

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

PLAINTIFF ACCURACY IN MEDIA'S STATEMENT OF MATERIAL FACT

Under Rule 56 of the Federal Rules of Civil Procedure and Local Rule 7(h), plaintiff Accuracy in Media, Inc. (AIM) respectfully submits this Statement of Material Fact to which there is no Genuine Issue.

1. On February 7, 2003, AIM submitted a Freedom of Information Act ("FOIA") request to the Central Intelligence Agency ("CIA"). The Request sought waiver of search and review fees as being a representative of the news media and public interest waiver of copying costs under 5 U.S.C. § 552 (a)(4)(a)(iii) and 5 U.S.C. § 552 (a)(4)(A)(ii)(II). The Request sought the following seven items of information:

Item 1: Records and information pertaining to Southeast Asia POW/MIAs (civilian or military) and detainees who have not returned or whose remains have not been returned to the United States, regardless of whether they are currently held in prisoner status, and regardless of whether they were sent out of Southeast Asia.

Item 2: Records or information pertaining to POW/MIAs sent out of Southeast Asia (for example, to China, Cuban [sic], North Korea, Russia).

Item 3: Records or information prepared and/or assembled by the CIA between January 1, 1960 and December 31, 2002 relating to the status of any United States POW/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;

Item 4: Records of the Senate Select Committee on POW/MIA Affairs which were withdrawn from the collection at the National Archives and returned to the CIA for processing;

Item 5: Records relating to 47 individuals who allegedly are Vietnam era POW/MIAs, and whose next-of-kin have provided privacy waivers to Roger Hall, and persons on the Prisoner of War / Missing Personnel Office's list of persons whose primary next-of-kin have authorized the release of information concerning them.

Item 6: All Records on or pertaining to any search conducted for documents responsive to Roger Hall's requests dated January 5, 1994, February 7, 1994, and April 23, 1998, including but not limited to all instructions and descriptions of searches to be undertaken by any component of the CIA and all responses thereto, and all records pertaining to the assessment of fees in connection therewith, including but not limited to any itemizations or other records reflecting the time spent on each search, the rate charged for the search, the date and duration and kind of search performed, etc.

Item 7: All records on or pertaining to any search conducted regarding any other requests for records pertaining to Vietnam War POW/MIAs, including any search for such records conducted in response to any request by any Congressional Committee or executive branch agency.

[CIA Koch Decl. Ex 1]

2. By April 13, 2005 Order, the Court denied AIM's motion for waivers of search and review fees as being a representative of the news media, and public interest waiver of copying costs, under 5 U.S.C. § 552 (a)(4)(a)(iii) and 5 U.S.C. § 552 (a)(4)(A)(ii)(II). [Docket # 30]

3. On April 26, 2005, AIM submitted a FOIA request to the CIA. The Request sought waiver of search and review fees as being a representative of the news media and public interest waiver of copying costs under 5 U.S.C. § 552 (a)(4)(a)(iii) and 5 U.S.C. § 552 (a)(4)(A)(ii)(II). The first seven items exactly duplicated those in the

February 2003 request, and that the eighth item requested records pertaining to fee estimates made in connection with the plaintiffs' February 7, 2003 request. Item 8 states: "All records of whatever nature pertaining to the estimates of fees made in response to the February 7, 2003 Freedom of Information Act request of Mr. Roger Hall and Studies Solutions Research, Inc., and how each estimate was made." [Ex. 1: AIM's April 26, 2005, FOIA Request ¶ 1]

4. The CIA denied this Request by letter dated June 1, 2005. [CIA Koch Decl. Ex 10.]

5. This June 1, 2005 CIA response states that because Items one through seven were the "subject of the current litigation" the CIA "will not accept these items as part of this request." [CIA Koch Decl. Ex 10]

6. The June 1, 2005 CIA response also states that Item eight "is also before the Court in the pending litigation," and that it "will not accept this items as part of this request." [CIA Koch Decl. Ex 10]

