

TRANSCRIPT OF PROCEEDINGS

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES NATIONAL
STUDENT ASSOCIATION,

PLAINTIFF

CIVIL ACTION
NO. 89-1086

v.

CENTRAL INTELLIGENCE AGENCY,

DEFENDANT

REPORTING BY MILLER REPORTING COMPANY

Pages 1 thru 161

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NO. 89-1086

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1 THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLUMBIA

3 -----x
4 UNITED STATES NATIONAL :
5 STUDENT ASSOCIATION, :
6

7 Plaintiff :

8 v. :

9 CENTRAL INTELLIGENCE AGENCY, :

10 Defendant :
11 -----x

Civil Action
No. 82-1686

12 Langley, Virginia
13 Wednesday, December 21, 1983

14 Deposition of LOUIS J. DUBE, called for examination
15 by counsel for Plaintiff, pursuant to notice, at the offices
16 of the Central Intelligence Agency, Langley, Virginia, at
17 10:00 o'clock a.m., Wednesday, December 21, 1983, before
18 ~~Mary Surplice Smith, a Notary Public in and for the~~
19 Commonwealth of Virginia at large.

20 APPEARANCES:

21 On behalf of Plaintiff:

22 DAVID L. SOBEL, Esq.
23 Dobrovir, Oakes & Gebhardt
1025 Vermont Avenue, N.W.
Suite 1105
Washington, D. C. 20005

1 APPEARANCES (Continued):

2 On behalf of Defendant:

3 MOLLY TASKER, Esq.
4 EMILIO JAKSETIC, Esq.
5 Office of General Counsel
6 Central Intelligence Agency
7 Washington, D. C. 20505

6 --0--
7 --0--

10 C O N T E N T S

11 Witness: EXAMINATION BY
12 COUNSEL FOR PLAINTIFF COUNSEL FOR DEFENDANT

13 Louis J Dube 3

15 EXHIBITS

16 For Identification

17	Deposition No. 1	31
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23

P R O C E E D I N G S

Whereupon,

LOUIS J. DUBE,

called for examination by counsel for Plaintiff, having first been duly sworn, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR PLAINTIFF:

BY MR. SOBEL:

Q Would you please state your full name for the record?

A Louis -- L-o-u-i-s -- J. Dube -- D-u-b-e.

Q And are you an employee of the United States Government?

A Yes, I am.

Q And in what capacity are you employed?

A I work for the CIA. I am Director^{ate} of Operations, Information Review Officer.

Q And what duties are entailed in that position that are relevant to this litigation?

A I am authorized to deny or release documents that are the subject of FOIA and Privacy Act litigation requests.

Q For how many years have you served in this capacity?

A Three years, approximately. It will be three years this March.

Q During the course of those three years, how many

1 FOIA requests have you reviewed?

2 A I would say at least three thousand. About a
3 thousand a year, FOIA and Privacy Act

4 Q Prior to your current position, to the extent that
5 you can describe it, can you tell us what your experience
6 within the Agency has been?

7 A All of my previous experience?

8 Q If you can.

9 A I joined the Agency in 1952. I was an Operations
10 Officer, under the Director^{AFC} of Operations. I served overseas
11 in four different tours. I made repeated TDY's overseas. I
12 have served as an Area Desk Chief, as Deputy Branch Chief, as
13 a Branch Chief, as a Deputy Group Chief, and as Group Chief,
14 all of those positions always within the Director^{AFC} of Oper-
15 ations.

16 Q Now, just for my own clarification, had documents
17 been found in this search that originated in components other
18 than the Director of Operations, would you have been the re-
19 viewing official or would somebody from that other directorate
20 have done the review, as well?

21 A If they found documents in other directorates, they
22 would have looked at their records and then they would have
23 sent them to us to review for our interests. So we both are

1 specialists in our own area. For example, if the document is
2 found in the Office of Security, Security would look to see
3 if there is anything in there that would have an effect on
4 their operation in Security, and they would treat that and
5 deny or release, and then they would send it to us, because
6 it is the DDO in the entire case.

7 Q Is that to say that you would have had final review
8 authority in any case, regardless of where the documents
9 originated?

10 A Yes, because it was basically a DO operation.

11 Q Is that to say that you would have had final review
12 authority in any case, regardless of where documents orig-
13 inated?

