UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROGER HALL, et al.,	:	
	:	
	:	
Plaintiffs,	:	
	:	
v.	:	C. A. No. 04-0814 (RCL)
	:	
CENTRAL INTELLIGENCE AGENCY,	:	
	:	
	:	
Defendant	:	

REPLY OF PLAINTIFFS ROGER HALL AND STUDIES SOLUTIONS RESULTS, INC. TO CENTRAL INTELLIGENCE AGENCY'S OPPOSITION TO PLAINTIFFS' SECOND RENEWED CROSS-MOTION FOR SUMMARY JUDGMENT AND OTHE RELIEF

Preliminary Statement

Defendant Central Intelligence Agency ("CIA"), has responded to the Second Renewed Cross-Motion for Summary Judgment and Other Relief ("2d RCMSJ"), ECF #259, of plaintiffs Roger Hall ("Hall") and Studies Solutions Results, Inc. ("SSRI")("collectively referred to hereafter as "Hall") by a barebones memorandum which, with minor exceptions, does not directly address the detailed factual materials which plaintiffs put forward in support of their motion. The CIA declares that plaintiffs "would have the Court revisit long-resolved issues,

including the sufficiency of the Agency's search[es]. . . based largely on unsupported speculative declarations amounting to the proposition that plaintiffs subjectively *believe* additional responsive records exist." Defendant's Opposition to Plaintiffs' Cross-Motions at 1 (Emphasis in original) ECF #271.

The statement that plaintiffs' claims are "based largely on unsupported speculative declarations" admits, of course, that some of plaintiffs' claims are based on non-speculative objective documentation. The CIA is obligated to specifically address those claims which it concedes fall in this category. It has not done so. The CIA's assertion that some of plaintiffs' objections to the adequacy of the searches are "largely on unsupported, speculative declarations" repeats its admission that the CIA has not dealt with documented, non-speculative objections. It cannot be awarded summary judgment on this basis.

In this regard, the CIA has ignored or avoided the detailed objective facts set forth in plaintiffs' lengthy Local Rule 1.7(h) Statements. Where it has done so, the Court may treat such facts as conceded—and should.

I. THE CIA HAS NOT MET ITS BURDEN OF PROOF WITH RESPECT TO THE ADEQUACY OF ITS SEARCHES

A. Logic, Common Sense and the Enormous Gap Between Search Efforts and Results Place in Doubt the Adequacy of the Searches Conducted to Date

In his 2d Renewed Cross-Motion for Summary Judgment, Hall pointed

out the great disparity between the CIA's claim that the searches it has conducted were sufficient and the results of those searches. Most notably, the CIA itself admits that the search it was forced to make of the 1,711 names on the PNOK (Primary Next of Kin) list yielded only responsive records on only 11 names. Although Hall highlighted this in his motion, noting that the CIA had admitted that its searches had located responsive records on only 11 out of the 1,711 names on the PNOK list, the CIA makes no attempt to explain how such an extreme discrepancy could exist if adequate searches had been made. It does try to limit the search issue to Items 5 and 7 or Hall's request, but even if one assumes that the search issue can at the present time be confined in this manner, it does not account for the disappearance of a massive amount of potentially responsive records. There should be some paperwork on the whereabouts of every one of the 1,711names. Instead, there are responsive records on only 11. Two battalions have disappeared.

Hall has a plausible explanation for the vast cleavage between the CIA's search efforts and the results achieved. In Operation Homecoming, President Richard Nixon

> proclaimed on national television that all Vietnam War POWs were coming home. This was not true, and the CIA is still covering up the extent of that deception. 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 provided.

Plaintiff Accuracy in Media's Memorandum in Reply to Opposition to Cross-Motion for Summary Judgment (AIM's Reply) at 17, citing Smith Aff., ECF 258-4, ¶ 2.

The CIA has relied upon search terms to conduct its searches. But there are inherent limitations on the utility of search terms, particularly where searches are accomplished through computerized index searches alone, and where there is a particular strong reason to hide or disguise the indexing and location of certain records. Two recent revelations demonstrate this point. First, the German magazine Der Spiegel recently reported that "an independent Historical Commission hired by the BND to investigate its early history" had discovered secret file about an illegal operation set up immediately after World War II to create an army of 2000 veterans of the Wehrmacht [the German Army] and the Waffen-SS to protect against an invasion of German by Russia or its European allies. See "Files Uncovered—Nazi Veterans Created Illegal Army." By Klaus Wiegref, *Der Spiegel*, May 14, 2014. *Der Spiegel* reported that "[i]t appears [the documents] were deliberately filed . . . under the misleading title 'Insurances' in the hope that no one would ever find any reason to take interest in them." Id. at 5 (reproduced as Exh. 1 hereto.)