7. By May 26, 2005 letter, the CIA "den[ied] AIM's request for a public interest fee waiver, and denied AIM news media status, based on this Court's April 13 2005 Order. [Ex. 4: May 26, 2005, CIA's response to plaintiff's FOIA Request]

8. The May 26, 2005 CIA response states that "the Agency sill only accept your appeal of the waiver denial if you agree to be responsible in the event of an adverse administrative or judicial decision." [Ex. 4: May 26, 2005, CIA's response to plaintiff's FOIA Request]

9. On June 29, 2005, AIM administratively appealed the CIA's denial of AIM's Request for fee waivers, writing that "AIM appeals the fee waiver denial but does

not agree to be responsible for any costs in the event of an adverse decision." [Ex. 5: June 29, 2005, AIM Administrative Appeal]

10. The CIA included AIM's Administrative Appeal letter with AIM's Articles of Incorporation [Ex. 5] in the administrative record. [Ex. 6: July 19, 2005, CIA acknowledgment of receipt of Administrative Appeal]

11. AIM's April 26, 2005, FOIA Request states that "AIM is an entity that is organized and operated to publish and broadcast news to the American public. It has been disseminating its analysis of news media reporting for more than 35 years." [Ex. 1: AIM's April 26, 2005, FOIA Request ¶ 3]

12. AIM's April 26, 2005, FOIA Request states:

It has been disseminating its analysis of news media reporting for more than 35 years. It disseminates information in several ways. Its semi-monthly newsletter, *The AIM Report*, has gone out without fail for 32 years. *The AIM Report* now has about 3,300 subscribers. AIM's other publications include AIM columns, *Briefings* (opinions), *Special Reports*, and *Guest Columns*. AIM's principals have published three books on the subject of the news media: Media Mischief and Misdeeds 1984; Profiles in Deception 1990; and News Manipulators 1993. AIM has also produced several nationally distributed documentaries, including Television's Vietnam, The Clinton Legacy, TWA 800: The Search for the Truth, and Confronting Iraq. More than 100,000 people visit AIM's website nearly every month. AIM has an active speaker's bureau, providing speakers on relevant topics to various groups around the country. Additionally, AIM delivers a daily radio commentary, *Media Monitor*, carried across the country. Oftentimes newspapers and websites around the country have picked up *The AIM Report's* stories. Due to its many efforts, AIM enjoys the ability to convey information to a broad public audience.

[*Id.*]

13. AIM's April 26, 2005, FOIA Request states that "[i]t is thus clear that AIM gathers information of potential interest to the general public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to its audience." [*Id.*]

14. AIM's April 26, 2005, FOIA Request states that "[u]pon disclosure of the records sought, AIM has concrete plans to make the information public in a *Special Report*, and perhaps also in the *AIM Report*, all in accordance with AIM's news dissemination function. All of its work on the POW/MIA issue will appear on AIM's website, AIM.org. Moreover, a number of AIM's publications in the past have referred John Kerry's record on the POW issue, and AIM has a concrete intention to do so in the future." [*Id.* ¶ 4]

15. AIM's April 26, 2005, FOIA Request states That "AIM posts most of the docket sheet of its POW/MIA litigation on its website ([see http://www.aim.org/special_report/1763_0_8_0_C/](http://www.aim.org/special_report/1763_0_8_0_C/)), but it will do more than just making the information available as a library would: AIM will actively disseminate the information. " [*Id.*]

16. AIM's April 26, 2005, FOIA Request states that "[d]isclosure of the information will enhance public understanding of the POW/MIA issue as compared with awareness prior to the disclosure." [*Id.*]

17. AIM's April 26, 2005, FOIA Request states that "[t]here is a pending House Resolution which would establish a new POW/MIA committee. This indicates that this issue is still of current interest to the American public." [*Id.* ¶ 5]