14 A Yes, because it was basically a DO operation.

15 Q How is that designation made, when you say it was
16 basically a DO operation?

17 A Well, this is ^{the} a directorate in which the operation
18 took place. We were the ones that supported the operation
19 and ran the operation, directed it.

20 Q Initially I would like to go into the search for the
21 documents. Now, just as a general matter, how much do you
22 know about the search that was conducted in this case?

23 A I know everything about the search.

1 Q Is this from your firsthand experience or was this
2 information related to you by other individuals who were in-
3 volved in the search?

4 A Well, I didn't run it myself physically.

5 MS. TASKER: Excuse me. David, do you mean the en-
6 tire Agencywide search or the Directorate of Operations search?

7 MR. SOBEL: When I talk about the search, I am look-
8 ing for information concerning the Agency's activities from
9 the day that this request came in to the current time.

10 THE WITNESS: The request comes into the Information
11 & Privacy Division, and they are the people that are in the
12 DDA, the Directorate of Administration, that handles this.
13 The ^{REQUEST} search comes in there and they send ^{A COPY} to all of the director-
14 ates that they feel would have responsive documents, they
15 send a copy of your letter and they assign a number to it, and
16 then they send it to the different directorates.

17 Now, some -- I would say most cases -- some cases
18 they send to the DO, Director^{ATE} of Operations, and they also
19 send it to the Director of the Office of Security. They would
20 send it to the DDI, the Deputy Director, Intelligence, and if
21 they had any reason to, they might send it to the Directorate
22 of Science & Technology, if they thought, for any reason, they
23 might have records there.

1 BY MR. SOBEL:

2 Q So that a decisional process begins right at that
3 point in terms of where the request will be routed?

4 A Right.

5 Q Now, how are those initial determinations made in
6 terms of likelihood of documents being present in a particular
7 component?

8 A If a requester came in and requested something
9 purely of a scientific nature and he wanted documents on
10 scientific subjects, they would probably not send it to the
11 DDO, because we probably wouldn't have any records on that.
12 So they would send it to the Directorate of Science & Tech-
13 nology. They would send it to the DDI because they collect
14 everything. They are the analytical part of the directorate
15 in the CIA. And they probably would not send it to us. They
16 might send it to other separate units in the DDA that might
17 have a technical background or scientific background. So
18 they make a determination then.

19 So if it was something coming in for an operation,
20 which in your case it was, it would primarily come to us and
21 it probably went to the other four directorates in one form
22 or another, but the likelihood of them having documents would
23 be very remote.

1 Q As a follow-up to that question, in light of your
2 answer, I direct your attention to the Plaintiff's third set
3 of interrogatories, and I am specifically referring to
4 interrogatory No. 10, in which the Agency has provided a list
5 of offices that were searched in response to this request.
6 Does this list reflect that initial determination that was
7 made by the Information & Privacy people when the request
8 initially came in?

9 A No. They would send it only to the directorates.

10 Q So that this list represents a more refined list of
11 the offices that were searched?

12 A Right. They would usually send out four copies, a
13 copy to each one of the directorates, and in the directorate
14 the officer in charge would make a determination of what
15 offices within his directorate he would search.

16 ~~The IPD tasks the directorates, and the individual~~
17 in the directorate, like myself, would task what component
18 within the directorate would be searched.

19 Q So that, in terms of the chronology that you are
20 providing us as to what happened to this particular request,
21 we have not yet gotten to the point that is reflected in the
22 response to interrogatory No. 10?

23 A No. This would be the result of the individual in

1 the directorate tasking components within the directorate.

2 For example, that Library Ready Reference, the
3 National Photographic Interpretation Center, they would all
4 be within the DDI, Director of Intelligence, so when it came
5 to him, he made the determination which of his offices he
6 would search.

7 Q In that case, why is it that the Directorate of
8 Operations is specifically noted in the response to this
9 interrogatory, but other directorates are not, if you are
10 saying that some of these components that are listed are
11 within other directorates?

12 A Well, because our offices are classified and we
13 couldn't put them into the public domain of where we have
14 searched, plus we have one records system within the Director
15 of Operations -- System 49.

