UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, Plaintiff, v. WILLIAM H. WEBSTER, ET AL., Defendants	Civil Action No. 78-0322
HAROLD WEISBERG, Plaintiff v. FEDERAL BUREAU OF INVESTIGATION, ET AL., Defendants	Civil Action No. 78-0420 (Consolidated)

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION CONCERNING THE ADJUDICATION OF CERTAIN EXEMPTION CLAIMS

Preliminary Statement

Defendants have moved the Court for an order adopting certain procedures for adjudicating defendants' claims that certain documents or portions thereof are exempt from disclosure pursuant to 5 U.S.C. § 552(b). What defendants seek is in effect a variant of the so-called "Vaughn Index" required by the Court of Appeals in Freedom of Information Act (FOIA) suits since its decision in Vaughn v. Rosen, 157 U.S.App.D.C. 340, 484 F.2d 820 (1973). For this reason plaintiff will hereafter refer to it as a "Selective Vaughn" or "Vaughn Sampling".

Plaintiff opposes the Selective Vaughn proposed by defendants because he believes that there is a better and more economical

means of resolving the unresolved issues in this case. If, however, the Court decides to grant defendants' motion, the Vaughn Sampling should be modified in line with the suggestions which plaintiff puts forth below.

ARGUMENT

A. Before Resorting to a Selective Vaughn, Court Should Order Defendants to Act on Plaintiff's Administrative Appeals

Defendants' motion for a Selective Vaughn proceeds on the assumption that the only remaining issue in this case concerns whether or not they have improperly withheld information under a claim that it is exempt pursuant to 5 U.S.C. § 552(b). This is in error. In addition to the dispute over exemption claims, there are a number of other issues which also have not been resolved.

When the FBI releases documents to a requester, it customarily notifies him that he has a right to appeal any withholdings made pursuant 5 U.S.C. § 552(b). In these two consolidated cases, Weisberg has reviewed the documents as they were released to him. When he came across exemption claims that appeared to be unjustifiable, he appealed them to the Justice Department's Office of Information and Privacy Appeals (OIPA).. His appeals generally identified the excisions in question by the serial number of the document containing them; in many instances he attached copies of the referenced documents to his appeal letters and provided background information showing why the exemption claims were unjustifiable.

In addition to questioning excisions, Weisberg also used the appeals mechanism to raise other issues, such as the adequacy of the FBI's search for responsive records. For example, he specified files containing information pertaining to former FBI Agent

James P. Hosty, Jr., Warren Commission critics, and former New Orleans District Attorney Jim Garrison that have not been searched. See attached affidavit of Harold Weisberg, ¶¶14-17. Because it is axiomatic that an agency must prove in an FOIA case that each document which falls within the class requested either has been produced, is unidentifiable, or is wholly exempt, National Cable Television Association v. F.C.C., 156 U.S.App.D.C. 91, 94, 479 F. 2d 186, 189 (1973), this is an issue which must be dealt with sooner or later in this litigation.

Other issues raised in Weisberg's appeals include his complaints that the FBI has violated its agreement to provide him copies of all films and tapes (other than the Marina Oswald tapes) contained in the files.

Although Associate Attorney General John H. Shenefeld did order a reprocessing of Dallas and New Orleans field office files in December, 1980, and that reprocessing has at long last finally been completed, the reprocessing has not addressed most of the appeals which plaintiff has lodged with OIPA. Weisberg Affidavit, ¶¶2-5.

Weisberg's appeals address matters that are of primary concern to him and other scholars who are interested in the assassination of President Kennedy. Weisberg Affidavit, ¶2. Weisberg has a right to have the OIPA act upon his particularized appeals. Moreover, this offers a means of ending this litigation without putting the Government to the immensely more time-consuming and expensive ordeal of a formal Vaughn Index. It is for these reasons that plaintiff made an offer--rejected out of hand by the the Government--to waive a Vaughn showing if defendants would agree to act upon his appeals and to pay him reasonable attorney's fees and costs which he has incurred in this litigation.

The Government's Vaughn Sampling motion proposes to waste more time and money than are required to resolve the issues in

this case. Plaintiff has a right to have the OIPA act upon his appeals, and there is every reason to believe that this offers a means of resolving the outstanding issues in this litigation without the larger expenditure of tiem and money required by the FBI's Selective Vaughn. See attached affidavit of James H. Lesar.

