

1 JOHN H. CLARKE [*Pro Hac Vice*]  
2 Telephone: (202) 332-3030  
3 JOHN F. DUNNE, JR. [SBN 32854]  
4 1601 Cloverfield Boulevard  
5 Second Floor, South Tower  
6 Santa Monica, California 90404-4084  
7 Telephone: (310) 393-9351  
8 Facsimile: (310) 230-4066  
9 *Attorneys for Plaintiff*

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

12 H. RAY LAHR, ) Case No. 030823 AHM (RZx)  
13 )  
14 Plaintiff, ) **PLAINTIFF'S AMENDED**  
15 ) **STATEMENT OF GENUINE**  
16 v. ) **ISSUES IN OPPOSITION TO NTSB**  
17 ) **MOTION FOR SUMMARY**  
18 NATIONAL TRANSPORTATION ) **JUDGMENT**  
19 SAFETY BOARD, *et al.* )  
20 )  
21 Defendants. )  
22 )  
23 )  
24 )

20 Date: Sept. 27, 2004  
21 Time: 10:00. a.m.  
22 Place: Courtroom 14, 312 N. Spring  
23 Street, Los Angeles, CA 90012  
24 Judge: Honorable A. Howard Matz

25 Plaintiff submits this revised statement of genuine issues, under L.R. 56-2,  
26 setting forth issues of material fact necessary to be litigated. Facts 1-50 below  
27 correspond to the facts and supporting evidence presented in the statement of  
28 uncontroverted facts filed by the NTSB. These facts are followed by additional  
material facts and supporting evidence showing a genuine issue.

1 For clarity, plaintiff cites his offer of proof by Bates stamp number, and the  
2 NTSB's record by page number.

3  
4 MOVING PARTY'S ALLEGED  
5 UNCONTROVERTED FACTS

RESPONSE

6 1. Plaintiff is H. Ray Lahr

1. Plaintiff agrees that this is  
7 undisputed.

8  
9 2. Among the two named defendants is  
10 the National Transportation Safety  
11 Board ("NTSB").

2. Plaintiff agrees that this is  
undisputed.

12  
13 3. Plaintiff filed an Amended  
14 Complaint under the Freedom of  
15 Information act ("FOIA"), 5 U.S.C. §  
16 552 et. seq. seeking records allegedly  
17 improperly withheld from him by the  
18 NTSB or by the Central Intelligence  
19 Agency.

3. Plaintiff agrees that this is  
undisputed.

20  
21 4. After departing JFK Airport in New  
22 York on July 17, 1996, at about 8:31  
23 p.m. E.D.T., Trans World Airlines  
24 Flight 800, a Boeing 747-131, crashed  
25 in the Atlantic Ocean near East  
26 Moriches, New York. All 230 people  
27 on board were killed and the airplane  
28 was destroyed.

4. Plaintiff agrees that this is  
undisputed.

1  
2 5. The NTSB was established in 1967,  
3 and in 1974 became an independent  
4 Federal agency with a focused mission.  
5 Congress tasks the NTSB with the  
6 investigation of every civil aviation  
7 accident in the United States and  
8 significant accidents in other modes of  
9 transportation. 49 U.S.C. § 1131(a)(1);  
10 49 C.F.R. § 831.2(a). The NTSB is also  
11 responsible for issuing safety  
12 recommendations intended, in the  
13 Board's judgment, to increase safety in  
14 transportation and/or prevent future  
15 accidents.

5. Plaintiff agrees that this is  
undisputed.

16  
17 6. The NTSB's investigation of the  
18 accident was by far the most extensive  
19 in the history of the Board. It was the  
20 longest on-scene investigation, and  
21 involved more Safety Board staff than  
22 any investigation – almost 1/3 of the  
23 Board's 370 employees at that time.  
24 The Board called upon experts from  
25 different disciplines and countries.

6. Plaintiff agrees that this is  
undisputed.

26  
27 7. With less than 400 employees  
28 available to investigate all civil aviation

7. Plaintiff agrees that this is  
undisputed.

1 accidents (as well as accidents in other  
2 modes of transportation) in the United  
3 States, the Board accomplishes the task  
4 of accident investigation by leveraging  
5 its resources, in part by designating  
6 parties to its investigations, such as the  
7 aircraft manufacturer, who possess  
8 pertinent technical data required to  
9 understand the nature of the accident.  
10 Other than the Federal Aviation  
11 Administration (FAA), which by law is  
12 automatically designated a party, the  
13 NTSB has complete discretion over  
14 which organizations it designates as  
15 parties to the investigation. Only those  
16 organizations or corporation that can  
17 provide expertise to the investigation are  
18 granted party status and only those  
19 persons who can provide the Board with  
20 needed technical or specialized expertise  
21 are permitted to serve on the  
22 investigation. All party members report  
23 to the NTSB.

24  
25 8. Parties to the investigation of the  
26 airplane accident of TWA flight 800  
27 included the Boeing Commercial  
28 Airplane Group and the Air Line Pilots

8. Plaintiff agrees that this is  
undisputed.

1 Association (ALPA).

2  
3 9. The primary records of accident  
4 investigations conducted by the NTSB  
5 are found within the public dockets of  
6 the NTSB. The public docket of an  
7 accident contains the Safety Board  
8 staff's factual reports and related  
9 supporting material, which document  
10 the NTSB's investigative efforts  
11 pertaining to a particular accident. The  
12 NTSB maintains an electronic index that  
13 lists the public dockets of investigations  
14 previously conducted by the NTSB.  
15 The public docket available to the public  
16 includes approximately 2,750  
17 documents, totaling 16,230 pages and  
18 approximately 1,350 photographs. A  
19 portion of the public docket is also  
20 available on the NTSB's website.

21  
22 10. A public hearing was conducted by  
23 the NTSB from December 8 through 12,  
24 1997. The Safety Board also held a  
25 hearing to review the facts, conclusions,  
26 and issue its recommendations in  
27 August, 2000.

9. Plaintiff agrees that this is  
undisputed, except that the public  
docket does not contain all "supporting  
material."

10. Plaintiff agrees that this is  
undisputed.

1 11. The Aircraft Accident Report was  
2 adopted by the five-member National  
3 Transportation Safety Board on August  
4 23, 2000. A copy of the report is  
5 available through the NTSB's Public  
6 Inquiries Office.

11. Plaintiff agrees that this is  
undisputed.

7  
8 12. The Safety Board determined that  
9 the probable cause of the TWA flight  
10 800 accident was an explosion of the  
11 center wing fuel tank (CWT), resulting  
12 from ignition of the flammable fuel/air  
13 mixture in the tank.

12. Plaintiff agrees that this is  
undisputed.

14  
15 13. In his letter date October 8, 2003,  
16 H. Ray Lahr sent 145 specific FOIA  
17 requests for records as to the NTSB's  
18 "zoom-climb data and calculations,"  
19 which Lahr defined in his request as  
20 TWA flight 800's "aircraft's continuing  
21 to fly after the nose of TWA 800 was  
22 blown off, climbing as much as 3,200  
23 feet (the "zoom climbs")." "The FOIA  
24 Requests are numbered 4 through 149."

13. Plaintiff denies that this is  
undisputed. Z Leffler Aff. Bates 408  
(quoting FOIA Request): "These  
requests are to be read as to be made  
both categorically and specifically."

