

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ALAN L. FITZGIBBON, :  
 :  
 Plaintiff, :  
 :  
 v. : Civil Action No. 86-1885  
 :  
 U.S. DEPARTMENT OF STATE, :  
 :  
 Defendant :

PLAINTIFF'S RULE 108(h) STATEMENT

Pursuant to Local Rule 108(h), plaintiff submits the following statement of material facts as to which there is a genuine issue:

1. The disclosure of the information at issue could not reasonably be expected to result in the disclosure of an intelligence source because the intelligence source is already known. Fitzgibbon Decl., ¶¶18-19, 26-27.

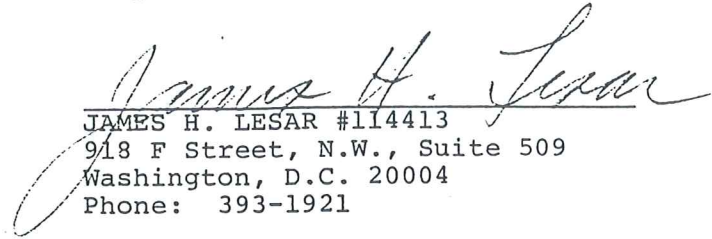
2. The unauthorized disclosure of the information could not be expected to cause serious damage to the national security. Fitzgibbon Decl., ¶25.

3. All reasonably segregable, nonexempt portions of the information have been declassified and released.

4. Public disclosure of the source would not constitute a betrayal of the source's expectation that the information would be furnished in absolute secrecy. The source is dead. Fitzgibbon Decl., ¶19. The source is already known. Id., ¶¶18-19, 26-27.

The circumstances under which the information was provided have undergone a vast change. Fitzgibbon Decl., ¶¶19-22, 25.

Respectfully submitted,

  
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Counsel for Plaintiff

Report of the Director of Central Intelligence  
to the Committees of Congress  
on the  
Historical Review Program

On 15 October 1984 President Reagan signed into law the Central Intelligence Agency Information Act (Appendix A), which authorizes the Director of Central Intelligence (DCI) to exempt certain files from search under the Freedom of Information Act. Section 3(a) of this Act also states that

The Director of Central Intelligence, in consultation with the Archivist of the United States, the Librarian of Congress, and appropriate representatives of the historical discipline selected by the Archivist, shall prepare and submit by June 1, 1985, a report on the feasibility of conducting systematic review for declassification and release of Central Intelligence Agency information of historical value.

The Act directs the DCI to submit this report to the Permanent Select Committee on Intelligence and the Committee on Government Operations of the House of Representatives, and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate.

In response to this requirement, on 18-19 March 1985 the DCI and members of his staff met at CIA Headquarters with the Archivist of the United States, Dr. Robert M. Warner, the Assistant Librarian for Research Services, Dr. John C. Broderick, representing the the Librarian of Congress, and the following three historians selected by the Archivist:

Dr. John Lewis Gaddis, Distinguished Professor of History, Ohio University

Dr. Richard W. Leopold, William Smith Mason Professor of American History Emeritus, Northwestern University

Dr. Gaddis Smith, Larned Professor of History, Yale University

of some 2500 cubic feet of declassified OSS operational records in CIA's custody. On 11 June 1984 the National Archives opened for research the first 194 cubic foot increment of these newly declassified OSS records. The opening of this collection for the first time permits thoroughly documented studies of the role of American intelligence in World War II. As Mr. Casey wrote to Senator Durenberger in June 1984, this transfer constitutes "an important first step in implementing the selective declassification program I promised to initiate last October."

By May 1985 the National Archives and Records Administration had accessioned approximately 800 cubic feet of OSS records. The transfer of a collection of this size is a large undertaking for both CIA and NARA, and the two agencies are cooperating closely to maintain the transfer pace. The pressure has probably been heavier on NARA, since a CIA team of 13 had already spent almost four years reviewing these records for declassification before this transfer began. It may be late 1986 before all of these OSS records are open to researchers. In the meantime, while continuing the transfer of OSS records, the Agency is moving systematically to establish its new Historical Review Program on a permanent footing.

#### Aims

CIA recognizes that it is accountable not only to Congress but also to the American public. Congress, historians, the media and the general public clearly expect us (after proper review) to release documents of historical significance that no longer require protection in the interest of national security. The Freedom of Information Act already makes this clear, and our exemption from searching certain designated operational records under the new

CIA Information Act increases the pressure to declassify other records. Our consultants rightly point out that "in a society as open as that of the United States, excessive secrecy erodes Government credibility and encourages distortions of the historical record." Moreover, as Senator Durenberger observed in his 3 October 1983 letter to Mr. Casey, "The important thing is to make the declassification of historical information a cooperative endeavor, rather than a test of wills fought out in FOIA requests and courtrooms." Needing the confidence of the American public to do our work, we hope to strengthen that confidence by undertaking this program to review CIA records of historical value for declassification and transfer to the National Archives.

In establishing the Historical Review Program, we have not attempted to distinguish between the voluntary program to which Mr. Casey committed CIA in his 4 October 1983 letter to Senator Durenberger, and the systematic program that Section 3 of the CIA Information Act proposes. As the House Report notes, both take into account similar criteria. After exploring a full range of options and ideas, CIA has decided to organize a maximum effort from the outset, to declassify and transfer to the National Archives the greatest feasible volume of historically significant records. Our consultants have examined and evaluated this proposed program, we have incorporated their recommendations into it, and we fully endorse their view that the program's aim

must be release of inactive records, appraised as permanently valuable, to the public via the National Archives, as the most effective means of serving the public interest and especially that of historical research.

#### Organization

Principal responsibility for this program has been assigned to the