## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

J. GARY SHAW  105 Poindexter Street Cleburne, Texas 76031,	) ) ,
and	)
MARK ALLEN 607 N. Carolina Avenue, S.E. Washington, D.C. 20003,	) ) )
Plaintiffs,	)
v.	Civil Action No. 11- 2306
NATIONAL SECURITY AGENCY Fort Meade, Maryland 20755,	Education Shear
Defendant.	) ) )

## COMPLAINT For Declaratory and Injunctive Relief

- 1. This case is brought under the Freedom of Information Act,
  5 U.S.C. 552, as amended, and the Administrative Procedure Act, 5 U.S.C.
  301 and 701-706, to require defendant to permit access to certain records
  in its possession and under its control.
- 2. This Court has jurisdiction over this cause of action pursuant to 5 U.S.C. 552(a)(4)(B) and 5 U.S.C. 702.
- 3. Plaintiff J. Gary Shaw is an individual residing in Cleburne, Texas; and plaintiff Mark Allen is an individual residing at 607 N. Carolina Avenue, S.E., Washington, D.C. 20003.
- 4. Defendant is an agency of the United States and has possession of the records to which plaintiffs seek access.

- 5. On March 8, 1982, plaintiffs made a formal request under FOIA to defendant for "all records (including "see references" or cross references) maintained by your agency pertaining to Eugene Barry Dinkin, who was a PFC in the "code section" of the 599th Ordnance Group stationed in Germany in the fall of 1963. Reference is made to Dinkin in Warren Commission document CD 1107, pp. 353-362. U.S. Army Serial No. RA-76710292. Born circa 1942. See also CD 943." It was pointed out in the request that the records were sought in connection with an investigation of the John F. Kennedy assassination, and, because of the public concern with that matter, defendant was asked for a waiver of search and copying fees. (See Exhibit 1, attached hereto)
- 6. On March 30, 1982, defendant acknowledged receipt of the request, but produced no records. NSA said that they had made a thorough search and had located no relevant records. (See Exhibit 2, attached hereto)
- 7. On May 27, 1982, plaintiffs wrote to defendant, asking for a re-check of the files, stating that Warren Commission files indicated that Dinkin had worked for NSA just before the Kennedy assassination. (See Exhibit 3, attached hereto)
- 8. On June 17, 1982, NSA replied that a re-check revealed no records.

  (See Exhibit 4, attached hereto)
- 9. On June 24, 1982, the statutory time for production or denial of access having passed, plaintiffs made an administrative appeal under 5 U.S.C. 552(a)

  (6) (A) and under the defendant agency's regulations. (See Exhibit 5, attached hereto)
- 10. Plaintiffs assert that their administrative remedies have been exhausted.
  - 11. To date, no records have been released.

## REQUESTED RELIEF

- 12. Pursuant to 5 U.S.C. 552(a)(3), plaintiffs are entitled to access to the requested records.
  - 13. Plaintiffs have exhausted their administrative remedies.
- 14. There is no legal basis for defendant's withholding of such access.
- 15. Defendant has abused its discretion and acted in an arbitrary and capricious manner in withholding records sought by plaintiffs.

WHEREFORE, plaintiffs pray that the Court:

- a) Order defendant by a date certain to produce the requested documents to them for inspection and copying, and a draft order to this effect is appended for the Court's consideration;
- b) In cases of withholding or deletions, order defendant by a date certain to prepare an index, description, and justification in accordance with the requirements of <u>Vaughn v. Rosen</u>, 484 F.2d 820 (D.C. Cir. 1973), <u>cert. denied</u>, 415 U.S. 977 (1974), and a draft order to this effect is appended for the Court's consideration;
- c) Provide for expeditious proceedings in this action as provided in 5 U.S.C. 552(2)(4)(D);
- d) Because of the great public interest in the Kennedy assassination, order a fee waiver as to search and duplication costs;
- e) Award plaintiffs their costs and reasonable attorneys' fees in this case; and

f) Grant such other and further relief as the Court may deem just and proper.

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Counsel to Plaintiffs

Dated: July 28, 1982