its Vaughn
index not produced in its August 16
filing, apparently denied in full a record
not listed in its Vaughn index, removed
pages from records, produced two
records with multiple MORI Doc ID
numbers, and produced 11 sets of
records with duplicate MORI Doc ID
numbers.

65. Plaintiff denies that this is
undisputed. Plaintiff cannot possibly
respond to this alleged "fact" until the

1 captioned "Analysis of Radar Tracking
2 of the TWA 800 Disaster on July 17,
3 1996. [Bur. Decl.] [DI at 56]
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CIA in good faith files a decipherable
Vaughn index and identifies the records
to which it refers. [3 Schulze Aff Bates
107 ¶ 85(a): "The CIA August chart
purports to identify... supposedly the
records already produced... [and] two
sets of additional records produced. The
chart is incomplete, misleading, and had
to be deciphered."] See response to
paragraph 41 above, reciting that the
CIA produced records without
corresponding Document ID numbers,
assigned MORI Doc ID numbers in
reverse chronological order, produced at
least 10 records not listed on its Vaughn
index, identified records in its Vaughn
index not produced in its August 16
filing, apparently denied in full a record
not listed in its Vaughn index, removed
pages from records, produced two
records with multiple MORI Doc ID
numbers, and produced 11 sets of
records with duplicate MORI Doc ID
numbers.

26 66. The fourth withholding described in
27 ¶ 62 is the entirety of 22 pages of charts
28 and graphs; prepared by one or more

66. Plaintiff denies that this is
undisputed. Plaintiff cannot possibly
respond to this alleged "fact" until the

1 CIA analysts, these materials contain
2 "intra-agency and inter agency
3 deliberations with NTSB, including
4 [the] analyst's selection of variables,
5 assumptions, calculations, and graphical
6 representations regarding [the] analyst's
7 preliminary analysis of radar tracking
8 data provided by the NTSB." [Bur.
9 Decl.] [DI at 58] [2nd Bur. Decl. ¶ 17]

CIA in good faith files a decipherable
Vaughn index and identifies the records
to which it refers. [3 Schulze Aff Bates
107 ¶ 85(a): "The CIA August chart
purports to identify... supposedly the
records already produced... [and] two
sets of additional records produced. The
chart is incomplete, misleading, and had
to be deciphered."] See response to
paragraph 41 above, reciting that the
CIA produced records without
corresponding Document ID numbers,
assigned MORI Doc ID numbers in
reverse chronological order, produced at
least 10 records not listed on its Vaughn
index, identified records in its Vaughn
index not produced in its August 16
filing, apparently denied in full a record
not listed in its Vaughn index, removed
pages from records, produced two
records with multiple MORI Doc ID
numbers, and produced 11 sets of
records with duplicate MORI Doc ID
numbers.

25
26 67. The CIA has also relied on the
27 deliberative process privilege and
28 Exemption 5 to withhold certain

67. Plaintiff denies that this is
undisputed. Plaintiff cannot possibly
respond to this alleged "fact" until the

1 materials reflecting the give-and-take
2 between the CIA and other agencies.
3 [Bur. Decl.] [DI at 59] [2nd Bur. Decl.
4 ¶ 16]

CIA in good faith files a decipherable
Vaughn index and identifies the records
to which it refers. [3 Schulze Aff Bates
107 ¶ 85(a): "The CIA August chart
purports to identify... supposedly the
records already produced... [and] two
sets of additional records produced. The
chart is incomplete, misleading, and had
to be deciphered."] See response to
paragraph 41 above, reciting that the
CIA produced records without
corresponding Document ID numbers,
assigned MORI Doc ID numbers in
reverse chronological order, produced at
least 10 records not listed on its Vaughn
index, identified records in its Vaughn
index not produced in its August 16
filing, apparently denied in full a record
not listed in its Vaughn index, removed
pages from records, produced two
records with multiple MORI Doc ID
numbers, and produced 11 sets of
records with duplicate MORI Doc ID
numbers.

25
26 68. One of the withholdings described
27 in ¶ 67, is the entirety of an undated
28 five-page draft, with handwritten

68. Plaintiff denies that this is
undisputed. Plaintiff cannot possibly
respond to this alleged "fact" until the

1 annotations, captioned "Response to
2 Allegations of SA [Special Agent]
3 Regarding CIA Analysis"; this draft
4 "reflect[s] candid discussion and
5 opinions of individuals both within and
6 between FBI and CIA regarding CIA
7 analysis of eyewitness reports." [Bur.
8 Decl.] [DI at 59]

CIA in good faith files a decipherable
Vaughn index and identifies the records
to which it refers. [3 Schulze Aff Bates
107 ¶ 85(a): "The CIA August chart
purports to identify... supposedly the
records already produced... [and] two
sets of additional records produced. The
chart is incomplete, misleading, and had
to be deciphered."] See response to
paragraph 41 above, reciting that the
CIA produced records without
corresponding Document ID numbers,
assigned MORI Doc ID numbers in
reverse chronological order, produced at
least 10 records not listed on its Vaughn
index, identified records in its Vaughn
index not produced in its August 16
filing, apparently denied in full a record
not listed in its Vaughn index, removed
pages from records, produced two
records with multiple MORI Doc ID
numbers, and produced 11 sets of
records with duplicate MORI Doc ID
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26 69. The other withholding described in
27 ¶ 67 is the entirety of three pages of
28 handwritten analyst notes containing

69. Plaintiff denies that this is
undisputed. Plaintiff cannot possibly
respond to this alleged "fact" until the

1 "intra-agency and inter-agency
2 deliberations with NTSB, including the
3 analyst's preliminary assessment,
4 comments, and notations regarding
5 select radar tracking data provided by
6 NTSB.

CIA in good faith files a decipherable
Vaughn index and identifies the records
to which it refers. [3 Schulze Aff Bates
107 ¶ 85(a): "The CIA August chart
purports to identify... supposedly the
records already produced... [and] two
sets of additional records produced. The
chart is incomplete, misleading, and had
to be deciphered."] See response to
paragraph 41 above, reciting that the
CIA produced records without
corresponding Document ID numbers,
assigned MORI Doc ID numbers in
reverse chronological order, produced at
least 10 records not listed on its Vaughn
index, identified records in its Vaughn
index not produced in its August 16
filing, apparently denied in full a record
not listed in its Vaughn index, removed
pages from records, produced two
records with multiple MORI Doc ID
numbers, and produced 11 sets of
records with duplicate MORI Doc ID
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26 70. The CIA has relied on exemption
27 7(C) to withhold, at the request of the
28 FBI, the names and initials of

70. Plaintiff denies that this is
undisputed. Plaintiff cannot possibly
respond to this alleged "fact" until the

1 eyewitnesses to the explosion of TWA
2 Flight 800; the names of special agents
3 and other employees of the FBI; and
4 contact information for certain such
5 individuals; this material comes from
6 records created as part of the criminal
7 investigation that the FBI conducted
8 into the explosion of TWA Flight 800,
9 including that portion of the
10 investigation with which the CIA
11 assisted. [Bur. Decl. ¶ 51 & DI at 43-
12 44, 49, 51, 53, 55-56, 64-65, 67-68, 70]
13 [2nd Bur. Decl. ¶ 15 & DI at 16-17]

