

KARIN J. IMMERGUT, OSB #96314
United States Attorney
District of Oregon
THOMAS H. EDMONDS, OSB #90255
Assistant United States Attorney
1000 S.W. Third Ave., Suite 600
Portland, OR 97204-2902
Telephone: (503) 727-1000
tom.edmonds@usdoj.gov
Attorneys for United States of America

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

UNITED STATES OF AMERICA

No. CR 05-333-BR

v.

**AFFIDAVIT OF
THOMAS H. EDMONDS**

DAVID BACON,

Defendant.

STATE OF OREGON)
) ss.
County of Multnomah)

I, THOMAS H. EDMONDS, being first duly sworn on oath, depose and say:

I am an Assistant United States Attorney for the District of Oregon and have been the lead counsel for the government in *United States v. David Bacon*, CR 05-333, for the entire pendency of the investigation and prosecution of the case.

During the execution of search warrants on September 1, 2005, which related to this case, there were hundreds of pieces of paper seized at an Eagle Creek, Oregon, location. The voluminous number of documents or objects included receipts, firearms records, correspondence,

postal records, literature, handwritten notes, bills relating to firearms purchases and transactions, bank receipts, correspondence, manuals, books, certificates, order forms, mail, bank statements, business cards, postcards, internet printouts, stock market records, catalogues, utility bills, retail flyers, ledgers, legal documents, magazines, etc. All of these items were held as evidence after their seizure on September 1, 2005, by the Bureau of Alcohol, Tobacco, Firearms and Explosives. Through the discovery process, and defendant's own awareness of items seized from his house, defendant would have been aware of the volume of documents and objects seized on September 1, 2005.

At least once, during the pendency of the pretrial period, defense counsel sought opportunity to view evidence held by BATF where it was being held. On September 29, 2006, defense counsel, Mr. Leuenberger, requested of me an opportunity to inspect seized evidence held by BATF. That opportunity was immediately arranged and occurred on October 2, 2006. No obstacle was ever presented to defense counsel or defendant to inspect any of the evidence in this case.

Discovery to the government was very limited in this case. It amounted to the cell phone record that was admitted as a defense exhibit in this case. No explanation of those records, or their pertinence, was given to the government at the time of their disclosure on October 16 and 17, 2006. It was not until David Bacon testified on October 19, 2006, that the full relevance or value of the cell phone records was clarified to the government. No notice of alibi had ever been provided, nor an explanation of the relevance of the cell phone records. Upon hearing defendant's testimony and explanation, I directed Special Agent McNall to examine the evidence that had been seized in this case for anything that would bear upon defendant's whereabouts on

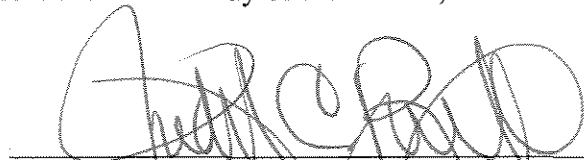
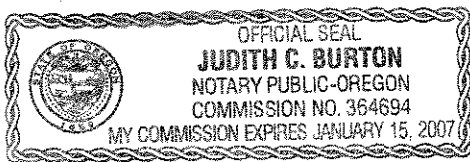
the afternoon or night of July 23, 2005, or the morning of July 24, 2005.

On the evening of October 19, 2006, the parties remained in the courtroom after the jury had been excused until approximately 8:00 p.m., after considerable time had been spent reviewing jury instructions. I left the courtroom and returned to my office where I continued to work on the many details of this case and my duties concerning the case. Later that night, at approximately 10-11 p.m., Agent McNall called me and informed me of what he had found in the voluminous documents and objects described above that had been seized from the Bacon residence. He described the receipt and its contents and the fact that it was barely legible, as the exhibit itself bears out. The following morning, the receipt was delivered to me and at the first opportunity I had to consult with defense counsel, I disclosed the receipt, gave it to him, and specifically told him I was disclosing it under *Brady*. He took time to examine the exhibit outside of my presence, with his client, and returned to the courtroom whereupon he offered the exhibit and agreed to the stipulation that is in the record concerning this exhibit. This all occurred before defendant had rested his case and no obstacle was presented by the government to the choices defendant made as to how to proceed with the exhibit and the remainder of his case.



THOMAS H. EDMONDS

SUBSCRIBED AND SWORN to before me this 3rd day of November, 2006.


NOTARY PUBLIC FOR OREGON