A second example arises from the remand which the Court of Appeals to the District Court in Oglesby/DiBacco, et al. v. Dept. of the Army, et al., Civil Action No. 87-3349. In 1998, following the second remand of the original Oglesby lawsuit, the defendants again moved for summary judgment and Oglesby cross-moved. In September 2000, while these motions were awaiting decision before District Judge Normal Holloway Johnson, the CIA suddenly confessed that the Director of Central Intelligence (DCI) had declassified the CIA's relationship with Nazi German General Reinhard Gehlen and the Gehlen Organization. During a series of hearings in District Court, defendants represented that they would begin processing an estimated 250,000 to 750,000 pages of records responsive to Oglesby's request and provide a *Vaughn* index for the records released. The case languished for a decade for a number of reasons--the defendants did not meet their commitments to file *Vaughn* indices, the CIA did not release any of the some 117,000 pages of responsive records it did process, Judge Norma Holloway Johnson retired in 2003, no successor was appointed to replace her, the Clerk of the Court and the AUSA both resisted Oglesby's counsel's efforts to reactivate the case, claiming that it was closed and that neither the U.S. Attorney's Office nor the Clerk of the Court had the case file.

In 2011, when Oglesby died, the undersigned counsel moved to substitute his daughter Aron DiBacco as a plaintiff. On a new round of summary judgment

motions the Army declared that the responsive records it had were microfilmed, digitized and sent to the NARA. Because the records were no longer in its possession the fee waiver Oglesby had obtained no longer applied. The National Archives declared that it would provide copies only if DiBacco agreed to pay a dollar a page for them. DiBacco appealed. DiBacco v. Dept. of Army, et al., D.C. Cir. No. 13-5353. At oral argument, however, Government counsel suddenly switched its position and admitted that the Army had apparently retained a copy of at least some 2800 pages in its INSCOM (Intelligence and National Security Command) files. As a result the Court directed the Government to inform the Clerk of the Court by letter as to whether some 2800 digitized pages of responsive Army records that had been transferred to NARA around year 2000 would be made available to Plaintiffs as a result of the fee waiver the Army had previously granted to Olgesby. When these records were produced, it developed that they contained numerous references on their face of dossiers or files responsive to Oglesby's request, the locations of which were contained on the rear side of the forms. This extraordinarily valuable information, NARA and the Army allege, was destroyed when the records were microfilmed and digitized without including the information on the rear of the index forms.

The history of the FOIA is filled with similar examples where the places where responsive information was indexed, filed or located turned out to be

different from what the agencies originally searched for. In Weisberg v. U.S. Dept. of Justice, 489 F.2d U.S. 308 (D.C.Cir. 1976), the Government disputed whether records on the spectrographic and neutron activation analysis performed on items of evidence in the assassination of President Kennedy existed. Ultimately, some of them were located not in FBI Headquarters main files but in files of its Laboratory division.

Similarly, in Weisberg v. U. S. Dept. of Justice, C. A. No. 75-1996, where the requester sought, *inter alia*, photographs of the Dr. Martin Luther King crime scene, the FBI, after contending that it couldn't locate them, found them in its Memphis Field Office files.

B. Likely Search Methods That Have Not Been Used

A number of search methods which are likely to locate responsive records have not been used. Plaintiffs have submitted voluminous and detailed evidence of raids, episodes, activities, events, raids on POW camps. The CIA gives no indication that it has focused on such events and activities as the basis for doing searches. Rather, its searches have focused largely on names of persons and terms used to describe POWs. And it has avoided using the names of projects and operations as search terms. The fact that such may be coded and kept secret in the name of national security does not prevent them from being used as search terms.

