

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROGER HALL, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 04-814 (RCL)
)	
CENTRAL INTELLIGENCE AGENCY,)	
)	
Defendant.)	
_____)	

PLAINTIFF ACCURACY IN MEDIA'S CROSS MOTION FOR ENTRY
OF SUMMARY JUDGMENT IN ITS FAVOR, AND OPPOSITION TO
DEFENDANT CIA'S MOTION FOR ENTRY OF SUMMARY JUDGMENT

COMES NOW plaintiff Accuracy in Media, Inc. ("AIM"), by counsel, and respectfully moves this Court, under Rule 56 of the Federal Rules of Civil Procedure, for entry of summary judgment in its favor, and in opposition to defendant CIA's motion for summary judgment. In support of this relief, plaintiff submits its attached memorandum, together with Plaintiffs' Statement of Facts, Plaintiffs' Response to Defendant's Statement of Facts, and the affidavits of Eugene B. McDaniel, James Sanders, Mark Sauter, and Bob Smith. AIM also joins co-plaintiffs Roger Hall and Studies Solutions Results, Inc., in support of their dispositive motions, including their prayers for leave to take discovery, for *in camera* inspections, and for appointment of a special master.

Captain Eugene B. McDaniel, U.S. Navy (Ret), was a former Vietnam POW for almost six years, author of "Scars & Stripes: The True Story of One Man's Courage in Facing Death as a Vietnam POW," and founder of the non-profit organization, the American Defense Institute. Investigative journalist James Dwight Sanders, coauthor of "The Men We Left Behind: Henry Kissinger, the Politics of Deceit and the Tragic Fate of POWs After the

Vietnam War," testified before the Senate Select Committee on POW/MIA Affairs, as an expert witness. Mark Sauter, author, investigator, and recognized expert on POW/MIA issues, co-authored four books, including "American Trophies: How American POWs Were Surrendered to North Korea, China, and Russia by Washington's Cynical Attitude." Bob Smith served as Vice Chairman of the Senate Select Committee on POW/MIA Affairs, from 1989 to 1993.

AIM also relies on the affidavits submitted by co-plaintiffs with their dispositive motion, those of plaintiff Roger Hall and Carol Hrdlicka, as well as the affidavits previously submitted in this matter, of Bill Hendon, John LeBoutillier, Larry J. O'Daniel, Lynn O'Shea, and Barry Allen Toll.

Carol Hrdlicka is the wife of David Hrdlicka, who was shot down over Laos in 1965, and was alive in captivity, at least into the early 1990s. Former Congressman Bill Hendon served on the U.S. House of Representatives POW/MIA Task Force, as consultant to the Pentagon on POW/MIA matters, as a full-time intelligence investigator assigned to the Senate Select Committee on POW/MIA Affairs, and co-authored, "An Enormous Crime, The Definitive Account of American POWs Abandoned in Southeast Asia." John LeBoutillier, former Congressman and member of the Foreign Affairs Committee's Special POW/MIA Task Force, authored the book, "Vietnam Now: A Case for Normalizing Relations with Hanoi," as well as numerous articles on the POW/MIA issue for such publications as *The New York Times* and *The Wall Street Journal*. Vietnam veteran Intelligence Officer Larry J. O'Daniel served in a counterinsurgency special operations program whose mission included liberation of American POWs, held a "military occupational specialty" as Military Historian, as well as an Electronic Warfare and Tactical Cover and Deception Officer.

Researcher Lynn O'Shea wrote "Abandoned in Place," the story of Operation Pocket Change, the planned rescue of POWs held in Laos. Barry Allen Toll participated in secret reconnaissance missions as a member of the elite covert operations branch of the American military in Vietnam, MACV-SOG.

Plaintiffs' affidavits contain numerous examples of operations, events and activities that surely generated relevant records that have not been provided or identified. The paucity of the CIA's production, as compared to the records clearly in its possession, is uncontroverted. This deficiency, along with the shortcomings evident in defendant's *Vaughn* indices, as well as the inadequacy of its search for responsive records, demonstrates that there is no genuine issue as to any material fact and plaintiffs are entitled to entry of summary judgment as a matter of law.

WHEREFORE, Plaintiff Accuracy in Media, Inc., respectfully prays that this Court:

- (1) Grant Plaintiffs' Motions for Summary Judgment;
- (2) Deny Defendant's Motion for Summary Judgment;
- (3) Permit Plaintiffs to engage in limited discovery;
- (4) Examine a certain number of documents *in camera*; and
- (5) Appoint a special master.

DATE: October 21, 2016.

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF ACCURACY
IN MEDIA'S CROSS MOTION FOR ENTRY OF SUMMARY JUDGMENT IN ITS FAVOR, AND
IN OPPOSITION TO DEFENDANT CIA'S MOTION FOR ENTRY OF SUMMARY JUDGMENT

AIM submits this memorandum in support of its Cross-motion for entry of Summary Judgment in its favor, and in opposition to the CIA's motion for entry of summary judgment. Additionally, AIM joins in the points in authorities submitted by co-plaintiffs Roger Hall and Studies Solutions Results, Inc., in support of their dispositive motions, and as well as co-plaintiffs' prayers for leave to take discovery, for *in camera* inspections, as well as for appointment of a special master.

Background on the Request

History reveals Communist policy of holding American soldiers captive in the aftermath of war. Such was the case in World Wars I and II, and the Korean War.¹

¹ See Affidavit of James Sanders ("*Sanders Aff.*") ¶ 4 quoting 1991 Senate Foreign Staff Report, "An Examination of U. S. Policy Toward POW/MIAs":

Moreover, the Vietnamese, as Communists, have had the additional benefit of the experience of other Communist regimes in dealing with the United States and European powers. Therefore, it is not surprising to learn that the problems which the United States has had in dealing with prisoners of war and the missing in action are not the result of chance, but of historic Communist policy. Indeed, history reveals that policy. In the years after

In 1967, American troop strength in Vietnam had reached 500,000. Protests, peace marches, demonstrations, and acts of civil disobedience were escalating, as many Americans questioned whether the U.S. war effort could succeed, or was morally justifiable.

The following year, the United States and Hanoi entered into preliminary peace talks, in Paris. However, the talks stalled, for three-and-a-half years. The Paris Peace Accords were finally signed on January 27, 1973, on the heels of President Nixon's so-called "Christmas bombing"—a 12-day campaign of nearly 2,000 sorties, dropping 35,000 tons of bombs, the most concentrated bombing in world history.

At the peace talks, reparation "negotiations had been extensive, and detailed. A list of specific items was drawn up for the first year of U.S. aid. Among some of the items on the list were... 200,000 metric tons of steel building supplies... between 2,650 and 2,900 tractors, bulldozers and excavators..."² Henry Kissinger had hand-carried a letter to the

World Wars I and II, the Soviet regime, and later their North Korean cohorts, held American soldiers and citizens captive in the aftermath of these wars.*** The fact is that Soviet and Asian Communist regimes view POW/MIAs, living or dead, not as a problem of humanitarian concern but as leverage for political bargaining, as an involuntary source of technical assistance, and as forced labor. There is, therefore, no compelling reason in Communist logic to return POWs, or their remains, so long as political and economic goals have not been met.

² See also *Sanders Aff.* ¶¶ 6-7 quoting 1991 Senate Foreign Staff Report, "An Examination of U. S. Policy Toward POW/MIAs":

In fact, U.S. reparations to North Vietnam were being discussed in Paris, France from April through June of 1973. The negotiations were extensive and detailed. A list of specific items was drawn up for the first year of U.S. aid. Among some of the items on the list: 700,000 square meters of prefabricated housing and warehouses; 200,000 metric tons of steel building supplies; 50,000 cubic meters of timber; 40 million meters of cloth; 2,000 metric tons of Rayon fibers; between 2,650 and 2,900 tractors, bulldozers and excavators..." Five days after the signing of the Paris Peace Accords,

North Vietnamese detailing the Administration's interpretation of Article 21 of the Paris Peace Accords, which pledged that the United States would "contribut[e] to postwar reconstruction... in the range of \$3.25 billion." The Vietnamese released 527 men, but continued its detention of over 600 more,³ held as collateral for the promised billions. "Dr. Kissinger's letter would not become public for another four years." *Sanders Aff.* ¶ 6.

