UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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| ROGER HALL, et al., | : | |
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| Plaintiffs, | : | |
| | : | |
| v. | : | Civil Action No. 04-0814 (HHK) |
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| CENTRAL INTELLIGENCE AGENCY | : | |
| | : | |
| Defendant | : | |

MEMORANDUM OF POINTS AND AUTHROITES IN SUPPORT OF PLAINTIFFS' SUPPLEMENTAL MEMORANDUM REGARDING THIS COURT'S NOVEMBER 12, 2009 ORDER AND IN OPPOSITION TO DEFENDANT'S SUPPLEMENTAL ITEMS 4 AND 5 RESPONSE TO COURT'S NOVEMBER 12, 2009 ORDER

Preliminary Statement

Plaintiffs' previous briefs filed during the lengthy proceedings following this Court's November 12, 2009 Order have extensively addressed the issues raised by the CIA. The arguments put forward in those briefs continue to apply to what the CIA's supplemental response to Items 4 and 5 of Hall's request, and to the submissions made by the Department of Defense ("DOD") and National Security Agency ("NSA"). Some of the

same and additional issues need to be addressed in the new context, however, and these are set forth below.

## ARGUMENT

### I. THE CIA HAS FAILED TO SHOW THAT IT CONDUCTED AN ADEQUATE SEARCH

Plaintiffs Roger Hall and Studies Solutions Results, Inc. (collectively referred to hereafter as "Hall") set forth in their Response to Defendant's Supplemental Response to the Court's November 12, 2009 Order ("Pls' Resp.") [Dk 166] a number flaws in the contention of defendant Central Intelligence Agency ("CIA") that it has conducted an adequate search. See id. at 2-19. The CIA's Supplemental Items 4 and 5 Response to the Court's November 12, 2009 Order ("CIA Suppl. Items 4 & 5 Resp.") does not address these issues. It confines itself to discussing a single "new" search issue. The "old" search issues remain unaddressed. After first addressing the CIA's "new search," Hall will turn to new information which bears on the "old" search issues, and to the need for discovery.

A. The New Search

The Declaration of Elizabeth Anne Culver ("Culver Decl.") notes that on April 14, 2011, Hall provided the CIA with three new privacy waivers, including two by persons who had not been previously submitted privacy waivers.[1] Culver asserts that only one of these three, Capt. Peter Richard Mathes "was also named in Item 5 of Plaintiffs' 2003 FOIA request and was therefore subject to this litigation." Culver Decl., ¶ 51. In a tone more akin to that of an imperial satrap than one whose salary is paid to serve the public, Culver proceeds to lecture Hall that had he "submitted additional identifying information . . . about Mathes earlier, Mathes would have been included in the CIA's search of the 31 individuals previously conducted and completed." She then haughtily declares that "[a]lthough Hall provided the CIA with Mathes' information at this very late date, the CIA nonetheless conducted a search for Mathes. . . ." Id. (footnote omitted).

Culver ultimately states that the CIA located seven responsive records as a result of its search, each of which originated with other federal agencies. By letter dated September 21, 2011, these documents were referred to unspecified agencies for direct response to Hall. Id.

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[1]In fact, Hall sent a second letter to AUSA Rybicki dated May 20, 2011, in which he provided two additional privacy waivers for Col. John Francis O'Grady and Lt. James Kelly Patterson. See Attachment C.

The three privacy waivers which Hall submitted to the CIA by his April 14, 2011 letter were for Cpl. Charles Joseph Scharf, Hugh M. Fanning, and Capt. Peter Richards Mathes. Two of these three are on the **PNOK** list submitted by Hall, thus they were subject to this litigation from the outset, contrary to Culver's assertion. The fact that the CIA now says that 7 responsive documents were located shows that the necessity of searching all the names on the Primary-Next-Of-Kin ("PNOK") list and producing those records that are responsive to the request.

Despite the fact that Culver states that these 7 documents were referred to other agencies last September for direct response to Hall, Hall is unable to locate any evidence of any such response. The documents have yet to be produced, and Hall has had no opportunity to challenge any withholdings in them.