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26 71. The CIA has relied on FOIA
27 Exemption 6, 5 U.S.C. § 552(b)(6), to
28 withhold the names and initials of

CIA in good faith files a decipherable
Vaughn index and identifies the records
to which it refers. [3 Schulze Aff Bates
107 ¶ 85(a): "The CIA August chart
purports to identify... supposedly the
records already produced... [and] two
sets of additional records produced. The
chart is incomplete, misleading, and had
to be deciphered."] See response to
paragraph 41 above, reciting that the
CIA produced records without
corresponding Document ID numbers,
assigned MORI Doc ID numbers in
reverse chronological order, produced at
least 10 records not listed on its Vaughn
index, identified records in its Vaughn
index not produced in its August 16
filing, apparently denied in full a record
not listed in its Vaughn index, removed
pages from records, produced two
records with multiple MORI Doc ID
numbers, and produced 11 sets of
records with duplicate MORI Doc ID
numbers.

71. Plaintiff denies that this is
undisputed. Plaintiff cannot possibly
respond to this alleged "fact" until the

1 eyewitnesses to the explosion of TWA
2 Flight 800; the names of employees of
3 the NTSB, CIA, FBI, Boeing, and other
4 private companies; and contact
5 information for certain of these
6 individuals. [Bur. Decl. DI at 42-45,
7 47-49, 51, 53-56, 64-68, 70] [2nd Bur.
8 Decl. ¶¶ 12-14 & DI at 16-17]

CIA in good faith files a decipherable
Vaughn index and identifies the records
to which it refers. [3 Schulze Aff Bates
107 ¶ 85(a): "The CIA August chart
purports to identify... supposedly the
records already produced... [and] two
sets of additional records produced. The
chart is incomplete, misleading, and had
to be deciphered."] See response to
paragraph 41 above, reciting that the
CIA produced records without
corresponding Document ID numbers,
assigned MORI Doc ID numbers in
reverse chronological order, produced at
least 10 records not listed on its Vaughn
index, identified records in its Vaughn
index not produced in its August 16
filing, apparently denied in full a record
not listed in its Vaughn index, removed
pages from records, produced two
records with multiple MORI Doc ID
numbers, and produced 11 sets of
records with duplicate MORI Doc ID
numbers.

25
26 72. Most of the information withheld
27 pursuant to FOIA exemption 6 has also
28 been withheld pursuant to Exemptions

72. Plaintiff agrees that this is
undisputed.

1 3, 4, or 7(C).

2
3 73. The individuals to whom the
4 information pertains "have a privacy
5 interest in not being subject to unofficial
6 questioning about the analytic project or
7 investigation at issue and in avoiding
8 annoyance or harassment in their
9 official, business, and private lives."

73. Plaintiff agrees that this is
undisputed.

10
11
12 Plaintiff also contends that the following other material facts are in dispute:

13
14 74. The government misrepresented the
15 evidence.

74. [K Sanders Aff. Bates 177 ¶ 15
(quoting Nov. 1996 FBI SAIC James
Kallstom interview with Jim Lehrer):
"We think it was a meteorite shower,
Jim." [K Sanders Aff. Bates 181-82 Ex
2 (Affidavit of NASA chemist C. W.
Basset): "The tests performed by me at
NASA-KSC on samples Dr. Birky said
were from... [the] cabin interior did not
address the issue of origin of any
reddish-orange residue..."] [X Lahr
Aff. Bates 380 Ex 14 (Transcript of
August 22-23, 2000, NTSB Sunshine
Hearing): "Jim Hall: However, even
though our employees are not law

1 enforcement personnel, they examined
2 every piece of wreckage for any
3 physical evidence that the crash of
4 Flight 800 had been caused by a bomb
5 or missile. Had we found such
6 evidence, we would have immediately
7 referred the matter back to the
8 appropriate law enforcement agencies
9 for their action. Let me state
10 unequivocally, the Safety Board has
11 found no evidence....] [Id. Bates 381:
12 "Bernard Loeb: No. In fact, as the
13 chairman put up earlier on the slide,
14 there were a great number of outside
15 organizations that participated in the
16 explosives end of it. A large number of
17 different organizations, within the
18 government and outside the
19 government, who looked at the metal all
20 came to the same conclusion that there
21 was no physical evidence of a bomb or a
22 missile warhead exploding."] [Id. Bates
23 385: "David Mayer: Well, the first
24 witness listed in the advertisement
25 (compare R Wire Aff) is the witness on
26 the bridge when he saw the accident.
27 This is the witness I described earlier in
28 my presentation, and I told you that his

1 account was consistent with the motion
2 of the airplane and the crippled flight."]
3 [**Id.**: "The second witness (compare P
4 Brumley Aff) in the ad was the witness
5 who was on US Air Flight 217 and I
6 explained to you that he couldn't have
7 seen a missile hit TWA Flight 800
8 because the timing just simple doesn't
9 work out."] [**Id.**: "The fourth witness
10 (compare S Angelides Aff) listed in the
11 advertisement said he saw, or in the
12 advertisement it says he saw the
13 accident from the deck of his house ...
14 seeing a glowing red object pick up
15 speed and streak out to sea ... then he
16 saw a series of flashes and a fireball
17 according to the ad. However, July 21,
18 1996 when the interview[ee] was
19 interviewed, his FBI document says he
20 saw a red flare descending and makes
21 no mention of some of the other details.
22 In fact, he's the first witness I used as an
23 example in my presentation."] [**Id.**:
24 "The fifth witness (compare O Meyer
25 Aff) who's mentioned in the
26 advertisement is the pilot of the
27 National Guard helicopter who,
28 obviously, I already described that

1 mistook/studied? the radar data and
2 calculated the time for his departure
3 from the accident site to the rescue field.
4 Be said he'd seen a fireball and the
5 breakup sequence of the airplane, not a
6 missile."]

7
8 75. The government withheld evidence
9 during the probe.