25  
26 14. While Lahr utilized the term "zoom  
27 climb" conclusion" in his FOIA request,  
28 that was not a term contained in the

14. Plaintiff agrees that this is  
undisputed.

1 Safety Board's Aircraft Accident report  
2 of conclusions. The NTSB's  
3 professional agency employees  
4 necessarily had to try to determine what  
5 Lahr was requesting. Dennis Crider (the  
6 NTSB employee principally responsible  
7 for the final Main Wreckage Flight Path  
8 Study, which study simulated the flight  
9 path of the aircraft following the loss of  
10 the forward fuselage) also did not sue  
11 the term "'zoom-climb' conclusion" in  
12 his report. The NTSB assumed that  
13 when Lahr used the term "'zoom-climb'  
14 conclusion," Lahr was referring to the  
15 flight path of the aircraft following the  
16 loss of the forward fuselage.

17  
18 15. The NTSB conducted a search for  
19 responsive records in those locations  
20 where records as to the 145 FOIA  
21 requests (as reasonably interpreted by  
22 NTSB professionals) reasonably were  
23 expected to be located.

24  
25 16. Given the focused mission of the  
26 NTSB, its records largely consist of  
27 accident investigation files and accident  
28 investigation-related files. With regard

15. Plaintiff denies that this is  
undisputed. A Hoffstadt Aff. Bates 39,  
¶ 7: "Highly unlikely that Mr. Crider has  
not record of any data, and no record of  
any formulas that he used to write any  
of the 64 graphs."

16. Plaintiff agrees that this is  
undisputed.

1 to these files, the NTSB has four sets of  
2 agency records: (a) NTSB Public  
3 Dockets; (b) Accident  
4 Briefs/Summaries; (c) NTSB Accident  
5 Investigation Files; and (d) Safety  
6 Recommendation Files. In response to  
7 Lahr's October 8, 2003 145 requests, the  
8 first three sets of agency records were  
9 searched. Because the requester's FOIA  
10 requests did not seek safety  
11 recommendations, the Safety  
12 Recommendation Files were not  
13 searched.

14  
15 17. The computerized database  
16 containing the Accident  
17 Briefs/Summaries is available to the  
18 requester to be searched through the  
19 NTSB's website at [www.nts.gov](http://www.nts.gov).  
20 While that database was searched in  
21 response to plaintiff's FOIA request, no  
22 responsive records to the requester's 145  
23 FOIA requests were found.

24  
25 18. The NTSB searched and found  
26 records responsive to the some of the  
27 145 FOIA requests in the NTSB's public  
28 docket for the TWA flight 800 accident

17. Plaintiff agrees that this is  
undisputed.

18. Plaintiff agrees that this is  
undisputed.

1 investigation, in responses to previous  
2 FOIA requests from Mr. Lahr seeking  
3 some similar information to what was  
4 requested in some of his 145 FOIA  
5 requests, and /or in Lahr's prior district  
6 court actions with the NTSB.

7  
8 19. Plaintiff had previously requested  
9 information similar to some of what was  
10 requested in his October 8, 2003 FOIA  
11 requests. Copies of plaintiff's prior  
12 FOIA requests 2001-0048, 2001-0410,  
13 2002-0306, the agency's  
14 acknowledgement letter for 2001-0048  
15 and 2002-0306, the agency's response  
16 letters, and the agency's responses to the  
17 appear letters are attached at Exhibits II-  
18 1 through II-15 to the Moye decl. The  
19 NTSB responded to all of these requests  
20 including the production of releasable  
21 responsive documents as well as  
22 withholding certain responsive  
23 documents. The NTSB had not  
24 responded substantively to the plaintiff's  
25 July 28, 2003 request, which, while  
26 involved in CV 02-8708-AHM, was not  
27 in issue by virtue of plaintiff's dismissal  
28 of that action.

19. Plaintiff denies that this is  
undisputed. The NTSB did not produce  
all releasable responsive records. See,  
e.g., Moye Decl. p. 17: "the BREAKUP  
and BALLISTIC programs played no  
role in the simulation. Therefore, there  
were no responsive records."

1  
2 20. With regard to "accident  
3 investigation files", the NTSB searched  
4 the NTSB's Vehicle Performance  
5 Division and the NTSB's Vehicle  
6 Recorder Division (both part of the  
7 NTSB's Office of Research and  
8 Engineering), and the Public  
9 Inquires/FOIA Branch of the Office of  
10 Research and Engineering, the locations  
11 where responsive records were  
12 reasonably expected to be located. The  
13 paper files and computer systems of the  
14 NTSB employees principally  
15 responsible for the final Main Wreckage  
16 Flight Path Study (which simulated the  
17 flight path of the main wreckage after  
18 the separation of the forward fuselage),  
19 for the simulation, and of the creation of  
20 the four "animations" of the flight path  
21 of TWA flight 800 as shown at the  
22 public hearing on December 8, 1997  
23 were searched. In addition, the NTSB  
24 also searched for and located potentially  
25 responsive documents and materials  
26 which related to part of the Trajectory  
27 Study because some limited information  
28 from the Trajectory Study was used for

20. Plaintiff denies that this is  
undisputed. A Hoffstadt Aff. Bates 39,  
¶ 7: "it is highly unlikely that Mr. Crider  
has no record of any data, and nor  
record of any formula, that he used to  
write any of these 64 graphs."

1 the simulation.

2  
3 21. Dennis Crider was the only NTSB  
4 staff responsible for deriving the  
5 calculations and/or computation of the  
6 flight path for TWA flight 800 and he  
7 was the only NTSB staff who created a  
8 computer simulation of the flight path of  
9 the airplane.

10  
11 22. Douglass Brazy was the only NTSB  
12 staff responsible for creating the four  
13 "animations".

14  
15 23. The NTSB typically does not use  
16 the term "animation", because, in the  
17 NTSB's view, included with the term  
18 "animation" is the suggestion that the  
19 pictures are contrived or based upon  
20 imagined events. The NTSB prefers the  
21 term graphical accident reconstructions  
22 because the NTSB representations re  
23 visual depictions based upon verified  
24 data (such as radar or FDR data) as  
25 much as possible, and at times wholly  
26 so. However for the ease of  
27 understanding plaintiff's requests, the  
28 NTSB used the requester's term

21. Plaintiff agrees that this is  
undisputed.

22. Plaintiff agrees that this is  
undisputed.

23. Plaintiff denies that this is  
undisputed. The "graphical accident  
reconstructions" are contradicted by the  
radar and flight data recorder data. BB  
Shulze Aff. Bates 467, ¶ 5: "Detailed  
analysis... revealed a clear and glaring  
omission of the last three to four  
seconds of the FDR tape data." E  
Stalcup Aff. Bates 120 ¶ 6: "the radar  
evidence contradicts all NTSB crash  
simulations that include Flight 800  
climbing sharply."

V Pence Aff. Bates 260, ¶ 14: "it would

1 "animations" to describe the four  
2 graphical accident reconstructions  
3 shows at the public hearing on  
4 December 8, 1997, which depicted the  
5 radar tracks of TWA flight 800 and  
6 other select vehicles in the area, and the  
7 motion of the airplane and the sequence  
8 of events related to the accident.

9  
10 24. The potentially responsive  
11 information was reviewed for  
12 disclosure.