Regrettably, President Nixon had announced to the country that "all of our American POWs are on the way home.... What President Nixon did not tell the American people and the families of the missing was that the American government had numerous classified

Kissinger hand-carried a letter, dated February 1, 1973 to the North Vietnamese Prime Minister which detailed the Administration's interpretation of Article 21 of the Paris Peace Accords, which pledged that the United States would "contribute to the healing the wounds of war and post-reconstruction of the Democratic Republic of Vietnam." The Committee reprinted that letter in the Report. The salient provision:

- 1) The Government of the United States of America will contribute to postwar reconstruction in North Vietnam without any political conditions.
- 2) Preliminary United States studies indicate that the appropriate programs for the United States contribution to postwar reconstruction will fall in the range of \$3.25 billion of grant aid over five years.

³ Affidavit of Senator Bob Smith ("*Smith Aff.*") ¶¶ 10, 14, 17-18: "One of the most intriguing documents on the issue is the one called the '1205 Document... [I]n September of 1972... the Deputy Chief of the General Staff of the Vietnam People's Army... told the Politburo members that North Vietnam was holding 1205 prisoners of war.... [A]ll other detailed statements in the 1205 were known to be true.... [A] high ranking former member of the KGB who told me point blank that the document is real, because the Soviets actually had the Vietnamese Politburo bugged and the words were a verbatim transcript.... The 1205 accurately recounts that the Socialist Republic of Vietnam held 1,205 men, just months before it released Vietnamese released only 527 of them."

documents and human intelligence that men were, in fact, still alive in Southeast Asia."

Smith Aff. ¶¶ 2-3. Of the 50 or so POWs known to be held in Laos,⁴ only nine were repatriated. The Laotians themselves admitted that they were holding American POWs.⁵

In response, "Chairman of the Joint Chiefs of Staff Admiral Thomas Moorer... order[ed] Saigon command to 'halt the withdrawal from Vietnam immediately,' pending the resolution of the Laos POW/MIA situation.... Roger Shields, Chief of the DOD's POW/MIA Office, protested to Acting Secretary of Defense William Clements' plan to declare that "[t]he rest are dead," whereupon Shields thought he would be fired. Affidavit of Barry Allan Toll ("*Toll Aff.*") Docket 83-1, pp. 9-10.

When it appeared that Congress would not authorize Nixon to pay reparations, Secretary of State William P. Rogers threatened to seek payment via executive order, and "three times called for restraint by members of Congress in making adverse comments on

⁴ See Affidavit of Carol Hrdlicka ("*Hrdlicka Aff.*") ¶¶ 37, 46: "There are numerous intelligence reports showing live POWs all over Laos after Homecoming 1973. Before operation homecoming, in 1971, there were at least 50 POWs in Laos. See, e.g., Exhibit 38, *Intelligence Report* of 50 to 100 POWs in Laos, at Bates 107-09:

DIA is collaborating closely where appropriate with CIA in regard to the current situation in Laos... At present there are proximately 350 US military and civilians listed as missing in action in Laos. Of this total, approximately 215 were lost under such circumstances that the Patriotic Laotian Front (PLP) probably has information regarding their fate...

See also Toll Aff. Docket 83-1, p. 7: "We fully expected approximately 300 to 350 Americans to be released from Laos alone, out of a true figure of 600 men missing there. We also expected between 1,050 and 1,200 American POWs to come home."

⁵ See *Hrdlicka Aff.* ¶ 48: "Lao officials admitted that there were "that some tens of prisoners were held" by Pathet Lao. See, e.g., Exhibit 51, an undated *Working Papers of Dr. Kissinger*..."

the aid issue, at least until American troops are out of Vietnam and all American prisoners are released."⁶

"The final death-knell for the payment of reparations to North Vietnam occurred a week later when Armed Services Chairman F. Edward Hebert... served notice he will introduce a proposal to prohibit any U.S. aid for Hanoi.... It was the very next day... that the United States made its definitive statement that there were no more Americans alive in Southeast Asia and that 'rumors' did the families a disservice."⁷ From that point, and going forward to the present day, the government is loath to admit its extreme misconduct. And there are other motives, endemic to the bureaucracy,⁸ to continue to falsely declare that the

⁶ *Sanders Aff.* ¶ 10, quoting 1991 Senate Foreign Staff Report, "An Examination of U. S. Policy Toward POW/MIAs."

⁷ *Id.*

⁸ *See, e.g., Sanders Aff.* ¶ 11, quoting 1991 Senate Foreign Staff Report, "An Examination of U.S. Policy Toward POW/MIAs: "Off the record, this priority vanishes. Instead, other considerations emerge: Grand visions of a foreign policy of peace and reconciliation; desire for a new economic order of trade and investment; ideological imperatives to downplay the hostility of antagonistic systems; and the natural tendency of the bureaucracy to eliminate its workload by filing cases marked 'closed' instead of finding the people."

See also Hrdlicka Aff. ¶ 33: "When men were put in an MIA status, as opposed to POW, it made easier for the government to declare those men KIA, at the end of the war. In Admiral Moorer's 1992 Senate Select Committee Deposition, he states, 'God help us if a man is put in a POW status.' Exhibit 37 at Bates 105-06 is the 1992 *Testimony of Chairman Joint Chiefs Thomas Moorer* regarding the problems to the government resulting from categorizing Americans as POWs."

And see Affidavit of Congressman Bill Hendon ("*Hendon Aff.*") Docket 116-42 ¶ 62, quoting talk by Assistant Secretary of Defense: "If future Americans become convinced their country won't stand behind them when the chips are down, then they won't stand on the front lines for their country."

POWs are dead.⁹

But the government's private posture was quite different. Cross-border, covert operational teams "routinely were inserted in attempts to locate survivors, retrieve bodies of SOG members, or quickly exploit opportunity to liberate them from their recent capture by the enemy."¹⁰ After Operation Homecoming, SOG (Studies and Observations Group), did not cease its activities.¹¹ "Overtly, [the government] search[ed] for remains of Americans

⁹ See *Hrdlicka Aff.* ¶ 62: "The government has insisted, for over 20 years now, that David is dead. According to the government, David died in 1966. Next, it claimed that he died in 1967. Lastly, according to the government, David died in 1968. It finally settled on 1968 as the date it 'believes' that David died. The press conference that displayed David was held in 1969. The government has no evidence that David is dead." "Rather, there have been live sighting reports that show him to be alive in the early 1990s." *Id.* ¶ 63.

¹⁰ *Toll Aff.* Docket 83-1, p. 3: "These highly trained mercenaries were provided to us from joint CIA and MACVSOG commando schools, and were composed of various Montagnard tribal groups, Chinese Nungs or Vietnamese. Our mission was to sneak amongst the enemy's base areas and gather covertly gather strategic intelligence, often in Cambodia and Laos. *** Upon disappearance of one or more, or all members of a team in Laos or Cambodia, codename "Brightlight" teams, standing by in Vietnam, routinely were inserted in attempts to locate survivors, retrieve bodies of SOG members, or quickly exploit opportunity to liberate them from their recent capture by the enemy. *** Bull Simon would later lead the SOG-80 attempt to rescue American POWs in North Vietnam, at Son Tay.... cross-border forays, which in those years, averaged seven to eight hundred yearly, on the ground alone."

¹¹ See, e.g., *Hrdlicka Aff.* ¶ 67: "The CIA's intelligence gathering regarding POWs in Laos was ongoing. See June 1973 *Joint Chief Memorandum re CIA's Intelligence* on POWs in Laos, Exhibit 47 at Bates 141-47, with the subject, 'US prisoners of war in Laos.' It states: ...CIA continue to conduct an active program to acquire intelligence relative to the status of US MIA personnel. ... CNO indicated that CIA is pursuing a priority effort to determine what happened to US POWs in Laos and suggested a brief... DIA and J-3 (DOCSA) discussions with CIA points of contact and records of DOCSA a monitoring of Laos activities indicate that CIA has had, and currently conducts, an active program to acquire intelligence related to the status of POW/MIA personnel. It is carried out by assets, and winds in the organizational structure of CIA station in Laos..."

missing, or last known held prisoner there, while covertly, standing ready to affect their rescue¹² in the known, second-tier POW camp system operating in Northern Cambodia and Laos, that [had been] extensively detailed, photographed, and ground reconnaissanced throughout the war era." *Toll Aff.* Docket 83-1, p. 6.

