

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ROGER HALL, et al., :

Plaintiffs, :

v. : **C. A. No. 04-0814 HHK**

:

CENTRAL INTELLIGENCE AGENCY, :

Defendant :

SECOND REVISED DECLARATION OF ROGER HALL

I, Roger Hall, declare and say as follows: 1. I am a plaintiff in the above captioned case. In 1958-1962, I served in the United States Marine Corps. In 1993, while a student at the University of Maryland, University College, I began researching the Missing in Action (“MIA”)/Prisoners of War (“POW”) issue, particularly as it related to the Vietnam War era. I have been involved in it ever since. As a result, I have developed an expertise in certain areas of this subject.

2. The Declaration of Schott Koch (“Koch Decl.”) filed in support of the original motion of the Central Intelligence Agency (“CIA”) for summary judgment makes no assertion that the files of the Directorate of Intelligence (“DI”) have been searched. In addition, claiming they are exempt from disclosure, the CIA has not searched its operational and other files for responsive records. However, the Central Intelligence Agency Information Act of 1984 (“the CIA Act”) contains exceptions to the general rule that operational files are exempt from the search, review and disclosure provisions of the Freedom of Information Act (“FOIA”). One

of these exceptions is for “information reviewed and relied upon by intelligence committees of the Congress . . . for any improprieties or violation of law, Executive order, or Presidential directive in the conduct of an intelligence activity.”

3. The government’s improper handling of issues relating to MIA/POW issues was the subject of investigations by the Senate Select Committee on MIA/POW Affairs (“the Senate Committee”), the Senate Foreign Relations Committee, the Senate Armed Services Committee, the House POW/MIA Task Force, and the House Montgomery Committee.

4. The CIA claims to have produced all nonexempt records responsive to Items 1 and 2 of the request, and for the years 1971-1975 of Item 3 of the request. This claim is not substantiated by the available facts, as is shown by the examples set forth below. The inadequacy of the CIA’s search for operational and all other records is evident, as these examples demonstrate.

5. At the Library of Congress, I obtained from the Microfilm Reading Room, POW/MIA Reel 462, documents which are “Briefing Board” reports. The text of these reports, reproduced here as Exhibit 4 [Bates 00091-00099], indicates that the information contained therein comes from human sources, photographic surveillance, etc. These Briefing Board reports relate only to Vietnam and not to POW camps in Laos, Burma, Cambodia or elsewhere. The CIA did not provide copies of these Briefing Board reports to me in this case. Nor have any of the source materials which were used in compiling the reports supplied to me. Thus, I received no source records relating to the Briefing Boards such as photographs, human source reports, etc. Nor did the CIA provide copies of Briefing Boards or

source materials relating to Laos, Burma, Cambodia, or other countries. Related to Briefing Boards are documents concerning POW prisons in Laos. See Exhibit 12 [Bates 00128-000145]. These are CIA documents which I obtained from various POW family members. The CIA has not released copies of these records relating to Laos to me in this litigation. Nor have I received any of this kind of record relating to Burma, Cambodia, China, Russia or South Vietnam. One of these documents, Exhibit 12-E [Bates 000145] states “Document Removed,” and that it was “BEING REVIEWED BY THE CIA.” I have not been provided with a copy of this document in this litigation.

6. Ambassador to Laos William Sullivan testified before the Senate Select Committee on POW/MIA affairs (“Senate Select Committee” or “Senate Committee”), 103d Congress. I obtained a copy of his deposition from the files of the Senate Committee which are maintained at the National Archives and Records Administration (“NARA”). Sullivan testified that he had direct oversight over the CIA. See Exhibit 3, Sullivan Deposition at 28 [Bates 000085]. According to the deposition transcript, Sullivan testified that there were occasions when they were able to get information on POWs and MIAs and that where they obtained information regarding those who had been captured, they “were fed into the POW system and that person was obviously carried on the list as being a POW rather than MIA or dead.” Id. I have not been provided with records containing such information. In particular, I have not been provided with the “list” [CITE] referred to by Ambassador Sullivan. Sullivan also testified that the Pathet Lao and North Vietnamese would broadcast information identifying POWs that had been captured.

