UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

G. ROBERT BLAKEY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 81-2174
	)	
DEPARTMENT OF JUSTICE	)	
	)	
and	)	
	)	
FEDERAL BUREAU OF INVESTIGATION,	)	
	)	
Defendants,	)	
	)	

DEFENDANT FEDERAL BUREAU OF INVESTIGATION'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND IN FURTHER SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT 1/

Introduction

Before discussing points raised by plaintiff's papers, we believe it may be helpful to the Court to provide, as to the FBI aspect of the case, an update as to two factual matters, and a compendious listing of the issues remaining to be adjudicated.

i. Factual Update 2/

One of the FBI documents 3/ was an internal memorandum from an FBI Special Agent, setting forth the details of the appearance, on January 31, 1981, of FBI personnel before the Committee on Ballistic Acoustics in the National Research Council of the National Academy of Sciences, concerning the Dallas, Texas, Police Department Tape Recording made at the time of the assassination of President John F. Kennedy. The withholding of this

1/ A separate memorandum is being filed on behalf of defendant Criminal Division.

2/ In addition to the new facts recounted in this introduction, there are other factual developments most appropriately dealt with in the "Discussion" portion of this memorandum.

3/ Document 7, referred to by plaintiff as the Bayse memorandum.

document under Exemption 5 was briefed by both parties, although defendant pointed out that the Exemption 5 issue would shortly become moot as a result of the release of the Committee report. Defendant FBI's memorandum, filed May 7, 1982, at pages 2-3. The Committee report became public on May 14, 1982, and document 7 was released to the plaintiff by letter dated May 19, 1982. 4/ Phillips affidavit, filed herewith, ¶ 6(c). 5/ Accordingly, the Exemption 5 issue is moot.

This defendant previously informed the Court that two documents were being sent to the CIA for consultation purposes. FBI Memorandum in Support of Motion for Summary judgment, filed February 23, 1982, page 7, n. 2. On March 23, 1982, the FBI filed a notice of filing, reporting that the processing had been completed, and the documents had been released to plaintiff with deletions. Defendant had indicated that it would file a Vaughn v. Rosen index as to those two documents. However, plaintiff agreed that such an index was not required as to these documents. See Attachment A, filed herewith. 6/

ii. Issues remaining to be adjudicated

The following issues remain to be adjudicated: plaintiff's request for fee waiver; the adequacy of the search; the invocation of Exemption 7(C) as to plaintiff's request for records

4/ Exemption 7(C) was invoked for the names of Special Agents, as we had stated would be done. FBI Memorandum, May 7, 1982, page 2 n. 1. In moving for summary judgment as to document 7, plaintiff did not address the invocation of Exemption 7(C) as to the names of Special Agents. See plaintiff's memorandum, at pages 1-3. In any event, we submit that Exemption 7(C) was correctly invoked for reasons stated in this defendant's motion for summary judgment, previously filed.

5/ In addition to Phillips affidavit filed herewith, a previous affidavit by Mr. Phillips was filed, dated February 18, 1982. All references to a Phillips affidavit are to the one filed herewith, unless otherwise specified.

6/ Attachment A, a letter dated May 6, 1982 from the FBI to plaintiff's counsel, also stated that additional information had been approved by CIA for release, which information was provided with the letter.

pertaining to Rogelio Cisneros which are unrelated to the assassination of President Kennedy; 7/ the invocation of exemptions 7(C) and 7(D) as to reports on organized crime.

Defendant has moved for summary judgment on all issues. Plaintiff has moved for summary judgment only on the issue of his request for a fee waiver. 8/ As to the other issues, plantiff has opposed defendant's motion for summary judgment. For reasons stated in this memorandum and in our previous submission, it is respectfully submitted that defendant's motion for summary judgment should be granted. 9/

Discussion

I. Plaintiff is not entitled to a fee waiver

In evaluating plaintiff's arguments that the taxpayers should pay $5196.70 to provide him a copy of the Oswald/Ruby materials, it is important to keep the major relevant considerations in mind.

These documents are available to be reviewed at no cost during the working hours of 9 a.m. to 4 p.m. at the FBI Building. 10/ Microfilm copies have been produced by the Microfilm Corporation of America, so that it is possible that a library near plaintiff may have a copy of the microfilm. 11/ Five news organizations have purchased Kennedy materials. Four of these paid $9060.50 for more than 90,000 pages; one paid $4000.10 for 40,001 pages. Southern Louisiana University paid $9060.50 for Kennedy materials. 12/

7/ Plaintiff was provided records pertaining to Cisneros that relate to the assassination of President Kennedy.

8/ Plaintiff also moved for summary judgment with respect to document 7 (the Bayse memorandum), but his motion has become moot in that respect, as explained above.

9/ However, as explained below at page 8, there is one additional report on organized crime that is presently being processed, and that will be the subject of a Vaughn index. As we state at page 16, at that time we intend to deal further with plaintiff's Exemption 7(C) and 7(D) argument.

10/ Defendant FBI's Statement of Material Facts [DSMF], ¶ 3.

11/ See DSMF, ¶ 4.

12/ FBI's Answer to Interrogatory 6.

In response, plaintiff makes the same arguments that tens, hundreds or perhaps even thousands of persons could make about the Kennedy materials, and about other materials of public interest too. Thus, plaintiff argues that there is great public interest in the Kennedy assassination. Of course there is. Such interest has been demonstrated by the vast number of publications on the subject. According to plaintiff, a bibliography compiled in 1978 by the Library of Congress for the Select Committee on Assassinations of published work on the death of President Kennedy contains over 1000 entries. Blakey affidavit, March 17, 1982, ¶ 6. Plaintiff also asserts that, since that time at least three major books on the assassination have been published, one of which was on the New York Times best seller list for a number of weeks. 13/ Ibid. (Emphasis added.) There are, therefore, very many persons who could invoke the "public interest" criterion in order to justify a fee waiver for 50,000 pages of Oswald-Ruby materials.

Therefore, the public interest criterion cannot overcome the prudent and reasonable decision of the FBI and of the Office of Information and Policy Appeals, which affirmed the FBI's decision, thereby preserving public funds. We must, accordingly, look to plaintiff's other reasons.

Plaintiff has alluded to his having no independent source of funds to pay for the materials or to travel to Washington to look at the materials in the Public Reading Room. Blakey affidavit, February 15, 1982, ¶ 6.