13  
14  
15  
16 25. The NTSB responded initially to  
17 the 145 requests on November 6, 2003,  
18 supplemented by its letter of April 13,  
19 2004. The results of the search for each  
20 of the 145 requests were set forth in one  
21 or both of the two response letters and  
22 are also detailed in the Moye Decl. at ¶¶,  
23 the Crider Decl. at ¶¶ 47-53 and Brazy  
24 Decl. at ¶¶ 39, 33-38. Certain of the  
25 information were publicly available,  
26 certain of the information had  
27 previously been released and certain  
28 information was withheld in whole or in

have tumbled, rolled, and basically  
dropped like a stone. And this is exactly  
what the radar data... says happened."  
C Hill Aff. Bates 46, ¶ 11: "the nearest  
radar, Islip's ASR-8, clearly shows the  
aftermath of a missile hit."

24. Plaintiff denies that this is  
undisputed. Few of defendant's 31  
records contain information responsive  
to plaintiff's requests. Z Leffler Aff.  
Bates 396-405, ¶ 5-57.

25. Plaintiff denies that this is  
uncontested. Plaintiff avers that  
additional responsive records were, or  
could have been, located. A Hoffstadt  
Aff. ¶ 7 Bates 39: "I have reviewed the  
FOIA requests numbered 3 through 69,  
which ask for the records of the formula  
and data upon which the graphs  
appearing in Mr. Crider's Main  
Wreckage Flight Path Study and its two  
Addendum are based. In my opinion, it  
is highly unlikely that Mr. Crider has no  
record of any data, and no record of any

1 part. Certain responses to plaintiff's  
2 prior FOIA requests and the Vaughn  
3 index filed in CV 02-8708-AHM were  
4 incorporated into the NTSB's responses  
5 to the 145 October 8, 2003 FOIA  
6 requests. No documents, other than  
7 those previously provided or identified  
8 in response to plaintiff's previous FOIA  
9 requests, provided or identified in the  
10 Vaughn index previously filed in CV  
11 02-8708-AHM, or provided with the  
12 April 13, 2004 response letter (Exh. I-3)  
13 were located.

14  
15 26. With regard to requests 70-73, 80-  
16 83, 90-93, 100-103, 110-113, 117-120,  
17 124-127, 131-134, 138-141, and 145-  
18 148, under cover of the NTSB's letter  
19 dated April 13, 2004 the NTSB made a  
20 discretionary release in full of Mr.  
21 Brazy's collection of records related to  
22 the four NTSB animations shown at the  
23 public hearing on December 8, 1997,  
24 with the exception of those records  
25 contained in two files maintained by Mr.  
26 Brazy which were referred to the  
27 Central Intelligence Agency for  
28 response to the requester. Other than

formula, that he used to write any of  
these 64 graphs."

26. Plaintiff denies defendant "released  
all records related to the animations."  
These requests are for records upon  
which the NTSB's animations are based.  
Requests 70-73 correspond to data upon  
which the four NTSB animations are  
based, 80-83 are for formulas and data  
entered into the computer, 100-103 are  
for the computer simulation used to  
create the four simulations, 117-120 are  
for the radar, radio, and Flight Data  
Recorder timing sequences, 131-134 are  
for Boeing-supplied information, 138-  
141 are for all records generated or

1 the two files referred to the CIA and the  
2 information which is publicly available,  
3 the NTSB has released all records  
4 related to the animations produced by  
5 Mr. Brazy.

received re the NTSB animations, and  
145-147 & 148 seek any other records  
of the process used to create the four  
NTSB animations. Brazy Decl. p. 601:  
"The animations are a visual depiction  
of the data presented from the radar  
sources..." Crider Decl. p. 523: "The  
four NTSB animations are a visual  
means of presenting a variety of data,  
including recorded data from the radar  
and FDR, and simulated data from the  
Main Wreckage Flight Path Study."  
Brazy Decl. p. 602: "animations are a  
visual depiction of the data presented  
from the radar sources, the digital flight  
data recorder, and/or the data from the  
simulations," as well as records of its  
"convert[ing] units of angular  
measurement... [and] linearly  
interpolate all data to the thirty-times  
per second needed for the animation  
software." CC McCauley Aff. Bates  
470, ¶¶ 3-4: "Nothing of particular use,"  
"data provided on the two CDs is of no  
utility."

27. The NTSB had no records  
responsive to requests 69, 79, 89, 95,

27. Plaintiff denies that this is  
undisputed. Requests 69, 79, 95, 116,

1 99, 109, 116, 123, 130, 137, and 144.

2 123, 130, 137, 144 are for records upon  
3 which the CIA animation is based. D  
4 Donaldson Aff. (Transcript of CIA  
5 animation) Bates 111-12: "CIA analysis  
6 included... data provided by the NTSB"  
7 X Lahr Aff. Bates 391 (CIA FOIA  
8 response): "pertinent data" provided by  
9 CIA. DD Crider Decl. Bates 478 ¶ 13:  
10 "I learned that Boeing was providing  
11 this information to the Central  
12 Intelligence Agency (CIA), as well as  
13 developing its own basic estimate of the  
14 flight path, so Boeing then included the  
15 NTSB on the routing of this data."  
16 Moye Decl. p. 23-24: "[T]he request for  
17 records of the process... too inexact for  
18 the agency to determine how to search  
19 for responsive records."

20 28. There were no records responsive  
21 requests 76, 77, 86, 87, 96, 97, 106, 107.

22 28. Request 76 seeks data entered into  
23 BREAKUP program. Request 77 seeks  
24 data entered into BALLSTIC program.  
25 Requests 86-87, and 106-107 were  
26 withdrawn. Request 96 is for the  
27 BREAKUP program itself, and 7 is the  
28 for BALLISTIC program itself.  
Defendant responds to Requests 96 &  
97 for computer codes of BREAKUP

1 and BALLISTIC with "no responsive  
2 records" because they were not used for  
3 the main simulation. Defendant limits  
4 specific requests at its whim. Moye  
5 Decl. p. 17.

6  
7 29. The lack of records responsive to  
8 certain FOIA requests is set forth in  
9 Moye Decl., ¶¶ 29, 33, 38; Crider Decl.  
10 ¶ 48; Brazy Decl., ¶ 28.

29. Plaintiff agrees that defendant's  
claims as to "lack of records" are "set  
forth" in these declarations.

11  
12 30. The NTSB was not able to respond  
13 to request 74, 84, 94, 104, 114, 121,  
14 128, 135, 142, and 149. Lahr has  
15 withdrawn these FOIA requests.

30. Plaintiff agrees that this is  
undisputed.

16  
17 31. Records 22 and 24 in Exhibit V  
18 were released in their entirety in the  
19 defendant's Vaughn index filed in CV  
20 02-8707-AHM. Portions of Records 5,  
21 10-13, 19, 21, 23, and 26 in Exh. V was  
22 also released in CV 02-8708-AHM.

