

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CRIMINAL TERM PART 27

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: THE PEOPLE OF THE STATE OF NEW YORK : Kings County Indictment
: : No. 6825/2005
: - against - :
: R. LINDLEY DEVECCHIO, :
: :
: Defendant. :
-----X

**AFFIDAVIT OF NON-PARTY PETER LANCE IN
SUPPORT OF HIS MOTION TO QUASH SUBPOENAS**

STATE OF CALIFORNIA)
) ss.:
COUNTY OF SANTA BARBARA)

PETER LANCE, being duly sworn, deposes and says:

1. I am a journalist residing in Santa Barbara, California who has authored three books published by HarperCollins Publishers LLC (“HarperCollins”). I have personal knowledge of the facts set forth in this affidavit.

A. Background Information

2. I graduated from Northeastern University in 1971 with a Bachelor of Arts degree in Philosophy. I also earned a Masters Degree from Columbia University Graduate School of Journalism in 1972.

3. I began my journalism career in 1968 at my hometown newspaper, *The Daily News* in Newport, Rhode Island, serving as a general assignment reporter. In 1972 I began working as a reporter-producer at WNET, Channel 13, the Public Broadcasting Station in New

York, New York. During my time at the station, I worked for the station's nightly news magazine "The 51st State".

4. In 1973 I joined WABC-TV, Channel 7 in New York, New York as a producer doing investigative reports. One documentary I wrote and co-produced won the National Community Service Emmy for WABC. After working as a producer for two years, I decided to attend law school at Fordham University, earning my law degree in 1978. I then returned to journalism in 1978 as a field producer for ABC News. In 1981 I became an investigative correspondent for ABC News, and worked for the next five years as a journalist covering hundreds of stories around the world for "20/20", ABC's weekly news magazine program, "Nightline," ABC's late night news program, and "World News Tonight," ABC's flagship nightly news broadcast.

5. In 1987 I left ABC News to move to California to work as a screenwriter. My first assignment was as a writer and story editor for Michael Mann, the acclaimed writer, director and producer, on two of his television series that aired on NBC, "Crime Story" and "Miami Vice." During my years working in television, I also served as the co-executive producer on the fourth season of the television program "Wiseguy" on CBS. I also was the co-creator of the program "Missing Persons" for ABC. In addition, I adapted Bob Woodward's best-selling book *Veil: The Secret Wars of the CIA* regarding the Iran-Contra scandal for the Home Box Office cable network. For the Showtime cable network, I wrote *Terror.net*, the true story of a diplomatic security agent who helped to hunt down some of the world's most notorious terrorists.

6. For more than a decade I also have been a book author. In 1997 I wrote my first book, a novel entitled *First Degree Burn*, which was published by Berkley Publishing. The book, which became a national best seller, is a film-noir mystery featuring a New York City Fire

Department Marshal. In 2000, Shadow Lawn Press published my best-selling non-fiction investigative biography, *Stingray: Lethal Tactics Of The Sole Survivor*, which tells the controversial story of Richard Hatch, the first winner on CBS' television show "Survivor," and how the program's producers may have violated Federal game show laws by manipulating the program's outcome.

7. I have also written a series of books regarding the path to 9/11 published by HarperCollins. Those books are described in further detail below.

8. During my career as a journalist, I have won five Emmy Awards, as well as the Robert F. Kennedy Journalism Prize, the National Headliner Award and the Sevellon Brown Award from the Associated Press Managing Editors Association. My award-winning journalism has encompassed a wide array of topics, from an exposé on a notorious institution for the mentally ill, to an investigation regarding an arson-for-profit ring in a Chicago neighborhood.

B. Books Regarding The Path To 9/11

9. Following the tragic events on September 11, 2001, I began investigating the origins of the plot dating back to the late 1980's and the al Qaeda cell responsible for the first terrorist attack at the World Trade Center ("WTC") in 1993. My work over the last five and one half years has focused on the two primary offices investigating Osama bin Laden: the Office of the U.S. Attorney for the Southern District of New York ("U.S. Attorney's Office") and the New York Office ("NYO") of the Federal Bureau of Investigation ("FBI"). In the course of that research I investigated, al Qaeda's master bomb maker, Ramzi Yousef ("Yousef"), who was convicted and sentenced to life for the so called "Bojinka" plot to smuggle a series of bombs on U.S.-bound airliners, and the 1993 WTC bombing plot. As a result of my initial research, I wrote *1000 Years for Revenge: International Terrorism and the FBI—the Untold Story* ("1000 Years").