10 75. [C Hill Aff. Bates 47: FBI SAIC
11 James Kallstrom claimed criminal
12 investigation in "pending inactive
13 status" as reason to continue to withhold
14 eyewitness FBI 302s from NTSB
15 Witness group.] [C Hill Aff. Bates 46 ¶
16 1: (quoting Commander William S.
17 Donaldson): "[T]he NTSB assisted the
18 Justice Department in hiding a witness
19 who claims to have seen a missile strike
20 the aircraft on the forward wall of the
21 number two main tank."] [L Speer
22 Aff. Bates 184 ¶ 15: "And the FBI said
23 all right, all right, we'll send it to our
24 real lab in Washington and that was a
25 Sunday, Monday, after the accident,
26 four or five days later, and the part has
27 not been seen since, for five years
28 now."] [U Perry Aff. Bates 253 ¶ 50:
"He [FBI agent] said they decided that I
was too far away, that I couldn't have

1 seen what I had seen. I said, 'But then
2 how did I tell you, what, how did I
3 describe to you how the plane had
4 broken up before they had even pulled it
5 out of the water?'"] [X Lahr Aff. Bates
6 273 ¶¶ 52-54: "The party process was
7 violated again with respect to the
8 Witness Group. In the case of TWA-
9 800, twenty-two groups were formed
10 including a Witness Group. However,
11 the FBI immediately blocked the
12 Witness Group from its function of
13 interviewing witnesses, and it was
14 disbanded. Later the Witness Group
15 was reformed to study the FBI FD-
16 302s... Thus, the Witness Group never
17 did interview any of the hundreds of
18 ground eyewitnesses. The Witness
19 Group never even knew who they
20 were.... [I]t was more than two years
21 after the accident before the Witness
22 Group interviewed Captain David
23 McClaine. [Only civilian eyewitness
24 interviewed by NTSB.] Never before in
25 my experience with NTSB accident
26 investigations have I seen the NTSB
27 refuse to conduct Witness Group
28 interviews of key eyewitnesses,

1 especially when the eyewitness
2 testimony was pivotal...] [X Lahr Aff.
3 Bates 309 Ex 2 (Dec 3, 1997 letter from
4 FBI SAIC James Kallstrom to NTSB
5 Chairman Hall): "[W]e particularly
6 object to discussion of the residue
7 examination [at the public hearing."]]
8 [Y Young Aff. Bates 394 ¶ 2(f): "The
9 non-governmental parties did not have
10 access to the FBI Witness Summaries,
11 which formed a significant foundation
12 for the CIA simulation, until the middle
13 of 1998. This was well after both
14 simulations had been completed and
15 were in the public domain."]

16
17 76. The government altered and
18 removed evidence from the
19 reconstruction hanger.

20
21 76. [Lodging – Expert Eyewitnesses –
22 Congressional testimony of NTSB
23 investigator Hank Hughes: relating FBI
24 agents surreptitiously in hanger at 3:00
25 a.m. on a Saturday] [X Lahr Aff. Bates
26 370 ¶ 1 Ex 10 (April, 2000,
27 *International Association of Machinists
28 and Aerospace Workers* submission to
NTSB final Report): "During the
investigation of TWA flight 800 cabin
wreckage began to disappear from the
cabin wreckage hanger. Indications

1 were that the disappearance was due to
2 the removal of wreckage by the FBI.
3 Field notes from the Cabin
4 Documentation Group (CDG) stated this
5 fact."]

7 77. The government banned eyewitness
8 testimony from its two public hearings.

77. [C Hill Aff. Bates 46: "The
9 hundreds of eyewitnesses who saw a
10 streak of light intersect with the aircraft
11 were banned, along with any
12 discussion" of their accounts.] [X
13 Lahr Aff. Bates 307 Ex 2 (Dec 3, 1997
14 letter from FBI SAIC James Kallstrom
15 to NTSB Chairman Hall): "[T]he FBI
16 objects to the use of the CIA video...
17 The FBI also objects... to include in the
18 public docket [any witness materials]...
19 and to calling any eyewitnesses to
20 testify at the public hearing."]

21 78. The government altered evidence.

21 78. [K Sanders Aff. Bates 178 ¶¶ 9-
22 10: ["Know piece bent down...
23 [b]ecause I have the photos of these
24 large pieces of the floor of the center
25 wing tank shortly after they were
26 brought into the hangar. They don't
27 have that bend in them.... [T]hey
28 couldn't live with that, because you

1 must have an external force coming into
2 the airplane blowing it upwards and in.
3 Now that's not mechanical, that's
4 something from outside. So they cut off
5 the upward bending metal, its huge...
6 mashed it down, so that instead of
7 having been blow upwards, it was
8 mashed down, because a mechanical
9 would have blown that same piece down
10 instead of up."] [1 Lahr Aff. Bates 30 ¶
11 5: (Congressional testimony of NTSB
12 investigator Hank Hughes): "I actually
13 found this man with a hammer pounding
14 on a piece of evidence trying to flatten it
15 out."]

16
17 79. The government knew that the
18 center wing fuel tank was empty.

19 79. [C Hill Aff. Bates 50 ¶ 4:
20 "Captain Mundo... used that sump
21 pump to take out tiny residual jet fuel
22 and any water that's present, as there
23 always is... why they have the sump
24 pumps. And then they took off, three
25 hours later. Because instead of going as
26 far as Athens, they weren't going to
27 Paris... they didn't need it.
28 Consequently, we know that tank was
empty. Well, that means that it had a
thimble-full of kerosene, or the

1 equivalent, of vapor. This is a huge
2 tank, much bigger than this room,
3 literally. And there's no way that you
4 can ignite a thimble-full of kerosene and
5 blow off the left wing of the strongest
6 airplane ever built."

7
8 80. The government knew that there
9 was no spark in the center wing fuel
10 tank.

11 80. [D Donaldson Aff. Bates 70
12 (quoting Commander William S.
13 Donaldson): "[T]he wiring and motor
14 for this pump are outside the tank....
15 [W]here this pump was mounted [] they
16 found it clean and without any signs of
17 metal failure."] [X Lahr Aff. Bates
18 366 ¶¶ 1-3 Ex 10 (April, 2000,
19 *International Association of Machinists*
20 *and Aerospace Workers* submission to
21 NTSB final Report): "We conclude that
22 the existing wiring recovered from flight
23 800 wreckage does not exhibit any
24 evidence of improper maintenance or
25 any malfunction that lead to a spark or
26 other discrepancy. Examination
27 indicates that the wiring was airworthy
28 and safe for flight.... No evidence of
improper, poor, or incomplete
maintenance was found m the wreckage
of the accident aircraft."]

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81. The defendant knew that the center wing fuel tank explosion theory is impossible due to the low volatility of the fuel.

81. [H Harrison Aff. Bates , ¶ 1, 3-4, 7 & 9: [A]viation fuel having a flash point greater than 100 degrees F would be properly classified as a combustible liquid and NOT a flammable liquid.... [A] combustible liquid is one that will NOT give off flammable vapors in sufficient quantity to allow combustion and/or an explosion at ambient temperatures. [A]s an airplane gains altitude, the ambient temperature drops. [T]oday cars have fuel pumps inside their gas [flammable] tanks... [A] fuel tank carrying a combustible liquid is, by scientific definition, not capable an internal fire or explosion because there simply cannot be the presence of flammable vapors therein."]

82. The government knew that the center wing tank (CWT) explosion followed by a zoom-climb is impossible due to the fact that the CWT spar

82. [W Rivero Aff. Bates 264 ¶ 13: "As the accompanying animation illustrates, the initiating event in the Center Wing Tank results in the

1 supports the wings.

destruction of the Front Spar of the
Wing Box, collapsing the wings."]

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4 83. Defendant's zoom-climb hypothesis
5 was knowingly impossible because
6 engine thrust was cut with the loss of
7 the nose.