It may be, however, that code-named projects require completely different search methods in order to locate responsive records. The deposition of John Whitten given to the House Select Committee on Assassinations under the pseudonym "Scelso" is revealing. Scelso was a high CIA Counterintelligence official who was initially appointed by CIA's head of counter-intelligence Richard Helms to investigate the activities of Lee Harvey Oswald. In his deposition he explained with respect to the location of 201 files "there might be one in Central Registry and another one on the desk where the case is active." See Exh. 2, May 16, 1978 Scelso Deposition at 105, lines 13-14. Moreover, these files would not necessarily be duplicative of one another, thus requiring a search of both to get all responsive material. Id., line 17. Information is usually kept in a project file. An agent's cryptonym indicates the project he is in. Id. at 106, lines 10-12. The most expeditious way of finding out what operations an agent has been involved in would be to "[g]o to the desk and ask them." Id., line 25. That is, go to the "area desk that was responsible for him. If he is still in the Division, they will have a complete file on him on the desk." Id at 107, lines 2-4.

Asked by HSCA counsel Michael Goldsmith if that would be a 201 file or some other kind of file, Scelso replied: "It probably would be a project file. If he is a security suspect, . . ., it would be a 201 file. If he was an agent of ours, he would be in a project file." Id., lines 7-9.

There is no indication in the sparse evidence provided by the CIA that any of this kind of information was taken into account by the CIA or other agencies.

Finally, the documents released to Hall contain abundant indications of the dissemination of copies of records to other units, persons or components but no statement that all such locations have been searched. The documents released to Hall contain many references to attachments which have not been provided despite this Court's order that such attachments should be searched for, processed, and released.

II. THE CIA HAS FAILED TO SUSTAIN ITS BURDEN OF PROOF WITH REGARD TO ITS EXEMPTION CLAIMS

A. The CIA Has Not Met Its Burden of Proving That There Are No Nonexempt Segregable Portions Remaining

The CIA "stated the bases for its rigorous segregation analysis of each record at issue." Def's Reply at 7. But stating that it has done so and doing so are two very different things. It has failed to show that there are no segregable non-exempt records or portions thereof remaining.

In his opening brief, Hall pointed to the withholding of the last two pages of RIP Item 22 under four different exemption claims, including Exemption 6. There is no justification for the withholding of a single name under Exemption 6, simply

a conclusory assertion that "[t]he name of another individual was withheld under Exemption (b)(6)." See Hall's 2d RCMSJ at 12-13 and Att. A thereto. No showing is made as to what is the nature of the privacy invasion—is the CIA claiming embarrassment, harassment or fear of publicity? Is the person deceased? The CIA's Opposition makes no response to Hall's citation of this document. What applies to this document applies universally to the other items in the CIA's *Vaughn* index, and particularly to the withheld in full index.

The January 30, 2017 Declaration of Antoinette B. Shiner ("Suppl. Shiner Decl.") adds little to her prior declaration seeking to justify the withholdings in the RIP and DIF *Vaughn* indices. In discussing several items from the DIF index she undermines the claim of the CIA's attorney that it had applied a "vigorous" segregability analysis to its withholdings. In discussing several specific items in the DIF index, she repeatedly asserts that all of the material in these lengthy entirely withheld documents are completely exempt under each of several Exemption claims. Apart from the conclusory nature of the assertion of these exemptions, it is difficult to imagine how each of several claims can be applied to a lengthy document in its entirety, or even a fairly short one, when the different exemptions differ in their scope, nature, and purpose. For example, the CIA cites Exemption 1 and two Exemption 3 statutes, the CIA Act and the National Security Act, to protect DIF Item 36, a 12-page document. Since the *Vaughn* index gives

the date of the document as May 5, 1992, clearly a page can be released with this information on it. Nor is any explanation given as to why the page numbers and administrative markings and file numbers cannot be released. The CIA invokes the CIA Act exemption 3 claim for the entire document, making it seems like it is only a list of names, nothing more. But the CIA says the document contains "written responses to questions posed by the Senate." It does not explain why the questions, or its summary of them, must be withheld under the CIA Act. Did the questions—or the answers—consist merely of the names of CIA personnel?

In his opening brief, Hall noted that the CIA might be withholding file numbers, classification markings and other administrative markings under Exemptions 1 and 3 that it previously withheld under Exemption 2. Hall's 2d RCMSJ at 11. He asserted this would be invalid, citing McGehee v. U.S. Dept. of Justice, 800 F.Supp.2d 220, 234 n. 8 and other cases. The CIA has not responded to this point.