16 Q And the other directorates do not?

17 A They have their own particular holdings, like the
18 Office of Finance will have financial records only. Now, that
19 office is under the Deputy Director of Administration. Now,
20 the DDA decides we will search this Office of Finance.

21 I think Public Affairs is a separate office. The
22 Director of Security, those are his offices, so he chose them
23 to search. They have their own records.

1 In the DDO, we couldn't break down what other
2 offices we looked into within the directorate, because that
3 would be classified. Our internal organization charts within
4 those offices are classified, plus we only have one record
5 system. That is why there was no further breakdown.

6 Q But, just to reiterate, in terms of the response
7 to Interrogatory No. 10, we are not yet at the point in the
8 search that we were initially discussing, when the request
9 came into Information & Privacy?

10 A This is an extension of that. Now we are at the
11 second step.

12 Q Then we might get back to this later.

13 Who oversaw the search process from the time that
14 it originally came into the Agency until the time that you
15 were provided with documents for review?

16 A Well, I think that IPD would be -- they are the
17 ones that are riding herd on the requests. The search re-
18 quest would come to our office here, and then we would assign
19 an individual, an officer, to make a search.

20 Q So this would be the only copy of the request that
21 was routed to DO, is that correct?

22 A Right. So our request would come in and then we
23 would assign someone to make a computer run on it.

1 Q Is that to say that there was an individual design-
2 nated in each of the directorates that was originally pro-
3 vided with the request?

4 A Yes, I would say each one of these offices -- Well,
5 the IRO would get the request, and in our component we have
6 a group called Freedom-Privacy Litigation Group, and they
7 actually perform the work for the IRO because we have so many
8 requests.

9 Now, in each of the directorates it is the same
10 setup, except some of the other directorates don't have such
11 a large staff, because their backlog is much smaller, but the
12 IRO ^{is} ~~are~~ the focal point in the Directorate that will look at
13 the request and say this office probably might have records,
14 this one will have, this one will have, and they will xerox
15 copies of the requests for as many offices as they want to
16 send them to, and they will send it to each one of the offices
17 and say, "Search your records", and they, either by hand or
18 by computer, search to see if there are any index cards in
19 there or index information, and when the index information
20 appears, it shows you where the documents are. They will go
21 and pull the documents from those files, make copies of them,
22 and return the documents to the focal point.

23 Q What occurs when no records are found?

1 A They send it back and say "No records located".

2 Q There is some form that is used for that purpose?

3 A No, it is usually done on the cover sheet of the
4 request. The request comes in and they put a cover sheet on
5 it, and here is a list of all of the offices that it was sent
6 to and each one of them will send it back and say "no records
7 down here", and how much time it took to search.

8 Q So that the Information & Privacy Division would
9 have those returned sheets?

10 A No, the Directorate will have it. We are very
11 jealous of our records. Each directorate is. We feel we are
12 the only ones that can analyze them and see what damage will
13 be done if they are released, so the determinations are made
14 in the directorate on each individual document, and then it is
15 sent to IPD at the end, saying these documents have been re-
16 leased, but they don't send them full copies of the denied
17 documents. They are retained by the directorate. (SEE ERRATA SHEET)

18 Q So that it is your understanding that every com-
19 ponent, other than the DO, to which this request was routed
20 would have sent back some indication that they did not have
21 any responsive documents?

22 A Right, and ^{the component within that Directorate} we would send it back to their focal
23 point or their IRO ~~of that component~~ and tell them that there

1 were no records.

2 Q Do you know specifically which component it was
3 sent to?

4 A All of these components in question 10, interroga-
5 tory 10. You have all of the offices that were searched.

6 Q But I thought we had established earlier that this
7 was a second stage of the search?

8 A Yes. On the first stage would be the four director-
9 ates, which were all tasked. You see, some of these, Office
10 of Technical Services, SIGINT, they are DDI. A couple of
11 these, Office of Legislative Counsel, that is a staff of the
12 Director ^{of Central Intelligence} and they are not in any of the directorates, but
13 they were also tasked. Also, General Counsel is a staff of
14 the Director, and the Office of Public Affairs is a staff
15 of the Director; Office of Security is in the DDA, Office of
16 Finance is in the DDA, Development & Engineering I think is
17 in DDS,^T and the Office of Academic Coordinator would be in
18 DDA.