However, as in the case of the "public interest" criterion, here too many other requesters could make precisely the same claim: inability to pay for a personal copy or to travel to Washington. Surely this is an insufficient argument to justify the fee waiver plaintiff seeks.

13/ The inferences are that more than three books were published, and others may have been published which plaintiff does not deem major.

In addition, upon inquiry from defendants' counsel, plaintiff's counsel informed us that plaintiff visits Washington approximately a dozen times a year. This is mostly in the winter, and the visits are for a day at a time. The trips are at someone else's expense, usually to give a talk. Plaintiff must return to school to teach, and he has no funds to stay longer.

Viewing these facts against plaintiff's claim for a fee waiver, it is difficult to understand why plaintiff could not make use of some of his time in Washington, or even stay somewhat longer on his trips, in order to review these materials. Not only could he seek to accomplish the substantive review he wishes to undertake, but also he could use the opportunity to ascertain whether he really needs the 50,000 pages or perhaps only some small fraction of that number. As to the expense of staying a little longer on these visits to Washington, it is difficult to understand why the expense of a short additional stay should be a major consideration. This is especially so in light of the fact that plaintiff intends to review the materials in connection with a seminar to be taught at Notre Dame Law School. As we have mentioned, Southern Louisiana University was willing to pay (and did pay) $9,000 for a set of Kennedy materials.

Plaintiff's final argument is that he is unique. 14/ There are aspects in which plaintiff is different from other requesters, but the difference cuts strongly against his request for a fee waiver. Plaintiff concedes that "aspects of [the requested materials] were made public and published in connection with the work of the House Select Committee on Assassinations. . . ." Blakey affidavit, February 15, 1982, ¶ 10. Thus, during his service of some two years (1977-1979) as Chief Counsel and staff

14/ See plaintiff's Statement of Material Facts, asserting that ". . . plaintiff is uniquely qualified to benefit the public through his insight into the requested records." ¶ 8. He also asserts that he "is uniquely capable of disseminating his knowledge on the Kennedy assassination to the public." ¶ 9.

director to the Committee (id. at 2), plaintiff presumably has had the opportunity to disseminate such of these materials as was thought appropriate through publication by the Committee. Other requesters, who did not have the opportunity to make such dissemination, might contend that they have a stronger case for fee waiver than plaintiff.

Similarly, plaintiff concedes that he has "had access to these materials and personally reviewed substantial portions of them as chief counsel to the House Select Committee on Assassinations. . . ." Blakey affidavit, February 15, 1982, ¶ 13. Surely a requester who did not have access to these materials and who did not review substantial portions of them would have grounds for complaint if plaintiff, who had these opportunities, received a fee waiver and the other requester did not. The blow would not be cushioned by the fact that plaintiff's earlier access to and review of the materials was at taxpayer's expense by virtue of his then being a government employee.

Plaintiff states that he has found that the University of Notre Dame does not have copies of the records he seeks. 15/ This is an insufficient reply to the statement by the Office of Policy and Information Appeals that the Microfilm Corporation of America made copies, so that a library near plaintiff might have one. There are other libraries near Notre Dame University besides the one at that university. Plaintiff gives no indication that he looked into the availability of a microfilm in university or other libraries in Chicago, Illinois, which is 90 miles from South Bend, Indiana, the home of Notre Dame.

Plaintiff also argues that there must be more copies in existence, and that he would save the government storage cost if he received a copy. Plaintiff's Memorandum of Points and Authorities (in support of plaintiff's motion for summary judgment), page 11. However, there are no extra copies, and there is no storage cost to be saved. Phillips affidavit, ¶ 8.

15/ Memorandum of Points and Authorities (in support of plaintiff's motion for summary judgment), page 9.

The authorities cited by plaintiff are unhelpful to him. As to Weisberg v. Bell, D.D.C. No. 77-2155, plaintiff attaches only the Order. Not only does plaintiff fail to provide anything that would explain the Order, but also, the Order expressly states that

> this decision is limited to the circumstances herein presented and should not be construed as establishing precedent for cases involving other circumstances. Plaintiff's Exhibit 8.

This careful circumscription of his action by Judge Gesell renders that opinion devoid of any significance for the instant case. In Allen v. Federal Bureau of Investigation, D.D.C. 81-1206, March 19, 1982 (plaintiff's exhibit 9), Judge Green expressly states: "Plaintiff has indicated that he does not seek documents available in the FBI reading room." Page 6. This makes Allen inapplicable here, where plaintiff seeks a fee waiver as to documents that are available in the FBI reading room. In fact, the fee waiver issue before the Court exclusively relates to documents in the FBI reading room, and to which plaintiff had access (and some of which he reviewed) as Chief Counsel and Staff Director of the Select Committee on Assassinations.

Thus, we respectfully refer the Court to the cases cited and the discussion at pages 3-4 of our original memorandum, showing that there is no basis upon which the concurrent exercise of discretion by the FBI and the Office of Policy and Information Appeals should be overturned.

The United States Congress established a Select Committee which made a lengthy inquiry and issued a voluminous report and exhibits in performing its task. Substantial cost was involved, and the Committee went as far as its mandate and budget would take it. The Committee presumably had to exercise judgment as to priorities as to what to pursue and as to what to publish. Plaintiff, who was assocated with that Committee in an important function, seeks, in effect, an additional public subsidy to pursue the work he was performing for the Committee. Such a

subsidy (via a fee waiver) would be inconsistent with both common sense and the sound management of public funds. 16/

II. The FBI's Search Was Adequate

Plaintiff's contentions do not refute defendant's clear showing that the search was adequate.

Plaintiff claims that the search was inadequate because he asserts that the FBI did not produce the June 29, 1962 FBI report "The Criminal Commission." However, the FBI did produce a report dated June 29, 1962, "The Criminal Commission." (The FBI also provided a report dated July 19, 1965, "La Cosa Nostra.") These reports were produced based on information the plaintiff provided with only the captions and dates for the requested reports. Ogden affidavit, filed herewith, page 3.

Upon receipt of plaintiff's opposition to defendant's motion for summary judgment, and in view of its contents, another review of the pertinent file was conducted. This review revealed an additional report entitled "The Criminal Commission," dated June 29, 1962. Id. at page 3. This report has been processed; however, review by the Criminal Investigation Division is necessary. Upon completion of that review, pages which are releasable will be forwarded to plaintiff. Id. at 4.