The book, published by HarperCollins in September 2003, tells the story of Yousef and two law enforcement investigators probing the origins of the first WTC attack: First Marshal Ronnie Bucca of the New York City Fire Department and FBI agent Nancy Floyd. The book details the FBI's awareness dating back to the summer of 1989 of the al Qaeda cell ultimately responsible for the 1993 WTC bombing. It also documents the years of multiple failures by the NYO and the U.S. Attorney's Office to prevent the 1993 bombing and other al Qaeda attacks including the 1998 African Embassy bombing, the 2000 bombing of the U.S.S. Cole and September 11th "planes as missiles" attack which Yousef designed and his uncle Khalid Shaikh Mohammed ("KSM") carried out. The book draws on tens of thousands of pages of trial transcripts, numerous once classified documents from U.S. and foreign intelligence agencies, dozens of source interviews and other materials that I uncovered during my extensive research.

10. On March 15th, 2004, as a result of the acclaim for *1000 Years*, I testified in private before the National Commission on Terrorist Attacks Upon the United States (also known as the "9/11 Commission"). Following my testimony, in the late spring of 2004, my ongoing research led me to unearth the details of a possible connection between Yousef, the al Qaeda terrorist network, and the crash of TWA Flight # 800 off the coast of Long Island in July, 1996, which killed 230 people. I further uncovered a treasure trove of al Qaeda related intelligence which the FBI's NYO and the U.S. Attorney's Office developed from March of 1996 through February of 1997. Continuing my investigation, I wrote my second book related to the events leading up to 9/11, entitled *Cover Up: What the Government Is Still Hiding About the War on Terror* ("Cover Up").

11. *Cover Up*, which was published by HarperCollins in September 2004, tells the story of the suppression of that al Qaeda related intelligence by officials of the U.S. Attorney's Office and the NYO. The book is told in two parts; Part One presents untold revelations of the aforementioned 11-month initiative by federal investigators to extract intelligence from Yousef and al Qaeda co-conspirator Abdul Hakim Murad ("Murad"), while they were resident at the Metropolitan Correctional Center ("M.C.C.") the federal jail in Lower Manhattan. The Government's source and agent in this intelligence gathering effort was an accused soldier in the Colombo Crime family named Gregory Scarpa, Jr. ("Scarpa Jr."), who happened to be located from March of 1996 through February of 1997 in a jail cell in between Yousef and Murad in the M.C.C. My book notes that in the spring of 1996, while Yousef awaited trial for the "Bojinka" plot, Yousef began passing notes to Murad via Scarpa Jr. The notes, later identified by prosecutors as the "Scarpa Materials," were memorialized in dozens of FBI #302 memos ("302's"). The intelligence included: 1) evidence of an active al Qaeda cell in New York City at that time, 2) an al Qaeda link to the Khobar Towers bombing in Saudi Arabia in June of 1996, and 3) a plot by Osama bin Laden to hijack airliners in an effort to free Yousef, Murad and other al Qaeda related terrorists including Sheikh Omar Abdel Rahman ("the blind Sheikh") convicted by prosecutors of seditious conspiracy in 1995. According to copies of the 302's and a number of Yousef's notes to Murad (passed through Scarpa Jr) that I obtained, Scarpa Jr. learned that Yousef was planning to blow up an airliner in order to secure a mistrial in the "Bojinka" case. Almost immediately after receiving the first notes which Yousef called "kites", Scarpa Jr. informed federal investigators. He was taken so seriously, according to the 302's, that the FBI first furnished Scarpa Jr. with a camera to photograph the "kites" and later set up "Roma Corporation" a fictitious Mafia front company which Scarpa Jr. told Yousef was staffed with

organized crime figures who would patch any phone calls Yousef made via an M.C.C. pay phone through to his cohorts in the U.S. and abroad. In fact, the FBI manned “Roma Corp.” with federal agents who monitored the calls, but the evidence I uncovered was that the FBI could not monitor the calls in “real time” since Yousef spoke in the obscure languages of Urdu and Baluchi and the FBI merely had Arabic speaking agents monitoring his calls.