The government had "vast studies of these camps in Laos, derived from SOG operations, Imagery Intelligence (IMINT, satellite, low and high altitude aircraft), and much agent reporting from... operations and CIA operatives reporting on the Americans held in these camps in Laos." Particularly illuminating was the "unreleased SOG archives and the satellite imagery showing secret authenticator symbols for dozens of missing men, since 1975 to late 1992,"¹³ some of which are "newly emerged intelligence documents... since the Senate Select Committee closed up shop in January, 1993." *Id.* at 13. One such camp was Nhom Marrott, Laos.¹⁴

¹² See *Hrdlicka Aff.* ¶ 20: "On July 29, 1992, I again requested specific information on a rescue attempt code-named 'Duck Soup.' ... It was a CIA run operation. General Secord testified before the Senate Select Committee Hearings to attempts to rescue David, and that there was a 'raft of cables' in the CIA on the rescue attempts."

¹³ See *Hrdlicka Aff.* ¶ 19: "In 1992, I then called Lorenzo Burroughs, a government satellite imagery expert, about this imagery. I asked him whether any authenticator codes were picked up with it. He responded that there were around ten."

See also *Hendon Aff.*, Docket 95-45 ¶ 21: "During the closed briefings... Dussault explained to the senators what the CIA personnel had said about the June 5, 1992, SEREX imagery.... and then stunned those present by declaring that, while recently reviewing 1988 imagery of Laos, he and his associates had discovered nineteen four-digit numbers that matched the four-digit authenticators of known MIAs..."

¹⁴ See Affidavit of Lynn O'Shea ("*O'Shea Aff.*") Docket 182-6 ¶¶ 1, 3, 5: "The Central Intelligence Agency (CIA) holds never released documents relating to... at least one camp believed to hold these servicemen... [In] 1981, the CIA gathered intelligence, including human intelligence reporting, and imagery of a prison camp located in... Laos [where] 18-30 American Prisoner of War were held... from September 1980-

While government efforts to free the POWs was clandestine, Vietnam War activists, veterans groups, and family members, have openly pressed on several fronts. They have embarked on a wide range of public-awareness campaigns, including rallies, marches, educational forums, newsletters and newspapers, television and radio programs, ceremonies, sale of memorabilia, creation of memorials and parks, and civil disobedience.¹⁵ They have sponsored legislative initiatives,¹⁶ prodded the government to act, and

May 1981 and perhaps beyond.... [T]he CIA dispatched a least one reconnaissance team to the camp location to photograph the inmates and gather intelligence. The CIA continues to withhold information on the preparation for the mission, team progress reports, photographs taken at the camp and the debriefing of reconnaissance team members... 'The CIA can neither confirm or deny'... [Attached is] a document confirming CIA holds at minimum 20 documents relating to their effort to confirm the presence of American POWs at the Nhom Marrott camp."

¹⁵ See Affidavit of Captain Eugene B. McDaniel, U.S. Navy (Ret) ("*McDaniel Aff.*") ¶¶ 9, 10, 15: "In 1986, four years after retiring from the U.S. Navy, I began to speak out publicly about our missing men. Almost immediately, the power brokers on the POW issue began to attempt to attack my character.... It was not long after I began to 'speak out' in 1986 that I received a late-night phone call from a National Security Council official confirming that we did indeed still have living American POWs in Southeast Asia. I was admonished to 'be patient' and advised that we would have them home 'in two or three years, plus.'... I continued to pursue getting the truth out about the POW/MIA issue for many years through the non-profit organization I founded in 1983, the American Defense Institute (ADI)... instrumental in helping to get a Senate Select Committee on POW/MIA Affairs established in 1991."

See also, e.g., Betrayal: Left Behind, Prisoners of War and Military Veterans, 2016, by Jerry Kiley, narrating 30-year fight to gain freedom for US prisoners of the Vietnam War still in captivity for decades after war's end.

¹⁶ *See, e.g., Hrdlicka Aff.* ¶¶ 65-66: "In 1996, the POW/MIA families tried to remedy the government's unjustified declarations of death, by amending the Missing Personnel Act, which had not been updated since 1942. The families worked for 6 months, at our own expense, to get this legislation passed and into law. There were provisions in this legislation that would have required evidence of death before the government could declare a person dead.... Another provision would have penalized anyone for lying to service family members about their loved ones. Later, our amendments were repealed, at the behest of Senator John McCain..."

demanded investigations into the government's misconduct. And they have supported various reconnaissance and rescue operations, a few of which have been publicized. The decades-long non-governmental quest for repatriation is known as "Operation Homecoming II."

The breadth of the intelligence gathered on POWs after the end of the war, from 1975 through 1992, is staggering. The government had *over 1,400* first-hand live-sighting reports, and *several thousand* second hand reports, of Americans being held captive throughout Vietnam and Laos.¹⁷ Many are from the 1980s and early 1990s. Almost all live sighting reports were funneled through CIA Station Chiefs in both Laos and Cambodia.

This lawsuit seeks disclosure of records of human intelligence, audio intercepts, and satellite and photographic imagery, analysis, correspondence, and testimony, along with other associated documentation.¹⁸

¹⁷ *Sanders Aff.* ¶ 13, quoting 1991 Senate Foreign Staff Report, An Examination of U.S. Policy Toward POW/MIAs:

The original plan of the Minority Staff was to review the U.S. government's handling and evaluation of "live-sighting" reports. These reports are first-hand narratives by witnesses who believe that they have seen American military personnel alive in various locations in Southeast Asia. *** For Vietnam, the U.S. Government has at least 1,400 such reports, including reports that have been received up until the publication of this report in May, 1991. In addition, the U.S. Government has received thousands and thousands of second-hand reports--accounts often full of vivid detail...

¹⁸ See FOIA Requests Docket 114-1 at 3-5:

1. 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.
2. POW/MIAs sent out of Southeast Asia (for example, to China, Cuba, North Korea, or Russia).
3. Prepared by and/or assembled by the CIA between January 1, 1960, and

I. DEFENDANT'S SEARCH IS INADEQUATE

A. The CIA Must Search its Operational Files

From the time it was signed into law on October 15, 1984, until April 21, 2005, the effective date of its amendment by the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458), the Central Intelligence Agency Information Act, 50 U.S.C. 431 ("Act"), authorized the Director of Central Intelligence (DCI) to exempt CIA operational files from the search, review, publication, and disclosure provisions of the Freedom of Information Act (FOIA). The Act defines operational files as:

- (1) files of the Directorate of Operations which document the conduct of foreign intelligence or counterintelligence operations or intelligence or security liaison arrangements or information exchanges with foreign governments or their intelligence or security services;
- (2) files of the Directorate for Science and Technology which document the means by which foreign intelligence or counterintelligence is collected through scientific and technical systems; and

December 31, 2002, relating to the status of any United States POWs or MIAs in Laos, including but not limited to any reports, memoranda, letters, notes or other documents prepared by Mr. Horgan or any other officer, agent or employee of the CIA for the Joint Chiefs of Staff, the President, or any federal agency.

4. Records of the Senate Select Committee on POW/MIA Affairs which were withdrawn from the collection at the National Archives and returned to the CIA for processing.
5. Records relating to 44 individuals who allegedly are Vietnam era POW/MIAs, and whose next-of-kin have provided privacy waivers to Roger Hall, attachment 1, and records relating to those persons who are named on attachment 2, the Prisoner of War/Missing Personnel Office's list of persons whose primary next-of-kin (PNOK) have authorized the release of information concerning them.
6. All records on or pertaining to any search conducted for documents responsive to Roger Hall's requests...
7. All records on or pertaining to any search conducted regarding any other requests for records pertaining to Vietnam War POW/MIAs...
8. All records of whatever nature pertaining to the estimates of fees...

- (3) files of the Office of Personnel Security which document investigations conducted to determine the suitability of potential foreign intelligence or counterintelligence sources; except that files which are the sole repository of disseminated intelligence are not operational files.

Id.

In its Renewed Motion for Summary Judgment, defendant perfunctorily states, at p. 3, that it "did not search operational files which are exempt from search and review pursuant to the CIA Information Act of 1984, 50 U.S.C. § 431(a)." In its Statement of Material Facts Not in Genuine Dispute, the CIA claims, at ¶¶ 8 and 9, that "[t]he Agency has determined that CADRE and archived records are the only systems likely to contain responsive records," and that its "broad searches yielded approximately 16,500 hits... [but it] did not search operational files which are exempt from search and review..."

Absent from its dispositive motion is any statement that it conducted a "decennial review" of these files, as required. Under the Act, not less than once every 10 years, the DCI must review the exemptions then in force to determine whether such exemptions could be removed from any category of exempted files or any portion of those files. The Act specifically requires that the DCI's decennial review include consideration of the historical value or other public interest in the subject matter of the particular category of files or portions thereof and the potential for declassifying a significant part of the information contained therein. Federal courts are authorized to review whether CIA has, in fact, performed the decennial review and, in doing so, considered these criteria. Here, the information concerns events which have both been the subject of official congressional investigations and extensive news, book, and film publicity, for decades. Thus, the subject records are of historical value and widespread public interest, and the CIA must search its operational files.