B. Satellite Imagery

A principal complaint raised by Hall has been the failure of the CIA to provide imagery of sites where Prisoners of War/Missing in Action ("POWs/MIAs") may have been located. The failure to locate and provide such imagery is both a search and an exemption claim issue.[2] On June 16,

[2] Contrary to the CIA's claims regarding Judge Friedman's August 10, 2000 Order, that order unequivocally stated that Hall's request "should have been

2012, Hall obtained copies of records from Minnesota Won't Forget which received them as a result of a FOIA request to the Defense Intelligence Agency ("DIA"). They included copies of photographs taken of Laotian sites which were suspected of having living POWs. See Exhibit D. These records included CIA Indices to photographic surveillance. See Exhibit E.

Neither these indices nor the imagery they list have been provided to Hall.

C. Search for Records on Hrdlicka

Carol Hrdlicka is the wife of Colonel David L. Hrdlicka, a known POW captured in Laos in 1965. According to her affidavit, he has been repeatedly reported alive since the United States withdrew from Vietnam, Laos and Southeast Asia in March 1973. Yet the United States Government has informed her that he was captured but died in captivity. On three different occasions, the DOD told her that he had died. Declaration of L. Hrdlicka ("Hrdlicka Decl."), ¶ 1.

A Russian correspondent, Ivan Shchedrov ("Shchedrov") interviewed Hrdlicka's husband several times in Sam Neua, Laos. According to his account, Hrdlicka's husband was seen at the dedication of a cave complex which Shchedrov witnessed. See Hrdlicka Decl., ¶ 2. Attachment 1.

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read to include photographs." August 20, 2000 Order, Civil Action 98-1319 at 12.

An attempt was made to rescue Hrdlicka's husband and another POW named Shelton from the communists in 1966, but he was later recaptured. State Department documents found in the President Johnson Library by Roger Hall reveal this attempted rescue. Hrdlicka Decl., ¶ 3, Attachment 2. Retired General Richard Secord, the then head of "CIA Air Operations in Laos, authorized that rescue. Id.

Documents obtained from the CIA over the years never had Hrdlicka's husband's name in them. The CIA never has released documents pertaining to the escape and recapture of her husband. However, now a document released by the CIA in this case has finally done so. It indicates that Hrdlicka's husband was alive in 1968. Id., ¶ 4, Attachment 3. It has her husband's name handwritten in the right-hand margin and at the bottom of the document. Id.

The CIA has not shown that it has performed a search for records pertaining to Col. Hrdlicka under his name or variants thereof. [3] Nor is there any indication of any search for records, particularly imagery, regarding the site of his capture in Laos.

D. Failure to Search All Components

[3] Among the possible variants of Hrdlicka's name is Khrdlicka, the Russian spelling of the name which is used in the Shchredrov article.

Exhibit B version indicates below and to the left of DCI Richard Helms' signature line he cc'd Secretary of State [William] Rogers, Secretary of Defense Melvin Laird, and Admiral Thomas Moorer. Below that is the notation:

DCI/SAVA
Distribution
1 – ER
1 – DDP
1 – C/FE

This distribution list indicates that responsive records may be located in components that the CIA has not indicated it has searched. The "DCA/SAVA" notation indicates copies of records responsive to Hall's request may be found in that location, Hall has not seen this term used before, except for the "DCI" part, which presumably stands for "Director of Central Intelligence." It is not clear whether **C00**3375985 (Exhibit A hereto) and **C0**3336699 (Exhibit B hereto) surfaced during a search on the DCI Area or some other component, but Hall is entitled to an explanation as to what each of these acronyms signifies—he has never heard of "SAVA" before and does not know what "ER" stands for—and indication that they were searched not only for these two records but other relevant materials as well.

E. The Lynn O'Shea Evidence

In April 2008 Lynn O'Shea filed a FOIA request to the CIA for records pertaining to POW/MIAs being held at Nhom Marrott in Laos. Both initially and on appeal the CIA refused to confirm or deny the existence of such records. However, she subsequently obtained a letter from the Office of Senate Security to the National Archives listing files and photographs pertaining to that site. The CIA has not produced these records for Hall. See Affidavit of Lynn O'Shea and Exhibits 1 and 2 thereto.

F. The Need for Discovery

As Hall has previously shown, the adequacy of the search in this case is a disputed issue of material fact. However, even without the existence of a factual issue in dispute, discovery in this case would be warranted. Long ago the D.C. Circuit emphasized the liberal nature of the rules of discovery in a case applying Rule 56(f) of the Federal Rules of Civil Procedure. The Court said:

> Upon a motion for summary judgment, sup
> ported by affidavits, the opposing party cannot rest merely on his pleadings to establish a genuine issue of fact. There is, however, an inherent danger if injustice in granting summary judgment to the moving party of his own version of facts within his exclusive control as set out only in ex parte affidavits. To avoid such unfairness, Fed.R.Civ.P. 56(f) vests the trial judge with discretion to grant the nonmoving party a continuance, permitting him to use his discovery to

> obtain the information necessary to show an issue of fact in dispute.