83. [V Pence Aff. Bates 259 ¶ 6: "In
the TWA 800 case, the moment the
explosion occurred, and the nose section
was severed, there would have been no
more engine thrust."]

8
9
10 84. Defendant's zoom-climb hypothesis
11 was knowingly impossible because the
12 wing(s) were initially separated from the
13 aircraft.

84. [B Hambley Aff. Bates 40: Upon
initiating event "the aircraft structure
supporting and supported by the
wings... was destroyed so severely"]
[C Hill Aff. Bates 43, ¶ 12: "[A]lready
lost one of its wings"] [E Stalcup Aff.
Bates 120 ¶ 9: "Debris field data
indicates that Flight 800's left wing was
damages early in the crash sequence...
wing structure... found in an area
consistent with it separating from the
aircraft within five seconds of the initial
explosion] [T McClaine Aff. Bates
236: "I didn't see it pitch up, no.
Everything ended right there at that
explosion... I saw the wings blow off."]
[U Perry Aff. Bates 248 ¶ 19: "And
then the left wing goes off in this
direction."] [Y Young Aff. Bates 393 ¶

1 2(a) & (b): "The loss of the nose section
2 caused an immediate and significant aft
3 shift of the aircraft's center of gravity.
4 The aircraft rapidly pitched upward to a
5 high angle causing the ensuing failure of
6 both the left and right wingtips. This
7 was due to excessive positive 'g'
8 forces..."

9
10 85. The CIA knew that the zoom-climb
11 is aerodynamically impossible.

12 85. [C Hill Aff. Bates 51 ¶ 4:
13 (quoting Commander William S.
14 Donaldson): "Once it goes beyond
15 about 20 degrees nose up, it can't fly any
16 more because these wings are no longer
17 into the wind they can't produce lift...
18 It's called gravity. This 333 tons are
19 going to stall... when the time the
20 airplane quits flying, [it] is going
21 down."] [V Pence Aff. Bates 259 ¶ 8:
22 "A very abrupt pitch-up would have
23 resulted in an immediate high-speed
24 stall with loss of lift and subsequent loss
25 (not gain) of altitude."] [X Lahr Aff.
26 Bates 274-75 ¶¶ 59, 62: "An aircraft in
27 balanced flight is like a teeter totter. As
28 can be seen in the following diagram,
the horizontal stabilizer normally pushes
down with a force of a few thousand

1 pounds to keep the aircraft (or teeter-
2 totter) in balance.... If the CG [center
3 of gravity] gets out of those limits, the
4 horizontal stabilizer cannot exert enough
5 force to keep the aircraft in balance, and
6 then there is nothing a pilot can do to
7 keep the aircraft from crashing.... The
8 aircraft stalls at an angle of attack of
9 about 18 degrees... At that rate, TWA
10 would have been stalled in about one
11 and half seconds after nose separation."]

12
13 86. The CIA knew that the aircraft did
14 not slow and so the zoom-climb is
15 impossible.

16 86. [D Donaldson Aff. Bates 62-3 ¶ 68,
17 72: "If the aircraft did a 'zoom climb,'
18 you would expect to see a significant
19 reduction in ground speed (horizontal
20 velocity). This is especially true the
21 more steeply the aircraft climbs. There
22 is no evidence of a significant loss of
23 horizontal speed during this time period.
24 In fact, two of the three radars tracking
25 the flight path show the aircraft
26 speeding up."] [E Stalcup Aff. Bates
27 126 ¶ 3: "The law of conservation of
28 energy says, that you use kinetic energy
and that's the speed you have already
and you convert that to altitude but there
is a price, the price that you pay is that

1 you slow down. It's like when you ride
2 a bike up a hill, at the top of the hill
3 you're going pretty slowly, you know,
4 you use your energy up. Well the radar
5 data shows the plane didn't slow down.
6 If didn't slow down, it didn't climb. If it
7 didn't climb, the witnesses didn't see the
8 plans climb, they saw something else."]

9
10 87. The two eyewitnesses featured in
11 the CIA animation repudiate its
12 depiction.

87. [P Brumley Aff. Bates 210 ¶ 1: "It
wasn't even close to being an accurate
representation of what I saw."] [R
Wire Aff. Bates 214 ¶ 4: "It [CIA
animation] didn't represent what I had
testified to the agent as to what I saw
out there."]

13
14
15
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17
18 88. Eyewitnesses saw projectile(s)
19 traveling at supersonic speed.

88. [C Hill Aff. Bates 51 ¶ 4: (quoting
Commander William S. Donaldson):
"When you see a streak go up, and go
up 13,800 feet, in seconds, 4 or 5, 6, 7
seconds, that's supersonic. Yeah, it's
supersonic. Only a fighter aircraft or a
missile can achieve those kinds of
speeds. And an investigator can pretty
quickly determine, as the FBI guys did,
that when you're 8 or 10 miles away and
you see something go that high that

1 quick, its just a matter of trigonometry.
2 I mean any high school kid can figure it
3 out. It's got to be a missile.]
4

5 89. The airborne eyewitnesses reject the
6 CIA zoom-climb video-animation.

7 89. [N Fuschetti Aff. Bates 191: "We
8 witnessed TWA 800... landing lights to
9 a ball of flames.... At no time did I see
10 any vertical travel of the aircraft..."]
11 [O Meyer Aff. Bates 192 ¶ 5(b):
12 "When that aircraft was hit, it
13 immediately began falling. It fell like a
14 stone. It came right out of the sky.
15 From the first explosion, to the second
16 explosion, to the third, possibly fourth
17 and the petrochemical explosion. It was
18 going down, from the first moment of
19 the first explosion, it was going down.
20 It never climbed."] [T McClaine Aff.
21 Bates 235: "The explosion just
22 happened right in front of me there and
23 it disappeared right there, with the two
24 wings coming out the bottom.... it just
25 disappeared right about the same level."
26 **Id.** Bates 236: "I didn't see it pitch up,
27 no." **Id.** Bates 236: "And everything
28 went down." **Id.** Bates 243 (ATC
tape): "it just went down – in the water"
Id. Bates 244 (ATC tape): "we are

1 directly over the sight with that airplane
2 or whatever it was just exploded and
3 went into the water"]
4

5
6 90. Not a single eyewitnesses saw what
7 the CIA video-animation depicts.
8

9 90. [S Angelides Aff. Bates 215 ¶ 5:
10 "That [CIA animation] bore no
11 resemblance whatsoever to what I
12 saw... Because if they ask me, it didn't
13 resemble it in any way."] [X Lahr Aff.
14 Bates 277 ¶ 66: "Neither the FBI nor the
15 CIA nor the NTSB has produced a
16 single eyewitness who saw TWA 800
17 zoom-climb upwards out of the initial
18 fireball."]
19

20 91. Eyewitnesses placed a newspaper
21 advertisement "*We saw TWA Flight 800*
22 *Shot Down by Missiles And We Won't be*
23 *Silenced any Longer.*"
24

25 91. [X Lahr Aff. Bates 327 Ex 7 (Aug
26 2000 *Washington Times* advertisement):
27 Featuring accounts of eyewitnesses
28 Michael Wire, Dwight Brumley,
Richard Goss, Paul Angelides, Major
Frederick Meyer, William Gallagher.]