18. AIM's April 26, 2005, FOIA Request states that "[m]aterials on POW/MIAs will necessarily shed light on the operations or activities of the government. Among other things, they will reveal the extent, nature, intensity, and duration of the Government's efforts to locate POW/MIAs, a subject that has long been of intense interest to the public." [*Id.* ¶ 6]

19. AIM's April 26, 2005, FOIA Request states:

Records disclosed to AIM is likely to contribute significantly to public understanding of such operations or activities by disclosing records that have remained secret despite congressional inquiries and Presidential directives to disclose them. The records will provide information regarding the thoroughness, scope, intensity, dedication and creativity of the search for missing POW/MIAs, and whether or not it was conducted in good faith. This information will show the degree to which the CIA has complied with Executive Order 12812 and Presidential Decision Directive NSC 8 and whether it has accurately informed Congress and the public about its search efforts and the information it possesses. It will also show how the CIA cooperated and coordinated its search efforts with other agencies and how and the CIA controlled the documentation other agencies possessed regarding POW/MIAs and detainees.

[*Id.*]

20. AIM's April 26, 2005, FOIA Request states that "AIM believes that the records it will obtain as a result of this request will shed light on the CIA's operations and activities by revealing that it has withheld information regarding missing POWs from congress and the public. This will show that the CIA has not done what it should have done to locate missing POWs and MIAs. The interest of enhancing the public's understanding of the operations or activities of the U.S. Government is clear, and the records' connection to these government activities is direct." [*Id.* ¶ 7]

21. AIM's April 26, 2005, FOIA Request states that "Release of the information will contribute to an understanding of government operations or activities regarding the POW/MIA issue, as compared with awareness prior to the disclosure."

22. AIM's April 26, 2005, FOIA Request states that "[o]ne example of the information that can be found in government documents regarding the POW/MIA issue is that the CIA and the military jointly conducted POW operations. Another example is corroboration of Sergeant Major Jerry Mooney's testimony before the Senate Select

Committee regarding live POWs who had been captured but who were not listed as captured. Mooney had worked for the NSA." [*Id.* ¶ 8]

23. AIM's April 26, 2005, FOIA Request states that "[t]he POWs' families never received NSA's information. AIM avers that the records show that the CIA also withheld this information from the families of the POWs." [*Id.*]

24. AIM's June 29, 2005, FOIA Appeal states "the CIA cannot restrict the administrative record to the initial FOIA request, kindly include AIM's [enclosed] 1971 articles of incorporation, as well as its April 26 FOIA request, in the record of this administrative appeal..." [Ex. 5: June 29, 2005, AIM Administrative Appeal]

25. AIM's June 29, 2005, FOIA Appeal recites that "AIM's 1971 articles of incorporation's purpose clause [states that it is]... to promote... the mass communication media and public understanding thereof with the aim of improving the accuracy of news media reporting... and the correction of errors."¹ [*Id.*]

26. By April 13, 2005 Order, the Court held that preclusion may apply to "certain records Hall sought in his May 28, 1998, FOIA request," and "particular records are exempt from the definition of 'agency records'" under FOIA. [Docket # 30 at 7].

¹ June 29, 2005, FOIA Appeal at 3:

The purpose or purposes of the corporation is organized is to promote, encourage, sponsor, support, finance and facilitate communication, education and cooperation among individuals and organizations working in the mass communications media and to conduct, promote, encourage, sponsor, support, finance, and facilitate research, education and information activities and public discussion groups, forums, panels, lectures, and other educational and informational processes in connection with the mass communication media and public understanding thereof with the aim of improving the accuracy of news media reporting in the mass communication media and to work for the adoption by editors and publishers of codes setting forth good journalistic practice relating to accuracy in reporting and the correction of errors.

27. The CIA's *Vaughn* index responds to Request Items 1, 2, 3, and 6 by referring AIM to Hall I. [CIA Koch Decl. ¶¶ 19, 21, 23, and 24].

28. The CIA's references to Hall I regarding Request Items 1, 2, 3, and 6 [*id.*] are not for "certain records Hall sought in his May 28, 1998, FOIA request." [Order, Docket # 30 at 7].

