

*This represents a device for converting the court into a rubber stamp and avoid any fees that will get made*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action Nos.  
 ) 78-322 & 78-420  
 WILLIAM H. WEBSTER, et al., ) (consolidated)  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )

DEFENDANTS' MOTION CONCERNING THE  
ADJUDICATION OF CERTAIN EXEMPTION CLAIMS

Defendants hereby move this Court for an order adopting certain procedures pursuant to which this Court can adjudicate defendants' claims that certain documents or portions thereof are exempt, under 5 U.S.C. § 552(b), from release to plaintiffs. The details of such procedures are described more fully in the memorandum of points and authorities submitted herewith.

Respectfully submitted,

J. PAUL McGRATH  
Assistant Attorney General

STANLEY S. HARRIS  
United States Attorney

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MEMORANDUM OF POINTS AND AUTHORITIES IN  
SUPPORT OF DEFENDANTS' MOTION CONCERNING  
THE ADJUDICATION OF CERTAIN EXEMPTION CLAIMS

PRELIMINARY STATEMENT

*records, compliance*

As is described in greater detail below, the issue in this action under the Freedom of Information Act, 5 U.S.C. § 522 (the "FOIA"), is whether the Federal Bureau of Investigation (the "FBI") has properly applied 5 U.S.C. § 522(b) in withholding from plaintiff certain documents or portions thereof.

By means of the instant motion and brief, defendants hereby submit for the Court's approval, a plan for resolving this issue. The key element of this plan is the submission by the FBI of a justification, itemization and indexing (i.e., a so-called "Vaughn Index")<sup>1/</sup> covering an approximate 118-document sample of those records which the FBI claims are exempt under 5 U.S.C. § 522(b) from release to plaintiffs. As is discussed below, this representative sample is to be randomly selected by the FBI.

*copy officials*

*How can you "comply" without records?*

STATEMENT OF THE CASE

In these consolidated actions, plaintiff seeks access to all records maintained by the FBI at its Dallas and New Orleans Field Offices pertaining to the assassination of President John F. Kennedy. Complaints, ¶¶ 7. During the course of this action, the FBI has engaged in a massive effort to search for and process documents responsive to plaintiff's request. As a result of the its search, the FBI has reviewed 35,775 documents, consisting of

*Correct but must search*

*not so limited to a few more files only*

<sup>1/</sup> See Vaughn v. Rosen, 157 U.S.App.D.C. 340, 484 F.2d 820 (1973), cert. denied, 415 U.S. 977 (1974).

148,196 pages. Declaration of John N. Phillips ("Phillips Decl."), ¶ 4. Of that total, 23,969 documents, consisting of 94,964 pages, were not processed inasmuch as they were duplicative of other documents which were processed or which had been furnished to plaintiff pursuant to his separate FOIA request for FBI Headquarters documents on the Kennedy assassination. Id. A total of 11,806 documents,<sup>2/</sup> consisting of 53,232 pages, were thus processed in response to plaintiff's FOIA request vis-a-vis the Dallas and New Orleans Field offices. Id. Of the documents processed, 9,146 were released without any deletions, whereas 2,660 contained some deletions. Id. Of the total number of pages processed, 51,475 were furnished to plaintiff, whereas only 1,757 were denied in their entirety. Id.

Moreover, the FBI also processed two special indices in response to plaintiff's FOIA requests.<sup>3/</sup> The first index consists of 1,514 cards, none of which were withheld in their entirety. Phillips Decl. ¶ 5. The second index consists of 51,989 cards, of which 48,754 were released and 3,235 were denied in their entirety. Id.

As a result of the FBI's efforts, the only remaining issue in this case is whether the FBI has acted properly in claiming that some or all of documents, including the index cards, are exempt under the FOIA from release to plaintiff. Because of the large number of documents and pages involved, the defendants submit that the most appropriate way for the Court to resolve this issue is for it to determine whether a sample of the FBI's exemption claims are valid. *cannot because of approvals* If the Court finds that the exemptions contained in the sample are proper, then it can conclude that the totality of the FBI's exemption claims are likewise valid.