31. Plaintiff agrees that this is  
undisputed.

23  
24 32. As a result of the Stipulation lodged  
25 with the Court on June 4, 2004, Lahr  
26 has dismissed with prejudice the  
27 following claims: (1) all of Lahr's  
28 claims as to the names and identifying

32. Plaintiff agrees that this is  
undisputed.

1 information of Boeing employees which  
2 is being withheld pursuant to 5. U.S.C. §  
3 552(b)(6) ("Exemption (b)(6)") and 5.  
4 U.S.C. 552(b)(4) ("Exemption (b)(4)")  
5 in NTSB Records numbered 1, 2, 3, 4,  
6 5, 6, 7, 8, 98, 10, 12, 13, 25 in Exh. V of  
7 the Vaughn index filed on May 19, 2004  
8 (and in the Errata to the Vaughn index  
9 filed on May 21, 2004); and (2) all of  
10 Lahr's claims as to information being  
11 withheld pursuant to 5. U.S.C. §  
12 552(b)(5) ("Exemption (b)(5)") in  
13 NTSB Records numbered 12, 13, 19,  
14 and 21 in Exh. V of the Vaughn index  
15 filed on May 19, 2004. CHECK

16  
17 33. Lahr has withdrawn his October 8,  
18 2003 FOIA requests numbered 74, 78,  
19 84, 856, 86, 87, 89, 90, 91, 92, 93, 94,  
20 98, 99, 104, 105, 106, 107, 108, 109,  
21 110, 111, 112, 113, 114, 121, 128, 135,  
22 142, and 149.

23  
24 34. Still in dispute are sixteen records  
25 withheld in full (189 pages and one  
26 computer program), and five records  
27 withheld in part (10 pages).

33. Plaintiff agrees that this is  
undisputed.

34. Plaintiff denies that this is  
undisputed to the extent that the records  
were adopted in the final agency  
disposition or was factual data, and  
disputes that the NTSB identified all

responsive records.

1  
2  
3 35. As its Vaughn index, the NTSB  
4 filed the Declaration of Melba D. Moye  
5 (Chief of the Public Inquiries/FOIA  
6 Branch, Office of Research and  
7 Engineering, NTSB) attached to which  
8 are Exhibits I, II, III, IV, and V, the  
9 Declarations of Dennis A. Crider  
10 (National Resource Specialist for  
11 Aircraft Simulation in the Vehicle  
12 Performance Division of the NTSB's  
13 Office of Research and Engineering)  
14 attached to which are Exhibits VI, VII,  
15 VIII, IX, X, and XI, the Declaration of  
16 Doug Brazy (Mechanical Engineer in  
17 the Vehicle Recorder Division of the  
18 NTSB's Office of Research and  
19 Engineering), the Declaration of  
20 Richard Breuhaus (Chief Engineer of  
21 Air Safety Investigation, The Boeing  
22 Company) and the errata to the Vaughn  
23 index.

35. Plaintiff agrees that this is  
undisputed.

24  
25 36. The declarations and exhibits  
26 thereto contain the relevant  
27 correspondence concerning the  
28 plaintiff's request, a detailed explanation

36. Plaintiff denies that defendant made  
a complete "identification of the records  
responsive to the plaintiff's request."  
The NTSB did not identify the records

1 of the format used for the justification of  
2 withheld information, an identification  
3 of the search for responsive records, an  
4 identification of the records responsive  
5 to the plaintiff's request, and the  
6 justification for the records redacted in  
7 whole or in part, which consist of  
8 descriptions containing the detailed  
9 identification and justification for each  
10 withholding taken by the NTSB,  
11 followed by the document as redacted in  
12 withheld in part, found in Exhibit V.

13  
14 37. NTSB Records 12 through 31, in  
15 which the (b)(5) exemption was initially  
16 asserted, is all intra-agency records.

17  
18 38. Because Records 22 and 24 were  
19 released in their entirety in the Vaughn  
20 index filed in CV 02-8708-AHM, and  
21 Lahr dismissed his claims as to the  
22 information withheld under exemption  
23 (b)(5) in Records 12, 13, 19, and 21, the  
24 NTSB continues to withhold Records  
25 14-18, 20, 23, 25-31 in whole or in part  
26 pursuant to the (b)(5) exemption since it  
27 protects from disclosure information to  
28 which the executive "deliberative

responsive to plaintiff's requests. Brazy  
Decl. p. 602: "animations are a visual  
depiction of the data presented from the  
radar sources, the digital flight data  
recorder, and/or the data from the  
simulations," as well as records of its  
"convert[ing] units of angular  
measurement... [and] linearly  
interpolate all data to the thirty-times  
per second needed for the animation  
software."

37. Plaintiff agrees that this is  
undisputed.

38. Plaintiff denies that this is  
undisputed to the extent that the records  
were adopted in the final agency  
disposition or are factual data.  
Defendant calls the TAGS database, a  
recording of debris recovery location,  
"deliberative." NTSB Record 28, p.  
486, ¶ 2. It was among evidence  
smuggled out of the probe. D  
Donaldson Aff. Bates 53 ¶ 9.

1 process privilege" applies.

2  
3 39. In the investigation of the TWA  
4 Flight 800 crash, the Safety Board  
5 adopted its Aircraft Accident Report on  
6 August 23, 2000. The report contains  
7 the final decision of the Safety Board as  
8 to the conclusions (including the  
9 probable cause of the accident) and  
10 safety recommendations. The Safety  
11 Board uses the information provided by  
12 the staff, but makes its own decision.  
13 The Safety Board is the ultimate  
14 decision-maker as to the probable  
15 cause(s) of an accident, and the safety  
16 recommendations that follow from that  
17 cause.

18  
19 40. NTSB Record 20 consists of six  
20 sets of draft sections of the safety  
21 Board's report and/or questions  
22 concerning the Board's report. The  
23 NTSB staff provided editorial and  
24 substantive comments to parts of ht  
25 Safety Board's report that address the  
26 flight path. These were preliminary  
27 recommendations and comments and  
28 thus were predecisional and part of ht

39. Plaintiff agrees that this is  
undisputed.

40. Plaintiff denies that this is  
undisputed. To the extent that it this  
record was adopted in the final agency  
disposition or are factual data, it is not  
deliberative.

1 deliberative process in providing the  
2 decision-maker with recommendations,  
3 analysis, and comments.  
4

5 41. The public docket for this accident  
6 includes certain studies, errata and  
7 addenda, prepared by Dennis Crider,  
8 which are attached to the Crider  
9 Declaration: NTSB Trajectory Study  
10 [Exh. VI]; NTSB Main Wreckage Flight  
11 Path Study [Exh. VII]; NTSB Errata  
12 Main Wreckage Flight Path Study [Exh.  
13 VIII]; Addendum I to Main Wreckage  
14 Flight Path Study [Exh. IX]; and  
15 Addendum II Main Wreckage Flight  
16 Path Study [Exh. X.]  
17

18 42. The information still contested as to  
19 exemption (b)(5) in NTSB Records 14-  
20 18, 23, 25-31 consists of drafts, notes,  
21 comments, opinions of the writers,  
22 preliminary recommendations and  
23 analysis which were preliminary to  
24 these studies, errata, and addenda or  
25 presentations to the Safety Board (or  
26 which were preliminary data to and/or  
27 analysis related to the simulation  
28 program or information generated by the

41. Plaintiff agrees that this is  
undisputed.

42. Plaintiff denies that this is  
undisputed to the extent that the records  
were adopted in the final agency  
disposition, or are factual data.

1 simulation used in creating all but the  
2 Trajectory Study) and was predecisional  
3 to those studies, errata and addenda as  
4 well as the final decision of the Safety  
5 Board as to the cause of the accident and  
6 part of the deliberative process, which  
7 ultimately resulted in the conclusions of  
8 the Safety Board as to the probable  
9 cause of the accident.