It is of interest to note that, by FBI letter to plaintiff dated July 31, 1980, plaintiff was furnished with 36 pages of material responsive to his FOIA requests numbered 90085 and 90086. The number 90085 was assigned to the request for a June 29, 1962 report, "The Crime Commission." Plaintiff did not raise a question as to whether that was the report he actually sought until the filing of his affidavit dated March 17, 1982. Blakey

16/ We are in era in which there is substantial public discussion of the levels of public spending that should be provided for various social services, including the provision of legal representation. Such discussions sometimes include a reference to the inflationary consequences of increased government spending. Such considerations provide an additional element of dimension to an evaluation of plaintiff's request for a $5,000 fee waiver.

affidavit, ¶ 19; see Ogden affidavit, page 3. In plaintiff's affidavit, dated March 17, 1982, plaintiff states that the report furnished is "barely 11 pages long," while the report he requested was "over 100 pages long." When the Bureau furnished the first report, by letter dated July 31, 1980, it stated that the June 29, 1962 report was 10 pages long. Phillips affidavit, February 18, 1982, Exhibit 13, enclosure. It is difficult to understand why plaintiff waited some 21 months to complain that he received the wrong report. If he had raised the question promptly, this point could have been resolved long ago, and there would have been no need to trouble the Court about it.

Plaintiff also makes a series of complaints about the search pertaining to the acoustical analysis. The answers to these points are as follows.

Discovery of additional material. Items are retrieved from the FBI file by use of indices. Not every item in a document is indexed for retrieval. Since the material requested by plaintiff was not indexed (i. e., acoustical analysis) it was not possible to locate the material requested by plaintiff through a search of the indices. However, when plaintiff provides additional specific information (i. e., date of document, addressee and addressor of document) that is available to him, the documents can be located through either a search of the indices or a physical review of the file. Phillips affidavit, ¶ 9.

The application of this general explanation is specifically shown with regard to plaintiff's requests, in ¶ 5 of the Phillips affidavit. When the FBI received plaintiff's request dated October 29, 1980, for background material on the acoustical analysis, a search failed to reveal any background material. Phillips affidavit, ¶ 5(a).

Later, the FBI received plaintiff's February 3, 1981 request, for "all written memoranda in connection with" the appearance of FBI personnel before the National Academy of Sciences on January 31,

1981. 17/ While searching for material responsive to this request, the two documents dated November 19, 1980 and January 14, 1981 were located. They were provided to plaintiff by the FBI, by letter dated February 1, 1982. Phillips affidavit, ¶ 5.

Allegation that additional records exist. At page 6 of his memorandum in opposition to defendant's motion, plaintiff alleges that there is evidence that other records exist. As stated above, a search by means of the index does not lead to documents where the documents are not indexed under the topic a requester uses. Obviously the FBI is not required to set up indices to accomodate all the potential subjects of a request. Just as the FOIA does not require agencies to create documents NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 161-162 (1975), it does not require them to create indices to suit the many requesters for information. Cf. Yeager v. Drug Enforcement Administration, D.C. Cir. No. 79-2275, May 14, 1982 ("A requester must take the agency records as finds them") (Slip op. at 15).

In this instance, after plaintiff mentioned the November 8, 1979 letter of Special Counsel Keuch, the FBI located the letter, as well as the FBI response dated December 10, 1979. These letters do not contain background material (i. e., instrumental analysis, graphs, calculations, etc.). Nevertheless, the FBI letter dated December 10, 1979 was provided to plaintiff by letter dated May 18, 1982, and Mr. Keuch's letter dated November 8, 1979 was referred to the Department of Justice for direct response to plaintiff. Phillips affidavit, ¶ 6(a).

17/ The February 3, 1981 request was not received by the FBI until service of the complaint in September of 1981. Phillips affidavit, dated February 18, 1982, ¶ 2(V); Answer to ¶ 38 of the Complaint. The February 3, 1981 letter differs from the October 29, 1980 request in that the February 3, 1981 letter refers to all written memoranda in connection with the appearance before the National Academy of Sciences on January 31, 1981, while the October 29, 1980 sought, in a handwritten notation on the typed letter, "all supporting documents, data and calculations" pertaining to the FBI acoustical analysis. See Exhibits S and W to the Complaint. The handwritten reference to "supporting documents, data and calculations" was reasonably construed to refer to background material such as instrumental analysis, graphs, calculations, etc. See Phillips affidavit, ¶ 3. The February 3, 1981 was, in terms, directed to written memoranda in connection with the January 31, 1981 appearance.

Plaintiff asserts that "[a] Bureau memorandum of January 14, 1981, makes reference to a letter of January 7, 1981, of Jeffrey I. Fogel, a copy of which, according to my records, I have not yet received." Blakey affidavit, March 17, 1982, ¶ 13 (Emphasis added.) This is a careless reading by plaintiff. The January 14, 1981 FBI memorandum states:

> On 1/7/81, Jeffrey I. Fogel, Attorney, General Litigation and Legal Advice Section, DOJ, requested the Technical Services Division (TSD) to provide background information. . . . Phillips affidavit, ¶ 6(b) and Exhibit B. (Emphasis added.)

Obviously, it is quite inaccurate to translate the term "requested" into "letter." It is inappropriate to use the transformation as the basis for a claim that there may be a record in existence that calls the adequacy of the search into question.

Furthermore, Mr. Phillips' affidavit states that "[a] search of the FBI central indices and a review of the appropriate date span of the JFK assassination file does not reveal any letter or other communication containing such a request." Phillips affidavit, ¶ 6(b). Moreover, Mr. Fogel states that, during that period he did not send out letters under his own name; that he has searched but cannot find a copy of any such "letter;" and that he concludes, therefore, that the request must have been by telephone. 18/

Finally--as to the allegation that there is evidence that records exist but have not been provided--plaintiff alleges that

> A Department memorandum of January 26, 1981, requested action of the Bureau. I have, according to my records, not received any documents relating to the Bureau's comments on or response to the Department request. Blakey affidavit, March 17, 1982, ¶ 13.