19 MS. TASKER: No, that is DDI.

20 THE WITNESS: Then Reference, CIA Library, Ready
21 Reference, FBIS ~~and NPIC~~ are all in the DDI, and then you
22 have DDO, so all four directorates were tasked. So four
23 letters went out to four different directorates, and then

1 within the directorates we tasked this many offices, plus
2 the staffs.

3 BY MR. SOBEL:

4 Q I assume that your knowledge of the search is
5 really the most specific within the Director^{ATE} of Operations?
6

7 A Yes.

8 Q Did you personally oversee the search there?

9 A No. We have a branch and the individuals are
10 trained in there and they retrieve the documents. They run
11 the search. They put it in the computer and they retrieve
12 index cards and they go and pull the index cards and then pull
13 the documents and make copies of them, and then they put the
14 documents in chronological order.

15 MS. TASKER: Excuse me a minute.

16 (Counsel conferring with witness)

17 THE WITNESS: But if any references are mentioned
18 on these documents, then they pull those references and put
19 them into the package.

20 BY MR. SOBEL:

21 Q What do you mean by "references"?

22 A When we prepare a dispatch, we, if it pertains to
23 something that has happened before and there is previous
correspondence about it, we will put a reference line up there

1 and say, Reference 1, 2, 3, 4, so when you get that document,
2 if you really want to see if there was any more information,
3 older information that predated that, you would pull the refer-
4 ence, as well, and put it in the package.

5 Q How many individuals were physically involved in
6 conducting that process?

7 A In the search itself? You are talking about the
8 search?

9 Q Right.

10 A And pulling the documents together?

11 Q Right.

12 A I think there were three individuals involved.

13 Q Would these be clerical personnel?

14 A These would be clerical personnel.

15 Q And what type of familiarity would they have had
16 with the relationship between the CIA and the National Student
17 Association?

18 A They would be retrieving any documents that
19 mentions the words "National Student Association".

20 Q Which is to say that a caption on the top of the
21 document saying "National Student Association" is not necessary
22 but if it is anywhere in the text --

23 A If it is in the text, if it is indexed in the docu-

1 documents, if it is in the middle of a paragraph. When the
2 document was created, the individual analyzed that and said
3 that this ought to be indexed to this organization. They would
4 put an "x" there and that would then be indexed to the
5 National Student Association. So every document that mentions
6 the words "National Student Association" would be pulled.

7 These people, the clericals, that is all they are
8 responsible for doing, is pulling those documents. They don't
9 make any determination whether the document is applicable to
10 the case or not.

11 Q Now, I would like to go back to Interrogatory No.
12 10 of the third set of interrogatories. How would the decision
13 be made that the components listed in the response to the
14 interrogatories were the appropriate responses?

15 I suppose we have here 14 different offices or com-
16 ponents listed?

17 A Right.

18 Q How many offices of this type would there be in the
19 Agency?

20 MS. TASKER: May I interject here, that Mr. Dube is
21 not an expert on all of the components and the manner in which
22 they conducted their search. He is trying to give responses
23 as completely as he can. He may not be as fully informed about

1 other directorates as he is on his own. Most of the director-
2 ates work along the same line as his office does.

3 I just want to make you understand that.

4 MR. SOBEL: That is why I asked at the outset of
5 this line of questioning what his familiarity with the process
6 was.

7 MS. TASKER: He is fairly familiar, but I wouldn't
8 characterize him as the expert on all of them, but he has
9 fairly extensive knowledge as to the general process.

10 MR. SOBEL: If at any point you want to qualify
11 how much you know about it, please do so.

12 THE WITNESS: If you look at the offices that were
13 selected here, I think it is very obvious that they were
14 looking for anything that they thought would be associated
15 with "university". They put in the Office of Academic Coord-
16 inator. They went to the Foreign Broadcast Information Ser-
17 vice because something might have been announced over a foreign
18 radio that pertained to the National Student Association, so
19 they went there. Then went to the Reference Library to see
20 if there was mention of it there. They wouldn't go to the
21 office that maintains our parking tickets out here--you know,
22 a copy of the roster. I don't think they went to the Office
23 of Personnel, because there would be no retrievable documents

1 there.

2 Q Now, let me just back up and ask you about the
3 Library Ready Reference. What type of information would be
4 maintained there?