10  
11 43. In Record 26 the NTSB withheld, in  
12 part, communications received from the  
13 Air Line Pilots Association  
14 representative in Record 26. The  
15 information being communicated (and  
16 still withheld and contested in Record  
17 26) was predecisional as it occurred  
18 prior to the final studies completed by  
19 the NTSB and the final report having  
20 been adopted by the Safety Board,  
21 constituted preliminary comments and  
22 opinions of the authors, not the decision  
23 of the Safety Board, and were  
24 communicated in order to assist the  
25 Safety Board in arriving at its decision.  
26 It is part of the deliberative process in  
27 the accident investigation and would  
28 expose the agency's decision-making

43. Plaintiff denies that this is  
undisputed to the extent that the records  
were adopted in the final agency  
disposition or are factual data.

1 process in such a way as to discourage  
2 candid discussion among the party  
3 representatives.  
4

5 44. Because Lahr dismissed all of his  
6 claims as to the names and identifying  
7 information of Boeing employees which  
8 had been withheld pursuant to 5 U.S.C §  
9 552(b)(4) ("Exemption (b)(4)") in  
10 NTSB Records numbered 1-10, 12, 13,  
11 16, 25 in Exh. V of the Vaughn index  
12 filed on May 19, 2004 (and in the Errata  
13 to the Vaughn index filed on May 21,  
14 2004), the information withheld by the  
15 NTSB pursuant to exemption (b)(4) still  
16 contested by Lahr consists of: (1) the  
17 name and identifying information of an  
18 ALPA employee in Records 11 and 26;  
19 (2) data provided by Boeing in tabular  
20 and graphic for of the aerodynamic,  
21 mass properties and engine  
22 characteristics (including thrust  
23 produced by the engines) specific to the  
24 Boeing 747-100 representing the  
25 physical flight characteristics,  
26 performance, and aerodynamic reactions  
27 of a Boeing 747 aircraft (including the  
28 data to determine the coefficient of drag,

44. Plaintiff agrees that this is  
undisputed.

1 the coefficient of lift and pitching  
2 moment coefficient) in Records 5-9, 12,  
3 and (3) Record 15, the computer  
4 program written by NTSB employee  
5 Dennis Crider, which used the  
6 proprietary data provided by Boeing.  
7

8 45. Records 1 through 10, 12-13 are  
9 records transmitted by Boeing and  
10 received by the NTSB. Records 11 and  
11 26 were transmitted by ALPA and  
12 received by the NTSB.  
13

14 46. Because Lahr dismissed all of his  
15 claims as to the names and identifying  
16 information of Boeing employees which  
17 had been withheld pursuant to 5. U.S.C.  
18 § 552(b)(6) ("Exemption (b)(6)") in  
19 NTSB Records numbered 1-10, 12, 13,  
20 16, 25 in exh. V of the Vaughn index  
21 filed on May 19, 2004 (and in the Errata  
22 to the Vaughn index filed on May 21,  
23 2004), the information withheld by the  
24 NTSB pursuant to exemption (b)(6) still  
25 contested by Lahr consists of: (1) the  
26 names and other identifying information  
27 as to private individuals (employees of  
28 the Air Line Pilots Association) in

45. Plaintiff agrees that this is  
undisputed.

46. Plaintiff denies that this is  
undisputed to the extent that the records  
were adopted in the final agency  
disposition or are factual data.

1 Records 11 and 26, as to an employee of  
2 the Central Intelligence Agency in  
3 Records 9 and 16, and as to an NTSB  
4 employee in Records 9 and 16 were  
5 withheld pursuant to exemption (b)(6).  
6

7 47. The NTSB has asserted that the  
8 employees of the Air Line Pilots  
9 Association, the employees of the  
10 Central Intelligence Agency and the  
11 NTSB have privacy interests in their  
12 names and identifying information  
13 withheld pursuant to Exemption (b)(6).  
14

15 48. Lahr did not assert a public interest  
16 cognizable under FOIA in the names  
17 and identifying information still  
18 withheld pursuant to exemption (b)(6) in  
19 either his requests or in his amended  
20 complaint.  
21

22 49. The NTSB reviewed the records  
23 withheld by it and determined that no  
24 reasonably segregable non-exempt  
25 segments of responsive information  
26 have been withheld from Lahr.  
27  
28

47. Plaintiff agrees that this is  
undisputed.

48. Plaintiff agrees that this is  
undisputed.

49. Plaintiff denies that this is  
undisputed. Reasonably segregable  
non-exempt segments of non-exempt  
information have been withheld from  
Lahr. A Hoffstadt Aff. Bates 39, ¶ 8:  
"It is highly likely that he could release  
this program's code in a non-executable

1 version, after removing any Boeing-  
2 supplied information." Z Leffler Aff.  
3 Bates 404, ¶ 53: "Even if Boeing's data  
4 is found to be proprietary, it is  
5 segregable, and can be redacted from  
6 the simulation program's source code."  
7

8 50. Any Conclusions of Law deemed to  
9 be a Finding of Fact is hereby  
10 incorporated into these Findings of Fact.  
11

50. To the extent that a response is  
appropriate, plaintiff denies this "fact."  
12

13 Plaintiff also contends that the following other material facts are in dispute:  
14

15 **Whether the NTSB's Vaughn index is sufficient**  
16

17 51. Which of the 31 records respond  
18 to which of plaintiff's FOIA requests?  
19

52. Vaughn Index.  
20

21 52. The NTSB did not respond to all  
22 of plaintiff's FOIA requests. Defendant  
23 failed to respond to request numbers 76  
24 & 77, and 96 & 97, seeking formulas  
25 and data entered into the BREAKUP  
26 and BALLISTIC simulation programs,  
27 as well as the programs themselves.  
28 Defendant did not substantively respond  
to requests 115 through 120 seeking all

53. NTSB failed to produce because  
"are not part of the main simulation  
program," and "played no role in the  
simulation. Therefore there are no  
responsive records." Moye Decl. p. 16-  
17, Crider Decl. p. 519. Z Leffler Aff.  
Bates 401, ¶ 33-4.

1 records of the timing sequence including  
2 but not limited to radar, radio  
3 transmissions, and the flight data  
4 recorder information.

5  
6 53. The NTSB did not identify all  
7 responsive records in accordance  
8 with Vaughn. Defendant did not  
9 substantively respond to FOIA requests  
10 122 seeking correlation of the radar plot  
11 with the zoom climb calculations.

54. Moye Decl. p. 22, ¶ h.

12  
13 **Whether the NTSB's segregation claims have merit**

14  
15 54. The simulation computer code  
16 can be segregated.

NTSB Vaughn Index, Appendix V,  
Record 15 p. 1: "This is the proprietary  
information Boeing provided for the  
TWA flight 800 investigation. The  
program cannot operate without these  
data; thus the program is not segregable  
from the proprietary data." A Hoffstadt  
Aff. Bates 39, ¶ 8: "Mr. Crider wrote  
his simulation program in C++. It is  
highly likely that he could release this  
program's code in a non-executable  
version, after removing any Boeing-  
supplied information, without printing  
the code. Review of the simulation's

1 computer code program, without Boeing  
2 supplied data, would permit review of  
3 much of the simulation program's  
4 inputs." Z Leffler Aff. Bates 404, ¶ 53:  
5 "Even if Boeing's data is found to be  
6 proprietary, it is segregable, and can be  
7 redacted from the simulation program's  
8 source code."