B. The CIA Has Not Met Its Burden Under Exemption 1

In her supplemental declaration Shiner states that none of the records that are presently at issue in the case are over 50 years old.[1] Suppl. Shinder Decl., ¶ 3. She further states that these documents are over 25 years old. Id., ¶ 4. While this changes the degree of damage which must be shown in order to warrant continued

[1] It is not clear from Shiner's declarations whether some of the information in the documents may be over 50 years old, although they bear more recent dates.

classification, it does not alter the fact that the plausibility of the CIA's claim that this information is still properly classified is dubious at best.

Section 3.3(a) of E.O. 13526 provides for the automatic declassification of records or information more than 25 years old. While this period may be extended, it is subject to a considerably higher test for showing the damage to national security required to continue classification. Thus, §3.3(b) of E.O. 13526 provides that an "agency head may exempt from automatic declassification . . . specific information, the release of which should clearly and demonstrably be expected to" reveal certain kinds of information. (Emphasis added).

The CIA has utterly failed to set forth "clear" and "demonstrable" evidence that national defense or foreign policy will be damaged in any way by the disclosure of the redacted information. Its claims of damage to national security are in categorical, boilerplate terms with no information set forth about relevant considerations such as

> Is an intelligence source whose name has been excised still alive? Has that source been otherwise identified in the decades since the report was filed? Would information deleted on the theory that it might identify a source still do so forty years after the fact? Is a particular intelligence method or activity still in use? If not, what concerns warrant continuing protection for information on intelligence methods and activities from the 1940's? *See* text, *infra* at notes 124-135.

Hall 2d RCMSJ at 13, citing King v. U.S. Dept. of Justice, 830 F.2d 210, 221 n. 90 (D.C. Cir. 1987).

C. The CIA Has Not Proved Its Exemption 3 Claims

1. The CIA Act, 50 U.S.C. § 3507

Hall's cross-motion for summary judgment set forth a number of D.C. Circuit cases and District Court cases which contravene an expansive interpretations of the scope of the CIA Act, 50 U.S.C. § 3507. The CIA makes no attempt in its reply to dispute these authorities.

Shiner does assert that the language of the CIA Act "does not restrict its interpretation to current Agency personnel." Suppl. Shiner Decl., ¶ 13. The provision actually provides an exemption from laws which "require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency. . . ." (emphasis added). The Supreme Court has recently made it clear that the "plain meaning" rule of statutory interpretation applies to FOIA as well as other cases. John Doe A Milner v. Dept of Navy, 562 U.S. 562 (2011).

An "employee" is defined by Merriam Webster as "one employed by another usually for wages or salary and in a position below the executive level. http//www.merriam-webster.com/employee. An example of its usage is: "*A good boss listens to his employees.*"

https://www.meriamwebster.com/dictionary/employee. Clearly this definition indicates that the phrase "employed by" used in the CIA Act contemplates a person who is actively employed at the Agency; and it certainly does not extend to deceased employees who, of course, are certainly no longer employed there. Moreover, assuming there is any ambiguity in the phrase, it must be construed according to its narrowest meaning in order to comport with the goals of the FOIA. See John Doe Agency v. John Doe Corp., 493 U.S. 146, 161 (1987)("construction of an exemption means, if anything, construing ambiguous language of the exemption in such fashion that the exemption does not apply.")(Scalia dissenting). Accord, Milner, supra.

2. The NSA Act, 50 U.S.C. § 3024

In response to Hall's point that national security concerns may no longer warrant withholding information under the NSA Act, 50 U.S.C. § 3024, because of its age, Shiner responds:

> However, the National Security Act recognizes the inherent sensitivity of revealing sources and methods of intelligence collection and, consequently, does not place temporal limitations on their protection.

Suppl. Shiner Decl., ¶ 13.

Thus, in the CIA's view, secrecy is forever. The problem is that this is not the law, as the country learned from the Valerie Plame affair. Under the statute and under E.O. 13526 disclosure of CIA intelligence sources and methods and

intelligence activities may be disclosed if the disclosure is authorized. E.O. 13526 sets a 75-year limit on the withholding of all national security information. And under the 25-year and 50-year rules for automatic declassification such disclosure is warranted unless strict standards are met.

Hall also wants to again point out that some intelligence sources and methods are so commonly known by the news media, the public at large, and hostile intelligence agencies that it is generally pointless to protect them in the name of national security, particularly when there have been vast disclosures related to the topic by congressional committees and the press.

Lastly, vast disclosures of intelligence sources and methods have been made as a result of the JFK Act and the Nazi War Crimes Disclosure Act, yet the CIA gives no indication of taking such disclosures into account when dealing with the POW/MIA issue.