Accordingly, plaintiff requests that the Court order defendants to act upon his pending appeals before resorting to the Vaughn sampling procedure.

B. Alternatively, if a Selective Vaughn Index is Ordered, It Should Be Modified from That Proposed by Defendants

If the Court should decide to grant defendants' motion for a Selective Vaughn, then certain modifications should be made to ensure that the sample is fair, adequate, and representative.

Defendants' proposed Vaughn Sampling is inadequate because it does not take into account the 94,965 pages which were not processed because they are allegedly duplicative of FBI Headquarters records "which were processed or which had been furnished to plaintiff pursuant to his separate FOIA request for FBI Headquarters documents on the Kennedy as-assination." Defendants' Memorandum of Points and Authorities, p. 2. Where field office records have been withheld from plaintiff on the grounds that they were "previously processed" in the FBI's releases of its Headquarters files, plaintiff has relinquished his claim to the withheld information only insofar as it was in fact released in the Headquarters files. But the Headquarters releases contained a great volume of materials which were withheld from the public and which have never been challenged in court by this litigant or, to the best of his knowledge, by anyone else. Thus, where the Headquaters records were withheld or excised and the corresponding field office records withheld on the grounds that they were "pre-

viously processed", the withheld information is at issue in this litigation. The Headquarters documents were processed and released more than four years ago. Those which were withheld under Exemption 1 must be reprocessed because they were processed under an Executive order, E.O. 11652, which was subsequently replaced by an Executive order, E.O. 12065, which prescribed entirely different standards for classifying information. The lapse of four years time and the publication of the report of the House Select Committee on Assassinations are factors which undoubtedly require reconsideration of some, if not all, of the exemption claims asserted to withhold Headquarters materials. Accordingly, the Selective Vaughn proposed by defendants must be enlarged considerably if it is to be an adequate sample, and if it is to be a fair and representative sample it must also include information withheld in the previously processed documents which was also withheld from the Headquarters releases.

Secondly, the proposed Selective Vaughn is neither fair nor adequate nor representative because selection on the random basis described by defendants would result in a Vaughn Index being prepared on numerous documents containing minor excisions of minimal importance to plaintiff. There are two obvious modifications which can be employed to remedy this defect. First, the Vaughn Index should be limited to those instances where (1) documents have been withheld in their entirety, or (2) at least an entire page or a full paragraph of material has been withheld. Secondly, plaintiff should be allowed to select not less than half of all the documents to be Vaughned. This will enable plaintiff to ensure that defendants are compelled to Vaughn those documents which are most important to him and those which he believes to be least capable of withstanding critical judicial scrutiny.

Plaintiff's suggested modifications of defendants' proposed Selective Vaughn are contained in an alternative order which is submitted herewith.

Plaintiff further requets the Court to order defendants to serve a copy of any Vaughn Index directly upon him as well as his counsel. Plaintiff lives at Frederick, Maryland and because of his age and ill-health cannot review such an index at the speed he was once able to muster. Because of this, and inview of the massive length of such an index, mailing a copy directly to him will enable him to respond to the index without additional delay caused by the need of his counsel to xerox and mail the index to him.

Respectfully submitted,

James H. Lesar

JAMES H. LESAR
1000 Wilson Blvd., Suite 900
Arlington, Virginia 22209
Phone: 276-0404

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of March, 1982, mailed a copy of the foregoing Plaintiff's Opposition to Defendant's Motion Concerning the Adjudication of Certain Exemption Claims to Mr. Henry La Haie, Civil Division, U.S. Department of Justice, Washington, D.C. 20530.

James H. Lesar

JAMES H. LESAR

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 78-0322
	:	Civil Action No. 78-0420
WILLIAM H. WEBSTER, ET AL.,	:	
	:	
Defendants	:	

O R D E R

Upon consideration of defendants' motion concerning the adjudication of certain exemption claims, plaintiff's opposition thereto, and the entire record herein, it is by the Court this _____ day of _____, 1982, hereby ORDERED THAT:

1. Defendant Federal Bureau of Investigation shall prepare a Vaughn v. Rosen-type affidavit justifying the exemption claims made on a total of 150 documents at issue in this litigation.