5 A That is finished intelligence, basically -- newspaper
6 articles on subject matters. You give a subject and we can
7 go there and find documents on it in some way, shape, or form,
8 either CIA documents or there might be books, but they will
9 turn up anything that has been printed and finished intelli-
10 gence and anything that was publicized, and it would be in
11 there.

12 Q Given your knowledge of the subject matter of this
13 request, wouldn't you think that information of the type you
14 are describing would be located at the Library Ready Reference
15 concerning the National Student Association?

16 A Yes, I would think so.

17 Q Can you provide any supposition as to why nothing
18 originating there turned up?

19 A I couldn't answer that one. You know, it is a
20 matter if they hit it, they hit it, and if they don't, they
21 don't, unless it is of a nature that there is no interest in
22 that type of organization in that component.

23 Q But within your knowledge of the material that they

1 have in that component, wouldn't any large public revelation
2 of a CIA activity tend to be recoverable there?

3 A I wouldn't say that there --

4 MR. JAKSETIC: Excuse me a second. I am not sure
5 this is really a proper line of questioning, asking him to
6 make suppositions about whether there may or may not be docu-
7 ments in a particular directorate. You are asking more than
8 personal knowledge; you are asking him to speculate about
9 matters.

10 MR. SOBEL: That is basically because the Agency's
11 position is, apparently, that Mr. Dube is the only individual
12 that will be provided for deposition, and my understanding is
13 that he is the individual who is primarily responsible for
14 providing the Agency's responses in terms of the adequacy of
15 the search.

16 MS. TASKER: That is correct, because all documents ar
17 Directorate of Operations documents.

18 MR. JAKSETIC: Would you mind if I just confer with
19 co-counsel for a moment?

20 (Record temporarily suspended)

21 MR. SOBEL: Back on the record.

22 BY MR. SOBEL:

23 Q Now, in response to Interrogatory No. 10, the Agency

1 responds that in order to fully answer this interrogatory -
2 quote - all CIA files or systems of records would need to be
3 searched. Is that your understanding of the Agency's obli-
4 gation?

5 A There is no way that any man in this building can
6 say that, when they search every directorate, that they have
7 retrieved every document on the subject. That is not to say
8 that there isn't another document that has information about
9 the National Student Association, but if the document is not
10 indexed to that, you can't retrieve it.

11 Q But didn't you tell me earlier that a reference to
12 the National Student Association within the text would be
13 sufficient?

14 A You see, there is a criteria for indexing. When
15 we started off back in the '40s, we used to index every name
16 and every organization that came in. Well, you know, you get
17 a pile of printouts on Franklin D. Roosevelt like this, and
18 we said, well, we can't go on doing this, so we said, okay,
19 we are not going to index the names of famous people any more
20 because we don't need it, and we established what our own
21 particular file system was meant to reflect.

22 Now, in the Directorate of Operations we are
23 interested in operations, counterintelligence, intelligence

1 operations, so we established a criteria of indexing that
2 revolves around those points. When we were running this oper-
3 ation, we would be indexing that or putting a copy in the
4 file, directly into the file. When we searched, we came up
5 and we said there are files with this material in them, so
6 we went and we pulled the files.

7
8 Now, also, there were documents not in those files
9 that the National Student Association had met the criteria
10 for indexing, and had been indexed, so that appeared outside
11 the file. So you go and you pull the file that says "National
12 Student Association" on it, and you also pull any documents
13 that were not in that file, that were anywhere else in our
14 file system, and you put them in, but if that mention of the
15 National Student Association didn't meet the criteria for
16 indexing, it wasn't indexed, and that document could be
17 sitting somewhere else and it could be information that you
18 want, but we can't retrieve it because the person that did
19 the indexing said, no, this doesn't meet the standards of the
20 criteria for indexing.

21 Q I would like to get into the filing system a little
22 bit. How would a document be designated "United States
23 National Student Association" so as to be responsive to this
request?

1 A I don't quite follow you. Say it once more.

2 Q You mentioned earlier that there were files that
3 would actually literally say "United States National Student
4 Association" on them?

5 A Right.

6 Q How would a document come to be designated so as to
7 be responsive to the request and would end up in one of those
8 folders?

