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*ALSO ADMITTED IN MARYLAND
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August 23, 1984

James H. Lesar, Esq.
1231 Fourth Street, S.W.
Washington, D.C. 20024

Dear Jim:

I think your draft on H.R. 5164 is quite good; I agree with all your arguments. I would, however, like to suggest the inclusion of my pet complaint -- no Vaughn indexes.

I am enclosing letters I sent to the House Intelligence Committee and the Nation. Despite the conciliatory tone of the letters, I think the legislation is atrocious.

Let me know if I can be of any assistance.

Regards,

David L. Sobel

Enclosures

jk

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May 31, 1984

Letters to the Editor
The Nation
72 Fifth Avenue
New York, NY 10011

To the Editor:

I, for one, do not ascribe evil motives to the ACLU's support of legislation to lessen the CIA's obligations under the Freedom of Information Act ("FOIA"). I strongly disagree, however, with Ira Glasser's contention that the pending bill will "prevent [the CIA] from withholding any information it is currently obligated to release."

Under current FOIA procedures, the CIA (like all other agencies) is required to search for requested documents and, if taken to court, account for all located material and justify its withholding. These justifications are contained in public indexes which generally list the dates, lengths and types of documents that are being withheld. Through this procedure, a requester can learn the volume and general nature of material in the custody of the CIA. An organization, for instance, can ascertain whether the Agency maintains information relating to its activities and determine whether the information is of recent vintage. While it is true that the vast majority of such documents is never released, the fact that they exist generally is.

The pending legislation will relieve the CIA of its obligation to locate and account for information in "operational" files, thus ending a requester's right to public indexes of withheld material. To my mind, the fact that records exist is information, often significant information. In most cases, public access to that information will end if the ACLU-supported legislation is enacted. While the bill might represent a compromise born of political reality, it is not, as Glasser claims, "a significant step forward."

Sincerely,

David L. Sobel

jk

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March 19, 1984

Mr. Michael O'Neil
Chief Counsel
House Intelligence Committee
H-405
U.S. Capitol Building
Washington, D.C. 20515

Dear Mr. O'Neil:

I am writing in reference to H.R. 5164, the Freedom of Information legislation currently pending before the Committee. I understand this bill is scheduled for mark-up on April 11. As counsel to the plaintiff in United States Student Association v. Central Intelligence Agency, Civ. No. 82-1686 (D.D.C.), I would like to address a problem I perceive in this legislation. In so doing, I note that the pending legislation (or that approved by the Senate) will not affect my client's case, pursuant to a stipulation signed by the parties and approved by the court.

As you will recall, the CIA secretly funded the National Student Association (NSA) for at least fifteen years. That covert relationship purportedly ended in 1967 with the execution of a separation agreement between the Agency and NSA. Needless to say, the student association has had a long-standing desire to learn its own history and to finally "clear the air" concerning its clandestine relationship to the CIA. To accomplish that end, NSA filed an FOIA request with the Agency in 1977, seeking records maintained under its name. The request languished for five years, during which time NSA merged with another organization and became known as the United States Student Association.

The association filed suit in U.S. District Court in June 1982, and began to receive Vaughn indexes from the Agency describing the 1500 responsive documents maintained by the Agency. The completed index is approximately 1000 pages in length and revealed, among other things, that the CIA maintains records concerning my client dated as recently as 1979. This came as a great surprise, given the 1967 separation agreement, the recommendations of the Katzenbach Commission (adopted by President Johnson), and the Church Committee's finding that the relationship terminated in 1967.