<sup>2/</sup> Many of these documents were actually processed twice by the FBI. The first time was pursuant to plaintiff's FOIA request. The second time was pursuant to the Justice Department's determination of the plaintiff's administrative appeal of the FBI's initial processing of his request. Of the documents that were reprocessed, only one -- a referral to the Central Intelligence Agency -- remains outstanding.

<sup>3/</sup> These indices were prepared by the Dallas Field Office as an administrative aide for investigators of the Kennedy assassination.

In this regard, the defendants suggest that a sample "Vaughn Index" be submitted, consisting of every one-hundredth document processed in response to plaintiff's FOIA request. If the one-hundredth document does not contain any deletions, the defendants propose to proceed to the first document containing a deletion after each one-hundredth document. Such a process would produce approximately 118 documents which would then be addressed in an affidavit with appropriate indexing and itemized justifications.<sup>4/</sup> At the discretion of the Court, the defendants will also submit for in camera inspection redaction-free copies of the documents in the sample. In addition, the defendants propose to submit for in camera review the index cards that correlate with each document contained in the itemized justification.<sup>5/</sup>

On the basis of these materials, the Court can decide whether all of the FBI exemption claims in this action are sustainable.

Because of the size of the sample, the defendants request that they be given one hundred twenty days to complete the processing of the documents and to file the appropriate "Vaughn Index" and other pertinent submissions, including the in camera packet of index cards.

#### ARGUMENT

##### Defendants' Sampling Plan Should Be Adopted By This Court

Defendants' plan for the resolution of the FBI's exemption claims at issue herein seeks nothing more than the employment of sampling techniques to resolve such claims. As such, there is nothing novel in what defendants seek. On the contrary, this

<sup>4/</sup> The defendants are fairly confident that the sample of approximately 118 documents will be representative of all the documents in question, and thus will contain examples of every type of exemption that was invoked to justify excisions. However, if it turns out that a type of exemption is not contained in the sample "Vaughn Index," the defendants will go back and randomly select three additional documents which contain the exemption, and will include those documents in the itemization and justification.

<sup>5/</sup> It would not be possible to prepare an adequate "Vaughn" itemization for the index cards since such would necessitate attaching copies of excised cards which, in turn, would disclose information that has been deleted in the underlying documents. Accordingly, an in camera submission would seem to be the only feasible type of review.

*appears in index, which withholds what was disclosed and is in the public domain. But the court has no way of knowing this*

Court and the Court of Appeals for this Circuit have, in the past, endorsed the use of sampling methods to determine the validity of exemption claims in FOIA cases. E.g., Bristol-Myers Co. v. Federal Trade Commission, 194 U.S.App.D.C. 99, 112, 598 F.2d 18, 31 (1978); Mead Data Central, Inc. v. U.S. Department of Air Force, 184 U.S.App.D.C. 350, 566 F.2d 242 (1977); Ryan v. Department of Justice, 474 F. Supp. 735 (D. D.C. 1979); Heublein, Inc. v. Federal Trade Commission, 457 F. Sup. 52 (D. D.C. 1978); St. Louis Post-Dispatch v. Federal Bureau of Investigation, 447 F. Supp. 31 (D. D.C. 1977).

Further, as a number of courts have held, sampling may be used to resolve exemption claims in FOIA cases where, as here, there are so many pages subject to such claims that a comprehensive "Vaughn Index," covering all such pages, is unfeasible. Vaughn v. Rosen, 383 F. Supp. 1049 (D. D.C. 1974), aff'd., 173 U.S. App. D.C. 187, 523 F.2d 1136 (1975); Deering Milliken, Inc. v. Nash, 90 L.R.R.M. 3138 (D. S.C. 1975), rev'd on other grounds, 548 F.2d 1131 (4th Cir. 1977); cf. Fensterwald v. Central Intelligence Agency, 443 F. Supp. 667 (D. D.C. 1977).