29 92. The CIA knowingly falsely reported
30 that only "21 eyewitnesses" saw stages
31 of the disaster before the fuselage began
32 its descent into the water.
33

34 92. [1 Schulze Aff. Bates 46 ¶ 17
35 (transcript of CIA video-animation):
36 "The 21 eyewitnesses whose
37 observations began earlier described
38 what was almost certainly the aircraft

1 itself in various stages of crippled flight
2 after it exploded."] [D Donaldson Aff.
3 Bates 101 Ex 16 NTSB Exhibit 4A
4 Witness Group Factual Report (based on
5 458 of the FBI's 736 302s): "Of the 183
6 [eyewitnesses] who observed a streak of
7 light... 96 said that it originated from
8 the surface."] (Note: NTSB withheld
9 this exhibit from its public docket.)
10

11 93. TWA is among the parties to the
12 probe which rejected the CIA's zoom-
13 climb-animation conclusion.
14

93. [Y Young Aff. Bates 393 ¶ 2: "As
the TWA Flight 800 Investigation Party
Coordinator and Chief Accident
Investigator, I can confirm that TWA
did not subscribe to the 'zoom climb'
scenarios of either the CIA or NTSB,
based on the following factual
reasons:"]
18

19
20 94. The aviation community ridiculed
21 the CIA's zoom-climb animation.
22

94. [C Hill Aff. Bates 46: Zoom-
climb is "a theory that is openly mocked
by senior military aviators, airline
captains and outside air crash
investigators."] [3 Schulze Aff. Bates
45 ¶ 15: "In a survey of 'Aviation Week
and Space Technology' readers, the
majority did not accept the CIA 1997
zoom-climb video as aerodynamically
28

believable."

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4
5 95. The airline industry has undertaken
6 no remedial measures to the Center
7 Wing Tank of Boeing 747s since the
8 disaster.

95. [V Pence Aff. Bates 259 ¶ 11: "If
there was the slightest chance that this
could occur in another aircraft of the
same type, the prudent and responsible
action would have been to ground....
that portion of the fleet that was of the
same series as TWA 800, by means of
an Emergency Airworthiness Directive.
That didn't happen."]

9
10
11
12
13
14
15 96. Defendant knew, along with
16 witnesses and investigators, that the
17 center wing tank explosion was not the
18 initiating event.

96. [O Meyer Aff. Bates 192 ¶ 5(a):
"And what I saw explode in the sky was
definitely military ordnance. I have
enough experience with it to know what
it looks like. And I saw one, two, three,
four explosions before I saw the fireball.
So, the fuel in this aircraft eventually
exploded. But the explosion of the fuel
was the last event, not the initiating
event. The initiating event was a
high-velocity explosion, not fuel. It was
ordnance."] [X Lahr Aff. Bates 371 ¶ 1
Ex 10 (April, 2000, *International
Association of Machinists and*

Aerospace Workers submission to NTSB final Report): "The center wing tank did explode! We find that its explosion was as the result of the aircraft breakup. The initial event caused a structural failure in the area of Flight Station 854 to 860, lower left side of the aircraft. A high-pressure event breached the fuselage and the fuselage unzipped due to the event. The explosion was a result of this event!"]

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13 97. Explosive residue was recovered
14 from the debris.

97. [E Stalcup Aff. Bates 126 ¶ 6:
PETN & RDX recovered from debris.]

15
16 98. The government concealed the
17 existence of the missile debris field.

18 98. [D Donaldson Aff. Bates 69
19 (quoting Commander William S.
20 Donaldson): "As I predicted in 1997,
21 and as Military missile experts privately
22 told FBI Agents in 1996, the missile's
23 extreme energy level would carry it
24 clear and create its own separate debris
25 field. This is precisely what the radar
26 video captured. The missile established
27 a debris field... approximately 1.6 NM
28 southwest of the aircraft nose impact
point and 2.8 NM southwest of main
body ocean impact... The NTSB made
no effort at recovery in this area. The

1 FBI's records and maps, left aboard the
2 contract boats handling the secret
3 missile recovery effort, prove the FBI
4 was specifically looking for a missile
5 body as well as the stinger missile first
6 stage pictured in their operations
7 manual." [D Donaldson Aff. Bates 88
8 Ex 9: Map of debris fields & air traffic]

9
10 99. The government concealed true
11 debris recovery locations.

99. [L Speer Aff. Bates 186 ¶ 21:
"And one of the more important parts of
the debris field is the keel beam, and the
NTSB/FBI has changed the recovery
location tag of the keel beam.... trying
to make the recovery location of the
keel beam fit a scenario that they've
already decided has happened..."]

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18
19 100. Investigators in the Flight 800
20 smuggled out missile evidence for
21 independent analysis.

100. [D Donaldson Aff. Bates 75-76
(Ex D): two pages of debris field data
smuggled out in 1996 by TWA Captain
Terrell Stacey to investigative reporter
James Sanders] [J Holtsclaw Aff.
Bates 173, ¶¶ 2-4: "[In] 1996, I
provided to Captain Richard Russell the
Radar tape... recorded at the New York
Terminal Radar Approach Control... I
know this tape to be authentic because it

1 was given to me by one of the NTSB
2 accident investigation committee
3 members.... The tape shows a primary
4 target at the speed of approximately
5 1200 knots converging with TWA-800,
6 during the climb out phase of TWA-
7 800. It also shows a U.S. Navy P-3 pass
8 over TWA-800 seconds after the missile
9 has hit TWA-800.] [K Sanders Aff.
10 Bates 180 Ex 1: Photograph of
11 smuggled out seat padding showing
12 reddish residue from missile exhaust.]

14 101. The government as well as
15 independent investigators have
16 determined missile firing position.

101. [C Hill Aff. Bates 47 ¶ (quoting
Commander William S. Donaldson):
"Suffolk County Police Department
(Deputy inspector Douglas S.
Mafutewich), and special agent of the
FBI... Bongardt... us[ed] global
positioning satellite (GPS) portable
equipment coupled with a had-bearing
compass... able to more precisely
determine two distinct firing positions,
both of which were in range of Flight
800 when it exploded had... missiles
been launched... [I] duplicated the
efforts... using the same type of GPS
equipment and hand-bearing compass

1 with a different mix of eyewitnesses...
2 same conclusion... surface positions at
3 sea..." [D Donaldson Aff. Bates 94
4 Ex 15: Triangulation of Witness
5 Bearing Lines]

7 102. The NTSB violated its statutory
8 mandate by ceding control of the probe
9 to the FBI.