12. In *Cover Up* I make an extremely strong circumstantial case, based on the “Scarpa Materials” and my own independent investigation, that TWA flight # 800 crashed on the night of July 17th, 1996 as a result of a bomb placed on board by al Qaeda operatives. It was a scenario identical to the “Bojinka” plot for which Yousef was then on trial. A key charge in the case against Yousef was a murder count for the killing of a Japanese national on December 11, 1994 when Yousef performed what he called a “wet test” by placing a “Bojinka” improvised explosive device in seat 26K on Philippine Airlines Flight # 434 bound from Manila to Cebu City and on to Japan. On the second leg of the flight the bomb exploded, nearly crashing the aircraft, a 747-100, which was an aircraft identical in design to TWA Flight # 800.

13. The evidence I uncovered in the book, argues, in effect, that TWA #800 was the realization of the “Bojinka” plot. In fact, just as Yousef had predicted to Scarpa Jr., within hours of the TWA #800 the terrorist sought a mistrial. But as I report in *Cover Up*, officials in the U.S. Attorney’s Office and the NYO ultimately discounted the Scarpa Materials, calling them a “hoax” and a “scam.”

14. Their motive, as detailed in *Cover Up*, was to discredit Scarpa Jr., whose father Gregory Scarpa Sr., (“Scarpa Sr.”), a notorious hitman for the Colombo Crime family, was allegedly in a corrupt relationship with defendant here, former senior FBI Supervisory Special Agent R. Lindley DeVecchio (“DeVecchio”). This evidence was developed in a two year FBI

Office of Professional Responsibility (“OPR”) internal affairs investigation which commenced after three FBI agents working under DeVecchio expressed concerns that key Colombo related intelligence was leaking out of the NYO. The OPR case against DeVecchio was compelling, but yet I uncovered a memo dated April 10th, 1996 from James Kallstrom the former Assistant Director In Charge (“ADIC”) of the NYO to FBI Director Louis Freeh, declaring that after the two year OPR there was “insufficient evidence to take prosecutive action” against SSA DeVecchio. ADIC Kallstrom stated further that “the failure of the DOJ (“Dept. of Justice”) to provide a prosecutive opinion or for the FBI to administratively resolve this matters continues to have a serious negative impact on the government’s prosecutions of various LCN (“La Cosa Nostra”) figures in the EDNY (“Eastern District of New York”) and casts a cloud over the N.Y.O.”

15. As reported in *Cover Up* there were initially some 75 cases in the Eastern District of New York focusing on “The Colombo War”, a so-called war of succession for takeover of the Brooklyn based crime family. By 1995, defense attorneys had uncovered evidence of alleged leaks from DeVecchio to Scarpa, Sr. the father of the younger mobster (Scarpa Jr.) who would later inform for the FBI on Yousef. The elder Scarpa was a notorious hit man for the Colombo Crime Family known as “The Killing Machine” and “The Mad Hatter”. He had only served 30 days in jail after more than 30 years of racketeering and murder largely because of his special status as an FBI informant.

16. Federal prosecutors had originally intended to base the 75 “Colombo War” cases in part on testimony from DeVecchio along with testimony from Scarpa Sr. under the exception to the rule against hearsay for “co-conspirator” testimony. Scarpa Jr. was prepared to argue later at his racketeering trial that his father had received intelligence from DeVecchio on the

whereabouts of his rivals in the Colombo Family so that he, or his agents, could murder those individuals.

17. But as reported in *Cover Up*, when defense attorneys learned of this alleged corrupt relationship between DeVecchio and Scarpa Sr. they argued that, in fact, Scarpa Sr. was not a co-conspirator but an FBI “agent provocateur” and that the hearsay exception should fall. A judge in the Eastern District of New York agreed, and 14 of the original 75 cases were dismissed. Soon, as reported in *Cover Up*, FBI and U.S. Attorney’s Office officials became concerned that if the DeVecchio/Scarpa Sr. scandal widened, and DeVecchio too was discredited as a witness, the remaining 60 odd Colombo War cases would “unravel.” So, it was my contention, that in August of 1996, a series of FBI and Justice Department officials made an “ends justify the means” decision to discredit Scarpa Jr. and his Yousef intelligence treasure trove, close the DeVecchio OPR, which, as stated by ADIC Kallstrom was casting “a cloud” over the FBI’s NYO and allow DeVecchio to retire with a full pension. In short, Part One of *Cover Up* makes a compelling case that the government chose to discredit a key witness with information about terrorism, Scarpa Jr., in order to maintain DeVecchio’s reputation and insure convictions in the remaining Colombo War cases.