Id. at 54-55 [Bates 000086-000087]. I have not been provided records relating to such broadcasts. Nor have I been provided with the CIA's FBIS broadcasts. When questioning Ambassador Sullivan, the Senate Committee referred to information it had about a plan to conduct an operation regarding POWs at San Nuea in 1967 or 1968. Id. at 75-77 [Bates 000088-000090]. I have received no records regarding any such plan.

7. Major General Richard Secord ("Secord") was Laos Chief of Air Operations, CIA, 1966-68. He testified before the Senate Select Committee on September 24, 1992. See Exhibit 23-B at 149 [Bates 000174]. He stated that he had personal knowledge of a raid involving David Hrdlicka and two others because he had been involved in an abortive attempt to rescue them in 1966 or 1967, stating, "[you would have to go to CIA to get all those cables, but there's a raft of cables on that." Id. at 151 [Bates 000176]. He also stated, regarding these POWs, "[w]e knew that they existed alive because we had an agent inside. We knew their names. We knew where they were." Id. I have not been provided any records related to this raid. I have not been provided with the "raft of cables" referred to by Secord, or any cables at all. Asked who was the dominant collector of information in Laos, the CIA or the Department of Defense ("DOD"), Secord replied, "CIA clearly, because of the resources they had on the ground." Asked who had the best information, the Defense Intelligence Agency ("DIA") or the CIA, Secord replied, "[t]he CIA was in charge of the war [in Laos], not the military. The military helped out a little bit on the side, particularly through the provisions of their assets, but the military had very few people on the ground except for forward air controllers, which were very

good, and some air attaches. Whereas the Central Intelligence Agency had several hundred people on the ground in Laos.” Id. at 192-193 [Bates 000177-0001178]. This description is inconsistent with the dearth of CIA records provided me in this case.

8. Secord was deposed by the Senate Committee before he testified before it. In response to a question about whether any of the intelligence reports he had reviewed while as a detailee in the CIA or in any other position “referred to prisoners of war or men who were missing in action, Secord replied, “Oh, many, constantly.” See Exhibit 23-A at 14 [Bates 000170]. In his deposition, Secord refers to photography taken in connection with this raid. See Exhibit 23-A at 59 [Bates 000173] I have not been provided with any records pertaining to this raid. Secord also stated in his deposition that the CIA conducted a raid—he thought it was in late 1967—in connection with Americans who were reportedly being held at Mahaxay, Laos. Id. at 58-59 [Bates 000172-000173]. I have not been supplied with any records relating to this raid.

9. Admiral Thomas Moorer gave a deposition in the case Robert Van Buskirk v. CNN, No. C99-20899 (N.D.Calif. Jan. 17, 2000), in which he testified that the military did not participate in the planning of Operation Tailwind. “It was the CIA’s doing.” Exhibit 6 at 0297 [Bates 000102-000103]. According to Moorer’s testimony, tracking defectors was one of the CIA’s jobs. See Exhibit 6 [Bates at 0311-0312 . According to Moorer, the CIA “gives the president every day on what [the defectors] do.” Id. at 0313 [Bates 000104]. I have not been provided CIA records on Operation Tailwind or on the tracking of defectors.