10 102. [L Speer Aff. Bates 184 ¶ 12:
11 "They [NTSB] conducted the
12 investigation... They [FBI] took over
13 like a bull in a China shop... and so they
14 have screwed this investigation up so
15 bad that it probably will never be
16 straightened out. We have – well ever
17 since we were there we have felt that the
18 truth was not allowed to be sought out
19 and discovered."] [L Speer Aff. Bates
20 184 ¶ 13: "The NTSB should have been
21 primary agency in conducting the
22 investigation."] [O Meyer Aff. Bates
23 192 ¶ 5(d): "FBI forbade" NTSB
24 Witness group Chairman Norman
25 Weidermier from interviewing Major
26 Meyer.] [Q Gross Aff. Bates 211 ¶¶ 4-
27 5: "Well, I actually think it's [FBI
28 investigation] unprecedented because,
by a mandate of the Congress, there is
one body, the National Transportation
Safety Board, that is entirely charged

1 with the investigation of any
2 transportation accident."] [X Lahr Aff.
3 Bates 327 Ex 5 (April 30, 2000, *Air*
4 *Line Pilots Association* submission to
5 NTSB final report): "Certain typical
6 civil investigative practices, such as
7 witness interviews and photographic
8 documentation, were prohibited or
9 sharply curtailed and controlled."] [X
10 Lahr Aff. Bates 365 Ex 10 ¶ 5 (April,
11 2000, *International Association of*
12 *Machinists and Aerospace Workers*
13 submission to NTSB final Report): "We
14 must comment on the Federal Bureau of
15 Investigation... We feel that our
16 expertise was unwelcome and not
17 wanted by the FBI.... The threats made
18 during the first two weeks of the
19 investigation were unwarranted and are
20 unforgettable!"]

21
22 103. In hypothesizing the zoom-climb,
23 the government violated the party
24 process, standard accident investigation
25 procedure.

26
27 103. [A Hoffstadt Aff. Bates 39 ¶ 36:
28 "TWA-800 represents a unique, notable,
and controversial event; any CFD
analysis of TWA-800 flight
performance is eminently appropriate
for public disclosure and peer review."]
[C Hill Aff. Bates 50 ¶ 3: "In all

1 aircraft probe investigations it is usual if
2 not universal for investigators to share
3 information and assessments for review
4 by other investigators. It is also
5 common for experts to review one
6 another's conclusions."] [E Stalcup
7 Aff. Bates 121 ¶ 17: "Disclosure and
8 subsequent peer review of the NTSB's
9 climb calculations would... significantly
10 improve the airline community's
11 understanding of the crash."] [X Lahr
12 Aff. Bates 388 Ex 15 (Oct 14, 1997
13 *NTSB Trajectory Study* by Dennis
14 Crider): "No group was formed for this
15 activity."] [X Lahr Aff. Bates 272 ¶
16 47-48: "[T]here should have been a
17 Flight Path Group to study the trajectory
18 of TWA-800 before and after the
19 explosion. The evidence, data, and
20 conclusions of that group should be a
21 part of the public record. That group
22 was not even formed. ALPA would
23 have had a representative on this group
24 had it been formed. Since a Flight Path
25 Group was not formed, ALPA and the
26 other parties to the investigation have no
27 knowledge of the zoom-climb data and
28 conclusions furnished by the NTSB to

1 the CIA, nor any knowledge of the
2 information used by the NTSB for its
3 own video animations." [X Lahr Aff.
4 Bates 327 Ex 5 (April 30, 2000, *Air*
5 *Line Pilots Association* submission to
6 NTSB final report): "[W]e are
7 concerned that this [flight path] analysis
8 was essentially accomplished by only
9 one individual at the Board, with little
10 or no party input or participation. It is a
11 well known and accepted tenet of
12 engineering analysis that the output
13 (results) can only be as accurate as the
14 input data. As cited in the previous
15 section, the trajectory study utilized
16 several uncertain or erroneous
17 component recovery locations,
18 increasing the uncertainty of the study's
19 results. Had this study been-conducted
20 as a group activity, opportunities would
21 have existed for necessary cross-
22 checking and party 'consensus-building,'
23 and it is likely that a more thorough,
24 accurate and universally-accepted
25 product would have been generated."]
26 [Y Young Aff. Bates 394 ¶ 2(f): "None
27 of the non-governmental parties to the
28 Flight 800 investigation participated in

1 the simulation work done by the CIA or
2 NTSB, including any fact-finding that
3 was done to support the scenarios. The
4 non-governmental parties did not have
5 access to the FBI Witness Summaries,
6 which formed a significant foundation
7 for the CIA simulation, until the middle
8 of 1998. This was well after both
9 simulations had been completed and
10 were in the public domain."]

11
12 104. Military assets in military
13 operating zone W-105 conducted
14 classified maneuvers in the air, on the
15 surface, and under the surface, at the
16 time of, and in close proximity to, the
17 disaster.

18
19
20
21
22 104. [D. Donaldson Aff. Bates 85 Ex 7
(Irvine Affidavit): "Tom Stalcup,
23 displayed for the first time (1999) new
24 radar data that had been withheld by the
25 NTSB for three years. It showed 25
26 vessels large enough to be detected by
27 radar 30 miles away in the W-105
28 warning zone or heading for it at the
time of the crash. Neither the NTSB nor
the Navy has been willing to identify
these vessels. This suggests that they
were Navy vessels on a classified
maneuver..."] [D. Donaldson Aff.
Bates 99 Ex 16 (NTSB Exhibit 4A
Witness Group Factual Report): "[T]he
P-3 crew from the aircraft, which was
flying over the area during the loss of

1 TWA 800... aircraft involved was a
2 standard anti-submarine configured...]
3 [F Neal Aff. Bates 150 ¶ 3: "A number
4 of scenarios have been suggested,
5 including the idea that friendly fire...
6 brought down TWA Flight 800 through
7 some bizarre miscalculation. We know
8 from several sources that there were
9 classified military operations taking
10 place that evening just south of the Long
11 Island coast on the surface, in the air,
12 and under water, at the same time that
13 TWA Flight 800 took off. It's possible
14 that the aircraft accidentally intruded
15 into a simulated intercept scenario that
16 could have involved target vehicles. In
17 a rare malfunction, an intercept missile,
18 or missiles could have locked onto the
19 civilian airliner, or intercepted its
20 course, and the 747 was hit, instead of
21 the original target."] [J Holtsclaw Aff.
22 Bates 173, ¶¶ 2-4: "[Smuggled out
23 Radar tape "also shows a U.S. Navy P-3
24 pass over TWA-800 seconds after the
25 missile has hit TWA-800.] [U Perry
26 Aff. Bates 246 ¶¶ 9, 11: relating had
27 seen earlier that day "a military ship...
28 so close [to shore] you can see the

1 numbers on it" with a round ball on the
2 front like a radar dome.] [X Lahr Aff.
3 Bates 371 ¶ 1 Ex 12 (March 10, 1997
4 *Press Enterprise* Newspaper): Military
5 graphic]

6
7 105. The government concealed that
8 one or more Naval vessels, on classified
9 maneuvers, fled the scene.