18. During my extensive research for *Cover Up*, I reviewed thousands of pages of open source court transcripts and other investigative documents and spoke to dozens of sources. Some sources spoke with me only after I gave them an express assurance of confidentiality.

19. I discuss DeVecchio on several pages in *Cover Up*. (A true and correct copy of the cover, title page, copyright page, and Index from *Cover Up* (which includes the pages on which DeVecchio’s name appears) is annexed hereto as Exhibit A; true and correct copies of the pages from *Cover Up* that reference DeVecchio’s name are annexed hereto as Exhibit B.) As

part of the exhaustive research I conducted for *Cover Up*, I reviewed certain immunized testimony given by DeVecchio in 1997 and a sworn statement that DeVecchio was reportedly compelled to submit as part of the OPR investigation in 1995. The “Notes” section of *Cover Up* makes reference to my citation of this immunized/compelled testimony in only five notes that pertain to three passages. (A true and correct copy of the “Notes” section of *Cover Up* is annexed hereto as Exhibit C.) The three passages in *Cover Up* can be found on pages 20, 84, and 87, and the corresponding notes can be found on pages 319, (notes 27 and 28), 326 (note 6), and 327 (notes 22 and 23).

20. A year and a half after *Cover Up* was published, the King’s County District Attorney’s Office held a press conference on March 30, 2006 to announce that DeVecchio had been indicted on four counts of second-degree intentional murder. I attended that press conference as a journalist investigating the DeVecchio case for my upcoming HarperCollins book entitled *Triple Cross: How bin Laden’s Master Spy Penetrated the CIA, the Green Berets, and the FBI—and Why Patrick Fitzgerald Failed to Stop Him* (“*Triple Cross*”). I was also at the press conference as executive producer of *TRIPLE CROSS*, a television documentary based on my investigation that was being produced for the National Geographic Channel. *Triple Cross* was the third installment in my ongoing investigation into the FBI/U.S. Attorney’s Office intelligence failures on the road to 9/11. In the book, published in November 2006 by HarperCollins, I present evidence that senior FBI and Justice Department officials may have obstructed justice in their failure to monitor Ali A. Mohamed, al Qaeda’s principal spy inside the United States.

21. I am currently at work on another book to be published by HarperCollins that will further explore the DeVecchio case and the government's failures in the years before 9/11. The upcoming book, as well as my three 9/11-related books, are all part of an ongoing investigation that I began in the months following September 11, 2001. For over five years and one half years I have worked as an investigative journalist, interviewing witnesses, seeking leads, and poring over documents in order to connect the dots on the failure of the FBI and Justice Department in the years leading up to the 9/11 attacks. My primary focus is national security. The subject matter is of profound public interest and, as such, I have endeavored to document my findings with great precision. In *Triple Cross* alone there are nearly 100 pages of end note citations or documentary appendices to support my findings. Since I began working on the research for *Cover Up* in the spring of 2004, the activities of DeVecchio and his relationship with Scarpa Sr. have been a key part of my ongoing investigation.

C. The Subpoena And The Instant Application

22. For the first time, in March 2007, I learned through press reports that Defendant's counsel may be planning to subpoena me in connection with a hearing in this case. In April, 2007, I received written confirmation from Defendant's counsel that they planned to subpoena me. Then, in June 2007, after learning that a process server was actively looking for me in California, I agreed to accept service of a subpoena. On June 23, 2007, I was served with a subpoena *duces tecum* (the "Defendant's Subpoena"). A true and correct copy of the Defendant's Subpoena is annexed hereto as Exhibit D. The Defendant's Subpoena seeks three categories of documents, and also commands me to appear for a hearing to give testimony as a witness in this action on August 8, 2007.

23. The third category of requested documents contained in the Defendant's Subpoena seeks: "ANY AND ALL recordings and materials, including but not limited to electronic, electromagnetic or digital recordings, computerized data compilations, or transcripts in the possession, custody or control of Peter Lance, relating to a Book TV C-Span 2 recording of Peter Lance at a Borders bookstore in Los Angeles, California, on February 13, 2007" (the "C-SPAN Appearance").