D. The CIA Has Not Met Its Burden Under Exemption 5

Plaintiffs, both Hall and AIM, have extensively briefed the Exemption 5 issue in prior briefs, and AIM has further articulated its position, with which Hall agrees, in its reply brief being filed concurrently herewith. Thus, there is no need for Hall to rehash those arguments here.

Hall notes, however, that the CIA contends that the FOIA Improvement Act of 2016, which provides for the release of deliberative process materials after 25

years, does not help plaintiffs because it pertains to requests made after the enactment of that Act. But it is clear that the law is now against withholding such information. The CIA, since it is legally bound to follow what the substance of the law provides, is only obstructing the law if it resists solely on technical grounds.

That said, plaintiffs are submitting new requests which comply with the technical requirements of the FOIA Improvement Act of 2016. If the CIA does not respond promptly to these requests, plaintiffs may move to amend the complaint. That will drive up the costs of this litigation, which the CIA has professed it seeks to avoid, but that is its choice.

E. The CIA Has Not Met Its Burden Under Exemption 6

In response to plaintiffs' contention that the CIA had wrongly redacted personal information about deceased Senator North Carolina Senator Jesse Helms and deceased National Security officer Sandy Berger, the CIA has now released the signature of Jesse Helms. RIP Item #6, but continues to withhold the signature that appears in the signature block on the grounds that it is not his. RIP #69. Suppl. Shiner Decl., ¶ 15. But both examples contravene Shiner's statement that the CIA used Exemption 6 sparingly and applied it "only to . . . low-level government employees, congressional staffers, and military personnel." Id., ., ¶ 14.

The Sen. Helms letter dates to April 1984, 33 years ago. The attachment has been extensively redacted on Exemption 6 grounds. The redactions related to a Vietnamese woman living in Paris in 1984 who is involved in efforts to find a pathway to dealing through Communist Party officials in Vietnam about the POW issue. The woman is deceased. Aside from speculation that disclosure of her name might lead to harassment and intimidation long after the Vietnamese and the Americans have reconciled and are now allies, Shiner can also find no public interest whatsoever in disclosing the redacted information. But the letter has to do with efforts being made by Sen. Helms and others to use the woman as a path to gaining access to Communist Party officials in Vietnam for discussions on the POW issue. The public interest in disclosing exactly who was involved in this effort is obvious and overrides whatever privacy interest there still might be.

III. THE COURT SHOULD PERMIT DISCOVERY, ENGAGE IN *IN CAMERA* INSPECTION AND APPOINT A MASTER TO ASSIST IT IN RESOLVING THIS CASE EXPEDITIOUSLY, EFFICIENTLY AND JUSTLY

A. *In Camera* Inspection

Throughout this litigation plaintiffs have urged the Court to allow them to engage in discovery, submit certain records for *in camera* examination, and appoint a master to facilitate the more rapid and economic of this complicated and very important case. The CIA has resisted all of these measures but one. While

not endorsing *in camera* examination, in its most recent filing the CIA states that it will produce for *in camera* inspection if requested by the Court.

The Court should accept this rare agreement by the opposing parties to take an action which could materially advance the resolution of this case. Each party should submit 20 documents to the Court. The parties would be permitted to prepare memoranda indicating any issues to which they wish to direct the Court's attention. The Court could request further briefing by the parties of any issues which it believes are presented by the documents which the parties have not addressed.

B. Discovery

The only form of discovery which has been utilized to date is the submission by the CIA of *Vaughn* indices. This, however, is a very limited form of discovery which is largely in the control of the Government, not the party seeking discovery. It is very expensive and time-consuming process which consumes many rounds of indices and many years of litigation frequently resulted in repeated trips to the Court of Appeals. Discovery has more flexibility and creativity and can lead to very important revelations not likely to occur in the highly-controlled *Vaughn* index context.

Discovery is warranted in this case for several reasons. First,

There are basic questions about the FBI's searches that have not been answered despite the employment of multiple rounds of *Vaughn* indices. A few simple questions, for example, would establish whether documents were ever marked with classification or declassification markings, and if so, who made those markings pursuant to which executive order. Have file numbers been deleted from the documents? Are routing forms or instructions being deleted under Exemption 1 or Exemption 3 or both?

The several thousands of pages that have been released to Hall so far are loaded with all kinds of terms and references whose meaning is not known to Hall. He cannot assess what these terms mean and what significance they hold for other locations that should be searched without having information about exactly what they signify.