10. Jan Sejna is a Czechoslovakian communist who served as Chief of Staff to the Minister of Defense, as First Secretary to the Communist Party, and as Chief of Staff of the Minister of Defense. See Exhibit 24 at 19, November 1992 Deposition of Jan Sejna, Senate Select Committee [Bates 000180]. In testifying before the Subcommittee on Personnel of the Committee on National Security, Sejna stated that on three or four occasions he saw American POWs in Prague, and that after staying there for about a week they were transferred to the Soviet Union. See Exhibit 9, October 1, 1996 Deposition of Jan Sejna, at 24-26 [Bates 000118-000120] According to Sejna, these groups of POWs numbered about 20 to 25 each of U.S. POWs taken from Vietnam to Czechoslovakia and then to the Soviet Union. The first group he recalled seeing was in 1965. See Exhibit 24 at 65 [Bates 000187]. At the time he saw these POWs, Sejna was First Secretary of the Communist Party to the Minister of Defense. Id. at 66 [Bates 000188]. After he was hired by the DIA in 1981, Sejna was interrogated by it about his knowledge of U.S. POWs being moved through Czechoslovakia to the Soviet Union. Id. at 91-93 [Bates 000189-000189a-b]. The CIA was tasked by the Air Force to search archived intelligence reports as well as current sources and defectors. See Exhibit 40 [Bates 000266]. I have not been provided records relating to the transfer of POWs from Vietnam through Czechoslovakia to the Soviet Union.

11. A DIA document dated December 30, 1980 refers to a meeting held that same day at which representatives of the DIA, the CIA, and the NSA are reported as being present. Rear Admiral J. O. Tuttle, Assistant Deputy Director for DIA reviewed a chronological report regarding POW facilities and sighting in Laos. See

Exhibit 7-A [Bates 000106]. Although the CIA was present at this meeting concerning POWs, I have received no CIA records regarding this meeting. A January 28, 1981 DIA memorandum on POWs states that since April 1979 the DIA had been investigating information provided by a refugee regarding POWs in Laos. It states that in November 1980 the CIA provided information which corroborated the refugee's account and that overhead imagery had confirmed the location of the detention cite. See Exhibit 7-B, ¶ 2 [Bates 000107]. I have not been provided with any CIA records which corroborate the refugee's report, nor have I received any overhead imagery. The same document also states that on January 17, 1981, the DIA requested that the CIA "attempt to confirm the presence of U.S. POWs in Laos." It further stated that the "details of the CIA's intentions are contained in the enclosure." Id., ¶ 3 [Bates 000107]. I have not been provided with a copy of the DIA's January 17, 1981 request to the CIA.

12. A December 5, 1991 DIA memorandum states that JSOC ("Joint Special Operations Command") was involved in planning the 1981 operation to rescue POWs at Nhom Marrot. See Exhibit 7-C, ¶ 1 [Bates000110]. "JSOC was . . . the joint (inter-service) command authority for special operations units such as Delta (Army) and Seal Team Six (Navy)." Id. In early 1981, JSOC had been "alerted to a possible rescue attempt in Laos for American POWs and had formed a small team to begin planning. Later on, an inter-agency meeting was held to discuss what actions to take. "JSOC, JCS, CIA, and NSA attended." When JSOC argued that Delta should perform the reconnaissance for this mission, the CIA insisted that it had jurisdiction over the reconnaissance. Id., ¶ 5 [Bates 000111]. I have not been

provided with any CIA surveillance or other records related to the planning of the Nhom Marrot operation. The existence of this operation and the fact that photographs were taken is corroborated by an "MFR" (Memorandum for the Record) by Bob Taylor. See Exhibit 7-D [Bates 000112]. I personally know Bob Taylor and that he worked as an investigator for the Senate Select Committee on POW/MIA Affairs.

13. A March 20, 1981 document which I obtained from the Library of Congress discusses an operation at Nhom Marrot. The CIA has not provided me with a copy of this document, nor has it provided me with any other documents related to this particular Nhom Marrot operation. See Exhibit 8-A [Bates 000113]. Another document which I obtained from the Library of Congress POW/MIA records reports that on December 30, 1980, CIA, NSA, and DIA representatives met with someone who showed them photos of "Lao and Viet sites reportedly containing U.S. POWs." See Exhibit 8-B at 2 [Bates 000115]. The CIA has not provided me with this document or any other documents related to the referenced meeting or the referenced photographs. This document also refers to a "[s]eries of exchanges between CIA, DIA, NSA [REDACTED] seeking to assure that all possible measures to collect any [REDACTED] of POWs in Nhom Marrot facility. The CIA has not provided me with a copy of this document or the "[s]eries of exchanges"] it refers to.