9  
10 **Whether the NTSB's production of its simulation's computer code after**  
11 **redaction would create a "new record"**

12 55. The NTSB can, in fact, segregate  
13 the simulation computer code without  
14 creating a new record. Crider Decl. p.  
15 513-15.

Leffler Aff. Bates 405, ¶ 55, citing 104  
16 P.L. 2,319, *Computer Redaction*: "The  
17 amount of information deleted shall be  
18 indicated on the released portion of the  
19 record." A Hoffstadt Aff. Bates 39, ¶ 8.  
20 Z Leffler Aff. Bates 404, ¶ 53.

21 **Whether disclosure would reveal Boeing trade secrets**

22 56. Boeing-supplied records have no  
23 proprietary interest as they have been  
24 published by the NTSB in conjunction  
25 with its probe.

A Hoffstadt Aff. Bates 39 ¶ 2:  
26 "Breuhais cites as proprietary data the  
27 lift coefficient, pitching moment, and  
28 drag coefficient of the 747-100 aircraft  
in two configurations... However, this  
information is also contained in Figures  
1, 2, and 3, respectively, in the NTSB  
*Main Wreckage Flight Path Study*,

1 Exhibit 22C, Docket Number SA-5 16,  
2 by Dennis Crider."; A Hoffstadt Aff.  
3 Bates 39 ¶ 3: "Breuhaus cites as Boeing  
4 proprietary data the aircraft gross  
5 weight, center of gravity, and pitch and  
6 roll inertias of the 747- 100 in two  
7 configurations... However, this data is  
8 listed plainly on Page 2 of Exhibit 22C;"  
9 X Lahr Aff. Bates 285 ¶ 118: "the  
10 Boeing Model 747-100's gross weight,  
11 center of gravity, and pitch and roll  
12 inertias... before and after nose  
13 separation... are exactly what was  
14 published in the NTSB accident report.  
15 Thus there is no longer any proprietary  
16 argument for secrecy regarding those  
17 numbers."

18  
19 57. Boeing-supplied records have no  
20 proprietary interest as they have been  
21 previously released by Boeing.

A Hoffstadt Aff. Bates 36 ¶ 13: "the  
22 CFD tool VSAERO and the Boeing 747  
23 geometry are publicly available"; A  
24 Hoffstadt Aff. Bates 39 ¶ 5: "Dennis  
25 Crider, in his declaration, refers to the  
26 'aerodynamics, propulsion, geometry,  
27 controls mass properties and so on of  
28 the aircraft' as Boeing proprietary data.  
With the same evidence stated above,  
the aerodynamics, geometry, and mass

1 properties of the aircraft have been  
2 made available to the public with  
3 Boeing's knowledge and consent."; X  
4 Lahr Aff. Bates 285 ¶ 119: "The lift  
5 coefficient, pitching moment  
6 coefficient, and drag coefficient can be  
7 found with reasonable accuracy in  
8 Airplane Flight Dynamics and  
9 Automatic Flight Controls by Jan  
10 Roskam, a former Boeing engineer, so  
11 there is no need for secrecy about those  
12 numbers." X Lahr Aff. Bates 272 ¶ 43:  
13 "[the withheld data is] available from at  
14 least four sources... 1. Operator  
15 Handbooks. 2. B-747 Flight Training  
16 Simulator. 3. B-747 Flight Data  
17 Recorders. 4. Authoritative treatise."

18  
19 58. Performance data has no  
20 proprietary interest.

X Lahr Aff. Bates 282 ¶ 93: "operation  
and performance information is not  
21 legitimately proprietary." X Lahr Aff.  
22 Bates 271 ¶ 39: "Performance data of  
23 the B747-100 is already in the public  
24 domain."

25  
26 59. The fact that the aircraft was  
27 placed in service 34 years ago and has  
28 since been succeeded by three models

X Lahr Aff. Bates 285 ¶ 122: "Aviation  
has progressed so far and so fast since  
the B747-100 was on the drawing board

1 vitiates the trade secret claim.

that it is hard to imagine that Boeing would be hurt competitively if the above information were disclosed." X Lahr Aff. Bates 365 ¶ 3: "Boeing 747-Series... 747-100B...FIRST FLIGHT DATE: 1979."

2  
3  
4  
5  
6  
7  
8 60. There is no trade secret in the performance of an aircraft with the nose blown off.

A Hoffstadt Aff. Bates 39 ¶ 6: "The claim of proprietary data related to a 747 without a nose section is so obviously bizarre and incredible that I find it hard to believe that anyone would make it." X Lahr Aff. Bates 285 ¶ 122: "No one designs an aircraft to fly with the nose blown off."

9  
10  
11  
12  
13  
14  
15  
16  
17 61. The government's assertion that Boeing-supplied data is proprietary is belied by Boeing's 1997 claim that it provided only "basic aerodynamic information."

D Donaldson Aff. Bates 114 ¶ 3-4 Ex. 21 (Boeing press release): "Boeing provided information about the design, operation and performance of the 747 to the FBI throughout their entire investigation. However, Boeing 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... we provided basic aerodynamic information." X Lahr Aff. Bates 286 ¶

1 125: "Boeing was stunned by the CIA's  
2 video animation and on that same day  
3 issued a public disclaimer distancing  
4 itself from the CIA's ridiculous  
5 scenario."  
6

7  
8 **Whether the deliberative process privilege is properly asserted**

9 62. The NTSB's reports of its zoom- NTSB Trajectory Study, Exhibit 22A, p.  
10 climb hypothesis is an agency "final 526-542; NTSB Main Wreckage Flight  
11 opinion" under the FOIA, were adopted Path Study, Exhibit 22C, p. 543-565;  
12 in the NTSB's public dealings, and NTSB Errata Main Wreckage Flight  
13 involved factual investigative records. Path Study, Exhibit 22D; p. 566-567,  
14 Addendum I to Main Wreckage Flight  
15 Path Study, p. 568-585; Addendum II to  
16 Main Wreckage Flight Path Study,  
17 Exhibit 22F, p. 586; NTSB Animation  
18 #1, "flight path view", lodged; NTSB  
19 Animation #2: "flight path view from  
20 ground, lodged.  
21

22 63. The NTSB claims that its Vaughn index p. 421 ¶ 2, NTSB Record  
23 simulation program, itself, is 15.  
24 deliberative, because it is "utilized by  
25 the agency's decision makers."  
26

27 64. The NTSB claims that the debris- Vaughn index p. 484 ¶ 2, NTSB Record  
28 field location record is deliberative. 27.