The Department of Justice letter of January 26, 1981 requested the FBI to attend a meeting of the National Academy of Sciences (NAS) on January 31, 1981. Details of FBI participation at this

18/ Affidavit of Jeffrey I. Fogel. The original is filed with the memorandum of the Criminal Division; a copy is filed herewith.

meeting are contained in the memorandum dated February 13, 1981, which is FBI document 7 and which plaintiff has called the Bayse memorandum. Plaintiff obviously knows of the existence of this document, which was accounted for in defendant's Vaughn index, because plaintiff moved for summary judgment to compel its disclosure. 19/ Plaintiff's invocation of the alleged nonexistence of a response to the Department's memorandum of January 26, 1981 is self defeating.

It is interesting, that, while plaintiff seeks to elevate the readily-explainable discovery of additional documents into an attack on the adequacy of the FBI's search, 20/ plaintiff has had a problem with keeping track of material in his files. Thus, on April 5, 1982, plaintiff moved for disclosure of two referrals that the Criminal Division made to the National Bureau of Standards. However, after we called plaintiff's attention to the fact that the Bureau of Standards had furnished the material directly to plaintiff, plaintiff withdrew the motion to compel, acknowledging the error. 21/ It was appropriate and conservative of the Court's time to withdraw the motion; however, the fact is that plaintiff did file the motion based on the erroneous predicate that the documents had not been received. On the other hand, the FBI has carefully explained, based on the use of its indices, why additional documents have been located after plaintiff has provided additional identifying information.

Plaintiff's claim based on the FBI's discovery of additional documents after additional information has been provided resembles a contention rejected in Military Audit Project v. Casey,

19/ As discussed above at pages 1-2, that aspect of plaintiff's motion is now moot.

20/ Plaintiff chose to use the rhetoric "I was falsely advised" to describe the information the FBI gave to him on May 21, 1981. Blakey affidavit, ¶ 10. As discussed above, the Phillips affidavit, at ¶ 5 explains the basis for the response. See also ¶ 6, 9.

21/ Plaintiff's withdrawal of the motion was by notice served

656 F.2d 724, 753-754 (D.C. Cir. 1981). There, the requester asserted that the CIA, by releasing information previously withheld, admitted that it was initially in error, from which it was claimed to follow that the agency is fallible, its affidavits suspect, and summary judgment improper. The Court held:

> We emphatically reject this line of argument. If accepted, it would work mischief in the future by creating a disincentive for an agency to reappraise its position, and when appropriate, release documents previously withheld. It would be unwise for us to punish flexibility, lest we provide the motivation for intransigence.
>
> Furthermore, this argument is based on the perverse theory that a forthcoming agency is less to be trusted in its allegations than an unyielding agency. . . . We find the agency's case strengthened by the massive declassification of documents it undertook at the appellants' behest. 656 F.2d at 754.

So here, the defendant's case is strenghtened by the fact that it has been willing to search further when plaintiff has provided additional information.

The adequacy of the search is clearly shown by Goland v. CIA, 607 F.2d 339 (D.C. Cir. 1978), cert. denied, 445 U.S. 927 (1980). There the Court held that the agency's affidavits

> on their face are plainly adequate to demonstrate the thoroughness of the CIA's search for responsive documents. The affidavits give detailed descriptions of the searches undertaken, and a detailed explanation of why further searches would be unduly burdensome. 607 F.2d at 353.

After considering the appellants' claims, the Court held that "plaintiffs have made no showing of CIA bad faith sufficient to impugn the [agency's] affidavit, which on its face suffices to demonstrate that the CIA's search for responsive documents was complete." 607 F.2d at 355. Therefore, the Court upheld the action of the District Court in granting the CIA's motion for summary judgment. Goland is controlling here, and shows that defendant is entitled to summary judgment on the search issue.

III. The FBI Properly Invoked Exemption 7(C) Insofar As Plaintiff Requested Information Relating To Rogelio Cisneros Which Was Not Related To The Assassination Of President John F. Kennedy

The Bureau searched for any records on Cisneros that relate to the Kennedy assassination. DSMF, ¶ 8. To the extent such records were located, they have been processed for release to plaintiff. Id. However, Cisneros is not so much of a public figure that all aspects of his life should be open to the public. This was the judgment of the Office of Privacy and Information Appeals of the Department of Justice, stated in its letter dated November 6, 1980, quoted in DSMF ¶ 8. The letter continued:

> In my judgment, even to confirm or deny the existence of investigatory records on Mr. Cisneros unrelated to the assassination would constitute an unwarranted invasion of his personal privacy, 5 U.S.C. 552(b) (7)(C), and, therefore, would violate the Privacy Act of 1974. 5 U.S.C. 552a(b). Accordingly, I am affirming the initial decision of the Bureau not to search for any such records.

The case law authorizes the FBI's invocation of Exemption 7(C). For example, in Fund for Constitutional Government v. National Archives and Records Service, 656 F.2d 856 (D.C. Cir. 1981), the Court of Appeals upheld the invocation of Exemption 7(C) as to individuals investigated but not charged with a crime. The Court rejected the contention of appellant there that Exemption 7(C) should be inapplicable where the individuals are public figures, or high level government or corporate officials. The appellant deprecated the privacy interest of such persons. The Court, however, held:

> . . .[R]evelation of the fact that an individual has been investigated for suspected criminal activity represents a significant intrusion on that individual's privacy cognizable under Exemption 7(C). The degree of intrusion is indeed potentially augmented by the fact that the individual is a well known figure and the investigation one which attracts as much national attention as those conducted by the [Watergate Special Proseution Force]. The disclosure of that information would produce the unwarranted result of placing the named

> individuals in the position of having to defend their conduct in the public forum outside of the procedural protections normally afforded the accused in criminal proceedings. Congressional News Syndicate v. United States Department of Justice, 438 F. Supp. [538] at 544. 22/

Fund for Constitutional Government, 656 F.2d at 865.