2. Of the total sample of 150 documents, plaintiff shall be allowed to select _____ documents which he wishes the FBI to include in its Vaughn Index.

3. Unless selected by plaintiff, no document shall be included in the FBI's Vaughn Index unless at least one full paragraph has been excised from it.

4. Within 120 days from the date of filing of this Order, defendants shall file with the Court and serve on plaintiff and his counsel the justifications, itemizations and indexing of the claims of exemptions contained in the sample documents.

UNITED STATES DISTRICT COURT

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HAROLD WEISBERG,	:	
Plaintiff	:	
v.	:	Civil Action No. 78-0322 Civil Action No. 78-0420
WILLIAM H. WEBSTER, ET AL.,	:	(Consolidated)
Defendants	:	

O R D E R

Upon consideration of defendants' motion concerning the adjudication of certain exemption claims, plaintiff's opposition thereto, and the entire record herein, it is by the Court this _____ day of _____, 1982, hereby

ORDERED, that defendants motion be, and the same hereby is DENIED; and it is further

ORDERED, that within 120 days of the date of this order defendants shall notify plaintiff of the action taken upon each and every one of the appeals he has taken in these consolidated cases.

_____
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

WILLIAM H. WEBSTER, et al.,

Defendants.

AFFIDAVIT

My name is Harold Weisberg. I reside at 7627 Old Receiver Road, Frederick, Maryland. I am the plaintiff in this case.

1. I have read defendants' Motion for a proposed Vaughn index to be prepared by a sampling of one record in each 100 records. If granted, it will ignore most of the records pertinent in this instant cause because defendants omit them from the proposed 1/100 sampling. Defendants also ignore the many records that are the subject of documented appeals, most of which remain both entirely ignored and entirely undisputed years after they were filed. Defendants also ignore the many pertinent records for which no search has as yet been made. Some of these are identified below.

2. The reprocessing of some records does not address most of the appeals. In these appeals, many of which address matters that are of primary concern to me and to other scholars who are interested in the assassination of President Kennedy and its investigations, I identified specific files to be searched. In a number of instances I provided their FBI file number identifications.

3. Most of the records defendants admit are within the request litigated in this instant cause have not been provided in this instant cause. Defendants argue that, because similar but not identical records were provided in response to another request that did not require litigation, they are provided as "previously processed" in response to the other request. The declaration of FBISA John M. Phillips is misleading in this regard.

4. No Vaughn index of any kind was ever prepared for any of the records allegedly "previously processed," although they are, admittedly, within this litigation. Defendants propose to ignore them while failing to inform the Court of this. Thus, if the Motion is granted, almost twice as many records will not be within even a one-in-one hundred sampling.

5. Phillips states that 148,196 pages are within the litigated request. Of these he states that only 53,232 pages of these records were processed in this instant cause. Of those processed, he states 51,475 pages were provided, with excisions to be sampled for indexing. This leaves 94,964 pages without even a one-in-one hundred sampling. That is 1.78 times more pages than proposed to be sampled. If it will require 120 man-days to sample index the 51,475 pages, then it will require an additional 171 man-days, or 291 man-days to sample all the records admittedly within this litigation.

6. After being informed of defendants' proposed 1/100 sampling and the claimed amount of time it required, I offered defendants a means of obviating any Vaughn indexing and saving all that time and effort. It was rejected out-of-hand.

7. With regard to these allegedly "previously processed" pages, I have filed many detailed appeals, illuminated with countless copies of the records that are the basis of those appeals. To this day these appeals remain largely ignored.

8. These "previously processed" pages are part of the general FBIHQ general releases of JFK assassination records that were disclosed in December 1977 and January 1978. The information withheld from them has never been tested, never subjected to any Vaughn indexing of any kind, but is included in the appeals I filed. These ignored and undisputed appeals are detailed and extensively documented. With the many pages of documentation I provided, they take up almost two file drawers of space.