29. The CIA cited the opinion in Hall I in refusing to search records responsive to Item 4 regarding Senate Select Committee documents. [CIA Koch Decl. ¶ 24]

30. The opinion in Hall I states that "[i]n preparing its supplemental declarations in this matter, the CIA should confirm that it has independently reviewed all documents of its own creation that were included with the Senate Select Committee documents." [CIA Ex 5 n. 4 at 14]

31. The CIA declined to search for records in Item 5, the 47 POW/MIA's identified in the releases signed by their primary next-of-kin (PNOK) because such "a search would be impossible" without the birthdates. [CIA Koch Decl. ¶ 25]

32. The 47 PNOK releases contain the individual's full name, POW/MIA incident date, Social Security or Service Number, and the branch of service. [Ex. 2: 47 Releases signed by the Primary Next of Kin (PNOK)]

33. The CIA refuses to search for records in Item 5, the 1700 names on Vietnam PNOK list [Ex. 3: 1700 PNOK names] without a deposit of \$50,000, and estimated that such a search would cost plaintiffs over \$600,000. [CIA Koch Decl. ¶ 28]

34. Regarding Item 7, in Hall I, the CIA asserted, on three different occasions, that Hall had incurred specific amounts of costs in connection with his Request.

35. The CIA's record production in response to Item 7 contains no documents which provide a basis for any of the figures referred to in the forgoing paragraph.

36. The CIA claims that the 18 records produced to plaintiffs' on October 17, 2006, along with its *Vaughn* index dedicated to Item 7, satisfies that FOIA Request. [CIA Koch Decl. ¶ 36, Ex. 16 (Item 7 *Vaughn* index)]

37. During the Vietnam War, the CIA Political Adviser ("POLAD") at the Commander in Chief Pacific ("CINCPAC") was the originator and/or party to MIA/POW operations. Additionally, the POLAD played a role in, and generated records concerning, the transfer of POWs in captivity from one Southeast Asian country, and to other communist countries. [Hall Decl. ¶ 5]

38. Plaintiffs have not been provided any records concerning the subject of the forgoing paragraph. [*Id*]

39. The CIA created and maintained briefing boards on camps throughout Southeast Asia where American POWs were held. The information on the briefing boards had to be backed up by reports and analysis. [Hall Decl. ¶ 6.]

40. Plaintiffs have not been provided any records concerning the subject of the forgoing paragraph. [*Id*]

41. Former Ambassador to Laos William Sullivan revealed in a deposition that Air Force and CIA employee Richard Secord, when a Major, had submitted requests to the CIA to rescue American POWs in Laos. [Hall Decl. ¶ 7]

42. Plaintiffs have not been provided any records concerning the subject of the forgoing paragraph. [*Id*]

43. In 1965 there was an attempt to rescue then Captain David Hardlicka and Captain Charles B. Shelton in the Sam Nuea area of Laos. These two POWs held by the Pathet Lao were rescued using CIA assets, including Air America, a CIA proprietary, and American military assets, and indigenous Controlled American Source ("CAS") personnel from the H'monq tribe of northern Laos, Thai forces, and others. One American participant was General Clifford Reese. These POWs were then recaptured. Hall found a limited release of information concerning this in State Department records at the President Lyndon Baines Johnson Library. [Hall Decl. ¶ 8.]

44. Plaintiffs have not been provided any records concerning the subject of the forgoing paragraph. [*Id*]

45. A later rescue attempt was planned for and may have occurred in Laos in 1971 or 1972. Special Forces Sgt. John Cavaiani was involved in the rescue or planned rescue. Such an attempt would not even have reached the planning stage unless the identities and locations of the POWs had been confirmed. [Hall Decl. ¶ 9.]