Plaintiff's lack of concern for Cisneros's privacy, therefore, is not mirrored by the authoritative case law. In addition to Fund for Constitutional Government, supra, the pertinent authorities, which include Lesar v. United States Department of Justice, 636 F.2d 472, 486-488 (D.C. Cir. 1980) and Baez v. United States Department of Justice, 647 F.2d 1328, 1338-1339 (D.C. Cir. 1980), inter alia, are referred to at pages 4 and 5 of our original memorandum. 23/

IV. Plaintiff's contention regarding invocation of Exemption 7(C) and (D) in the organized crime report

Plaintiff claims that some of the confidential sources were actually electronic. 24/ Defendant is considering that claim in connection with its processing of the "new" report of June 29, 1962, "The Crime Commission." 25/ After defendant finishes

22/ In Fund for Constitutional Government, the Court of Appeals also quoted with approval the passage in Congressional News Syndicate in which this Court stated that "an individual whose name surfaces in an investigation may, without more, become the subject of rumor and innuendo." 438 F. Supp. at 541, quoted in 656 F.2d at 863.

23/ Plaintiff complains that the judgment as to what materials related to Cisneros are related to the Kennedy assassination is being made by the FBI. However, it is inherent in the structure and functioning of FOIA that such judgments are made by agencies. It is not possible for either a requester or a Court to double-check each judgment made by an agency employee as to the appropriate place to file a document, or each judgment as to whether a document is responsive to a search. As Goland, supra, holds, where the agency affidavits make a showing that the search was adequate, and there is no supported challenge to the agency's good faith, that is the end of the matter. In the instant case, all references to Cisneros in the Kennedy assassination files were processed. Anything else is protected by Exemption 7(C), as shown by the case law. Therefore, plaintiff presents no colorable question as to the Cisneros request.

24/ Blakey affidavit, March 17, 1972, ¶ 22.

25/ See pages 8-9 above.

processing that report, it will file a Vaughn index on it. 26/ Defendant intends to deal with plaintiff's claim concerning electronic surveillance at that time, and its impact on the application of Exemption 7(C) and 7(D).

V. Under appropriate standards, defendant is entitled to summary judgment

In plaintiff's opposition, at pages 3-4, there is a discussion of the applicable standards in granting summary judgment. We note that summary judgment is clearly appropriate in a FOIA case where the agency's affidavits make a showing that the search is complete and that the exemptions were properly invoked, and the plaintiff does not make a substantial showing of bad faith or that the exemptions were not properly invoked. See, e.g. Military Audit Project v. Casey, 656 F.2d 724, 750-752, 754 (D.C. Cir. 1981); Goland v. CIA, 607 F.2d 335, 355 (D.C. Cir. 1978), cert. denied, 445 U.S. 927 (1980); Church of Scientology of California, Inc. v. Turner, 662 F.2d 784 (D.C. Cir. 1980).

The FOIA cases, therefore, show that the record entitles defendant to summary judgment. We add that this is confirmed by the teaching of cases in other areas of the law. The United States Court of Appeals for the District of Columbia Circuit has recognized that summary judgment is properly and wholesomely invoked when it eliminates a useless trial. Bloomgarden v. Coyer, 479 F.2d 201, 206 (D.C. Cir. 1973). There the Court carefully examined the record, in concluding that appellees bore their burden as to the nonexistence of any genuine factual issue, and that appellant offered nothing substantial to bar appellees' request for summary judgment. 479 F.2d at 207-208. In Zerilli v. Smith, 656 F.2d 705, 715-716 (D.C. Cir. 1981), the Court engaged

26/ In view of the length of the report, the review remaining and the need to prepare a Vaughn index, defendant estimates that it will file its Vaughn on that report and a supplemental memorandum on Exemption 7(C) and 7(D) on or before August 9, 1982. However, the processing and release to plaintiff will take place on or before July 7, 1982.

in extensive analysis of the record in upholding motions for summary judgment, pointing out that appellants did not meet the burden of setting forth specific facts showing that there is a genuine issue for trial.

Recently, in Proctor v. State Farm Mutual Automobile Insurance Company, D.C. Cir. No. 80-2437, March 16, 1982, the Court noted that summary judgment should not be granted hastily in complex anti-trust actions. Slip. op. at 55. Nevertheless, carefully reviewing the record evidence in the case, the Court concluded that the movant was entitled to summary judgment. Slip. op. at 39, see 55-56; 18-19. See Talev v. Reinhardt, 662 F.2d 888 (D.C. Cir. 1981)(affirms grant of summary judgment in case alleging discrimination).

These principles apply all the more strongly in a FOIA case, where substantial weight is given to agency affidavits. See, e.g., Military Audit Project v. Casey, 656 F.2d 724, 738 (D.C. Cir. 1981). 27/

Conclusion

For these reasons, it is respectfully submitted that defendant's motion for summary judgment should be granted.

Respectfully submitted,

CHARLES F. C. RUFF
United States Attorney

ROYCE C. LAMBERTH
Assistant United States Attorney

NATHAN DODELL
Assistant United States Attorney

27/ In addition to the cases cited at page 16, see Ground Saucer Watch v. CIA, D.C. Cir. No. 80-1705, August 24, 1981, copy filed herewith as Attachment B. (Although the Court of Appeals originally stated that Ground Saucer Watch would not be published, it later decided that it would be published. Attachment C.) See also Bast v. Department of Justice, D.D.C., No. 78-2195 and No. 79-0348, August 6, 1981, copy filed herewith as Attachment D.

WAH

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

MAY 6 1982

Dear Mr. Lesar:

Reference is made to the request of your client, Robert Blakey, for information concerning Rogelio Cisneros pertaining to the assassination of President Kennedy.

The FBI has been advised by Assistant United States Attorney Nathan Dodell of Professor Blakey's kind agreement not to require the submission of a Vaughn index concerning this material.

By letter dated March 19, 1982, your client was provided with excised copies of the two documents which had been referred to the Central Intelligence Agency (CIA). The FBI has now been advised by the CIA that further information as shown by the attached documents, has been approved for release.

Sincerely yours,

James K. Hall, Chief
Freedom of Information-
Privacy Acts Section
Records Management Division

Enclosures (2)

1 - Mr. G. Robert Blakey
Professor of Law
Notre Dame Law School
Notre Dame, Indiana 46556 Enclosures (2)

1 - Legal Counsel
Attention: Kevin Grady

C.A. 81-2174
Att. A.

NOT TO BE PUBLISHED - SEE LOCAL R 8 (f)

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 80-1705 September Term, 1980

GROUND SAUCER WATCH, INC., Appellant
HARVEY BRODY

v.

CENTRAL INTELLIGENCE AGENCY et al.