10 105. [C Hill Aff. Bates 43 ¶ 14:
11 Identifying large vessel close to Flight
12 800 which traveled at 32-knots away
13 from the disaster.] [D Donaldson Aff.
14 Bates 82 (quoting FBI response to
15 questions from Congressman): "[I]n
16 1997 the FBI first noted the presence of
17 a surface vessel, which, because of its
18 speed of between 25 and 35 knots, is
19 believed to be at least 25-30 feet in
20 length, approximately 2.9 nautical miles
21 from the position of Flight 800 at the
22 time of the initial explosion... Despite
23 extensive efforts, the FBI has been
24 unable to identify this vessel." [D
25 Donaldson Aff. Bates 84 (quoting FBI
26 SAIC James Kallstrom): "They were
27 [three] naval vessels that were on
28 classified maneuvers... [The 30-knot
track] was a helicopter."]

106. Release of the withheld records

106. [2 Hoffstadt Aff. Bates 35 ¶ 15:

1 would not cause Boeing to suffer a
2 substantial competitive injury.

"The claim that these aerodynamic characteristics are trade secrets is contradicted by the fact that these characteristics can be calculated to a high degree of precision by any competent engineer due to the existence of a Boeing 747 Classic CFD model in the marketplace." [Id. ¶ 18: "To the extent these Records contain information about the aerodynamic and pitching moment characteristics of the 747 Classic aircraft or publicly available modifications thereof, the claim Boeing has made efforts to maintain their secrecy is contradicted by the fact that Boeing has previously allowed and sanctioned the existence of a 747 Classic CFD model in the marketplace.] [Id. Bates 36 ¶ 24: "[T]he calculation of large vehicle aerodynamics in such applications such as... aircraft can be expected to have accuracy accurate enough to compare to or even replace experimental data." [Id. Bates 37 ¶ 25: [The Boeing Company closed three wind tunnel test facilities in the last ten years. "The increasing efficiencies and corresponding decreases in cost of

1 computing hardware, when combined
2 with modern CFD tools, are widely
3 acknowledged to be a second major
4 reason for these closures."] **Id.** ¶ 27:
5 "A competent engineer would be able to
6 reproduce this configuration [in the
7 withheld records] using the 747 CFD
8 model in conjunction with the many
9 visual representations of this
10 configuration and then obtain the same
11 aerodynamic information with a high
12 degree of precision."] **Id.** ¶ 28: "[T]he
13 baseline lift coefficient of the 747
14 Classic has already been reproduced
15 numerous times by engineers using this
16 CFD model and software. Therefore,
17 Boeing has likely previously judged that
18 this reduction in market value is
19 nonexistent, negligible, or acceptable.
20 Therefore also, release of the
21 information in Figures 1 and 4 of the
22 CIA document (or the information in
23 NTSB Records 6 and 8) would not
24 change the market value of Boeing's
25 data package.] **Id.** Bates 38 ¶¶ 31-33:
26 "[Since Mr. Breuhaus did not provide an
27 estimate... let us assume it would
28 reduce the investment by a generous

1 25%, or \$5 million.... [A] competitor
2 would have to invest \$15 million
3 towards an enterprise that has earned
4 approximately \$10 million in revenue
5 over the past 14 years.... [a]ssuming the
6 same demand... 21 years to recover
7 their investment.... assume[ing] they
8 capture 100% of the market from
9 Boeing... assume[ing] that the demand
10 for this simulator data package remains
11 constant over the next 21 years.] **Id.**
12 Bates 38-39 ¶ 35: "[T]he available
13 market and associated market value of
14 Boeing's 747 Classic simulator data
15 package and related services has already
16 declined 26% [in the last 15 years] from
17 its maximum possible value due to the
18 normal and continuous removal of such
19 aircraft from service from aging,
20 obsolescence, or damage."] **Id.** Bates
21 39 ¶¶ 39-40, 42: "[C]ompetitor would
22 have to obtain approval and certification
23 from the national aviation regulatory
24 agency that the simulation facility very
25 closely matches the actual flight
26 characteristics of the aircraft....
27 competitor would have to present actual
28 flight test data of the 747 Classic

1 aircraft.... would require purchasing or
2 obtaining at least one 747 Classic
3 aircraft, significant on-board flight test
4 data hardware, and then subjecting this
5 aircraft to substantial modifications to
6 install this hardware. It would also
7 require ground station equipment and
8 facilities, related staffing and
9 engineering support, access to a large
10 airport, aviation fuel, maintenance
11 equipment and facilities and staff..."]

12
13 107. The government continues to
14 withhold evidence.

15
16 107. [AA Sephton Aff. Bates 461 ¶ 2:
17 "I have made seven FOIA requests to
18 the NTSB for Flight 800 investigative
19 records since mid-1988. The NTSB has
20 consistently contravened the FOIA
21 statute... with non-responses,
22 excessively delayed responses, illicit
23 withholding, and in at least one case a
24 false Affidavit filed with the court.
25 Examples... appear below."]

26
27 108. The probe was politicized.

28 108. [C Hill Aff. Bates 45, ¶ 1:
Members of the NTSB appointed by
President.] [Q Gross Aff. Bates 211 ¶
5: "Any time you take away from the
NTSB, which, by congressional charter,

1 must be in charge, and have the FBI say
2 that they will not investigate or
3 interrogate any witnesses whatsoever,
4 that immediately raises an issue in my
5 mind about the politics of it."]
6

7 109. Missile fire was the initiating
8 event of the disaster.

9
10 109. [C Hill Aff. Bates 43-44, ¶ 17:
11 "On more than one occasion during
12 these proceedings [press conferences] I
13 heard [former Chief, Joint Chiefs of
14 Staff] Admiral Moorer express his
15 opinion publicly and with members of
16 the press present that it was a missile
17 that brought TWA-800 down..."] [E
18 Stalcup Aff. Bates 129-30: "*TWA Flight*
19 *800 Probable Cause Announced*, "A
20 surface-to-air missile, launched from the
21 ocean off the coast of Long Island rose
22 up and exploded at or near TWA Flight
23 800." [Q Gross Aff. Bates 211 ¶ 7:
24 "When I saw photographs of the left
25 side, with that large indentation forward
26 of the wing, then I immediately was
27 curious, what in the world could cause it
28 to be dented in. It would have to be
something external to the aircraft." [U
Perry Aff. Bates 251 ¶ 38: "it was so
clear, and it was so vivid, was so

1 obvious that what was happening was
2 that this plane was being assaulted..."]
3 [X Lahr Aff. Bates 369 ¶ 8 Ex 10
4 (April, 2000, *International Association*
5 *of Machinists and Aerospace Workers*
6 submission to NTSB final Report):
7 "Approximately nineteen (19) holes in
8 the fuselage below the L3 door that
9 appear to originate from the exterior of
10 the aircraft."]

11
12 110. The government pursued a cover-
13 up.