Additionally, on July 22, 1992, President Bush issued Executive Order 12812, requiring that all government agencies declassify and publicly release, to the extent that it would not compromise U.S. national security, all documents, files and other materials pertaining to POWs and MIAs. In 1993, President Clinton reiterated that order in Presidential Decision Directive NSC 8, requiring that all agencies complete their review by 11 November 1993—Veterans' Day. CIA Director James Woolsey agrees that Executive Order 12812, as well as Presidential Decision Directive NSC 8, includes disclosure of operational files, as reflected in his November 9, 1993 letter to President Clinton:

As directed by Presidential Decision Directive NSC/8, "Declassification of POW/MIA Records," I am reporting on the completion of the CIA's review, declassification and release of all relevant documents files pertaining to American POWs and MIAs missing in Southeast Asia in accordance with Executive Order 12812... Our review included a thorough, exhaustive search of operational files, finished intelligence reports, memoranda, background studies, and open source files.... We will continue to be responsive to this issue through our active participation on the POW MIA intelligence review panel and in handling future FOIA requests.

Exhibit 1 to Affidavit of Roger Hall ("*Hall Aff.*")

B. Inadequacy of Search, Paucity of Responsive Records

Notwithstanding the fundamental question being not "whether there might exist any other documents responsive to the request, but rather whether the search for those documents was adequate," *Steinberg v. Dep't of Justice*, 23 F.3d 548, 551 (D.C. Cir. 1994) the absence of identification and production of responsive records is so wide-ranging as to be highly probative of the inadequacy of the government's search.

Although the CIA was joined by the DOD in tracking POWs in Southeast Asia—both before and after Operation Homecoming—the CIA played a major, if not the dominant, role in those efforts. "Asked who was the dominant collector of information in Laos, the CIA or

the Department of Defense (DOD), [Major General Richard] Secord replied, 'CIA, clearly, because of the resources they had on the ground.' Asked who had the best information, the Defense Intelligence Agency or the CIA, Secord replied:

The 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 air 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.

Hall Aff. ¶ 119, quoting Exhibit 8 at Bates 32.

"CIA station chiefs testified before the Senate Committee that the CIA had primary responsibility for interviewing all human sources of such intelligence, including refugees during this period. See Exhibit 26, October 1991 Select Committee Deposition COS, Vientiane (1970-1973) Bates 111-19." *Hall Aff.* ¶ 151. The CIA has not stated that it searched any systems that contain records of overseas field stations. Yet, it opposes even limited discovery regarding its search.

"[A]ll live sighting reports that came into the [US] embassy [in Laos] went directly to the CIA Station Chief." *LeBoutillier Aff.* Docket 83-15 ¶ 12. "Witnesses before the Select Committee testified repeatedly to the involvement of CIA field stations in Vietnam, Laos, Cambodia, and Thailand, in the gathering of information about POW/MIAs." *Hall Aff.* ¶ 122. "The government had over 1,400 first-hand live-sighting reports, and several thousand second hand reports, of Americans being held captive throughout Vietnam and Laos" (*Sanders Aff.* ¶ 13), and "investigators on the Senate Select Committee found literally thousands of live-sighting reports over the years from the end of the war into the 1990s." *Smith Aff.* ¶ 9. These accounts of live sighting occasioned an initial interview, and an interview report, accompanied, presumably, by hand-written notes. Of the several

thousand raw initial interview reports, the CIA has produced exactly *zero*. It has produced a few hundred summaries—a far cry from the *thousands* available to the Senate Select Committee looking into the matter.

Those who have seen the records furnished Congress would appear to agree that defendant's search was inadequate. Former Congressman John LeBoutillier has "personal knowledge of several POW-related incidents where the CIA has had documents that have not been publicly acknowledged or released." *LeBoutillier Aff.* Docket 83-15 ¶ 7. Former Congressman Billy Hendon has "personal knowledge of several incidents where the CIA has had intelligence on living POWs that has not been publicly acknowledged and/or released." *Hendon Aff.* Docket 95-45 ¶ 4. Senator Smith has "personally have seen hundreds of classified documents that could and should be released as they pose no national security risk.... I can state without any equivocation that they are still holding documents that should be declassified." *Smith Aff.* ¶¶ 8, 20.

The CIA has provided no information on the Military Assistance Command, Vietnam – Studies and Observations Group ("MACV-SOG" or "MACSOG"), which was a highly classified, multi-service United States Special Operations unit that conducted reconnaissance missions in the Vietnam, the Laos, and Cambodia, as Hall observes:

Exhibit 39, Bates 240-241, is an undated table of contents for a Draft MACSOG Documentation Study (Military Assistance Command Studies and Observation Group), which describes the cooperation between the Department of Defense ("DOD") and the Central Intelligence Agency ("CIA") with respect to covert operations in Vietnam and Laos prior to 1964. It memorializes arrangement for the CIA and MACSOG to work together on POW matters, and demonstrates that MACSOG tracked live POWs. In addition to confirming a connection between SOG and the CIA... The CIA produced only one document, dating to 1971, that refers in any way to SACSA. I have not been provided any other records referring to SACSA or MACSOG, notwithstanding that Section 3 of Part II the study is titled, "DOD

Support of CIA (Covert/PW Operations)" (*id.* at Bates 190), and Section 5 is titled, "The CIA Program." *Id.*

Hall Aff. ¶ 5.

Another telling deficiency is the CIA's claim to have searched "all systems that are likely to produce responsive records" for the 1,711 names on the Primary Next-of-Kin list, but produced records on only 11 of those 1,711 names. Hall's dispositive pleading aptly characterizes this fact as "stunning."

Plaintiffs' affidavits contain numerous examples of operations, events and activities that surely generated relevant records that have not been provided or otherwise identified. The paucity of the CIA's production, compared to the records clearly in its possession, is uncontroverted. Plaintiffs have pointed to a number of specific documents which are reasonably thought to be responsive records—in Hall's extensive affidavit—but which remain unidentified.

The CIA reports that it searched CADRE and the Office of Congressional Affairs and the Office of the Director of the CIA using the search terms "Missing in Action", "MIA", "Missing", "POW/MIA", "POW-MIA", "Prisoner(s) of War," "POW", "Prisoners", "War", "Vietnam War," and "Vietnam." Shiner Decl. ¶ 26. But the Agency is well aware that other search terms are appropriate. For example, it could search using the names of facilities known to house American POWs,¹⁹ including Nhom Marrott—the subject of Lynn O'Shea's

¹⁹ *E.g.*, Tran Phu prison in Haiphong, North Vietnam (*see* Plaintiffs' Statement of Material Facts ¶¶ 29, 39), or Dong Vai (Dong Mang) prison (*id.*), or the camp in Sam Neua Laos (*id.* ¶¶ 50,103), or Tan Lap Prison, Vinh Phu Province, North Vietnam (*id.* ¶ 92), or facilities in the towns of Mahaxy, Pha Kateom, Laos (*id.* ¶ 114), or in Son Tay, Vietnam (*id.* ¶ 119).

book, "Abandoned in Place,"²⁰ or the code names of known operations of rescue reconnaissance,²¹ for which it has provided *no* responsive records. Nor has the CIA provided any records of POWs transferred to Russia, North Korea, or China.²²

²⁰ Plaintiffs' Statement of Material Facts ¶ 71:

The Central Intelligence Agency (CIA) holds never released documents relating to American servicemen Prisoners of War and Missing in Action in Southeast Asia, and at least one camp believed to hold these servicemen after March 1973. During the period March 1979- June 1981, the CIA gathered intelligence, including human intelligence reporting, and imagery of a prison camp located in the Nhom Marrott District of Khammouane Province Laos. According to intelligence reports approximately 18- 30 American Prisoner of War were held at this camp from September 1980-May 1981 and perhaps beyond. Between January and May 1981 the CIA dispatched a least one reconnaissance team to the camp location to photograph the inmates and gather intelligence. The CIA continues to withhold information on the preparation for the mission, team progress reports, photographs taken at the camp and the debriefing of reconnaissance team members. *O'Shea Aff.* Docket 182-6 ¶¶ 1-2.

²¹ *E.g.*, code names Duck Soup (*id.* ¶ 57), Operation Thunderhead (*id.* ¶ 62), Operation Blackbeard, Oak, Nantucket, Vesuvius One, Sunstune Park, Gunboat, Bright Light, Project Alpha, Operation Pocket Change, Project Corona (*id.* ¶ 115).