Appeal from the United States District Court for the District of Columbia.

Before: WRIGHT, Circuit Judge, VAN DUSEN,* Senior Circuit Judge, and GINSBURG, Circuit Judge.

JUDGMENT

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia and was argued by counsel. For the reasons stated in the accompanying memorandum,

It is ORDERED and ADJUDGED by this court that the judgment of the District Court appealed from in this cause is hereby affirmed.

Per Curiam
For the Court
George A. Fisher
Clerk

*Of the Third Circuit, sitting by designation pursuant to 28 U.S.C. § 294(b) (1976).

Bills of costs must be filed within 14 days after entry of judgment. The Court looks with disfavor upon motions to file bills of costs out of time.

CA. 81-1714

MEMORANDUM

This case comes before us on appeal from a District Court decision to grant appellees' motion for summary judgment. It presents a single troublesome issue. Following a search of its files that resulted in release of over 900 pages of documents, the Central Intelligence Agency (CIA) filed affidavits indicating that it had conducted a thorough search for materials defined by appellant's Freedom of Information Act (FOIA) request.[1] Under the applicable legal standard, agency affidavits will ordinarily suffice to establish the adequacy of an FOIA search effort if they are "'relatively detailed' and nonconclusory and * * * submitted in good faith." Goland v. CIA, 607 F.2d 339, 352 (D.C. Cir. 1978) (footnote omitted), quoted in Founding Church of Scientology v. National Security Agency, 610 F.2d 824, 836 (D.C. Cir. 1979). The District Court found, and appellant cannot seriously dispute, that the Agency affidavits here in issue were relatively detailed and nonconclusory. Ground Saucer Watch does, however, contest the conclusion that it failed to raise a substantial and material question about the CIA's good faith. Its argument on this point defines the issue before us: Viewing the evidence in the light most favorable to appellant, can it be said that the CIA affidavits left no substantial and material fact to be determined and that appellees were entitled to summary judgment as a matter of law?[2]

As this court held in Founding Church of Scientology v. National Security Agency, supra, 610 F.2d at 834, "[T]he competence of any records-search is a matter dependent upon the circumstances of the case * * *." Agency affidavits enjoy a presumption of good faith, which will withstand purely speculative claims about the existence and discoverabil-

[1] The CIA released the materials to appellant on December 14, 1978. Affidavits explaining its search procedures, together with indices to the uncovered documents, were filed with the District Court on February 26, 1979. The affidavits were by George Owens, CIA Information and Privacy Act Coordinator; Robert Owen, Directorate of Operations documents; Karl Weber, Office of Scientific Intelligence documents; Sidney Stembridge, Office of Security documents; and Rutledge Hazzard, Directorate of Science & Technology documents.

[2] The Freedom of Information Act retains this traditional legal test of the propriety of summary judgment. Founding Church of Scientology v. National Security Agency, 610 F.2d 824, 836 (D.C. Cir. 1979).

ity of other documents. See, e.g., Goland v. CIA, supra, 607 F.2d at 355. In order to prevail on this appeal, therefore, appellant must point to evidence sufficient to put the Agency's good faith into doubt. Although Ground Saucer Watch advances numerous arguments, in none do we find a sufficient link between asserted fact and argued inference to raise a serious and material question requiring trial on the merits.

Appellant relies, first, on the search instructions that the CIA issued to the employees actually canvassing its files. Those instructions called for a search of only those files identified in a stipulation entered by the parties on August 23, 1978 and approved by the District Court on September 15, 1978[3]: they stated that the stipulation "sc changes the [appellant's] original requests, original complaint and revised complaint that the latter have, in effect, become immaterial to the search you will conduct * * *."[4] According to appellant, the CIA showed its bad faith by not directing a search responsive to all of Ground Saucer Watch's earlier requests. The answer to this argument appears in the plain language of the stipulation, the stated purpose of which was to "clarify and simplify the issues"[5] arising from appellant's earlier demands for production. In addition to the amended complaint incorporating by reference the FOIA requests of various nonparties these included 635 interrogatories and 274 requests for other documents. Under the circumstances, we agree with the District Court that the stipulation contemplated "simplification" by limiting the Agency's search obligations to the files and documents defined therein.[6] Noting that appellant drafted the terms of the stipulation that defined the files

[3]The stipulation, which was designed to "clarify and simplify the issues" developed in literally hundreds of document requests, pleadings, and interrogatories over a three-year period, defined the documents at issue in this case and identified precisely where the CIA would search for those documents.

[4]Quoted in Memorandum Opinion in Ground Saucer Watch, Inc. v. CIA, D. D.C. Civil Action No. 78-859, at 8 (May 30, 1980), Appellant's Appendix (App.) at 147.

[5]Stipulation and Order, Ground Saucer Watch, Inc. v. CIA, D. D.C. Civil Action No. 78-859, at 1 (Sept. 15, 1978), App. at 94.

[6]See Ground Saucer Watch, Inc. v. CIA, supra note 4, at 7-8, App. at 146-147.

to be searched, we must reject its claim in this court that a search limited to those files "ignore[d]" the stipulation's "content and intent."[7]

Appellant also purports to find evidence of bad faith in the CIA's failure to produce all of the documents "referenced" in the more than 900 pages of materials that were disclosed following the de novo search conducted pursuant to the stipulation. Yet the CIA's affidavits assert entirely plausible reasons for the absence of the missing documents. Most are old, and some naturally have become lost or illegible.[8] Moreover, as this court held in Goland v. CIA, supra, 607 F.2d at 369, "The issue [is] not whether any further documents might conceivably exist but whether CIA's search for responsive documents was adequate." (Emphasis deleted.) Although the failure to produce identified documents might sometimes raise a substantial and material question of good faith, see Founding Church of Scientology v. National Security Agency, supra, 610 F.2d at 835, the reasonableness of an inference necessarily depends on its factual context. Id. at 834-835. Here, the missing documents can be identified almost solely through references contained in the more than 900 pages of documents that the CIA did produce. Compare Founding Church of Scientology v. National Security Agency, supra, in which NSA had produced no documents in response to the plaintiff's request. Moreover, the CIA's large disclosure occurred following a de novo search of its records, conducted pursuant to stipulated search instructions drafted

[7] Brief for appellant at 17. Appellant argues in this court that the District Court misconstrued the stipulation in holding that it "did not refer to the original requests, original complaint, or amended complaint." Ground Saucer Watch, Inc. v. CIA, supra note 4, at 8, App. at 147. As appellant notes, the stipulation did, in fact, expressly adopt certain definitions—including those of "documents" and "UFOs"—contained in the interrogatories. See Stipulation and Order, supra note 5, at 1 & nn.1-4, App. at 94 & nn.1-4. But we do not understand either *the* District Court's opinion or the CIA's search instructions *to have ignored* those definitions. As we read them, they merely meant to recognize that the stipulation's request for "[a]ll documents in the possession or under the control of the CIA from wherever obtained, relating to Unidentified Flying Objects (UFOs) and the UFO Phenomena," id. (footnotes omitted), superseded the earlier requests and rendered unnecessary a separate search for materials identified therein. So understood, neither the CIA's search instructions nor the District Court's opinion can be viewed as mischaracterizing the aim of the stipulation.