9. These "previously processed" pages were processed before the effective date of Executive Order 12065.

10. The FBI and I have an extensive FOIA history, including the amending of the investigatory files exemption in 1974. The FBI does not like but cannot refute my work, which is far and away the most extensive and most

dependable on the JFK assassination and is so recognized by scholars. Because the FBI has not been able to refute my criticisms of it - and I have obtained its records, or at least those it is not unwilling to disclose in response to my information requests - early on, in the late 1960s, it decided instead to ignore my requests. This was bucked up to and approved by Director J. Edgar Hoover. The FBI's subsequent history is that when it can no longer violate and ignore the Act, it stonewalls, refuses to search pertinent files and then engages in wholesale and entirely unjustified and unnecessary withholdings. The reason so many of my appeals are totally ignored in this case is because they prove that the withholdings are unjustified and unnecessary. In a large number of instances I attached to my appeals copies of records the FBI itself disclosed in which the same information was not withheld. It is not generally known, but when the FBI bureaucracy wanted the Warren Commission to withhold all FBI records from the public, Director Hoover ordered that nothing be withheld. Thus, it is not uncommon to find that the FBI in this case withholds from me what Director Hoover ordered the Warren Commission and the National Archives be authorized to disclose. I state that in this case the FBI withholds from me what the FBI itself authorized the Warren Commission to make available to the public. No Vaughn sampling can overcome this defect in the processing of the records I was provided and no sampling can include all the detailed, documented and undisputed appeals I have filed.

11. The extent to which the FBI deliberately, on orders of highest authority, ignored the Act and my requests shocked another court to which, in 1976, I presented an incomplete listing of 25 of my ignored, specific requests. To this day almost all of them remain ignored. Some are 14 years old. I recall only one of those records since provided. It was sent to me a year after I obtained it from the National Archives, which was authorized to disclose it by the FBI itself.

12. For years I filled out the then required DJ-118 forms, each accompanied by a check. It was normal practice for my checks to be cashed and the requests thereafter to be ignored. In one instance some angry and self-important functionary tore my check up. He then decided to cash it, still not providing the information requested. The Scotch-taped check was returned

to me by my bank.

13. Even when information is disclosed to other and later requesters after being withheld from me and I make a separate request limited to the information already disclosed to another, the FBI refuses to provide me that information. An example of this is the information the FBI made available to another, albeit sycophantic, writer, Edward J. Epstein. As of today, after the passing of more than four years, the FBI still has not provided me with as much as a single piece of paper it disclosed to Epstein who, from previous experience, it could expect to write and publish what the FBI liked.

14. One of the examples of the continued withholding of what is clearly within the litigated requests even after I provided their correct identifications, including the numbers of the files to be searched, is information pertaining to Jim Garrison. I use this as an illustration because he was very much a public figure and because I provided the numbers of two pertinent New Orleans files in which the FBI had such information hidden. One, incredible as it may seem, is classified and filed as "Laboratory Research Matters."

15. An example of the files not searched is those on the critics. In a number of instances, where I was able to determine them, I provided their file numbers. While still not providing these pertinent records, the FBI then removed the file numbers from other records provided so that identification of the pertinent files it refused to search would be made more difficult. These files are important historical records. In all cases these are on public persons and in all cases, when the FBI had what it regarded as derogatory information about the critics, it disclosed what it regarded as derogatory. With regard to me, for example, the FBI disclosed that it told President Johnson, the Attorneys General and the Congress what is totally false and totally fabricated, that an annual religious gathering at our farm was the celebration of the Russian revolution. The amount of injury from such incredible fabrications and defamations is incalculable. Once my appeals proved that they are false, the FBI ceased any further disclosures and my repeated appeals remain ignored.

16. Also pertaining to Garrison and to me and in the New Orleans records within this litigation are other long ignored appeals. The disclosed records, including some "previously processed" FBIHQ records, recount what I did report

to the New Orleans FBI office, that I had received by telephone when I was in New Orleans a threat against Garrison, attributed to the Mafia in San Francisco. The time at which I informed the FBI is correctly stated in the disclosed records. But one of the FBIHQ records states that the New Orleans FBI office informed FBIHQ of this quite some time before I notified the New Orleans FBI office. Those records, of the FBI's knowledge before I notified it, remain withheld after appeals. The only apparent explanation of earlier knowledge by the FBI in New Orleans is that it learned from a telephone tap.