²² *See e.g.*, plaintiffs' Statement of Material Fact ¶¶ 154-158:

After his May 19, 1967, shoot down and capture, James Kelly Patterson, "an expert in the use of his aircraft's state-of-the-art electronics system being used to defeat Vietnam's Russian-made missile defense system" was shipped to a closed Russian military region dedicated to missile research and testing. *McDaniel Aff.* ¶ 12.

"Exhibit 99 is a CIA Report to the White House Situation Room regarding alleged location of live American POWs in Luang Prabang province Laos mid-1985, 1986, at Bates 303. It relates: 'There had been 12 American POWs at the site but in 1985 five of the Americans POWs were moved to the Soviet Union....' The CIA has not provided any... information regarding the POWs mentioned in this document." *Hall Aff.* ¶ 88.

"Exhibit 43, Bates 206, is a March 12, 1982, Foreign Intelligence Information Report from the CIA's Domestic Collection Division, claiming Soviet

Additionally, plaintiffs' affidavits include proof that the Director of Operations maintained files "detailing our certain knowledge of the second tier prison system in Laos, and the numbers of American POWs being held there," and that these files may have thereafter been relocated to the "Executive Registry Files of CIA."²³ But the Agency declined to search those records.

incarceration of U.S. Vietnam era POWs.... I have not received any records regarding this from the CIA." *Hall Aff.* ¶ 38.

"Exhibit 44 is a March 9, 1988 CIA Memorandum regarding "alleged Sightings of American POWs in North Korea from 1975 to 1982." It refers to three reports. One is of "two Americans [observed] in August 1986," and the other is regarding "about 10 military pilots captured in North Vietnam [that] were brought to North Korea." The third report concerns a sighting of 11 "Caucasians," in 1988. The CIA has produced no records regarding any POWs brought to Korea during the Vietnam War." *Hall Aff.* ¶ 99.

"Exhibit 38(h), at Bates 189, is a June 1992 Memo to Select Committee re 'President's Daily [CIA] Intel Briefings,' seeking copies of those briefings 'given to the President regarding the possibility of POWs being transferred to the East Bloc after Homecoming.' The author has 'a source who claims to have seen them.' The memo said the CIA had responded that they "are not available to anyone." The CIA has provided few President's Daily Intel Briefings. The CIA should produce all such briefings that address the POW issue. *Hall Aff.* ¶ 121.

²³ Plaintiffs' Statement of Material Fact ¶¶ 163-65:

At a meeting in the White House in 1993, "George [Carver] proffered CIA documents he'd authored, as late as 1975, going to the Director himself, about Americans still held captive in Indochina in the hundreds. I [Toll] provided CIA documents going to the Director himself, in 1967 and 1969, detailing our certain knowledge of the second tier prison system in Laos, and the numbers of American POWs being held there at the time. Their exact coordinates were noted." *Toll Aff.* Docket 83-1 at p. 12.

At a meeting in the White House in 1993 Toll asked Carver "'all of those intelligence materials and product flowed directly to you in the Nixon White

II. THE CIA HAS FAILED TO MEET ITS BURDEN OF PROOF TO SHOW THAT ITS EXEMPTION 5 CLAIMS ARE VALID

A. Legal Standards

(1) Deliberative Process Privilege

Under the FOIA Improvement Act of 2016, Exemption 5 of the FOIA is amended to provide that "the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested." Exemption 5, 5 U.S.C. § 552(b) (5), provides that the FOIA does not apply to matters that are:

(5) inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested;

Exemption 5 was intended to incorporate the government's common law privilege from discovery in litigation. H.R. Rep. No. 1497, 89th Cong., 2d Sess. 10 (1966); S. Rep. No. 813, 89th Cong., 1st Sess. 29 (1966); S. Rep. No. 1219, 88th Cong., 2d Sess. 607, 13-14 (1964). However, the Supreme Court has cautioned that discovery rules be applied to FOIA cases only "by way of rough analogies." *EPA v. Mink*, 410 U.S. 73, 86 (1973). The CIA invokes 5's privilege for the deliberative process.

House, did they not?' and George said 'Yes,'" again. *Toll Aff.* Docket 83-1 at p. 12.

Regarding records referenced in the foregoing paragraph, "George [Carver] said, 'I sent them back to Langley for storage, through the DO,' meaning the Directorate for Operations in the CIA. 'That was the arrangement I had,' he continued, 'usually by courier.'" *Toll Aff.* Docket 83-1 at p. 18.

Carver stated that [i]f they moved them out of Operations, historically, they would probably be moved to the Director's files... to the Executive Registry Files of CIA..." *Toll Aff.* Docket 83-1 at p. 18.

The ultimate burden which an agency must carry under this privilege is to show that the document is so candid or personal in nature that public disclosure is likely in the future to stifle honest and frank communications within the agency. *Coastal States Gas Corp. v. Department of Energy*, 617 F. 2d 854, 866 (D.C. Cir. 1980). Congress intended to confine Exemption 5 "as narrowly as [is] consistent with efficient Government operation." *Id.* at 868, quoting S. Rep. No. 813, 89th Cong., 1st Sess. at 9 (1965). The agency must show "by specific and detailed proof that disclosure would defeat, rather than further, the purposes of the FOIA." *Senate of Puerto Rico v. U.S. Dept. of Justice*, 823 F.2d 574, 585 (D.C. Cir. 1987), quoting *Mead Data Central, Inc. v. Dep't of the Air Force*, 566 F. 2d 242, 258 (D.C. Cir. 1977). The possibility that disclosure will be "likely in the future to stifle honest and frank communications within the agency" depends on the identities of the author and recipient of the communication being disclosed. Here, such damage cannot occur because the identities of the author and recipient of these communications can be deleted. *See Boch v. C.I.A.*, 593 F. Supp. 675, 689 (D.D.C. 1984) ("given the anonymity of [blind memorandum], [the CIA] has failed to show by specific and detailed proof that disclosure of this document would defeat rather than further the purposes of FOIA").

An agency invoking Exemption 5's deliberative process privilege bears the burden of demonstrating that the material at issue is predecisional and deliberative. *Schlefer v. United States*, 702 F. 2d 233,237 (D.C. Cir. 1983); *Paisley v. C.I.A.*, 712 F. 2d 687, 698 (D.C. Cir. 1983) ("The agency bears the burden of establishing the character of the decision, the deliberative process involved, and the role played by the documents in the course of that process.").

In order to uphold an Exemption 5 claim on grounds that the document is predecisional, "a court must be able 'to pinpoint an agency decision or policy to which the document contributed.'" *Senate of Puerto Rico*, 823 F.2d at 585, quoting *Paisley v. CIA*, 712 F.2d 686, 698 (D.C. Cir. 1983), vacated in part on other grounds, 24 F.2d 201 (D.C. Cir. 1984). If there is no definable decision-making process that results in a final agency decision, then the documents are not predecisional." *Paisley v. C.I.A.*, 712 P. 2d 686, 698 (D.C. Cir. 1983), citing *Vaughn v. Rosen*, 523 P.2d 1136, 1146 (D.C. Cir. 1975). Moreover, "[p]redecisional communications 'are not exempt merely because they are predecisional; they must also be part of the agency give-and-take by which the decision itself is made.'" *Senate of Puerto Rico*, 823 P. 2d at 585, quoting *Vaughn v. Rosen*, 523 P.2d at 1144. Finally, where an agency in making a final decision "chooses expressly to adopt or incorporate by reference" a predecisional recommendation, that document loses its protection under Exemption 5. *NLRB v. Sears, supra*, 421 U.S. at 161. This principle applies to a wide range of agency recommendations, and to "formal or informal adoption." *Coastal States, supra*, 617 P. 2d at 866.

(2) Extreme Government Wrongdoing Vitiates Privilege

Agency bad faith in the litigation is relevant because it undermines the credibility of the agency's statements in its affidavits. *Allen v. CIA*, 636 F.2d 1287 (D.C.Cir. 1980). The same result is warranted where the agency engaged in bad faith in the activities that generated the records at issue. "[W]here it becomes apparent that the subject matter of a request involves activities which, if disclosed, would publicly embarrass the agency or that a so-called 'cover up' is presented, government affidavits lose credibility." *Rugiero v. U.S. Dept. of Justice*, 257 F.3d 534 (6th Cir. 2001).