[8] See Supplementary Affidavit of George Owens at 5-7 (Sept. 10, 1979), Supplementary Appendix at 48-51.

in pertinent parts by appellant's own attorneys. In the absence of other evidence, the institution of a de novo search significantly undercuts appellant's argument that earlier noncooperation by the CIA raises a substantial question of current bad faith on the part of the Agency. Indeed, if the release of previously withheld materials were held to constitute evidence of present "bad faith," similar evidence would exist in every FOIA case involving additional releases of documents after the filing of suit. See Fonda v. CIA, 434 F.Supp. 498, 502 (D. D.C. 1977).

There is, finally, no evidence whatever to support appellant's bald allegation that the CIA did not in fact conduct a de novo search of its files. Such unadorned speculation will not compel further discovery or resist a motion for summary judgment. Goland v. CIA, supra, 607 F.2d at 352 & n.78 (citing cases).

The judgment of the District Court is, accordingly,

Affirmed.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 80-1705 September Term, 1981

Ground Saucer Watch, Inc.,
Appellant

CA 78-0859

Harvey Brody

v.

Central Intelligence Agency,
et al.

BEFORE: Wright, Circuit Judge; Van Dusen*, Senior Circuit Judge, United States Court of Appeals for the Third Circuit; and Ginsburg, Circuit Judge

ORDER

Upon consideration of the letter received from counsel for appellee (federal) requesting publication of this Court's decision issued herein on August 17, 1981, and no opposition having been received thereto, it is

ORDERED, by the Court, that appellee's aforesaid letter, construed as a motion for publication, is granted and the Clerk is directed to note the docket accordingly. And it is

FURTHER ORDERED, by the Court, that the Clerk is directed to take the appropriat steps to cause said decision, issued August 17, 1981, to be published.

Per Curiam
FOR THE COURT:

GEORGE A. FISHER
Clerk

*Sitting by designation pursuant to Title 28 U.S.C. §294(d).

C.A. 81-2174

C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RICHARD L. BAST,

Plaintiff,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 78-2195 and
Civil Action No. 79-0348

FILED

AUG - 6 1981

JAMES E. DAVEY, CLERK

MEMORANDUM

Plaintiff has filed these actions under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA) to compel release of all records maintained by the Department of Justice which refer to him in any way. The two cases request the same type of records, but cover different time periods: Civil Action No. 78-2195 seeks documents covering the period from October 21, 1975 to May 11, 1978; Civil Action No. 79-348 covers the period from May 12, 1978 to November 21, 1979. On June 5, 1979, the Court entered an Order consolidating these cases for all purposes.

The plaintiff's request embraced records maintained in separate sections of the Justice Department: the Civil Division, the Criminal Division, the Tax Division, and the United States Attorney's Offices for the District of Columbia and the Eastern District of Virginia. The government has filed affidavits made by officials within these sections describing the response each has made to the plaintiff's request. The affidavits reveal that only a limited amount of material has been withheld, chiefly under exemption (3) which covers material exempted by statute; exemption (5) which protects internal memoranda or letters not discoverable in litigation; exemption (6), which covers "personnel and medical and similar files"; and exemptions (7)(C) and (D), which protect the privacy of third parties and the identity of informants.

*/ The Executive Office of the United States Attorneys (EOUSA) has filed a single affidavit on behalf of the two U.S. Attorneys'

Relying on these affidavits to establish the pertinent facts, the government has moved for summary judgment.

The plaintiff has not directly opposed the government's motion. Instead, he has filed a "Motion to Commence Discovery" in which he asserts that genuine material issues of fact exist and that he is entitled to discovery to draw them out. Through discovery, plaintiff states that he would attempt to discover facts which would indicate that the defendant has waived entitlement to exemption (5). In addition, plaintiff refers to incidents in other lawsuits involving the defendant where the defendant in this case has allegedly made misrepresentations concerning the contents of certain agency files. According to plaintiff, discovery is needed to determine if the agency has been untruthful in this case. Finally, plaintiff insists that discovery is necessary to determine the true activities of the National Security Agency, which plaintiff asserts has strayed from its assigned mission.

After considering the full record before it the Court has concluded that no discovery is warranted in this case. "[T]he Court has discretion in an FOIA case to forego discovery and decide the case on the basis of reasonably detailed, explanatory affidavits submitted by the agency in good faith." Exxon Corporation v. FTC, 466 F.Supp. 1088, 1094 (D.D.C. 1978), citing Goland v. CIA, 607 F.2d 339, 352 (D.C.Cir. 1978). The affidavits in this case adequately describe the limited amount of material not released to the plaintiff and properly justify its withholding. Plaintiff's attacks on the affidavits are based not on the record in this case, but on reports of incidents in other cases and on extraneous matters which have little relevance to the issues before the Court. There is nothing before the Court which indicates that the defendant has failed to make a full search for documents responding to plaintiff's request, or has misrepresented the contents of unreleased material in any way.

Not only do the affidavits survive plaintiff's efforts at

352. In assessing an agency's claim to exemptions, a district

court is to afford the agency's affidavits "substantial weight." Lesar v. United States Department of Justice, 636 F.2d 472, 481 (D.C.Cir. 1980). This means that if the affidavits contain sufficient information to place the withheld material within the exemption claimed, and if the information is not challenged by contrary evidence in the record or evidence of bad faith, then summary judgment is appropriate for the defendant. Id. Review of the Justice Department's affidavits in these cases reveals that the unreleased material here was properly withheld. Accordingly, the defendant's motion for summary judgment is granted and the complaints in these consolidated cases are dismissed with prejudice.