46. Plaintiffs have not been provided any records concerning the subject of the forgoing paragraph. [*Id*]

47. Admiral Elmo Zumwalt revealed to Hall in a conversation he had with him that the CIA wanted to present information on their ongoing MIA/POW operations in Laos to him in 1973 when he was Chief of Naval operations. [Hall Decl. ¶ 10]

48. Plaintiffs have not been provided any records concerning the subject of the forgoing paragraph. [*Id*]

49. Operation Tailwind, an operation aimed at a particular POW camp in Laos was approved and tasked by the CIA. Journalist April Oliver revealed this on CNN. Ten

foot lockers of documents were removed from this POW interrogation site. [Hall Decl. ¶ 11]

50. Plaintiffs have not been provided any records concerning the subject of the forgoing paragraph. [*Id*]

51. In 1994/1995, Hall interviewed Admiral Thomas Moorer, former Chairman of the Joint Chiefs of Staff. He told Hall that in 1972 he had authorized a rescue of 60 POWs in Laos. Admiral Moorer told Hall that, as planned, this raid was second in complexity only to Son Tay. They knew the names, locations and other information on the POWs. The rescue attempt was cancelled because of the pending Peace Agreement of January 1973. Admiral Moorer stated that the CIA and the Department of Defense had information on this operation, and that Hall should check with the indigenous personnel files known as Controlled American Source. He said this was a joint CIA/military operation. [Hall Decl. ¶ 12].

52. Plaintiffs have not been provided any records concerning the subject of the forgoing paragraph. [*Id*]

53. POWs were taken from Vietnam, Laos and possibly Cambodia to the Soviet Union. [Hall Decl. ¶ 13]

54. Plaintiffs have not been provided any records concerning the subject of the forgoing paragraph. [*Id*]

55. The North Vietnamese and other communist embassies in Laos were the subject of electronic surveillance by the CIA, whose employees, advised by the National security Agency ("NSA"), were gathering information regarding POWs. [Hall Decl. ¶ 14]

56. Plaintiffs have not been provided any records concerning the subject of the forgoing paragraph. [*Id*]

57. During the Reagan administration, the CIA ran a reconnaissance into Laos based on satellite imagery of a camp where POWs were reportedly being held. There were also NSA intercepts related to this satellite imagery and other intelligence. This operation was originally set to be run by Special Forces members from the Delta Compound at Fort Bragg, North Carolina. The CIA took over control of this operation, informing the military that Laos was their domain and they would run it. On the insistence of the Special Forces, a Marine Corps Captain was assigned to the operation. Photographs and voice recordings were taken. [Hall Decl. ¶ 15]

58. Plaintiffs have not been provided any records concerning the subject of the forgoing paragraph. [*Id*]

59. MIA/POW satellite imagery was given to the Senate Committee on POW/MIA Affairs, but was not included in the committee's 1993 Report, perhaps because it was received too late. The imagery was given to Barry Toll in the presence of Carol Hrdlicka, wife of a POW. It was then given to Mr. Kent Weiderman, who accepted it for Mr. Anthony Lake of the National security Council. [Hall Decl. ¶ 16]

60. Plaintiffs have not been provided any records concerning the subject of the forgoing paragraph. [*Id*]

61. Hall spoke with Mr. Harry Pugh, a CIA employee about American POWs in China between 1993-1995. He told Hall over the telephone that all that documentation was in the basement of the CIA, and he did not have time to go through it all. [Hall Decl. ¶ 17]

62. Plaintiffs have not been provided any records concerning the subject of the forgoing paragraph. [*Id*]

63. Former communist Czechoslovakia General Major Sejna has stated that he ran an operation in Czechoslovakia which received over 100 American POWs who were transferred from Vietnam, then in turn to the Soviet Union in the 1960s. [Hall Decl. ¶ 18]