While we can only speculate as to the significance of this revelation (as the documents themselves have not been released), I believe that the acknowledgment of these records illustrates a problem posed by the bill. Since all of the documents indexed by the CIA originated in the Directorate of Operations and would, presumably, be characterized as "operational," the pending legislation would relieve the Agency of its obligation to search for, and acknowledge, such documents in the future. While it may be true that such operational files are rarely, if ever, released to FOIA requesters, it is disingenuous to claim, as the Agency has, that enactment of this legislation would not result in "any meaningful loss of information now released under the Act." Such a contention ignores the fact that information of public interest is occasionally contained in the Vaughn justifications the Agency is currently obligated to submit in litigation. To illustrate the point, I am enclosing an article that appeared in the Washington Post and was based upon the Vaughn indexes released in our case.

In raising this point, I note that the CIA, under current law, is permitted to forego the Vaughn indexing requirements in certain instances. If the mere acknowledgment of the existence of records concerning NSA/USSA subsequent to 1967 would harm national security, the Agency would be permitted to refuse to confirm or deny the existence of such records under so-called "Glomarizing" procedures. See, e.g., Phillippi v. CIA, 546 F.2d 1009 (D.C. Cir. 1976). I can only conclude that the Agency felt that it could not make the requisite showing of harm to justify such a procedure in my client's case, yet the pending legislation would remove the Agency's obligation to acknowledge such material.

The problem I have raised could apparently be cured by providing an exception to H.R. 5164's provisions for "proper requests by United States persons," rather than the "United States citizens" language currently contained in the bill. Expanding the exception to domestic organizations would retain the search and indexing requirements for requests such as my client's and would protect against the possibility of personal records being secreted in files maintained under organizational names. It would seem odd not to afford an organization comprised of individuals the same protection afforded the individuals themselves.

I appreciate your consideration of my views on this matter. I would be happy to provide additional information on our pending litigation to you or members of your staff.

Sincerely,

David L. Sobel

Enclosure

cc: Bernard Raimo, Jr.

jk

CIA Admits Study Of Domestic Group Despite 1975 Ban

By Angus Mackenzie
Pacific News Service

A CIA court statement has revealed that the agency maintained an active intelligence project through January, 1979, aimed at the U.S. Student Association, which represents 3 million American students at 360 institutions.

The CIA action will be addressed by a special panel at the association's annual convention in Atlanta starting next Thursday.

The intelligence disclosures came in a "document disposition index" filed by the agency with the U.S. District Court. Targeting of domestic organizations was supposed to have been halted in 1975.

President Reagan ordered the CIA back into domestic operations on Dec. 4, 1981, sparking protests from many civil liberties organizations.

The student group, which until 1978 was called the National Student Association (NSA), sued in June, 1982, for access to its CIA file. In a widely publicized 1967 controversy, the NSA had been exposed as a CIA front.

The CIA document index was submitted to the court in an effort to keep the student group's file secret. Under normal court procedures, when a government agency wants to keep records closed, it must acknowledge what documents it possesses and explain why they should be hidden from the public.

The student association is now trying to convince U.S. District Court Judge June L. Green to order the release of the 1,500 CIA documents accumulated through 1979 and listed in the index.

In a surprise move June 21, Green ordered the agency to produce for her inspection "an unexpurgated copy of every 25th document it has indexed in this action," according to CIA attorney Molly Jean Tasker. Those documents were submitted to the judge July 8.

The step was unusual for two reasons, said the students' attorney, David Sobel: the judge asked for the documents instead of waiting for the student association to request her inspection, and she refused a CIA request, usually granted, to supply affidavits describing the secret documents.

According to the document index, the CIA accumulated more than 372 pages on the student group after February, 1969, including 28 pages in 1978. All CIA-originated materials regarding the organization from 1978 on, and most from other recent years, are being withheld by the agency.

These materials are classified "Secret" because, according to the index, they reveal "intelligence methods" and contain CIA employe names as well as "intelligence sources" and "cryptonyms and pseudonyms."

The index, which was obtained by this reporter from Sobel, notes that one document, dated Aug. 4, 1978, "consists of brief statements which would identify a method used to support intelligence activities." Another, dated July 27, 1978, "states in precise detail, step by step, a method used to support intelligence activities."