1  
2  
3  
4 **Whether the public interest in disclosure outweighs the interests sought to be**  
5 **protected by exemptions asserted – including agency bad faith.**  
6

7 65. The NTSB "proactively"  
8 abandoned its Congressional mandate  
9 by forbidding its Witness Group from  
10 interviewing any eyewitnesses  
11 compartmentalizing this evidence solely  
12 to the FBI, which then concealed this  
13 evidence.  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

C Hill Aff. Bates 45 ¶ 3: "For the first  
time in its history, the NTSB, the lead  
federal agency for air crash  
investigation, has pro-actively  
abandoned its congressional mandate;"  
Q Gross Aff. Bates 211 ¶ 5: "Any time  
you take away from the NTSB, which,  
by congressional charter, must be in  
charge, and have the FBI say that they  
will not investigate or interrogate any  
witnesses whatsoever that immediately  
raises an issue in my mind about the  
politics of it." C Hill Aff. Bates 46 ¶ 1  
(Cdr. William S. Donaldson): "the  
NTSB assisted the Justice Department  
in hiding a witness who claims to have  
seen a missile strike the aircraft on the  
forward wall of the number two main  
tank;" O Meyer Aff. Bates, 193 ¶ 5:  
"He said, 'I've been trying for six  
months to get to see you for an  
interview,' and I said, 'Norm I am in the

1 phone book, pick up the bloody phone,'  
2 and he said, 'the FBI forbade it.'"

3  
4 66. The government's idea to "explain  
5 what the eyewitnesses are seeing  
6 with only the burning aircraft" was  
7 made in bad faith.

8  
9  
10 X Lahr Aff. Bates 304 ¶ 1 Ex. 1  
11 (Transcript of CIA Analyst #1): "There  
12 was a realization... that you can explain  
13 what the eyewitnesses are seeing with  
14 only the burning aircraft."

15  
16  
17 67. The NTSB prevented presentation  
18 of eyewitness evidence in its two public  
19 hearings.

20 X Lahr Aff. Bates 269 ¶ 25: "Not a  
21 single eyewitness was allowed to testify  
22 at the hearing." E Stalcup Aff. Bates  
23 144 ¶ 2: "The NTSB misrepresented  
24 witness 649's observations at its final  
25 'Sunshine Hearing' held in August 2000  
26 by stating that it doesn't appear that this  
27 witness was looking in the light  
28 location."

68. Eyewitnesses featured in the CIA  
animation refute its account of their  
observations.

R Wire Aff. Bates 214 ¶ 4: "When I saw  
the first CIA animation, I assumed that  
they have used it as a story just to make  
- pacify the general public because it  
didn't represent what I had testified to  
the agent as to what I saw out here."  
P Brumley Aff. Bates 210 ¶ 1: "It [the  
CIA animation] wasn't even close to  
being an accurate representation of what

I saw."

69. Not one eyewitness reports having seen the NTSB's claimed zoom-climb.

X Lahr Aff. Bates 277 ¶ 66: "Neither the FBI nor the CIA nor the NTSB has produced a single eyewitness who saw TWA 800 zoom-climb upwards out of the initial fireball." O Meyer Aff. Bates, 193 ¶ 4: "Everything fell downward out of the fireball, not upward." T McClaine Transcript Bates 232 ¶ 1: "Any noticeable climbing angle change [?]... None at all." T McClaine Transcript Bates 236 ¶ 6: "I didn't see it pitch up, no. Everything ended right there at that explosion, as far as I'm concerned."; T McClaine Transcript Bates 243 ¶ 3-5 Ex. (Boston ARTCC conversation [air traffic control]): "we just saw an explosion out there... it just went down – in the water." T McClaine Transcript Bates 244 ¶ 4 Ex. (Boston ARTCC conversation [air traffic control]): "we are directly over the site with that airplane or whatever it was just exploded and went into the water." S Angelides Aff. Bates 215 ¶ 7: "That [the CIA animation] bore no resemblance whatsoever to what I saw. Nobody said,

1 is this what you saw? Did they show me  
2 the mug book? No. Because if they ask  
3 me, it didn't resemble it in any way." Perry Aff. Bates 245 ¶ 6: "the plane  
4 stopped in the middle of the sky... and  
5 then it goes down."

6  
7 70. The NTSB abandoned its  
8 Congressional mandate by its ceding of  
9 the probable cause determination to the  
10 CIA.

70. CIA Animation, broadcast on  
national news November 17, 1997.  
Lodged.

11  
12 71. The NTSB violated its US Code  
13 enabling statute mandating its use of  
14 the party process by Crider privately  
15 generating the records at issue.

X Lahr Aff. Bates 333 ¶ 1 Ex. 6  
(IAMAW submission): "we are  
concerned that this analysis [of flight  
path trajectory] was essentially  
accomplished by only one individual at  
the Board, with little or no party input or  
participation;" X Lahr Aff. Bates 283 ¶  
100: "Mr. Crider's work has never been  
checked or verified by an independent  
source." X Lahr Aff. Bates 272 ¶ 46,  
47: "Normally separate investigative  
groups are formed... there should have  
been a Flight Path Group."

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26 72. The NTSB violated its own party  
27 process in virtually all its investigative  
28 activities.

C Hill Aff. Bates 50 ¶ 3: "In all aircraft  
probe investigations it is usual if not  
universal for investigators to share

1 information and assessments for review  
2 by other investigators. It is also  
3 common for experts to review one  
4 another's conclusions." X Lahr Aff.  
5 Bates 327 ¶ 3 Ex. 5 (Submission of the  
6 ALPA): "Certain typical civil  
7 investigative practices, such as witness  
8 interviews and photographic  
9 documentation, were prohibited or  
10 sharply curtailed and controlled." X  
11 Lahr Aff. Bates 287 ¶ 126: "NTSB  
12 steadfastly refuses to reveal the data and  
13 the formulas and the calculations and  
14 the computer program used for its  
15 zoom-climb conclusions. This breaks  
16 the rules of accident investigation." Y  
17 Young Aff. Bates 394 ¶ 2: None of the  
18 non-governmental parties to the Flight  
19 800 investigation participated in the  
20 simulation work done by the CIA or  
21 NTSB, including any fact-finding." X  
22 Lahr Aff. Bates 279 ¶ 76: "This is the  
23 only accident investigation that I have  
24 ever seen where conscientious  
25 investigators on the inside were so  
26 dissatisfied with the way evidence was  
27 being treated that they smuggled out  
28 evidence outside in the hope that the

truth would prevail."

1  
2  
3 73. The NTSB's center-wing-tank  
4 explosion followed by a zoom-climb is  
5 a self-defeating theory because the front  
6 of the support frame for the aircraft  
7 wings would have been destroyed (as  
8 defendant admits) resulting in loss of  
9 the wings.

B Hambley Aff. Bates 40 ¶ 1: "The aircraft structure supporting and supported by the wings... was destroyed so severely, that it renders any climb calculations meaningless." W Rivero Aff. Bates 264 ¶ 13: "The claim that the rear portion of TWA 800 was able to climb from between 1226 and 2989 feet is directly contradicted by the claim of a center wing tank explosion as the initiating event for the breakup;" Y Young Aff. Bates 394 ¶ 2: "The asymmetric loss of both wingtips precluded the stable wings level climb as depicted by both the CIA and NTSB simulations."

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20 74. The NTSB acted in bad faith in  
21 analyzing the radar evidence.