Donofrio v. Camp. 470 F.2d 428, 431 (D.C.Cir.1972). The circumstances of this case clearly warrant this Court exercising its discretion so that plaintiffs can resolve certain currently disputed issues of material fact and determine whether others exist.

While Hall is able to present many facts which dispute the CIA's claim to have conducted an adequate search, he cannot begin to present a full and complete record on this issue without being afforded an opportunity to take discovery. There are several reasons why Hall is unable to present by affidavit all of the facts essential to countering all, or even a major part of, the CIA's contentions regarding the adequacy of its search efforts in this case. Supplemental Rule 56(f) Declaration of Roger Hall ("Suppl. Rule 56(f) Decl."), ¶ 2.

First, this case concerns the operations and activities of the CIA regarding POWs/MIAs records pertaining thereto. To a considerable degree, information pertinent to whether or not certain responsive records were created, and where they might be located, is exclusively within the possession of the CIA; without discovery Hall cannot establish that certain important operations and activities created records or categories of records pertaining to POW/MIAs which are likely still maintained by the CIA. Id.

Second, the existence and content of many records which may be pertinent to this case is concealed because their existence or content is still allegedly properly classified. Without discovery, Hall has no means of establishing this. Id., ¶ 3.

Third, persons who provided significant information to Hall about CIA operations or activities or records pertaining to them when he interviewed or corresponded with them are no longer living and thus are not available to provide affidavits or deposition testimony as to what they told him that bears on the adequacy of the CIA's search. Id., ¶ 4. This increases the need to have those who are still alive provide pertinent information.

Fourth, several persons who have given me significant information about CIA operations and activities which would have generated records pertaining to POW/MIAs have refused to provide such information without what they regard as the protection of a court subpoena or unless they are called as witnesses at an evidentiary hearing.

In the two preceding sections, Hall has brought forward new information regarding the CIA's failure to conduct adequate searches for records on Col. David Hrdlicka in particular and photographic imagery in general. General Richard Secord has personal knowledge of the CIA's

efforts to locate missing POWs in Laos that involves both of these aspects of this case.

Secord served the CIA in the field in Laos in 1966-1968 and was back there again, "briefly, in 1969." See Suppl. Hall Rule 56(f) Decl., ¶9, Exhibit 1 (testimony of General Richard Second before the Senate Select Committee on Intelligence ("SSCI") at 149. He testified that he had personal knowledge of the "famous case of Hrdlicka" because he was "involved in an abortive attempt to rescue those guys [Hrdlicka and two other POWs] back in late '66 or '67. . . ." Id., at 151. In responding to a question about how many POWs there were in Laos, Secord said: "You would have to go to CIA to get all those cables, but there's raft of cables on that. We knew that they existed alive because we had an agent inside. We knew their names. We knew where they were." Id. He indicated that there were a larger number than nine missing POWs in Laos and that none of the many missing POWs he was tracking came back from Laos: "None of them, that I know of, have been located or even heard of since the Paris Accords." Id., at 152. In regard to the information about these missing POWs, Secord testified that "there was just a mountain of intelligence on all of this." Id.

It is clear that General Secord possesses a great deal of information that is pertinent to the search issue in this case. He has information about

the amount of records created ("rafts of cables"), information concerning the tracking of missing POWs, and knowledge of the nature of such records, where they were filed, the number of copies created and disseminated to agency and departmental units, etc. He also has pertinent information about operations to rescue POWs and the types of records created concerning such operations and by whom they were created and to whom they were disseminated. Id., ¶ 10.

Another person with highly relevant knowledge is Bob Taylor, who was a Senate Select Committee investigator in 1991-1993. After the SSCI ended, satellite imagery and other information kept coming in. He turned these materials over to Barry Toll, who took them over to the White House for a meeting with Anthony Lake, Carol Hrdlicka, and George Carver. He turned the imagery over to Lake. Further details regarding this meeting are recounted in a prior declaration executed by Carol Hrdlicka in 2008. Id., Exhibit 2.