The first of the above opinions ("Vaughn II") should not be confused with an earlier and more celebrated opinion in the same case, Vaughn v. Rosen, 157 U.S.App.D.C. 340, 484 F.2d 820 (1973). In this earlier opinion ("Vaughn I"), the Court of Appeals for this Circuit invented the "Vaughn Index" and ruled that such an index was an appropriate device for resolving exemption claims in FOIA actions. After so doing, the Court of Appeals remanded the case for further proceedings consistent with its opinion. On remand, the District Judge in Vaughn II expressed his dismay at the enormity of the task thus presented him:

the number of documents involved here is approximately 2,448, filling seventeen standard-size, five-drawer cabinets. According to [the government's affidavit], the time required to index all the documents in accordance with the decision of the Court of Appeals would be 10,257.1 man-hours or 4.93 man-years at a total cost to the government of \$96,176.00. [383 F. Supp. at 1052].

Faced with such a prospect, the Court specifically rejected the notion that a "Vaughn Index" need be prepared for all of the documents there at issue:

It is clear from [the government's affidavit] that the cost, both in time and money, would be, in any practical sense, prohibitive. A realistic solution to the dilemma posed by the suggestion of the Court of Appeals and the physical magnitude of the task become[s] imperative. [Id.]

The "realistic solution" which the Vaughn II court employed to resolve the government's exemption claims involved the use of sampling. In fact, that solution was quite similar to the one advocated herein by defendants. Specifically, in Vaughn II, the government, with the plaintiff's agreement, submitted to the court a representative sample of the documents there at issue. The sample consisted of nine documents, out of the total of 2,448. In addition, the government submitted a "Vaughn Index" for the sample, i.e., tables which itemized the deletions therein and gave justifications therefor.

On the basis of such procedure, the court in Vaughn II was able to rule on all of the government's exemption claims in the case. The Court of Appeals, implicitly approving the procedure that the district court had followed, affirmed.

The Deering Milliken case, supra, is another one in which too many documents were at issue to permit the preparation of a comprehensive "Vaughn Index" and in which the court, accordingly, resorted to sampling to resolve the government's exemption claims.

In that case, the National Labor Relations Board (the "NLRB"), relying on certain FOIA exemptions, withheld, apparently in toto, various documents relating to a backpay proceeding. Large numbers of such documents were involved:

The number of documents which may be included in [plaintiff's] request is obviously quite substantial. The rights of approximately 540 discriminatees are involved in the back pay determination and the NLRB has indicated that it possesses files of varying complexity for each of the discriminatees. [90 L.R.R.M. at 3140].

To resolve the exemption claims relating to such documents, the court did not require the NLRB to prepare a "Vaughn Index" for all of them. Instead, "[t]o simplify this action and to provide [the plaintiff] with some insight into the nature of the documents which it had requested but obviously not seen," the court ordered the NLRB to "provide a descriptive list of the documents contained in several typical files." Id. at 3140-41. The NLRB provided such a list for six such files and submitted, for each file, "the reasons for which it claim[ed] each document" to be exempt under the FOIA. The NLRB further provided assurances that the list of documents was accurate and representative of the entire group of documents at issue in the case and submitted for possible in camera inspection the documents itemized in the list.

Based on the above procedure, the court in Deering Milliken was able to resolve the exemption claims for all the documents in the case. The Fourth Circuit modified certain of the district court's holdings on the merits and remanded the case, but took no issue with the sampling procedure which the district court had adopted.