D Donaldson Aff. Bates 52 ¶ 7: "In my opinion the 'Zoom Climb' theory advanced by the NTSB is impossible based on their own documents and my analysis of the radar data that they never released." D Donaldson Aff. Bates 62-3 ¶ 68, 72: "If the aircraft did a 'zoom climb,' you would expect to see a significant reduction in ground speed

1 (horizontal velocity). This is especially  
2 true the more steeply the aircraft climbs.  
3 There is no evidence of a significant  
4 loss of horizontal speed during this time  
5 period. In fact, two of the three radars  
6 tracking the flight path show the aircraft  
7 speeding up." D Donaldson Aff. Bates  
8 63 ¶ 76": "the biggest problem with the  
9 CIA scenario and that is the time it  
10 would take to hit the water. It would  
11 take at least 54 seconds after reaching  
12 17,000 for the aircraft to hit the water  
13 assuming it reaches a terminal velocity  
14 of 450 ft/sec. But it is only visible on  
15 radar for another 20 seconds. Where  
16 was the aircraft for those extra 34  
17 seconds? There is only one conclusion.  
18 It was already in the water because there  
19 never was a "zoom climb." E Stalcup  
20 Aff. Bates 120 ¶ 6: "The radar data  
21 contradicts all NTSB crash simulations  
22 that include Flight 800 climbing sharply  
23 after exploding." E Stalcup Aff. Bates  
24 146 ¶ 4: "The official radar record  
25 indicates that Flight 800 began an  
26 immediate descent after losing electrical  
27 power..." E Stalcup Aff. Bates 145 ¶ 5:  
28 "The NTSB Final Report on the crash

1 incorrectly concludes that a simulation  
2 displayed in that report 'matched the  
3 JFK radar data.'"

4 75. The NTSB acted in bad faith in  
5 positing that a zoom-climb was  
6 aerodynamically possible.

7 X Lahr Aff. Bates 335 ¶ 1 Ex. 6 (Ed  
8 Zehr's Aerodynamic Analysis of the  
9 Climb Scenario): "I have yet to see a  
10 single credible technical argument  
11 supporting the official version." X  
12 Lahr Aff. Bates 351 ¶ 3 Ex. 6 (Ed Zehr's  
13 Aerodynamic Analysis of the Climb  
14 Scenario): "The altitude gained from  
15 about 200 ft to 650 ft. That is about 1 to  
16 3 aircraft lengths. Such a climb would  
17 be barely discernable, if at all, to a  
18 ground observer." V Pence Aff. Bates  
19 259 ¶ 8: "A very abrupt pitch-up would  
20 have resulted in an immediate high-  
21 speed stall with loss of lift and  
22 subsequent loss (not gain) of altitude."

21 76. The NTSB acted in bad faith in  
22 concluding that the center-wing-tank  
23 exploded.

24 H Harrison Aff. ¶¶ 7-9 Bates 153: the  
25 NTSB's initiating event theory is  
26 impossible, as a combustible liquid  
27 "simply cannot" give off "flammable  
28 vapors."

1 77. The NTSB deleted evidence.  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

L Speer Aff. Bates 187 ¶ 30: "[I said to] our FBI agent chaperone... 'You know, this tape has been edited.' He says, 'No, it hasn't.' 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." D Donaldson Aff. Bates 56, ¶ 24: "Some data is missing from the radar data file." E Staclup Aff. Bates 126, ¶4: "The last sweep of the River Head radar shows the four data points deleted... and that's where any missile would have been that was going to hit it." BB Schulze Aff. Bates, ¶ 5: "Detailed analysis... revealed a clear and glaring omission of the last three to four second soft the FDR tape data."

1 78. The NTSB altered records of  
2 where the debris was found.

3 X Lahr Aff. Bates 370 ¶ 11 Ex. 10  
4 (IAMAW Analysis and  
5 Recommendations Regarding TWA  
6 Flight 800): "The validity of the Tag  
7 database has been in question from the  
8 beginning;" L Speer Aff. Bates 186 ¶  
9 27: "One of the most important parts,  
10 the keel beam, had its recovery location  
11 tag changed from orange to red,  
12 apparently to fit the scenario that they  
13 wanted to present." B Hambley Aff.  
14 40: "Radar data showing increasing  
15 speed... would lead to the conclusion  
16 that there was no climb." D Donaldson  
17 Aff. Bates 53, ¶ 9: "Information was  
18 being changed." D Donaldson Aff.  
19 Bates 57, ¶ 33: "[missile debris field not  
20 included in] official debris field."  
21 Donaldson Aff. Bates 68: "distinct  
22 missile debris field." Donaldson Aff.  
23 Bates 90 (debris field chart). E Stalcup  
24 Aff. Bates 129: "Radar data shows the  
25 first pieces of wreckage hurling out of  
26 the wreckage of TWA flight 800,  
27 landing in an area not listed in the  
28 NTSB debris field database."

1 79. The NTSB participated in  
2 covering up the cause of the deaths of  
3 230 people.  
4

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." C Hill Aff. Bates43 ¶ 16:  
"The fact that the NTSB saw fit to  
disavow witnesses and investigators...  
is in my view, prima fascia evidence  
that it was in pursuit of a cover-up as  
opposed to a hunt for the truth." G  
Krukar Aff. Bates 151 ¶ 3: "Before  
every[one] sat down at this corner  
conference table, Serge Kovalaski said,  
'well, you can't tell me it was anything  
other than a missile,' and Jim Kallstrom  
said, 'you're right, but if you quote me  
I'll deny it.'" L Speer Aff. Bates 187 ¶  
32: "it's been successfully covered up,  
the truth is not known, and there are  
many people fortunately still working  
on it trying to discover the truth for  
future accident prevention, to let the  
loved ones and family and friends know  
what happened to the airplane;" L  
Speer Aff. Bates 184 ¶ 12: "[E]ver since

1 we were there we have felt that the truth  
2 was not allowed to be sought out and  
3 discovered."  
4

5 80. The airline industry made no  
6 remedial changes to wiring to other  
7 models of the same aircraft.  
8  
9  
10  
11  
12  
13  
14  
15

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 the entire  
747 fleet, or at least the portion of the  
fleet that was of the same series as  
TWA 800, by means of an Emergency  
Airworthiness Directive. That didn't  
happen."

16 81. Flight 800 is the most  
17 controversial in aviation's history.  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Z Leffler Aff. Bates 405-07, ¶ 58-60.  
D Donaldson Aff. Bates 69 ¶ 3 Ex. 1  
(Cdr. William S. Donaldson): "The  
FBI's records and maps, left aboard the  
contract boats handling the secret  
missile recovery effort, prove the FBI  
was specifically looking for a missile  
body as well as the stinger missile first  
stage pictured in their operations  
manual;" E Stalcup Aff. Bates 129 ¶ 3:  
"FIRO has documented evidence the  
government concealed, omitted, and  
misrepresented during the

investigation."

1  
2  
3 82. The withheld records are  
4 appropriate for disclosure and peer  
5 review.

A Hoffstadt Aff. Bates 39 ¶ 36:  
"TWA800 represents a unique, notable,  
and controversial event; any CFD  
analysis of TWA800 flight performance  
is eminently appropriate for public  
disclosure and peer review."; C Hill  
Aff. Bates 51 ¶ 5: "If you cover up the  
truth of what happened to this airplane  
for whatever the political reason, you've  
done the world of aviation a tremendous  
disservice. Because the threat is there;"  
E Stalcup Aff. Bates 121 ¶ 17:  
"Disclosure and subsequent peer review  
of the NTSB's climb calculations  
would... significantly improve the  
airline community's understanding of  
the crash."

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20 Date: August 6, 2004.

21  
22 Respectfully submitted,

23  
24 Captain H. Ray Lahr  
25 By Counsel

26  
27 \_\_\_\_\_  
28 John H. Clarke