64. Plaintiffs have not been provided any records concerning the subject of the forgoing paragraph. [*Id*]

65. It is known that the CIA had certain guards on the payroll at POW camps in Laos and North Vietnam. [Hall Decl. ¶ 19]

66. Plaintiffs have not been provided any records concerning the subject of the forgoing paragraph. [*Id*]

67. CIA Director William Casey inform President Ronald Reagan that the Vietnamese had made an offer of live Americans for cash. At President Reagan's request, Casey instructed a CIA employee to go back to the CIA and bring the confirming documentation to the White House for the President. [Hall Decl. ¶ 20]

68. Plaintiffs have not been provided any records concerning the subject of the forgoing paragraph. [*Id*]

69. The CIA generated records concerning POW/MIAs in CIA overseas field stations in Vietnam, Laos, Cambodia, and Thailand. [Hall Decl. ¶ 21]

70. Plaintiffs have not been provided any records originating in CIA overseas field stations. [*Id*]

71. Terms used in native populations and in published news /propaganda reports in Far East Asia included war criminals, Criminals, pirates, air pirates or sea

pirates. Post 1973 reports of a Caucasian in any Far East Asia country was likely to be a report about a suspected POW/MIA. [Hall Decl. ¶ 22]

72. The CIA's Directorate of Operations search for records originating in any Far East Asia country did not use the search terms "war criminals," "Criminals," "pirates," "air pirates," "sea pirates," "Caucasian."

73. The terms "unaccounted for" and "last known living" are terms used throughout the government in connection with POW/MIAs. [Hall Decl. ¶ 22]

74. The CIA's search did not include the search terms "uncounted for" and "last known living."

75. The CIA was involved in operation Bright Light (a DOD collection and reporting system on POWs and Prison Camps), Trail Watch (a project using, among others, Controlled American Sources and intelligence personnel to observe POW and military movements on routes in Laos and elsewhere), Project Alpha (an Air Force mission to track the location of POW/MIAs to protect them against inadvertent U.S. bombings, Operation Pocket Change (a 1981 plan to use photography and listening devices and rescue those believed held in Laos), Project Corona (an operation to photograph included satellite imagery to interpret troop movements in south East Asia, including along the Ho Chi Minh Trail), and Duck soup (the CIA/Air America name for an operation to rescue a POW. [Hall Decl. ¶ 23]

76. The CIA's search did not use the terms identified in forgoing paragraph, and plaintiffs have been provided no records regarding the subjects of the foregoing paragraph.

77. The CIA kept a list of suspected prison sites by name and grid-coordinates, the prison names were not used as search terms, and plaintiffs have been provided no records regarding the CIA's suspected prison sites. [Hall Decl. ¶ 24]

78. The CIA worked in close collaboration with the Department of Defense, each of the military branches, NSA, and other agencies, both in gathering and analyzing information about POW/MIAs. To date, the CIA has not released documentation reflecting this collaborative effort. [Hall Decl. ¶ 25]

79. CIA Directors showed Congressman Billy Henderson aerial reconnaissance photographs of escape and evasion codes photographed from the roof of a POW prison in North Vietnam, as well as photographs of the construction through completion of a prison in Nhom Marrott, Laos. The CIA has not released any documentation of Henderson's meetings with the CIA nor of any photographs. [Hall Decl. ¶ 26]

80. Congressman John LeBoutillier had meetings with officials in Laos where they confirmed that there were live prisoners in that country as late as 1981 and 1982, and that the United States Government agreed to supply medical supplies in exchange for information and possibly the release of these prisoners. CIA Director Casey was directly involved in these discussions. [Hall Decl. ¶ 27]

81. The CIA has never released information about these activities, reported in Cong. LeBoutillier affidavit, nor has it done so with respect to his meetings with Director Casey. [Hall Decl. ¶ 27]

82. The CIA has not shown that it searched the files of the National Photographic and Interpretative Center, a component of the CIA, which is now the National Imagery and Mapping Agency. [Hall Decl. ¶ 28]

83. In February 1981 the President, Vice-president, CIA Director Casey, and others had a meeting in which a North Vietnamese proposal to trade information about POW/MIAs for money (specifically 4 billion dollars) was discussed. The CIA has not released any information about this meeting or about any such proposal from a foreign country. [Hall Decl. ¶ 29]