14. A member of an American POW family provided me with a CIA document, an Intelligence Information Report from the Directorate for Plans whose subject is the "Preliminary Debriefing Site for Captured U.S. Pilots in Vinh Phu Province." It reports on the location of a debriefing facility for U.S. pilots shot

down over Vinh Phu Province. The site was located at the Lam Thao Superphosphate Plant. See Exhibit 10 at 1-2 [Bates 000121-000122]. The CIA did not provide me with this record nor any other documents pertaining to this debriefing facility.

15. Exhibit 11 consists of two documents I obtained from NARA's Collection on POW/MIAs. Exhibit 11-A [Bates 000123] is a typed memorandum which reports that President Reagan, William Casey and Vice President George Herbert Walker Bush came into the Roosevelt Room of the White House from the Oval Office and joined other Reagan administration officials there. The document indicates that a meeting and a conversation which occurred just prior to it concerning an offer the North Vietnamese made concerning U.S. POWs which involved payment of \$4.5 billion. President Reagan is reported as having told CIA Director William Casey to do something about it [this offer]." This typed report is supported by Exhibit 11-B [Bates 000124], the handwritten notes of someone who appears to have been present at the meeting. This meeting is mentioned in the Senate Select Committee Report Exhibit 32 at 282-284 [Bates 000219A-C]. The CIA has not provided me with this 1981 memorandum or the North Vietnamese offer or what the CIA (Casey) did in response to it as directed by President Reagan.

16. The CIA has not stated that it searched any overseas field stations for responsive records. I have been provided no records of the CIA's field stations in Vietnam, Laos, Cambodia, and Thailand.

17. The Koch Declaration lists the search terms used by the Directorate of Operations. The Report of the Senate Select Committee indicates the use of terms

not employed by the CIA in its search. Examples include “war criminals,” see Exhibit 32, Senate Report at 244 [Bates 000217], “pirates,” id. at 228, 244 [Bates 000215, 217]; “air pirates,” id. at 244, 770 [Bates 000217, 000223]; “criminals,” id. at 80, 244 255, [Bates 000213, 000217, 000219], “common criminals,” id. at 68 [Bates 000212]; “political criminals,” id.; “breathers,” id. at 255 [Bates 000219]; and “defectors,” id. at 960 [Bates 000225]; “international bandits,” id. at 242 [Bates 000211].

18. Air Force intelligence officer Terry Reed gave a deposition in John Cummings v. Department of Defense, Civil Action No. 91-1736 (D.D.C.). He testified that when he was stationed at a unit called Task Force Alpha I, Nekhon Phenom, Thailand, he was involved in an extremely classified project which was called “The Project.” See Exhibit 19, Deposition of Terry Reed at 9 [Bates 000160]. “‘The Project’ . . . was a codename for Task Force Alpha.” Id. Mr. Reed was a targeter and he supervised and directed targeting strikes. His unit became aware that POWs were being placed in “a very hostile, threatening environment . . . in an effort to prevent American targeting efforts in Laos and North Vietnam.” Id. Thus, small POW sites were being placed at targets such as gasoline pumping stations. Id. at 9-10 [Bates 000160-000161]. When Reed arrived at his unit, he was briefed as to “the habit pattern that was developing of the Khmer Rouge or North Vietnamese tending to co-locate prisoners in certain target elements, and that we had gone so far as to establish safeguards within the computer to prevent inadvertent bombing there.” Id. at 13 [Bates 000163]. According to Reed, the targeting safeguard system was very simple. “If you listed a target as a POW/MIA possible complex or if you

listed it as a hospital, for example, it would be automatically rejected by our computer.” Id. However, later, Reed was informed, “. . . at a unit level . . . that the safeguards would be removed from the computer system. In other words, the computer would accept the target request from the other unit without alerting that unit that it was, in fact, . . . a potential POW location.” Id. at 14 [Bates 000164]. I have not been provided with any records related to the activities described by Reed.

19. CIA document 94-0036 shows that the CIA kept lists of suspected prison sites by name and grid coordinates. Attachment 2 [Bates 000035A] contains one such list. I have not been provided with others. The CIA did not use the names of such prisons as search terms in conducting its search.