Additionally, government misconduct vitiates the deliberative process privilege, mandating disclosure of what otherwise may be exempt deliberative materials. *See Tri-State Hosp. Supply Corp. v. U.S.*, 226 F.R.D. 118, D.D.C., 2005:

The deliberative process privilege yields, however, when government misconduct is the focus of the lawsuit. In such instances, the government may not use the deliberative process privilege to shield its communications from disclosure. Thus, "if either the Constitution or a statute makes the nature of governmental officials' deliberations *the* issue, the privilege is a nonsequitur." *In re Subpoena Duces Tecum Served on Office of the Comptroller of Currency*, 145 F.3d 1422, 1424 (D.C.Cir.1998) (citations omitted). Simply put, when there is reason to believe that government misconduct has occurred, the deliberative process privilege disappears. *Id.*; *In re Sealed Case*, 121 F.3d 729, 746 (D.C.Cir.1997). *See also In re Subpoena Served Upon Comptroller of Currency*, 967 F.2d 630, 634 (D.C.Cir.1992); *Alexander v. FBI*, 186 F.R.D. 170, 177 (D.D.C.1999) (citations omitted).

This Court discussed the application of this principle to the (b)(5) exemption in *ICM Registry, LLC v. U.S. Department of Commerce*, 538 F. Supp. 2d 130, 133 (D.D.C. 2008):

In this court, the deliberative process privilege has been disregarded in circumstances of extreme government wrongdoing. *See, e.g., Alexander v. FBI*, 186 F.R.D. 154, 164 (D.D.C. 1999) (no privilege where documents related to misuse of a government personnel file to discredit a witness in an ongoing investigation of Clinton administration); *Tax Reform Research Group v. Internal Revenue Service*, 419 F. Supp. 415, 426 (D.D.C. 1976) (no privilege where documents concerned recommendation to use the powers of the IRS in a discriminatory fashion against "enemies" of the Nixon administration).

The privilege does not apply where the plaintiff's allegations "place the deliberative process itself directly in issue." *Dominion Cogen D.C., Inc. v. District of Columbia*, 878 F.Supp. 258, 268 (D.D.C. 1995). In *Tax Reform Research Grp. v. IRS*, 419 F. Supp. 415 (D.D.C. 1976), the court refused to permit the government to invoke Exemption 5 and ordered the release of withheld documents where the documents at issue "simply cannot be construed as being part of any proper governmental process." *Id.* at 426. Similarly, in *Judicial Watch of Florida, Inc. v. U.S.*

Dep't of Justice, 102 F. Supp. 2d 6 (D.D.C. 2000), another court in this District recognized that the exception could be invoked in FOIA suits.

The court in *Nat'l Whistleblower Ctr. v. Dep't of Health & Human Servs.* (D.D.C., 2012) concluded, "[c]onsistent with these cases, the Court here finds that the government-misconduct exception may be invoked to overcome the deliberative-process privilege in a FOIA suit."

The party seeking release of withheld documents under this exception must "provide an adequate basis for believing that [the documents] would shed light upon government misconduct." *Judicial Watch of Florida, Inc.*, 102 F. Supp. 2d at 15; *see also ICM Registry*, 538 F. Supp. 2d at 133.

B. Argument

(1) Deliberative Process Claims

In this case, the deliberative process privilege under exemption (b)(5) was asserted for three released-in-part records, as reflected in the sample *Vaughn* index (entry numbers 26, 62, 79), and for 17 of the denied-in-full documents ("DIF") (entry numbers 1-2, 5-7, 9, 11-14, 20-21, 23, 25, 32, 34-35).

AIM's Extract of defendant's inventory of these records is submitted herewith as Exhibit A.

As Hall points out in his dispositive motion, of the 48 numbered items which comprise the DIF index, seven contain more than 10 pages: Item 6 (58 pages); Item 20 (16 pages); Item 21 (11 pages); Item 23 (15 pages); Item 29 (20 pages); Item 31 (18 pages); Item 36 (12 pages). The use of the date of the "package" conceals the dates of the 20 CIA documents and the date of the information they describe. Obviously, the Court and

plaintiffs cannot tell whether the deliberative process privilege is being asserted to records "created 25 years or more before the date on which the records were requested," as the use of the date of the "package" conceals the dates of the 20 CIA documents and the information in them.

The Agency bears the burden of demonstrating that withheld documents contain no reasonably segregable factual information, which it clearly has not done.

(2) Extreme Government Wrongdoing

Plaintiffs aver that the CIA is covering up its participation in knowingly leaving POWs in Southeast Asia post-1973 Operation Homecoming—its motive for withholding documents and information about American POWs abandoned in Vietnam. In support of their allegations, plaintiffs have proffered affidavits and testimony from indisputably qualified experts, as well as dozens of examples in the record of operations, events and activities which surely generated relevant CIA records that have not been identified, or provided.

Plaintiffs' allegations of serious misconduct are borne out in their Statement of Material Facts not in Genuine Dispute. In February of 1974, President Nixon announced to the country that "all of our American POWs are on the way home." However, Nixon knew that this was not true. In accordance with their "long-standing communist policy holding back POWs in furtherance of political and economic goals," the Vietnamese and Laotian governments held back approximately 600 POWs, as collateral for the approximately \$3.5 billion in war reparations that President Nixon had promised. The money never came, and the POWs never came home. *Id.* ¶¶ 4, 7, 10.

In the years that followed, the government declared that the POWs are dead, notwithstanding the government's receipt of "over 1,400 first-hand live-sighting reports, and several thousand second hand reports, of Americans being held captive throughout Vietnam and Laos" (*id.* ¶¶ 16-17), as well as *several dozen* secret military signals and codes and messages sent from desperate POWs. *Id.* ¶¶ 18, 27-31, 33, 35-39, 41, 50. Additionally, the government declined several offers to repatriate POWs for rewards (¶¶ 14, 51-56), and contemplated rescue missions (*id.* ¶¶ 57-65), even while repeatedly lying to family members that their loved ones were dead. *Id.* ¶ 76.

The CIA's long-standing policy is to withhold post Operation Homecoming POW records, such as satellite imagery and photographs, live sighting reports, radio intercepts, correspondence, communist broadcasts, analysis, studies, memoranda, briefings, and testimony. As Vice Chairman of the Senate Select Committee on POW/MIA Affairs wrote, he has "personally seen hundreds of classified documents that could and should be released as they pose no national security risk. What is really at risk are the reputations and careers of the intelligence officials who participated in and perpetrated this sorry chapter in American history." *Smith Aff.* ¶ 8. Aside from the affidavit of Vice Chairman of the Senate Select Committee Senator Smith, particularly forceful is the February of 1991 resignation letter of the Chief of the Special Office for Prisoners of War and Missing in Action, Colonel Millard Peck. That letter is summarized in the May 1991 U.S. Senate Committee on Foreign Relations Republican Staff Report, "An Examination of U. S. Policy Toward POW/MIAs:"

Colonel Peck confirms that a "cover-up" has been in progress. He speaks of a "mindset to debunk"-- that is, to discredit witnesses rather than to ascertain the truth of their statements. He says that there was no effort to pursue "live sightings." He states that "any soldier left in Vietnam, even inadvertently,

was, in fact, abandoned years ago." He also criticizes the U.S. government's treatment of the families and friends of the POW/MIAs.

These statements should be evaluated in the light of Colonel Peck's long career of faithful service in the U.S. Army, including three combat tours in Vietnam, for which he was awarded numerous medals of gallantry, including the nation's second-highest award, the Distinguished Service Cross. These are serious charges put forth by a man who knows their seriousness.

Moreover, he is one of the few who have intimate knowledge of the way the U.S. Government's POW/MIA policy operates.

Sanders Aff. ¶ 16.

Colonel Peck was so thoroughly disgusted with the matter that he ended his letter, "I further request that the Defense Intelligence Agency, which I have attempted to serve loyally and with honor, assist me in being retired immediately from active military service."

Hrdlicka Aff. Exhibit 42.²⁴

Here, it is quite "apparent that the subject matter of a request involves activities which, if disclosed, would publicly embarrass the agency or that a so-called 'cover up' is presented." *Rugiero, infra.*

Given the history of the matter, the reasonable inference is that the CIA was not deliberating how best to provide information to members of Congress in its internal memoranda,, withheld in full on deliberative process grounds (entry numbers 1-2, 5-7, 9, 12-14, 20-21, 23, 25, 31-32, 36), but, rather, was deliberating how to cover it up.