24. While I do not object to DeVecchio's counsel obtaining the C-SPAN Appearance, my only copy is the link posted on my website at www.peterlance.com. I do not have any actual copies in videotape or DVD format of the C-SPAN Appearance.

25. On July 18, 2007, my counsel accepted service of a subpoena (the "DA's Subpoena") issued by the Kings County District Attorney on my behalf. A true and correct copy of the Defendant's Subpoena is annexed hereto as Exhibit E. The DA's Subpoena commands me to appear for a hearing to give testimony as a witness in this action on August 8, 2007.

26. It is imperative for my career as a professional journalist that I do not testify as a witness in connection with my newsgathering activities, or be compelled to produce any documents in connection with those activities. I have been investigating a variation of the same vital story regarding the government's intelligence failures in the years leading up to 9/11 for more than five years. I have developed sources including many active duty government officials or former officials upon whom I rely, and who trust me to fairly and accurately present the information they provide. Given the volume of information in my books and the scope of newsgathering activities that I engage in, if I were required to give evidence in any civil and criminal matter that had any connection to any of these activities, I would cease acting as a professional journalist and would instead become a professional witness.

27. Further, my ability to obtain interviews and elicit information is directly dependent upon the assurance that I will not be haled into court any time I research or write on a topic that is in any way relevant to a civil or criminal matter. In order to maintain my objectivity, and not become an investigative arm for the government or for any private litigant, it is essential that I not be compelled to give testimony relating to my newsgathering activities.

28. I can give this Court one concrete example of how my insistence on protecting confidential sources led to a major breakthrough in my 9/11 investigation. In the year 2002, former ABC News correspondent John Miller published a book entitled: *The Cell: Inside the 9/11 Plot, And Why the FBI and CIA Failed to Stop it*. In the entire 352 page book which included a reputed detailed accounting of the first WTC bombing, Miller and his co-authors Michael Stone and Chris Mitchell never once mentioned by name, FBI Special Agent Nancy Floyd (“Floyd”). In fact, as early as 1991, Floyd had recruited Emad Salem, an ex-Egyptian intelligence officer who infiltrated the cell connected to the WTC bombing only to see him forced out as an FBI asset by Assistant Special Agent in Charge (“ASAC”) Carson Dunbar, a senior FBI official in the NYO who later admitted under oath that he didn’t “trust” SA Floyd or Salem. In the fall of 1992 Salem advised SA Floyds to have the FBI follow two of the key WTC bomb plotters, only to have ASAC Dunbar fail to approve the surveillance. In his last meeting with SA Floyd prior to the February 1993 WTC bombing carried out by those identical plotters, Salem advised SA Floyd “don’t call me when the bombs go off.” Realizing that they could have prevented the first WTC attack if they had only followed Salem’s advice and listened to SA Floyd, the FBI re-recruited Salem immediately post bombing and he became the government’s linchpin witness in the “Day of Terror” trial which resulted in the conviction of the Blind Sheikh and nine other cell members. Rather than getting promoted or rewarded for recruiting arguably

the most important undercover asset to date in the “war on terror,” SA Floyd became the object of a four and one half year OPR and was ultimately suspended for “insubordination” to ASAC Dunbar.

29. Telling her story in depth for the first time allowed me, as an investigative reporter, to rewrite history as it had been previously told by some reporters. I accomplished that by gaining the trust of a number of confidential sources inside and outside the Bureau who helped me piece together the complex story. Further, by relying on those confidential sources who trusted me to protect them, I was able to give Special Agent Nancy Floyd the credit she deserved, while shedding new light on one of the greatest counterterrorism blunders in the history of the FBI’s NYO: ASAC Dunbar’s effective dismissal of Emad Salem. Telling that true story served the public interest in that it helped expose a key failure of national security and point out the need for reform within the FBI’s NYO.

30. During my investigation of the DeVecchio/Scarpa Sr. story, which I told in depth in *Cover Up* for the first time, I relied on case files, trial transcripts, news articles and sources who spoke both on the record and off. I could never have told that complex story in depth if my sources believed that I would give them up in open court or betray the trust that they placed in me.

31. I understand that I can rely on the New York State Shield Law in deciding not to testify or provide any evidence in connection with the Subpoena. I hereby specifically rely on that statute to protect me from answering any questions, divulging any sources or producing any documents in connection with my newsgathering activities regarding Defendant.

PETER LANCE

Sworn to before me this
_____ day of July 2007

Notary Public