20. Richard V. Allen, deputy national security adviser under President Nixon (1968-69), and senior foreign policy and national security adviser to President Reagan, testified to the Senate Select Committee about seeing, in 1981, a photograph of escape and evasion codes stamped in the grass at what was understood to be a Vietnamese prison. See Attachment 6, Deposition of Richard v. Allen at 41-45 [Bates 000053-000057]. He testified that President Reagan launched an operation to investigate the site. Id. at 43 [Bates 000055]. However, when the mission arrived at the site, the camp was found to be abandoned. Id. at 44 [Bates 000056]. The CIA has not produced any records pertaining to this mission.

21. Admiral Bobby Ray Inman, who served as Deputy Director of Central Intelligence from early 1981 through 1982, testified in a deposition given to the Senate Select Committee that maps of activities going on in northeast Laos appeared

to flow from the CIA not the NSA. See Attachment 7 at 45 [Bates 000060]. I have not been provided with copies of such maps.

22. Attachment 8 hereto [Bates 000113-000116] consists of Briefing Board notes and a map that I obtained from the Library of Congress Collection on POW/MIA records, including one note about the Son Tay camp. The CIA has not provided me with these notes.

23. A DIA memorandum dated January 23, 1981, specifically requests that the CIA prepare a model of a camp. While the Library of Congress has a collection of some of these reports for Vietnam prior to the end of the war, nothing has been acknowledged or released about camps in Laos or Cambodia or other countries.

24. Attachment 9 [Bates 000067-000083] consists of several CIA Intelligence Cables documenting that it collected the kind of detailed information on POW/MIA movements and suspected camps set forth in Attachment 8. However, all of the documents acknowledged and released by the CIA predate 1972 and the end of the war. The CIA has not provided me with any such post-war cables.

25. A May 5, 1972 CIA Memorandum proposes the transfer of information to the DIA member of the Interagency Prisoner of War Committee (IPWIC). See Exhibit 18-A [Bates 000150]. The CIA has not provided me with a copy of this document in this lawsuit, nor has it provided me with copies of CIA records involving its input and receipt of information from IPWIC. A document obtained from NARA states that IPWIC “is the only intelligence committee responsible for matters relating to missing and unaccounted for American personnel in Southeast Asia. See Exhibit 18-C, ¶ 5 [Bates 000153]. It also notes that “CIA is the only non-

DoD member to IPWIC.” Id., ¶ 4. This document also states that a draft dispatch refers to a “data bank of intelligence on PW camps in Laos and adjacent areas.” See Exhibit 18-B, ¶ 1 [Bates 000151]. The CIA has not provided me with any materials relating to this data bank. This document further states that a recent “working level interagency review” supported the view that “if any American PWs are in Laos, they are in the Sam Neua Ban Tong complex in northeastern Laos. . . .” Id., ¶ 2. I have not been provided with any records pertaining to this review. This document also refers to a model made of a certain camp site in Laos and to photographs of it which are said to be enclosed. Id., ¶ 4. Finally, this document refers to an indices search which revealed “several reports on American PWs in Laos. . . .” Id., ¶ 6 [Bates 000132]. I have not received these reports.

26. Exhibit 38 contains eight documents prepared for the White House Situation Room and circulated to CIA units such as the Office of Current Operations or the Director of Central Intelligence (“DCI”). See Exhibit 38-A through Exhibit 38-L [Bates000244-000258]. These documents are all from the 1980 and concern live POWs. I have not been provided such records for other periods of time.

27. At NARA I located a document reporting on the Nhom Marrot Detention Facility. It reports on a suspected prison camp in Laos where 30 POWs were said to be held. It refers to a CIA report. In addition, it ends with a DIA request for the CIA to conduct an operation to verify information about the suspected prison camp, which CIA agreed to undertake. See Exhibit 7-B [Bates 000107]. The CIA has never acknowledged or released any information on the Nhom Marrot facility.