17. Another kind of continued withholding pertains to a matter about which the FBI deceived the Warren Commission and all others to protect its false pretense, that the accused assassin, Lee Harvey Oswald, had never given any indication of any predisposition toward violence. But in fact Oswald had appeared at the Dallas FBI office several weeks before the assassination, left a written threat of violence and, after the assassination, the FBI destroyed Oswald's threat. The FBI was able to suppress this entire matter more than a decade, until after the retirement of then then Dallas Special Agent in Charge, Gordon Shanklin, was secure. After Shanklin's retirement the fact of this threat by Oswald was leaked to a Dallas newspaper. This caused an internal investigation by the FBI. Shanklin was almost indicted for perjury. By all accounts the note was a clear threat. A number of FBI Dallas employees were familiar with this threat and had read it. But their recollections of its contents were not entirely consistent on some details. Some said the threat was to bomb the FBI office, some that it was to bomb police headquarters, and some recalled that Oswald said he would blow up both. To the degree it could, the FBI covered up for itself in its investigation of itself. As one result, the same people had to be reinterviewed repeatedly as others told the inspector general what was not included in his earlier reports. One of those repeatedly reinterviewed is the Special Agent, James P. Hosty, Jr., who had been the Oswald case agent and who stated that on Shanklin's order he had torn up this Oswald threat and flushed it down the toilet. The last statement taken from Hosty is one he wrote out himself. It remains withheld from me. It was filed in a "67" or "Personnel Matters" file the correct number of which I provided in my still ignored appeal. To avoid providing it, the FBI searched a different "67" file and provided a

few records from it. It has not searched the "67" file whose number I provided in my appeal.

18. Hosty, instead of testifying fully and truthfully to the Warren Commission, pretended to be testifying fully and truthfully. He did not tell HW the Commission about Oswald's threat or his destruction of it. He preserved the FBI's cover story for not telling the Dallas police about Oswald, that Oswald displayed no predisposition toward violence, even though a Dallas police officer, Jack Revill, attested that Hosty had told him the exact opposite. After Revill's affidavit was known, the FBI launched a major campaign against the Dallas police and its chief in particular. Motive for this continued withholding is obvious, as is the reason for which the FBI steadfastly refuses to search correctly identified files for indubitably pertinent information.

19. Other examples of still withheld information include what the FBI agreed I was to receive. Its agreement was committed to writing. One example is JFK assassination information disclosed to others. Another is copies of all films and tapes. In these categories my only waiver was of the tapes the FBI recorded when it wiretapped and bugged the young widow, Marina Oswald. I did not want that personal information, some of the content of which was already disclosed to me, and I did not want it publicized. I received a few of the films and then the FBI just ceased sending me any of it. My appeals remain ignored. This, too, is information of exceptional importance.

20. Here, too, motive for the withholding is apparent: The films disclose the opposite of the FBI's preconception of the crime. The most glaring example of this is a film of which the Dallas FBI office did not inform either FBIHQ or the Warren Commission. Still and motion pictures were taken by an engineer, Charles Bronson. The film processor notified the FBI that the film would be available to it after processing. On the Monday after the assassination the FBI agent who viewed the film said it was valueless because, he said, the movies did not even show the building from which the FBI claimed Oswald fired all the shots. This FBI agent also found Bronson's still pictures to be valueless, even though one showed the President at the time he was killed. When friends of mine in Dallas learned that Bronson had this film, they viewed it and found that in fact the motion picture shows more than the building this

FBI agent claimed it did not show at all. There are almost 100 individual picture frames of the very window from which the FBI claims Oswald fired all the shots. What is and is not visible disputes the FBI's "solution." The House Select Commission on Assassinations was at the end of its life when it learned of this Bronson film. It requested the Attorney General and he agreed to have the FBI analyze that film and have it enhanced by computer. While I have received no information about this for several months, I do know that for two years the FBI avoided obtaining the Bronson film and having it analyzed and enhanced, and that it has not, after several years, issued any report on it.

21. The agent who presided over this stonewalling, whose name is withheld from me in this instant cause, is well known in Dallas where he is in a public role for the FBI and deals regularly with the press. He also is well known to my friends who deal with him. He is Udo Specht. But the FBI withholds this name throughout the records provided in this instant cause on a spurious privacy claim.

22. One of the many "national security" withholdings in this case, pertaining to Oswald and his contacts with the Russian and Cuban embassies in Mexico City, is of information the FBI disclosed to another, of which I provided a copy with my ignored appeal. What is withheld from me was unclassified until
6W the FBI started to process records for disclosure. Then it was classified "Top Secret." With a 1/100 sampling, which will be closer to a 1/300 sampling, the probability of this record being included in the index is very slight. It is not an exceptional case.