In addition to Deering Milliken and Vaughn II, a third case, Fensterwald v. Central Intelligence Agency, supra, also stands for the proposition that a court may resolve exemption claims by means of sampling in situations where it is impracticable to prepare a "Vaughn Index" of the usual kind. In the Fensterwald case, many of the exemption claims involved national security matters and the government, apparently, had tendered "only skeletal justifications to support broad claims of exemption." 443 F. Supp. at 669. Because of the sensitive nature of the withheld material, Judge Sirica felt that it would not be "altogether satisfactory" if the government were required to come forward with a standard "Vaughn Index," i.e., one containing "particularized justifications" for its exemption claims. Id. at 668. As he explained,

Requiring the withholding authority to come forward with adequately detailed and particularized justifications runs the risk of requiring the agency to disclose the very information that is

claimed to be protected. This danger is particularly grave in instances where the requested material is withheld on the basis of the national security exemption. The FOIA does not afford astute litigants a license to use the indexing and justification procedure in order to discern the contents of potentially exempt materials. [Id. at 668-69].

In addition to rejecting the notion that the government need prepare a detailed "Vaughn Index," Judge Sirica also rejected the notion that he conduct an in camera inspection of all the documents at issue. Such inspections, he commented, entail

an awesome "investment of judicial energy" where numerous documents are subject to dispute. This problem is compounded where the particular items being withheld are claimed to be protected by a variety of different statutory exemptions. [Id. at 669 (citation omitted)].

In view of the above problems, Judge Sirica ruled that he would decide the exemption claims by "reviewing a small yet representative sample of withheld materials in order to determine whether the agency's skeletal justifications [for its exemption claims] are overbroad." Id. Once such review was completed, he said, he would "be in a position to extrapolate [his] conclusions to the larger group of withheld materials." Id.

On the basis of the above procedure, Judge Sirica was, in fact, able to resolve all of the exemption claims in the case. Fensterwald v. Central Intelligence Agency, No. 75-897 (dated and filed July 12, 1978) (vacated upon voluntary dismissal of plaintiffs).

Fensterwald, Deering Milliken and Vaughn II thus establish that, in FOIA cases, where the number or the content of documents makes it unsuitable for the government to prepare a comprehensive "Vaughn Index," the court may resolve the government's exemption claims by examining, in camera, a sample of the documents at issue or by considering a "Vaughn Index" prepared with respect to such a sample.

In the instant case, where there are far more documents at issue than in either Deering Milliken or Vaughn II, defendants propose that the Court adopt a procedure for the determination of the government's exemption claims, which follows the procedures



set forth in those cases and in Fensterwald: the FBI will prepare and submit "Vaughn Indexes" for a sample of the documents here at issue; those indexes, and, at the Court's discretion, the documents themselves, will be submitted to the Court for such rulings as can be made concerning the validity of the exemption claims herein. The above cases provide ample authority for such a plan and it may be the only way to prevent this lawsuit from continuing far into the 1980's.

CONCLUSION

For the reasons stated herein, defendants' motion concerning the adjudication of certain exemption claims should be granted.

Respectfully submitted,

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Assistant Attorney General

STANLEY S. HARRIS  
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3/2/82

UNITED STATES DISTRICT COURT  
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	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO.
	)	78-322 & 78-420
FEDERAL BUREAU OF	)	
INVESTIGATION,	)	(Consolidated)
	)	
Defendants.	)	

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DECLARATION OF JOHN N. PHILLIPS

I, John N. Phillips, make the following declaration:

1. I am a Special Agent of the Federal Bureau of Investigation (FBI), assigned in a supervisory capacity to the Freedom of Information-Privacy Acts Section, Records Management Division, FBI Headquarters (FBIHQ), Washington, D.C.

2. Due to the nature of my official duties, I am familiar with the procedures followed in processing Freedom of Information Act (FOIA) requests received at FBIHQ, including plaintiff's request for records on the assassination of President John F. Kennedy (JFK Assassination) contained in the Dallas (DL) and New Orleans (NO) Field Offices of the FBI.