Here, the CIA's credibility is lacking. This affects the trustworthiness of its affidavits, works in favor of plaintiffs' prayer for *in camera* inspection, and, given the volume of its

²⁴ See also *Hrdlicka Aff.* Exhibit 50, *DIA Memoranda re Destruction of POW Records*, 1992; *Id.* ¶ 55, relating 24 complaints to the DOD Office of Inspector General, citing Exhibit 8, her "lawyer's list of *Criminal Violations committed by DOD and CIA*," including "Perjury Before the Senate Select Committee."

questionable redactions, would seem to evidence the advisability of the appointment of a special master.

Hall's dispositive motion thoroughly analyzes the shortcomings of defendant's assertions of under exemptions 1 and 3—5 U.S.C. § 552(b)(1) and 5 U.S.C. § 552(b)(3).

CONCLUSION

WHEREFORE, Plaintiff Accuracy in Media, Inc., respectfully prays that this Court:

- (1) Grant Plaintiffs' Motions for Summary Judgment;
- (2) Deny Defendant's Motion for Summary Judgment;
- (3) Permit Plaintiffs to engage in limited discovery;
- (4) Examine a certain number of documents *in camera*; and
- (5) Appoint a special master.

DATE: October 21, 2016.

Respectfully submitted,

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EXHIBIT A
CIA INVENTORY OF RECORDS DENIED IN FULL

Item No., CADRE #	Date, No. of pages	Exemption	Description of Document and Information Withheld
1 C59999025	08/02/00 4	(b)(3), (b)(5)	This document is composed of a one-page cover sheet and handwritten comments on a three page request for information by a member of Congress . The handwritten notes include a draft response to the request. Exemption (b)(3) (CIA Act) was invoked to protect identifying information of CIA personnel (names). The deliberative process privilege of Exemption (b)(5) was asserted to protect predecisional intra-agency analysis and recommendations on responding to the request.
2 C05999027	None 3	(b)(1), (b)(3), (b)(5)	This is a three-page draft internal memorandum describing a proposed response to a congressional request . The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence activities, sources, methods) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect identifying information of CIA personnel (names). The deliberative process privilege of Exemption (b)(5) was asserted to protect pre-decisional intra-agency analysis and recommendations included in the proposed response.
3 C05999550	05/02/03 5	(b)(1), (b)(3)	This five page document consists of a one page cover sheet, a one page print out from an action item tracker, a one page routing slip, and a two page memorandum for the record recounting a classified briefing provided by the CIA to a Senate staff member . The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence activities, sources, methods) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and

			methods. Exemption (b)(3) (CIA Act) was also invoked to protect identifying information of CIA personnel (names, signature, office location).
4 C06001231	None 4	(b)(1), (b)(3)	This four page document consists of three intelligence reports derived from human source reporting . The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence sources, methods) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods.
5 C06001238	09/23/92 3	(b)(1), (b)(3), (b)(5)	This document is comprised of a one-page routing sheet and a two-page internal memorandum discussing a proposed reply to a request for information from a congressional committee . The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence activities, sources, methods) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect identifying information of CIA personnel and offices. The deliberative process privilege of Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations on how to respond to the congressional request.
6 C06001241	10/06/92 58	(b)(1), (b)(3), (b)(5)	This fifty-eight page document is a package of twenty CIA documents requested by a congressional committee for review . The package also includes three memoranda discussing the documents, a draft proposed response to the committee, and a draft list of the documents with handwritten notes. The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence activities, sources, methods) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect identifying information of CIA personnel (names, signature, office locations, phone numbers) and offices. The deliberative process privilege of Exemption (b)(5) was asserted to protect pre-decisional intra-agency

			deliberations with regard to the reply as reflected in the draft proposed response and handwritten notes.
7 C06001244	03/92 8		This document consists of a five-page draft of the final memorandum detailing written responses to questions posed to CIA by the Senate that is located in C0600124; and three internal routing sheets. Included on the routing sheets are handwritten notes discussing the content of the memo. The entire memo and handwritten notes are classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence activities, sources, methods) and are withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption b(3) (CIA Act) was also invoked to protect the information on the routing sheet and identifying information of CIA personnel (names, signatures, office location, phone numbers) and offices. The deliberative process privilege of Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations with regard to the reply as reflected in the draft proposed response and handwritten notes.
8 C06001316	03/16/92 2	(b)(1), (b)(3)	This document is a memorandum from the CIA to the Senate in response to a request for information . The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence activity, method) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect identifying information of a former CIA officer (name, address, phone number).
9 C06001317	03/06/92 2	(b)(1), (b)(3), (b)(5)	This document is comprised of an internal memorandum proposing a response to a request for information from the Senate and two routing sheets. The final response is located in C06001316. The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence activity, method) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect identifying information of a former CIA officer (name,

			address, phone number) and CIA offices. The deliberative process privilege of Exemption (b)(5) was asserted to protect predecisional intra-agency deliberations with regard to the reply as reflected in the proposed response.
10 C06001322	06/23/92 2	(b)(1), (b)(3)	This document consists of a two page memorandum from the CIA to a Senate Committee . Exemption (b)(1) applies to all of the sections of the memo that are classified as SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence activity). Disclosure of this information could reasonably be expected to cause serious damage to national security because it would reveal intelligence sources or methods. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect identifying information of CIA personnel (names, phone numbers, signature).
11 C06001323	06/19/92 3	(b)(1), (b)(3), (b)(5)	This document is comprised of a one page routing sheet and a two page draft memorandum with handwritten edits. The final draft of the memo is located in C06001322. The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence activity, method) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect identifying information of CIA personnel (names, signature, office locations, phone number). The deliberative process privilege of Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations on the draft response to the congressional request as reflected in the handwritten notes and proposed reply.
12 C06001408	07/21/92 2	(b)(1), (b)(3), (b)(5)	This document is a two page internal memorandum discussing a response to a request from Congress . Exemption (b)(1) applies to all of the sections of the memo that are classified as SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence activities, methods) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect identifying information of CIA personnel (names, signature).The

			deliberative process privilege of Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations on the draft response to the congressional request as reflected in the discussion of the response to the congressional request.
13 C06001411	07/92 7	(b)(3), (b)(5)	This document contains a one page draft memorandum from CIA to a Senator and four internal routing slips. One of the routing slips contains handwritten notes about the draft memo. Exemption (b)(3) per the CIA Act was invoked to protect information identifying CIA personnel (names, phone number) and information identifying CIA offices on the routing slips. The deliberative process privilege of Exemption (b) (5) was asserted to protect the draft memo and the handwritten notes on the draft memo because they reflect pre-decisional intra-agency analysis and deliberations concerning the CIA's response to a letter from a Senator.
14 C06002420	None 2	(b)(3), (b)(5)	This document is a two page draft memorandum from the CIA to a Senator . It contains handwritten notes and handwritten edits. Exemption (b)(3) per the CIA Act was invoked to protect identifying information of CIA personnel (name, phone number). The deliberative process privilege of Exemption (b)(5) was asserted to protect the entire draft memo because it was part of pre-decisional intra-agency deliberations concerning the CIA's response to the Senator.
15 C06002421	None 7	(b)(1), (b)(3)	This document consists of talking points prepared for a CIA senior leader. The talking points identify and extensively discuss a CIA human source . The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence activities, intelligence source, methods) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect identifying information of CIA personnel.
16 C06002459	08/26/92 2	(b)(1), (b)(3)	This document is a two page memorandum for the record. The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence activities, methods) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3)

			per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect identifying information of a CIA covert officer (name, signature).
17 C06002464	09/01/92 2	(b)(1), (b)(3)	This document is a two page memorandum for the record. The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence activities, sources, methods) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect identifying information of CIA personnel (name, signature).
18 C06002470	12/03/92 4	(b)(1), (b)(3), (b)(6)	This document includes a one page routing sheet and a three page letter from the CIA to Congress to respond to a request from Congress . The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence activities, sources, methods) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect identifying information of CIA personnel (names, signature) and information identifying a CIA office. Exemption (b)(6) was asserted to protect the names and identifying information of third parties not employed by the Agency.
19 C06002471	11/20/92 2	(b)(1), (b)(3), (b)(6)	This document is a two page internal memorandum prepared to assist with the CIA's response to a request from Congress . The final letter from CIA to Congress is in C06002470. The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence activities, sources, methods) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect identifying information of CIA personnel (names, signature) and information identifying a CIA office. Exemption (b)(6) was asserted to protect the names and identifying information of third parties not employed by the Agency.