84. Deputy national security adviser under President Nixon Richard V. Allen, (1968-69) and senior foreign policy and national security adviser to President Reagan (1978-1982) testified to the Senate Committee about seeing in 1981 a photograph of escape and evasion codes stamped in the grass at what was understood to be a Vietnamese POW prison. He testified that President Reagan launched an operation to investigate the site. The CIA has failed to release any records pertaining to this or the ensuing rescue attempt. [Hall Decl. ¶ 30]

85. The declassified portion of the Senate testimony of Deputy Director of Central Intelligence from early 1981 through 1982 Admiral Bobby Ray Inman concerns the CIA's involvement in monitoring POW/MIA movements in 1981, including CIA preparation of maps and gathering human source reports of live sightings. Plaintiffs have been provided no records regarding this subject. [Hall Decl. ¶ 31]

86. Hall has notes and maps of various prison camps in Vietnam, including the Son Tay camp, where an unsuccessful raid to rescue POWs was conducted. These records appear to have originated by the CIA or based on CIA supplied information.

Documents maintained on each known or suspected facility were updated regularly. Nothing has been released about camps in Laos or Cambodia. The CIA has detailed information on POW/MIA movements and suspected camps, but has released only records predating the end of the war. [Hall Decl. ¶ 32]

87. Both Martin Murphy and Thomas Meurer accompanied Ross Perot on various trips, starting in 1969, to deliver supplies to POW/MIAs and to visit prison camps in South Vietnam and Laos. Both men attended a meeting with CIA station chiefs in Laos, where they were shown maps and documents detailing precise locations of POW/MIAs, and camps. The CIA has never released documents pertaining to these meetings. [Hall Decl. ¶ 33]

88. Vietnam War Air Force intelligence officer Terry Reed testified about "the Project," special mission carried out by Task Force Alpha in Thailand in 1970, which involved gathering information and targeting strikes in Laos. Intelligence had discovered that American POW/MIAs were being moved into what threatening environments to try to prevent Americans from targeting those spots in Laos, and in North Vietnam. His group's mission was to identify the location of all POW/MIAs and likely prison camps in order to prevent inadvertent U.S. bombings of those locations. [Hall Decl. ¶ 35]

89. Hall has documentation summarizing cooperation between the DOD and the CIA with respect to covert operations in Vietnam and Laos prior to 1964, including several references to acronyms for CIA/DOD efforts, including the rescue of POWs. Plaintiffs have been provided no records regarding these operations. [Hall Decl. ¶ 36]

90. There exists a CIA report on the Nhom Marrott Detention Facility, a suspected prison camp in Laos where 30 POWs were said to be held. The DIA requested

the CIA to conduct an operation to verify information, and the CIA agreed. Despite these two sources of information about CIA involvement with intelligence gathering on Nhom Marrott, the CIA has never released any information on this facility. [Hall Decl. ¶ 37]

91. With respect to the CIA's production in response to Item 3 of AIM's request, for documents on POW/MIAs in Laos from 1971-1975, it is clear from the information set forth above that the CIA was involved in collecting and monitoring such information. In addition, 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. [*Id.*]

92. The Koch Declaration does not state that the CIA properly classified Exemption 1 information under Executive Order 12958. [Koch Decl.]

93. The classified information at issue is more than 25 years old.

94. The CIA has not described the kinds of information to which its Exemption 2 claims pertain. [Koch Decl.]

95. The CIA refused to conduct a search for records responsive to Item 8, regarding computation of CIA fee estimates for plaintiffs' February 7, 2003 FOIA Request, asserting its right to decline because the item was "the subject of the current litigation." [CIA Koch Decl. Ex. 12, June 2005 Koch letter]

96. The CIA was granted a protective order from plaintiff Hall's and SSRI's discovery of the records identified in Item 8. [Docket # 68]

DATE: May 10, 2007.

Respectfully submitted,

/s/

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