Hall particularly needs discovery on what components of the CIA have been searched or not searched and exactly what search instructions were issued. He further needs to learn how the CIA indexes and stores its records in various components.

C. The Court Should Appoint a Master

Appointment of a Master Pursuant to Rule 53 of the Federal Rules of Civil Procedure provides in pertinent part

(a) Appointment

(1) Scope

Unless a statute provides otherwise, a court may appoint
a master only to:

(A) perform duties consented to by the parties;
(B) hold trial proceedings and make or recommend findings of fact on issues to be decided without a jury if appointment is warranted by:
(i) some exceptional condition; or

(ii) the need to perform an accounting or resolve a difficult computation of damages; or

(C) address pretrial and post-trial matters that cannot be effectively and timely addressed by an available district judge or magistrate judge of the district.

Thus, appointment of a master is potentially possible in this case pursuant to Rule 53 (1)(A), (l)(B)(i), or (1)(C), unless, of course, the CIA refuses to consent to it under Rule 53(1)(A), in which case only the other two options are available.

In In Re Dept. of Defense ("In Re DOD") 848 F.2d 232 (D.C. Cir. 1988 found "exceptional circumstances" existed) the Court held that appointment of a special master was warranted. In doing so, it applied a prior version of the rule which was more restrictive than the present one. At that time. Rule 53(b) provided that a judge may appoint a special master upon a showing of an "exceptional condition" and "only when the issues are complicated. . . ."

This case clearly presents an "exceptional condition."

This case is somewhat different from the situation presented in In Re DOD. The core issue there was the problem of obtaining a valid representative sample of a large volume of documents, many being withheld in their entirety. Here, the volume of records is already large—380 pages. It is also subject to expansion because the number of pages withheld may increase considerably after operational files are searched.

While the volume of records here is significant and a master would be very helpful in dealing with that problem, the overriding problem here stems from the fact that the CIA's search efforts over the past dozen years are grossly out of proportion to the volume of responsive records which one might reasonably expect to have located. There is reason to question whether the absence of more records than have been found to date stems from a cover-up designed to conceal the magnitude of the failure of government agencies to adhere to President Nixon's Operation Homecoming promise that missing POWs and MIAs in Vietnam would all be returned home. It is a view that has credible support, including by Senator Bob Shim who wrote and introduced the Senate resolution establishing the Committee to attempt to get the documents released to the public and who served as Vice Chairman of the Committee, and others as well.

Plaintiffs have made detailed showing in their briefs that the CIA has failed to search operational files. They have, in effect, already met the burden which the CIA is supposed to bear to show that the exceptions to the CIA's exemption from search and review of operational records applies. The evidence of the existence of relevant operational files is a key factor supporting the case for appointment of a master. Determining where these records exist and what their volume is will be a painstaking task best delegated to some other than the district court judge for reasons of judicial economy and the specialized knowledge which a master brings to bear on both the search issue and the examination of withholdings.

It should not be a difficult task to find an appropriate master familiar with the prior history of the POW/MIA controversy. Indeed, it is likely that an appropriate master can be found from still-surviving congressmen and congressional staffers who were involved in the official Senate probe back in the early 1990s.

A question of payment of the master's fees must be addressed by the parties. Plaintiff Hall's counsel will make a substantial contribution, which should be matched by the CIA. Plaintiffs AIM and Hall will also seek to raise any additional funds that may be required once an estimate of the cost of such fees has been reached. Again, this would be matched by the CIA.

In plaintiffs' view, this presents the best way of making a real breakthrough on the troubling issues which have arisen in this case.

Finally, Judge Oberdorfer appointed a special master in In Re DOD, and this was cited with approval in Weisberg v. United States Dept, of Justice, 746 F.2d [1476] at 1490 (D.C.Cir. l984). Hall's counsel, who is familiar with the record in In Re DOD represents that the result was highly successful, with thousands of pages of withheld pages being released at a relatively modest cost.

CONCLUSION

For the reasons set forth above and in Hall's Second Renewed Cross-Motion for Summary Judgment and Other Relief. The Court should reject the CIA's claims of having conducted an adequate search and not having withheld any non-exempt information. It should also accept the parties' agreement to comply with a Court order directing submission of a certain number of records for *in camera* examination. And the Court should appoint a Master to produce a more administratively efficient, economical and prompt resolution of this case.

Respectfully submitted,

/s/

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