20 C06002484	11/21/91 16	(b)(1), (b)(3), (b)(5)	This document contains draft remarks and background information compiled for a senior Agency officer in preparation for a briefing to a Senate committee . It contains handwritten comments and edits. The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence activities, sources, methods) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect identifying information of CIA personnel (names, signature) and information identifying a CIA office. The deliberative process privilege of Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations concerning the draft document as reflected by the handwritten edits and comments.
21 C06002485	11/91 11	(b)(1), (b)(3), (b)(5)	This document contains draft remarks and background information compiled for a senior Agency officer in preparation for a briefing to a Senate committee . It contains pages marked draft and handwritten edits and comments. The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence activities, sources, methods) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect identifying information of CIA personnel (names, signature) and information identifying a CIA office. The deliberative process privilege of Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations concerning the draft document as reflected by the handwritten comments.
22 C06159048	02/21/92 3	(b)(1), (b)(3), (b)(6)	This document is a one page letter from the CIA to a Senate Committee staff member and two pages of enclosures attached to the letter . The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence activities, sources, methods) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to

			protect information identifying a CIA employee (name, signature). Exemption (b)(6) was asserted to protect the names and identifying information of third parties not employed by the Agency.
23 C06002563	11/20/91 15	(b)(1), (b)(3), (b)(5)	This document is a draft of remarks prepared for a senior Agency officer . It contains handwritten comments and questions. The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence activities, sources, methods) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. The deliberative process privilege of Exemption (b)(5) was asserted to protect predecisional intra-agency deliberations concerning the draft document as reflected by the handwritten comments.
24 C06002568	11/92 5	(b)(1), (b)(3)	This document contains a two page letter from the CIA to Congress, a routing sheet, and a two page enclosure that summarizes information from a named CIA human source . The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence activities, sources, methods) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect identifying information of CIA personnel (names, signatures, phone number) and information identifying CIA offices.
25 C06010745	12/24/91 4	(b)(1), (b)(3), (b)(5)	This document is a one page routing sheet and a two page draft memorandum providing a proposed response to a request for information from Congress . The document contains handwritten comments and edits. The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence activities, sources, methods) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect identifying information of CIA personnel (names, phone number) and information identifying CIA offices. The deliberative process privilege

			of Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations concerning the draft document as reflected by the handwritten comments.
26 C06010746	11/29/91 1	(b)(1), (b)(3)	This is a one page CIA cable . The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence methods) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect information identifying CIA offices
27 C06010769	10/92 4	(b)(1), (b)(3)	This document is a one page routing sheet and a three page memorandum for the record documenting a closed congressional hearing . The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence activities) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect identifying information of CIA personnel (names, phone number, signatures) and information identifying CIA offices.
28 C06010770	10/19/92 9	(b)(1), (b)(3)	This document contains information compiled in response to a question raised during a congressional hearing. The information includes memoranda and a disseminated report . The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence methods, activities) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect identifying information of CIA personnel (names, phone number, office location, signatures) and information identifying CIA offices.
29 C06010780	02/11/92 20	(b)(1), (b)(3)	This document contains a one page routing sheet, two letters from CIA to Congress, and information requested by Congress . The entire document is classified SECRET pursuant to 1.4(c) of Executive Order

			13526 (intelligence methods, activities) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect identifying information of CIA personnel and information identifying CIA offices
30 C06010782	02/07/92 2	(b)(1), (b)(3)	This document is a two page memorandum for the record regarding a briefing provided by the CIA for Congress . The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence methods, activities) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect identifying information of CIA personnel (names, signature) and information identifying CIA offices.
31 C06010789	01/21/92 18	(b)(1), (b)(3), (b)(5)	This document includes a routing sheet, two memoranda to Congress discussing a congressional request to review CIA files , and enclosures included with the memoranda. The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence sources, methods, activities) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect identifying information of former CIA officers (names, addresses) and information identifying CIA offices. Exemption (b)(6) was asserted to protect the names and identifying information of third parties not employed by the Agency.
32 C06010792	01/92 5	(b)(1), (b)(3), (b)(5)	This document includes two routing sheets and an incomplete, internal draft of the memoranda included in C0601789 which discuss the CIA response to a congressional request to review CIA files . One of the routing sheets has handwritten notes regarding the memoranda. The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence sources, methods, activities) and is withheld under Exemption (b)(1) because disclosure of this information

			<p>could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect identifying information of CIA officers and former CIA officers (names, signatures, phone number, addresses) and information identifying CIA offices. The deliberative process privilege of Exemption (b)(5) was asserted to protect pre-decisional intra-agency deliberations concerning the draft memoranda as reflected by the handwritten comments and the incomplete nature of the memoranda.</p>
<p>33 C06010827</p>	<p>12/08/98 1</p>	<p>(b)(3), (b)(5)</p>	<p>This document is a memorandum from the head of an office within CIA to the Director of the CIA. The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence sources, methods, activities) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect identifying information of a CIA officer (name) and information identifying CIA offices. Exemption (b)(6) was invoked to protect information identifying third parties who are not employed by the Agency</p>
<p>34 C06010842</p>	<p>11/18/91 3</p>	<p>(b)(3), (b)(5)</p>	<p>This document is a memo from the CIA's Office of Congressional Affairs to the Director of the CIA discussing the Director's proposed attendance at a closed briefing. Exemption (b)(3) per the CIA Act was invoked to protect information identifying a CIA employee (phone number). The entire document is withheld under the deliberative process privilege of Exemption (b)(5) because it includes recommendations and deliberations from a subordinate to the Director, CIA regarding a briefing.</p>
<p>35 C06010843</p>	<p>Undated 5</p>	<p>(b)(5)</p>	<p>This document contains three drafts of a memorandum from the Director, CIA to a Senator and a routing page. It includes handwritten notes and edits regarding the text of the memorandum. The entire draft document is withheld under the deliberative process privilege of Exemption (b)(5) because it reflects intra-agency pre-decisional analysis and deliberations.</p>

36 C06010933	03/30/92 12	(b)(1), (b)(3)	This document is a twelve page memorandum detailing written responses to questions posed to CIA by the Senate . The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence activities, sources, methods) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect identifying information of CIA personnel and information identifying CIA offices
37 C06010936	05/05/92 4	(b)(1), (b)(3)	This document is a four page memorandum for the record detailing a meeting between CIA employees and a member of a congressional staff . The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence methods, activities) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect identifying information of a CIA officer (name, signature) and information identifying a CIA office.
38 C06010939	06/06/92 5	(b)(1), (b)(3)	This document is a one page memorandum from the head of an office in the CIA to the CIA's office of congressional affairs and four pages of sensitive human source reporting . The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence sources, methods, activities) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect identifying information of CIA officers (names, signature) and information identifying a CIA office.
39 C06010951	10/92 5	(b)(1), (b)(3)	This document contains two CIA operational cables . The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence sources, methods, activities) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence

			sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect information identifying CIA offices
40 C06010954	02/12/92 2	(b)(1), (b)(3)	This document is a two page memorandum for the record recounting a classified briefing provided by the CIA to members of a Senate staff . The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence source, activities) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect identifying information of CIA officers (names, signature) and information identifying a CIA office.
41 C06010955	02/14/92 2	(b)(1), (b)(3)	This document is a two page memorandum for the record recounting a classified briefing provided by the CIA to a member of a Senate staff . The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence source, activities) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect identifying information of CIA officers (names, signature) and information identifying a CIA office.
42 C05006257	06/27/73 4	(b)(1), (b)(3)	This document is a two page memorandum for the record drafted by the head of a CIA office . The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence sources, intelligence activities, intelligence methods) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect identifying information of a CIA employee (name, signature) and information identifying a CIA office.
43 C06116955	01/13/76 2	(b)(1), (b)(3)	This document contains a one page routing sheet and a one page internal memorandum . The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence methods) and is withheld under Exemption (b)(1) because disclosure of this information

			could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect identifying information of a CIA employee (name, signature) and information identifying a CIA office.
44 C06117105	01/06/75 1	(b)(1), (b)(3)	This document is a one page operational cable . The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence methods, intelligence activities) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect information identifying CIA offices
45 C06117100	01/26/76 1	(b)(1), (b)(3)	This document is an internal one page memorandum . The entire document is classified SECRET pursuant to 1.4(c) of Executive Order 13526 (intelligence methods, intelligence activities) and is withheld under Exemption (b)(1) because disclosure of this information could reasonably be expected to cause serious damage to national security. All of this information is also protected under Exemption (b)(3) per the National Security Act which protects intelligence sources and methods. Exemption (b)(3) (CIA Act) was also invoked to protect identifying information of a CIA employee (names, signature) and information identifying a CIA office.