The CIA has not been providing imagery pertinent to POW/MIAs. This is an issue which relates both to the adequacy of the search and to an alleged need to protect intelligence sources and methods. Because of their knowledge about imagery bears both on the adequacy of search and claims that material is covered by exemption claims based on protection of

intelligence sources and methods, both General Secord and Bob Taylor should be permitted to testify about such matters. Id., ¶ 12.

John McCreary, who was a Defense Intelligence Agency ("DIA") Officer who worked on loan for the SSCI, had the highest security clearance permitting him to have access on POW/MIA records at the CIA and NSA. He revealed to Hall that NSA had a "mother lode" of documents that had not been turned over to the SSCI. The public interest in obtaining the full record about missing POW/MIAs would be greatly enhanced by allowing him to testify as to his knowledge about records that he told Hall were not turned over to the SSCI. Id., ¶ 13.

## II. THE VAUGHN INDICES SUBMITTED ARE INADEQUATE

In Hall's response to the CIA's initial supplemental response to this Court's November 12, 2009 order to explain at some length a number of flaws in the CIA's Vaughn index at issue at that time. The indices more recently submitted by the CIA, the NSA, and the DOD with respect to the CIA's supplemental response to Items 4 and 5 of Hall's request are similarly flawed, and the analysis set forth there applies equally here. See Pls' Response at 19-28.

Examples of some of these problems are found in CIA documents C03375985 and C03336699, the first of which (Exhibit A hereto) is 29 pages in length according to the CIA's Vaughn, while the second (Exhibit B) is 51 pages long. Both of these two documents are almost entirely withheld, although each contains an October 29, 1971 Memorandum from DCI Richard Helms to National Security Adviser Henry A. Kissinger which is six pages long. The subject of the memorandum is "Background /Data Possibly Relevant to the Current Vietnamese Communist Prisoner Exchange Overture."

The Vaughn index description for Exhibit A states:

> This document is 29 pages total and consists of a series of memorandums, one of which is responsive to Item 5. This responsive portion of this document is a 6-page CIA memorandum to Henry A. Kissinger, Assistant to the President for National Security Affairs, regarding background information possibly relevant to the current Vietnamese Communist prisoner exchange overture. The document reveals information about human sources, identifies the location of CIA facilities, reveals internal CIA control markings, numbers, dissemination control information and names of individuals all of which have been properly withheld. This substantive portion of this document has been released. It is currently and properly classified SECRET.

See Attachment B.

Attachment C states:

> This document is 51 pages total and consists of a

> series of separate and distinct memoranda, one of which is responsive to Item 5. This responsive portion of this document is a 6-page CIA memorandum from the CIA to Dr. Henry A. Kissinger [Assistant to the President for National Security Affairs, regarding background information] about a [possibly relevant to the current] Vietnamese Communist prisoner exchange overture. The document reveals information about human sources, internal CIA control markings, [identification of CIA facilities, reveals] . . ., numbers, dissemination control information in addition to [and] names of individuals all of which have been properly withheld. The [This] substantive portion of this document has been released. It is currently and properly classified SECRET.

See Attachment C.[4]

The lengthy list of justifications for withholding information from these two documents which appears on page two of each of these two documents is verbatim the same.

A number of problems arise. First, it is unclear as to what basis the largest portion of each document is deemed not responsive to Item 5 of Hall's request. The description of Exhibit A and Exhibit B as "[t[his document" suggests that they are unified somehow. It may be that only the 6-page memorandum to Kissinger has been deemed by the CIA to be

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[4] The underscored portions are new information or information which appears sooner than the same information in Exhibit B. The material in brackets either did not appear in Exhibit B or is somewhat different from it. Elipsis was to indicate the deletion of information which appeared later in Exhibit B than it does in Exhibit C.

responsive to Item 5 because it mentions specific names of POW/MIAs, but that does not mean the remainder of each of these documents is unresponsive to Hall's request. The remaining parts of each document may still pertain to Item 5 of Hall's request, or even more likely, to Item 1 of his request, which is not confined to named individuals.[5]

Even assuming that only the 6-page memorandum to Kissinger is pertinent to Item 5, further problems arise. The most notable difference between the Exhibit A and Exhibit B versions of this memo is that in the Exhibit B version indicates below and to the left of DCI Richard Helms' signature line he cc'd Secretary of State [William] Rogers, Secretary of Defense Melvin Laird, and Admiral Thomas Moorer. Below that is the notation:

> DCI/SAVA
> Distribution
> 1 – ER
> 1 – DDP
> 1 – C/FE

The Exhibit B document does not contain this distribution list. Instead, beneath names of Rogers, Laird, and Moorer is what appears to be a

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[5]Item 1 of the request seeks all records or information on or pertaining to "Southeast Asia POW/MIAs (civilian or military) and detainees, who have not returned, or whose remains have not been returned, to the United States, regardless of whether they are currently held in prisoner status, and regardless of whether they were sent out of Southeast Asia."

block redacting the list. No exemption claim is noted next to this deletion, however. This is also true of other redacted portions on this document, particularly the extensive deletion of half a page of page two. The Vaughn sheets list 10 different kinds of exemption claims that are being asserted,[6] However, there is no correlation between any particular exemption claim and any particular redacted passage, thus it is impossible to determine which exemption claim applies to a particular redaction and, if it does, whether another claim overlaps it. It was precisely this problem which led the Court of Appeals to remand a suit involving the CIA in another case, See Attachment D, April 27, 2011 Per Curiam opinion in Morley v. C.I.A., D.C.Cir. No. 10-5161.

For example, pages 4 and 5 of the memo to Kissinger contain a list of the names of 20 POWs, with but a single redaction. Because in this case context is provided, it seems apparent that the one name redacted is withheld under Exemption 6, but given the failure of the CIA's Vaughn indices to correlate exemption claim with location, it is not possible to determine

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[6]Exhibit A contains 23 pages that are entirely blank (except for an occasional page number or cancelled "Secret" stamp here and there), and Exhibit B contains 45 similarly blank pages. There are no exemption claims asserted on any of the blank pages. Whether this is due to a claim that these pages are unresponsive to Item 5 of the request or because the CIA simply did not deign to correlate exemption claims with particular portions of the documents is unclear.

whether the Exemption 1 and Exemption 3 claims overlapping this redaction.

The release of 19 of the names and the withholding of one also suggests inconsistency of processing, as no explanation is given why the 19 names have been released and the one name withheld.

## III. THE CIA HAS FAILED TO SUSTAIN ITS EXEMPTION 1 CLAIMS

Hall previously addressed the CIA's national security claims at some length, and there is no need to repeat that analysis here. It applies to the submissions made by the DOD and the NSA as well as the new filings by the CIA. Again, Hall stresses that there is an insufficient demonstration of current threats to national security to warrant sufficient deference to their proferred evidence that an award of summary judgment in the CIA's favor is warranted. Rather, the historical nature of these records and their pertinence to a region no longer the subject of armed conflict or terrorism against the United States indicates that, at best, there is a disputed issue of material fact as to whether disclosure could reasonably be expected to cause the identifiable damage to national security.

## IV. THE CIA HAS FAILED TO SUSTAIN ITS EXEMPTION 3 CLAIMS

Hall previously dealt with the CIA's Exemption 3 claims in his Supplemental Response to the Court's November 12, 2009 Order at 36-39. The agency to which it referred responsive records have now raised new exemption claim.

Exemption 3 allows the withholding of information prohibited from disclosure by a federal statute if the statute "(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld."

5 U.S.C. § 552(b)(3).

DOD cites 10 U.S.C. § 150b, which provides in part:

> a) Exemption From Disclosure — The Secretary of Defense and, with respect to the Coast Guard when it is not operating as a service in the Navy, the Secretary of Homeland Security may, notwithstanding section 552 of title 5, authorize to be withheld from disclosure to the public personally identifying information regarding—
>
> (1) any member of the armed forces assigned to an overseas unit, a sensitive unit, or a routinely deployable unit; and
>
> (2) any employee of the Department of Defense or of the Coast Guard whose duty station

is with any such unit.

Since this provision is clearly discretionary—it provides that the Secretary of Defense and, under certain circumstances, the Secretary of Homeland Security, may withhold certain types of information—Exemption 3(B) does not apply. Assuming, arguendo, that this provision qualifies as an Exemption 3(B) statute, the information which the DOD seeks to exclude from disclosure is beyond its scope. This provision employs the present tense to the members of the Armed Forces and the employees of the Department of Defense to whom it applies. DOD has failed to show, however, that it has met its burden of proof of showing that any of the persons whose names it has redacted are currently serving with the Armed Forces or employees of the DOD.