23. Recently, in this case, I received a record of what the FBI had been told by a reporter for The National Enquirer, his account of the contents of a declassified and disclosed record. The FBI classified the report of what The National Enquirer knew - what was declassified and disclosed - as "Secret."

24. From my extensive experience with the FBI in FOIA matters, it is apparent that this effort to have the Court sanction a sampling of not much more than a third of the records it admits are pertinent in this instant cause, and then indexing only one in 100 records of that third, is no more than an effort to
4W get this Court to sanction its persisting noncompliance, its unjustified withholdings and its steadfast refusal to make the searches required for

compliance with my requests. It is the usual FBI practice in my cases not to respond to my requests but to select only those records it is less unwilling to have disclosed and then to engage in extensive, unnecessary and unjustified withholdings from them. It thus stonewalls me and my lawyer, tying us up and preventing my doing the writing it does not like. By these means it also enormously inflates the cost of FOIA. It then uses these inflated costs of its own creation to seek the amending of the Act so that the nonexempt information it does not want to disclose may remain unknown to the country and its people.

25. It is highly unlikely if not entirely impossible that any sampling, of one in a hundred, of one in three hundred, or even one in three, can address all the many appeals I have filed and that are without response. It is my understanding of the Act that response to appeals is required and that as long as these material facts are in dispute any motion for summary judgment is inappropriate.

26. Any Vaughn sampling is premature until there is a competent attestation that all pertinent files have been searched and all nonexempt information has been provided. The FBI has filed no such attestation in this case. It merely ignores the actuality and by its present Motion seeks to deceive and mislead the Court into believing what is not true. The FBI has not made the required searches and therefore cannot attest to having made them.

HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 11th day of March 1982 Deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires July 1, 1982.

LILLIAN WEISBERG NOTARY PUBLIC FREDERICK CO., MD.

Lillian Weisberg
NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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AFFIDAVIT OF JAMES H. LESAR

I, James H. Lesar, first having been duly sworn, depose and say as follows:

1. I represent plaintiff in the above-entitled cases.

2. I also represent plaintiff in Weisberg v. United States Department of Justice, Civil Action No. 75-1996, a Freedom of Information Act lawsuit for records pertaining to the assassination of Dr. Martin Luther King, Jr.

3. In the latter case the FBI employed a Vaughn sampling technique virtually identical to that which defendants want to utilize in the above cases. However, that experience revealed several serious flaws in the technique itself. Because the random sampling method failed to even to produce a single example of several exemption claims which had been made by the FBI and produced only a miniscule number of others, the Vaughn Sampling Index

had to be done twice. Even then, it remained woefully inadequate. One problem was that a number of the documents alegedly selected at random contained only one or two relatively trivial exemptions, such as the names of FBI agents. If the same method is utilized in the instant cases, this flaw can be expected to manifest itself again. In the meantime, the more serious questions plaintiff has raised about more important matters would be ignored.

4. I am familiar with the case of Fensterwald v. Central Intelligence Agency, 443 F. Supp. 667 (D.D.C. 1977), which the defendants cite in their Memorandum of Points and Authorities. In that case Judge Sirica examined in camera an allegedly representative sample of CIA documents selected by the plaintiff. On the basis of his in camera examination, Judge Sirica upheld the CIA's national security claims. Subsequently, however, another requester, Mr. Mark A. Allen,, brought suit against the CIA for one of the documents which was at issue in the Fensterwald case but which Judge Sirica did not examine in camera. After two trips to the Court of Appeals, Allen has now obtained about half of the 15-page document which was originally withheld in its entirety on national security grounds. This history suggests to me that the "Vaughn Sampling" technique proposed by defendants in the above cases may be less economical in the long run than it would be for defendants to give close consideration to the merits of the particularized appeals which plaintiff has lodged with the Office of Information and Privacy Appeals.

James H. Lesar

JAMES H. LESAR

ARLINGTON COUNTY, VIRGINIA

Subscribed and sworn to before me this 15th day of March, 1982.

Ann Lisbon

NOTARY PUBLIC IN AND FOR
ARLINGTON COUNTY, VIRGINIA
9/30/85