An appropriate Order and Judgment accompanies this Memorandum Opinion.

Entered: August 6th, 1981

Barrington D. Parker

BARRINGTON D. PARKER
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RICHARD L. BAST,

Plaintiff,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action No. 78-2195 and
Civil Action No. 79-0348

FILED

AUG - 6 1981

JAMES E. DAVEY, CLERK

ORDER AND JUDGMENT

Upon consideration of the accompanying Memorandum, it is this 6th day of August, 1981

ORDERED that the defendant's motion for summary judgment is granted. Judgment is entered for the defendant and the complaints in these consolidated cases are dismissed with prejudice.

Barrington D. Parker

BARRINGTON D. PARKER
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

G. ROBERT BLAKEY, Plaintiff, v. DEPARTMENT OF JUSTICE and FEDERAL BUREAU OF INVESTIGATION, Defendants.	)	Civil Action No. 81-2174

DEFENDANT FEDERAL BUREAU OF INVESTIGATION'S STATEMENT OF GENUINE ISSUES AND RESPONSE TO PLAINTIFF'S STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE

The parties have filed cross motions for summary judgment on the issue of plaintiff's request for a $5,000 fee waiver. In defendant's view, there are no genuine issues of material fact as to its motion for summary judgment.[1/] Plaintiff's statement is another matter. It does raise issues of material fact. In other words, the present record is sufficient to support the granting of summary judgment to defendant. It is insufficient to support a grant of summary judgment to plaintiff.[2/]

6. This paragraph is incomplete, and as such raises genuine issues as to plaintiff's motion. These are: what efforts has plaintiff made to ascertain whether the records are in a library in a location that is near to plaintiff, such as in Chicago, Illinois? How many other universities do not

1/ The defendant has moved for summary judgment on the other issues in the case, besides the issue of fee waiver, and respectfully submits that there are no genuine issues of material fact as to those issues as well. Although plaintiff has filed a "Statement of Genuine Issues of Material Fact Which Are In Dispute," it is merely conclusory and not an appropriate Statement under Local Rule 1-9(h); it is not annotated to the record as required; and does not comply with the discussion in Gardels v. CIA, 637 F.2d 770, 773 (D.C. Cir. 1980) as to the purposes and procedures relating to summary judgment.

2/ Paragraph 1 of plaintiff's Statement of Material Facts, while incomplete, is not relevant to the fee waiver issue. It is relevant only to the issue of the invocation of Exemption 5 as to FBI document 7, which plaintiff refers to as the Bayse memorandum. That issue has become moot.

have the Kennedy assassination records, but have teachers and students knowledgeable about and/or interested in studying the assassination and in disseminating information about it? How many other libraries (outside of universities) do not have the Kennedy assassination records, but have clientele knowledgeable about and/or interested in studying the assassination, and in disseminating information about it?

7. The term "accessible" is a conclusion and raises a genuine issue of material fact as to plaintiff's motion.

In addition, upon inquiry from defendant's counsel, plaintiff's counsel informed us that plaintiff visits Washington approximately a dozen times a year. This is mostly in the winter, and the visits are for a day at a time. The trips are at someone else's expense, usually to give a talk. Plaintiff must return to school to teach, and he has no funds to stay longer.[3/]

In terms of "accessibility," a genuine issue of material fact is raised by the question of whether plaintiff could make use of some of his time in Washington to review the materials. A further question is whether the expense of a short additional stay on one or more of the trips should be a major consideration. This is especially so in light of the fact that plaintiff intends to review the materials in connection with a seminar to be taught at Notre Dame Law School. Southern Louisiana University paid $9,000 for a set of Kennedy materials. FBI response to Interrogatory 6.

8-9. Plaintiff's statement of the uniqueness of his qualifications and capabilities raises a genuine issue of material fact as to plaintiff's motion. According to plaintiff, a bibliography compiled in 1978 by the Library of Congress for the Select Committee on Assassinations of published work on the death of President Kennedy contains over 1,000 entries. Blakey affidavit, March 17, 1982, ¶ 6. Plaintiff also asserts that

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[3/] This entire paragraph relates the information provided to defendant's counsel by plaintiff's counsel.

since that time at least three major books on the assassination have been published, one of which was on the New York Times best seller list for a number of weeks. Many of these authors (not to mention other writers with works in progress) could assert that they are unique for one reason or another. News-disseminating agencies could proffer their "uniqueness" because of their capacity to distribute information to broad segments of the public, without being dependent on the separate discretion of an independent publisher.

Moreover, plaintiff's statement of "uniqueness" is incomplete, in that there are aspects in which plaintiff is different from other requesters, but the difference cuts strongly against his request for a fee waiver. By virtue of his service as Chief Counsel and Staff Director to the Select Committee on Assassinations, plaintiff has already had opportunities to review and disseminate the materials (and has reviewed substantial portions of them) which other requesters have not had. See Blakey Affidavit, ¶¶ 10, 13, 2.

11. This is not correct. See Phillips Affidavit, ¶ 8.

12. This is a statement of a conclusion, and as it is presented does not state a material fact to the disposition of plaintiff's motion. As stated in defendant's accompanying memorandum of points and authorities at page 4, strong public interest alone cannot justify public subsidization of copies, because that would mean affording this $5,000 subsidy to many requesters. As to the question of public benefit, in contrast to public interest, genuine issues arise as to plaintiff's motion: why did not the Select Committee publish more of these materials when it published a report and several volumes of exhibits? Given the fact that plaintiff had access to these materials and reviewed a substantial portion of them, what incremental public benefit would there be in the taxpayers' paying for a copy for him? Given the fact that four news organizations have had a copy of these records since they bought them, and

the fact that these records have been available for review in the FBI reading room as well as, apparently, in some libraries as a result of the purchase of a copy by the Microfilm Corporation of America, what incremental public benefit would result from a fee waiver which would provide plaintiff a copy?

Respectfully submitted,

STANLEY S. HARRIS
United States Attorney

ROYCE C. LAMBERTH
Assistant United States Attorney

Nathan Dodell

NATHAN DODELL
Assistant United States Attorney