The DOD also cites 50 U.S.C. § 435 note as an Exemption 3 statute. It cites no authority for this proposition. It contends that it requires the missing Americans' "primary next of kin give written consent to release information concerning their treatment, location, and/or condition." DOD states that consent was not give for 29 documents, therefore "the missing individual's (sic) names were redacted. Declaration of Roland D. Tisdale, ¶ 5B. It then lists 29 documents which contain the names of missing POWs

whose names have been redacted for failure of their kin to comply with this provision.

This revives the Primary-Next-of-Kin issue which plaintiffs dealt with in their initial response to the Court's November 12, 2009 Order. See Pls' Response at 2-8. The DOD gives no indication that it consulted the PNOK list before determining that the next of kin of these individuals had signed the required authorization. The terms of Hall's request required that this be done.

While the CIA has claimed that retrieving and producing the records of those on the PNOK list would be burdensome, Hall notes that that justification would not apply here because only 29 documents are involved.

## V. THE EXEMPTION 6 CLAIMS ASSERTED BY THE CIA, THE DOD, AND THE NSA DO NOT PASS MUSTER

The CIA has once again claimed Exemption 6 to protect the privacy of persons named in the documents and the NSA and DOD join in. None of them carries its burden of proof under FOIA Exemption 6.

Hall set forth the legal standard for invoking Exemption 6 in his Renewed Cross-Motion for Summary Judgment, at 32-34. He incorporates that brief herein by reference.

The CIA asserts that "the individuals identified in the documents have a significant privacy interest in the withheld information" and that "the public does not have an interest in the disclosure of the withheld information. Culver Decl., ¶ 46. However, as a general rule, a privacy interest usually diminishes greatly, if in fact it is not extinguished by death, and most of the names at issue in these documents very likely belong to the deceased. As the Court of Appeals has held:

> First, death clearly matters, as the deceased by definition cannot personally suffer the privacy-related injuries that may plague the living. A court balancing public interests in disclosure against privacy interests must therefore make a reasonable effort to account for the death of a person on whose behalf the FBI invokes exemption 7(C).

Campbell v. U.S. Department of Justice, 164 F.3d 20, 33 (D.C.Cir.1998), citing Summers, 140 F.3d at 1084-85 (Silberman, J., concurring); id. at 1085 (Williams, J., concurring); Kiraly v. Federal Bureau of Investigation, 728 F.2d 273, 277-78 (6th Cir.1984).

The CIA tries to maintain that there is no public interest in disclosure because "this data would not shed light upon the operations and activities of Government." Nor would it "contribute to the public understanding of the thoroughness, scope, intensity, or creativity of the Government's efforts to locate POW/MIAs." Culver Decl., ¶ 47.

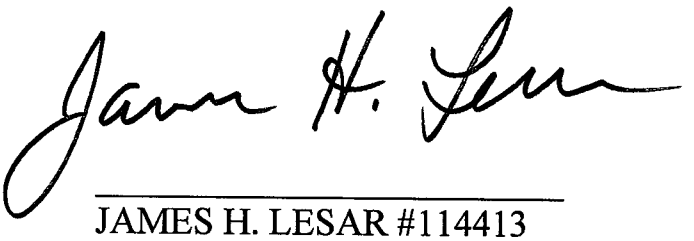
But of course the disclosure of these names sheds light on the operations or activities of the Government. It provides information, among other things, on who the POWs are—what percentage were enlisted men, what percentage officers, what kind of operations they were on when they went missing or were killed, what their ethnic composition was, etc. And because of this, disclosure would foster public understanding of the very things the CIA says it would not. The public interest is also reflected in the countless news stories on POW/MIAs and the nearly 60,000 names engraved on the walls of the Vietnam War Memorial.

The DOD and NSA declarations are purely conclusory in their Exemption 6 analysis. They simply assume that it is sufficient that names might be disclosed. The application leads to extreme results, including invoking Exemption 6 for photographs of five capture U.S. officers who were introduced at a Hanoi press conference on February 19, 1972, see Document Index No. 36, Hall 328-329, and again for photographs of POWs introduced at a June 29, 1972 press conference in Hanoi. Id. No. 51, Hall 342-343.

## CONCLUSION

For the reasons set forth above, this Court should grant summary judgment to plaintiffs. Alternatively, the Court should deny defendant's motion for summary judgment, permit plaintiffs to engage in limited discovery, and examine a certain number of documents in camera.

Respectfully submitted,



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