3. The following files and Special Indices representing all the files responsive to plaintiff's FOIA request were searched and processed:

- (1) Dallas (DL) file 89-43
- (2) DL file 100-10461
- (3) DL file 44-1639
- (4) DL file 105-1435
- (5) DL file 67-425
- (6) DL file 105-632
- (7) DL file 66-1313A
- (8) DL file 9-1984

- (9) DL file on technical surveillance of Marina Oswald
- (10) DL file on technical surveillance of Marina Oswald (logs)
- (11) DL file on technical surveillance of Marina Oswald (transcripts)
- (12) DL file on microphone surveillance of Marina Oswald
- (13) DL file on microphone surveillance of Marina Oswald (logs)
- (14) DL file on microphone surveillance of Marina Oswald (transcripts)
- (15) DL file 62-3588
- (16) DL file on allegations of William Walter
- (17) DL miscellaneous references
- (18) DL search slips
- (19) New Orleans (NO) file 89-69
- (20) NO file 100-16601
- (21) NO file 44-2064
- (22) NO file 62-3702
- (23) NO miscellaneous references
- (24) NO search slips
- (25) DL 3x5 Special Index
- (26) DL 5x8 Special Index

*FB originally planned to limit to exp pro  
 & DL - needs  
 include others  
 But it originally  
 planned to & did  
 try to cover  
 more than  
 half of these*

4. The FBI's processing of plaintiff's FOIA request involved the review of 35,775 documents, consisting of 148,196 pages. Of this total, 23,969 documents, consisting of 94,964 pages, were not processed inasmuch as they were duplicative of other documents processed for plaintiff's FOIA request for DL and NO records on the JFK Assassination, or had been furnished to FBIHQ and processed pursuant to plaintiff's separate FOIA request for FBIHQ documents on the JFK Assassination. A total

of 11,806 documents, consisting of 53,232 pages, were thus processed in response to plaintiff's DL and NO FOIA request. Of these, 9,146 documents were released without any deletions, whereas 2,660 documents contained deletions. The plaintiff was furnished with 51,475 pages, whereas 1,757 pages were denied in their entirety.

5. Two Special Indices were also processed in response to plaintiff's FOIA request. The first Index consisted of 1,514, 5in. x 8in., index cards none of which were withheld in their entirety. The second Index consisted of 51,989, 3in. x 5in., index cards of which 48,754 were released and 3,235 were denied in their entirety. The index cards were prepared by the Dallas Field Office specifically as an administrative aide for investigators of the JFK Assassination.

6. The 5x8 Special Index consisted of index cards containing the file and serial numbers (references) of the documents contained in the four main files that the Dallas Field Office maintained on the events surrounding the JFK Assassination: 89-43; 44-1639; 100-10461; 62-3588. This Index was created to administratively track documents on the JFK Assassination. Accordingly, a short description of each document was placed on an index card. More than one document was usually described on a card. These 5x8 index cards were, in turn, filed by date. When processed pursuant to plaintiff's FOIA request, it was necessary to determine whether the information on an index card was withheld or released when the underlying document(s), on which the index card was based, was (were) processed. If information on the card was excised in the underlying document(s), then the information on the card was also excised.

7. The 3x5 Special Index consisted of index cards filed in alphabetical order. These cards referenced various subject matters, including names and the file and serial number of the document containing the information indexed. The 3x5 Special Index provided cross reference access to the four main files on the JFK Assassination which were maintained in the Dallas Field