9 MS. TASKER: I am going to object to that on
10 national security grounds, as to the detail. Lou may be able
11 to answer that in very general terms, but to give out actual
12 criteria would involve classified information.

13 MR. JAKSETIC: Let me just ask a question for point
14 of clarification. Are you asking how do we index documents
15 in order to make them responsive to FOIA requests?

16 I am not trying to put words in your mouth; I am
17 just not clear what you are asking. In other words, my under-
18 standing is that any organization of the Federal Government
19 of the United States basically organizes its files^s in order
20 to carry out its day-to-day business, not in order to make
21 documents responsive to or non-responsive to FOIA requests.

22 MR. SOBEL: That is right, but it is my understand-
23 ing that the Agency has a certain definition as to what is

1 responsive to this request, and that is what I am trying get
2 at, how a document falls within that designation.

3 THE WITNESS: Any document that is indexed to the
4 words "National Student Association" was retrieved in this
5 search, and that made it responsive.

6 BY MR. SOBEL:

7 Q Would that be limited to a physical file folder
8 with the name "United States National Student Association" on
9 it?

10 A No. Also, if a document was not in that file, but
11 if it contained "National Student Association" in the body of
12 of it and that document was indexed to that name, it was re-
13 trieved and it is in the case.

14 Q Now, you might have some problems with this, but I
15 would like to try to arrange this in a way that you can give
16 me some response. In the normal course of an operation of
17 this type, what would be the average ratio between files such
18 as those designated "United States National Student Assoc-
19 iation" and material generated through the operation, but not
20 maintained under that heading, if you understand what I am
21 asking?

22 I assume, and I don't think you have any problem
23 with the assumption, that an operation generates information,

1 that there is one body of intelligence information and another
2 body of documents that would be considered operational docu-
3 ments. Is there any standard ratio of intelligence material
4 to the operational documents?

5 A No. It varies in the type of operation. You could
6 have an operation involving counterintelligence where you have
7 no intelligence produced; you have only operational documents
8 produced. It could very well be -- I am saying it could be --
9 but what you worry about is finding out who the agents are,
10 who the Soviet agents are, so you wouldn't be producing any
11 positive intelligence. Where you are running an operation
12 and you have an individual who has a high level penetration
13 of a foreign government and he is there and has access to a
14 lot of reports, he is going to give you a lot of information,
15 and it is going to be disseminated. It is going to go out
16 to the White House, the National Security Council, the State
17 Department, and that will be indexed.

18 Q Would that intelligence product be indexed or main-
19 tained under the operational name?

20 A No, it would be maintained by subject matter. In
21 other words, if he is talking about a Soviet atomic bomb,
22 we would have a copy of the report and we would put it in his
23 file, because we keep track of what he produces, but the

1 information then goes to DDI. They don't know who it came
2 from. We don't identify our sources to the DDI. And they
3 would disseminate it then. They review it and they make hard
4 intelligence out of it; they make finished intelligence. Our
5 stuff was a raw report that we sent to them, and they would
6 disseminate it to the rest of the intelligence community or
7 to the Executive that needs it, and that would be their
8 function, but they would only be able to retrieve it over
9 there under the Soviet atomic bomb. We would have to go to
10 the spy and say he produced the report on the Soviet atomic
11 bomb. Follow me?

12 Q Then it is likely that information, generated through
13 whatever sources, might have within it "United States National
14 Student Association", is floating around in other directorates
15 and would not be produced in response to the request?

16 A Right, because they wouldn't know it came from that.
17 An individual might have gone to one of the youth festivals
18 and he might have come back and said, boy, there were 25
19 Soviets over there and they were doing this and that, and he
20 reported that and we reported it. We made a production out
21 of it. It would be under the festival's name, and that would
22 be the only way they could retrieve it. They wouldn't know
23 who gave it to us. They wouldn't have that information.

1 They retrieve by subject matter. Our files are primarily
2 based on individuals.

3 Q Is 1,500 documents a low number for 30 years of
4 record keeping within the Agency for an operation of this
5 type?

6 A It wasn't 30 years.

7 Q Well, the indexes indicate that the documents span
8 the years 1949 through 1979.

9 A Yes, but I don't think that we were -- You know, the
10 operation ceased in '67. I think it was the year '67. So
11 actually you had about -- When did it start -- '49 or '52?