28. Item 3 of my request seeks documents that on POW/MIAs in Laos from 1971-1975. CIA station chiefs testified before the Senate Committee that the CIA had primary responsibility for reviewing all human sources of intelligence on them during this period, including refugees. See Attachments 1 and 3 [Bates 000025 and 000036].

29. Under Exemption 2, the CIA appears to be withholding information such as administrative markings, routing information, file locations or numbers, etc. This kind of information is of interest to the public because it provides knowledge of where records are located, who was aware of what when, who did what, etc. The CIA's removal of the administrative information on documents and routing sheets prevents me from knowing where I should seek additional information under the FOIA and thus defeats the public's right to know.

30. A March 9, 1988 CIA memorandum pertains to alleged sightings of American POWs in North Korea 1975-1982, and 1988. It specifically references 10 military pilots captured in North Vietnam who were taken to North Korea. I have been provided with no documents pertaining to these POWs. See Exhibit 35 [Bates 000235-000236].

31. An April 22, 2008 letter from Kristin Welhelm of the National Archives to me attaches a list of depositions taken before the Senate Select Committee on POW/MIA Affairs that have been "withdrawn in full" from public access. See See Exhibit 36-A [Bates 000237-000238]. Exhibit 36-C is an April 28, 2008 letter from Archives Specialist Thomas Haughton to me which acknowledges my request

for mandatory declassification review of the depositions of John Mason and William Graver. It advises me that it may be necessary to send them to the CIA for review. See Exhibit 36-C [Bates 000242]. I have been advised that NARA did send them to the CIA. I have heard nothing further from the CIA. The CIA has not provided me with copies of any of the depositions referenced in these letters or accounted for their withholding. Exhibit 36-B [Bates 000239] is a typed note by Ms. Wilhelm dated May 25, 2006, which attaches a list of depositions and Senate Select Committee documents on POW/MIAs which the CIA withheld in full in response to my request for mandatory declassification review. The CIA has neither provided me with copies nor accounted for their withholding in this lawsuit.

32. In his November 9, 1993 letter to the President, CIA Director James Woolsey stated that the CIA was withholding 574 documents pertaining to POWs. See Exhibit 37 [Bates 000243]. These records have not been provided to me nor their withholding justified.

33. Exhibit 41 is a March 12, 1982 Foreign Intelligence Information Report from the CIA's Domestic Collection Division. It reveals alleged Soviet incarceration of U.S. Vietnam era POW s. [Bates 000269-000272]. I have not been provided with any records regarding this from the CIA.

34. Appendix A to this declaration is a chart of the information which was previously submitted along with 44 PNOK ("Primary Next of Kin") authorizations given to me by members of POW/MIA families. This chart shows the identifying information provided with respect to each of these authorizations. In sum, the

number of the 44 PNOK authorizations containing the following categories of information is as follows:

- (1) 31 have the POW/MIA's social security number;**
- (2) 39 include the POW/MIA's branch of service;**
- (3) 20 include the POW/MIA's service number;**
- (4) 11 include another case or reference number;**
- (5) 37 include the POW/MIA's date of incident;**
- (6) 15 include the POW/MIA's place of incident;**
- (7) 13 contain additional information.**

35. I also seek records pertaining to 1700 unreturned POW/MIAs which are listed in a document captioned "Defense Prisoner of War/Missing in Action Office Reference Document—U.S. Personnel Missing in Southeast Asia and Selected Foreign Nationals. In this document the POW/MIAs are listed in alphabetical order preceded by a 4 digit identification number. Information pertaining to the persons listed includes date of capture, branch of service, rank, a reference number, country of capture, time of capture, release date if released, and aircraft or vehicle or ground location.

36. At NARA I reviewed the testimony of the Chief of Station, Vientiane, Laos (1970-1973) and made copies of it. Although it has since been reclassified, I made copies of it, so I append it as Attachment 1-B [Bates 00027-00036]. Because it indicates the involvement of CIA field stations in POW/MIA matters, they should have records. They have not been provided to me.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17th day of December, 2008.



ROGER HALL