Office. Only names and information considered relevant and necessary for future retrieval were indexed. The decision of what to index was made by the Investigative Agent and Supervising Agent. A notation (indexing mark), consisting of two intersecting lines, was placed next to each piece of information in a document that was indexed, denoting that an index card had been prepared. If the same information was to be indexed in a later document, the file and serial number of this later document was also added to the index card already in existence. To process the 3x5 Special Index, it was necessary to check whether the information in the underlying document(s), for which the index card was prepared, was released or withheld, so that the index card could be processed in the same manner. In some instances a 3x5 index card referenced two or more documents, and it was determined that information on the card was released in at least one of the underlying documents listed on the card but withheld in at least one of the other underlying documents listed on the card. In those instances, it was necessary to withhold from release the entire original index card and to prepare a new index card containing the name and reference(s) that were releasable on the original index card. This was done because a release of the original index card, even in its excised form, would have made it possible to undermine the purpose of excising material pursuant to proper exemption(s). The preparation of a new index card was thus the best way to protect information that had been excised. If new cards had not been prepared in instances of multiple references on one card, it would have been necessary to withhold from release the entire 3x5 Special Index so that exempted material could be protected. Single reference index cards, in which the name on the card had to be excised, were withheld from release, as well as multiple reference cards in which all the information on the card was excised. The single reference cards were so treated since the large number of 3x5 Special Index cards combined with the alphabetical arrangement of the Index, made it easy to identify last names on the cards prepared for the underlying documents in which the indexed information was denied.

8. To submit an affidavit indexing and itemizing justifications for all of the 11,806 documents involved would take approximately 20,000 man-hours to prepare. Submission of such an affidavit for a random sample of every one-hundredth document containing excisions would take approximately 500 man hours. In addition, it would take approximately 6,000 man-hours to provide the Court with a "Vaughn Index" for all the 1,514, 5in. x 8in., index cards. However, if such an index was prepared for only those cards that correlate with every one hundredth document containing excisions (i.e. - about 90 cards), it would take approximately 400 man-hours.


9. In order to submit a "Vaughn Index" for the 51,989, 3in. x 5in., index cards, it would take about 50,000 man-hours to prepare. The underlying documents for which each card was prepared<sup>h</sup> would also have to be justified and that would take approximately 50,000 more man-hours. Moreover, to submit an adequate "Vaughn Index" for these index cards would require attaching copies of the cards that contain excisions; however, such a submission would itself disclose excised information (see paragraph 7, supra). Therefore, an in camera submission of the index cards would appear to be the most appropriate type of review. It is estimated that it would take approximately 50,000 man-hours to prepare all of the index cards plus the underlying documents for an in camera review. If only those cards that correlate with every excised one-hundredth document were submitted for in camera review (i.e. - about 400 cards), it is estimated that it would take approximately 400 man-hours to prepare that sample.<sup>\*/</sup>

\*/ The time estimates detailed in paragraphs 8 and 9 are based upon the FBI's experience in preparing "Vaughn Indexing" in other litigations. Included in these estimates are duplication time, word processing time, preparation of the affidavit indexing and itemizing the justifications, proofreading, retyping, assembly of documents and consultation with other components of the Justice Department, as well as other government agencies. Thus, the FBI estimates that it will take an average of 4 hours to "Vaughn" a document that contains deletions, whereas a document without deletions will require about 1 hour. Because more than one document is usually referenced on a 5x8 index card, the FBI thinks that it will take approximately 4 hours to itemize and justify each 5x8 card. The FBI estimates that it will take about 1 hour to "Vaughn" each 3x5 card, and about 1.7 hours to itemize and justify the correlated 30,000 (approximately) Dallas documents. Finally, the FBI thinks that it will require about 1 hour to prepare each 3x5 index card plus the underlying documents for an in camera submission.

10. In sum, if the Court desires a "Vaughn" justification and itemization of every document and index card, it would require a total effort of over 126,000 man hours. If the Court permits a justification and itemization of every one-hundredth document randomly chosen, it would take approximately 1,300 man hours, or 2 FBI employees working full time for almost 120 days.

I have read the foregoing statement consisting of 6 pages and fully understand its contents. I declare under penalty of perjury that the statement is true and correct to the best of my knowledge and belief.

Dated, this 2 day of March, 1982.