14 110. [C Hill Aff. Bates 43 ¶ 16:
15 "[D]isavow[ment of] witnesses and
16 investigators... in my view prima facie
17 evidence that it was in pursuit of a
18 cover-up"] [G Krugar Aff. Bates 151 ¶
19 3: "...said, 'well, you can't tell me it
20 was anything other than a missile.'
21 [FBI SAIC] Jim Kallstrom said, 'you're
22 right, but if you quote me I'll deny it.'"]
23 [L Speer Aff. Bates 186-87 ¶ 32-33:
24 "And so for whatever reason, it's been
25 successfully covered up, the truth is not
26 known, and there are many people
27 fortunately still working on it trying to
28 discover the truth for future accident
prevention, to let the loved ones and
family and friends know what happened

1 to the airplane. They feel they have a
2 right to know, since it was never
3 declared a crime scene... So here we
4 are in limbo, a dedicated group of
5 people with a mission to seek the truth,
6 obstructed by the government..."]

7
8 111. By letter of January 26, 2001, in
9 response to plaintiff's first CIA FOIA
10 request, the CIA denied generating any
11 records upon which its zoom-climb
12 animation was based.

111. [X Lahr Aff. Bates 391 Ex 16
(Jan. 26, 2001, Letter from CIA to Ray
Lahr): "We have researched this matter,
and have learned that the pertinent data,
and resulting conclusions, were
provided by the National Transportation
Safety Board (NTSB). CIA simply
incorporated the NTSB conclusions into
our videotape.... Accordingly, you may
wish to submit your request to the
NTSB...]

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20 112. The CIA did not identify or
21 produce most of its responsive records.

112. [3 Schulze Aff Bates 56 ¶ 31:
"These 15 computer files are required in
electronic e-format."] [Id. Bates 58 ¶
33: "This Computer program is
required in e-format."] [Id. Bates 70 ¶
44: "This Computer program is
required in e-format."] [Id. Bates 79 ¶
52: "The referred to attachments are
required and missing."] [Id. Bates 90 ¶
62: "This program is required in e-

1 format on computer disk."] **[Id.]** Bates
2 95 ¶ 67: "These missing computer files
3 and disks are necessities for reviewing
4 the zoom-climb video. The subject CIA
5 electronic file disks have been
6 withheld."] **[Id.]** Bates 97 ¶ 69:
7 "[C]omputer software program has been
8 withheld."] **[Id.]** Bates 100 ¶ 72: "[I]t is
9 not made clear what exact work
10 products were produced by this three
11 month effort and in what form this work
12 product was produced. However, it is
13 clear that numerous computer files and
14 computer programs were generated in
15 some form or another."] **[Id.]** Bates
16 100 ¶ 72: "The following redacted
17 reference of Aerodynamics Science for
18 TWA 800 is the major goal of this
19 FOIA and does not qualify to be
20 redacted under any justification. The
21 following aerodynamic information is
22 required:"] **[Id.]** Schulze Aff Bates 111
23 § IV: "[N]o timing sequence data for
24 the radar data, CVR and FDR was found
25 in any form.] **[Id.]** Schulze Aff Bates
26 112 § IV: "No correlation of zoom-
27 climb aerodynamic calculations with
28 actual radar data was found in any

1 form.] [**Id.** Schulze Aff Bates 113 § IV:
2 "[N]o records of the zoom-climb
3 conclusion reaching process were
4 supplied.]

5
6 113. Defendant failed to produce the
7 computer program or simulation that
8 was used to create its zoom-climb
9 animation.

10 113. [**3 Schulze Aff Bates 96 ¶ 68:**
11 "This computer program is one of the
12 major CIA records sought by the subject
13 FOIA. The subject electronic program
14 has been withheld."] [**Id.** Bates 105 ¶
15 82: "In displaying the presence of this
16 computer program and the resultant
17 output data graphs and tables the CIA is
18 providing evidence that this flight
19 trajectory software program for a
20 crippled 747 aircraft exists."] [**Id.** Bates
21 111 § IV: "[N]o electronic records of
22 simulation and animation programs
23 have been herein produced]

24 114. Defendant failed to produce or
25 identify the calculations underlying the
26 computer program or simulation
27 identified in the foregoing paragraph.

28 114. [**3 Schulze Aff Bates 100 ¶ 72:**
"(1) the flight/trajectory path
calculations of TWA 800 are the key
information items being sought, (2) the
establishment of this flight/trajectory
path relied heavily on computer based
data files and computer executed
computer programs using these files, (3)

1 it is impossible to make use, and derive
2 benefit from, the originally supplied
3 handwritten notes and information
4 without these computer files and
5 programs... (6) no computer files or
6 programs have yet to be provided in e-
7 format...] **[Id.** Bates 109 § IV:
8 "[F]ormulas and calculations performed
9 by use of computer files and executable
10 computer programs have not been herein
11 provided."] **[Id.** Bates 111 § IV:
12 "[P]rintouts received were not
13 sufficiently identifiable, dated...]

14
15 115. Defendant failed to produce or
16 identify the "recently declassified...
17 report on eyewitnesses to the crash of
18 TWA Flight 800" referred to in the
19 December 2003 Washington Times
20 article.

115. [**1 Lahr Aff.** Bates 31: *CIA on
Flight 800*, Wash. Times, Dec. 5, 2003,
B. Gertz & R. Scarborough.

21
22 116. The CIA participated in covering
23 up a crime which took the lives of 230
24 people.

116. [**O Meyer Aff.** Bates 206 ¶ 57: "If
you're conducting a missile shoot under
the main traffic control routes into New
York City, you have exhibited in my
mind depraved indifference to human
life. That's not an accident - under any
statute - any codes anywhere. That's

murder."]

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2
3 117. The threat of missile fire is a
4 legitimate concern to the flying public.

117. [C Hill Aff. Bates 51 ¶ 4:
(quoting Commander William S.
Donaldson): "This was the 27th large
aircraft hit by these missiles in the last
15 years. Not all of them went down."]

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9 118. Flight 800 is the most
10 controversial disaster in aviation history.

118. [Z Leffler Aff. Bates 405-07, ¶
58-60.]

11
12 Date: September 13, 2005.

13
14 Respectfully submitted,

15
16 Captain H. Ray Lahr
17 By Counsel

18
19 _____
20 John H. Clarke

1
2 **PROOF OF SERVICE – BY MAIL**

3
4 DISTRICT OF COLUMBIA:

5 I am a resident of the District of Columbia, over the age of 18 years. My business
6 address is 1717 K Street, NW, Suite 600, Washington, DC 20036. I am counsel
7 for plaintiff.

8 On September 13, 2005, I served a true copy of **PLAINTIFF'S STATEMENT**
9 **OF GENUINE ISSUES** on the interested parties in this action by first class mail
10 proper postage prepaid, addressed to:

11 David M. Glass, Esquire
12 Assistant United States Attorney
13 20 Massachusetts Avenue, NW
14 Room 7140
15 Washington, DC 20530
16
17
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19

20
21 I declare under penalty of perjury that the foregoing is correct and that this
22 Proof of Service was executed on September 13, 2005.
23

24 _____
25 John H. Clarke
26
27
28