  
\_\_\_\_\_  
JOHN N. PHILLIPS  
Special Agent  
Federal Bureau of Investigation  
Washington, D.C.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, )  
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 Plaintiff, )  
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 ) 78-322 & 78-420  
 FEDERAL BUREAU OF )  
 INVESTIGATION, ) (Consolidated)  
 )  
 Defendants. )  
 )

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ORDER

Upon consideration of defendants' motion concerning the adjudication of certain exemption claims, it is hereby ORDERED that:

1. As used herein, the following terms have the following meanings:

(a) "FOIA" means the Freedom of Information Act, 5 U.S.C. §552.

(b) "Document" means any document within the scope of plaintiff's FOIA request which is limited to those documents contained in the following files of the Federal Bureau of Investigation (FBI): Dallas (DL) file 89-43; DL file 100-10461; DL file 44-1639; DL file 105-1435; DL file 67-425; DL file 105-632; DL file 66-1313A; DL file 9-1984; DL file on technical surveillance of Marina Oswald; DL file on technical surveillance of Marina Oswald (logs); DL file on technical surveillance of Marina Oswald (transcripts); DL file on microphone surveillance of Marina Oswald; DL file on microphone surveillance of Marina Oswald (logs); DL file on microphone surveillance of Marina Oswald (transcripts); DL file 62-3588; DL file on allegations of William Walter; DL miscellaneous references; DL search slips; New Orleans (NO) file 89-69; NO file 100-16601; NO file 44-2064; NO file 62-3702; NO miscellaneous references; NO search slips; DL 3x5 Special Index; and DL 5x8 Special Index.



(c) "Claim of Exemption" means any claim, asserted by the FBI, that a document or portion thereof need not be released to plaintiff by reason of 5 U.S.C. §552(b).

2. The FBI shall select a representative sample of documents which are subject, in whole or in part, to one or more claims of exemption. That sample shall consist of every one-hundredth document processed in response to plaintiff's FOIA request. If the one-hundredth document does not contain any deletions, the FBI shall include in the sample the first document containing a deletion after each one-hundredth document. If it materializes that a type of exemption is not contained in the sample, the FBI shall go back and randomly select three additional documents which contain the excluded exemption, and shall include those documents in the itemization and justification.

3. The FBI shall also prepare an itemization and justification for those 5x8 index cards that correlate with each document contained in the itemized justification referenced in paragraph 2 of this Order. In addition, the FBI shall prepare for in camera review the 3 x 5 index cards that likewise correlate with each document contained in the itemized justification.

4. Within one hundred twenty (120) days of the date of filing of this Order, the defendants shall file with the Court justifications, itemizations and indexing of the claims of exemption contained in the documents and index cards selected pursuant to paragraphs 2 and 3 hereof. Also, within one hundred twenty (120) days of the date of filing this Order, the defendants shall submit, for in camera inspection by the Court, unredacted copies of the documents and index cards referenced in paragraphs 2 and 3 hereof.

5. The Court will review the materials filed by defendants pursuant to paragraph 4 hereof and will determine on the basis thereof whether all of the claims of exemption asserted by the FBI in this action may be sustained.

So ORDERED this \_\_\_\_ day of \_\_\_\_\_, 1982.

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of March, 1982, I have served the foregoing Defendants' Motion Concerning the Adjudication of Certain Exemption Claims, Memorandum of Points and Authorities in Support thereof, and a proposed Order, by mailing a copy, postage prepaid, to:

James H. Lesar, Esq.  
Suite 900  
1000 Wilson Boulevard  
Arlington, Virginia 22209

  
HENRY J. LAHAIE

Substituted for Ulysses  
and respond to effects  
make the class more ~~small~~, like <sup>✓</sup> critics

35,775 days 148,196 job hrs  
23,964 " 94,964 job not  
present - "previously present"  
did present

11,806 days 53,232 job hrs  
51,415 job hrs, with 1,757 job hrs

did not present in his case 65%  
(67,08)

to do the 94,964 is 1.78 times as  
much work as 171 man-  
days more, total 291 man-days