12 MS. TASKER: In the '50s.

13 THE WITNESS: It started in the '50s and ran up to
14 '67, so you are really talking about 12 years of operational
15 files there, roughly. Don't quote me now when I say 12
16 years, but, roughly, the operation ran 10-12 years, and then
17 you have some information about the organization before and
18 after it was acquired, not from the operation itself, but
19 after the operation and before the operation.

20 BY MR. SOBEL:

21 Q You mentioned earlier that you had processed approx-
22 imately 3,000 requests. What was the largest number of docu-
23 ments ever involved?

1 A I think the largest one is about 60,000, and that
2 is on the MIA's, people missing in action in Vietnam.

3 MR. JAKSETIC: Excuse me. Was that a general ques-
4 tion? I am a little confused as to the question. Is it in
5 terms of a request to the Agency?

6 MR. SOBEL: That Mr. Dube has processed.

7 MR. JAKSETIC: Regardless of subject or regardless
8 of request?

9 MR. SOBEL: I am trying to keep it to his experience.

10 THE WITNESS: The MIA-KIA, missing in action or
11 killed in action in Vietnam, that has been the largest, and
12 that was 60,000 documents. That was the entire length of the
13 war over there.

14 BY MR. SOBEL:

15 Q Then the figure 1,500 documents in this request is
16 not unusual to you, knowing what you do about the operation?

17 A No, I wouldn't think it would be unusual. For an
18 operation that ran that long, I would say that would be about
19 what I would expect it to be.

20 Q Now, also, in your experience in processing requests,
21 are there commonly documents found in other components, other
22 directorates?

23 A Yes. When we are involved in an operation, there

1 will probably be documents in the Office of Security. If
2 there is funding involved in the operation, there will prob-
3 ably be documents in the Office of Finance. If we are paying
4 some money, we have to have receipts and we submit the receipts
5 and they keep track of it up there.

6 Q One of the few facts that I think we all agree is
7 officially confirmed is the fact that there was financing in
8 this operation?

9 A Right.

10 Q Do you have any idea why there would not then be
11 documents retrievable in the Office of Finance?

12 A We had them all here, I think.

13 Q With no copies there?

14 A They are only required to maintain files for a
15 certain period of time. In their fiscal responsibility, there
16 is a time element. ~~They are actually accounting for funds~~
17 spent, and I think -- I am not positive -- I think there is
18 a time frame within which they can destroy records after a
19 certain date, when they are not subject to audit or what not.

20 Q Are there literally file folders that are labeled
21 "United States National Student Association" that are
22 scattered around in various file cabinets?

23 A No. They would be, basically, in one place. They

1 would all be in one spot.

2 Q Which is to say, since all of the information that
3 we are dealing with is from the Directorate of Operations,
4 that it was maintained, basically, as one set of 1,500 docu-
5 ments?

6 A Yes, basically. Most of the documents were in there.

7 Q Now, this request was originally agreed to be pro-
8 cessed by the Agency in 1979?

9 A Uh-huh.

10 Q And it wasn't until this suit was initiated, in
11 June of 1982, that the documents were located, at least in
12 terms of the information that was provided to the plaintiff?

13 A '79 it started?

14 Q Yes.

15 A Yes, the request came in '79.

16 Q Why would it have taken so long to locate this set
17 of 1,500 documents that were all maintained in one identifiable
18 place?

19 A We have a backlog. You know, it's first in-first
20 out. So when a request comes in -- we just have so many
21 people over there and they can only search so much -- we put
22 them in line, and when a new one comes in, that goes at the
23 end, and they are working off this end.

1 Q Are you aware of any requests that were received by
2 the Agency subsequent to 1979 that were processed prior to
3 June, 1982?

4 A Say that again.

5 Q Are you aware of any requests that were received by
6 the Agency after 1979 that were processed prior to June, 1982?

7 A I don't think I could answer that. I am not posi-
8 tive of my facts on that. You know, sometimes a case will
9 come in and there will be motivating circumstances to take
10 the case out of order, if somebody needs it for a court case
11 or they are dying or something, and if we are so requested
12 we will take a case out of line and put it ahead, if it were
13 justified, basically, by OGC. They will say please do this
14 case before that, because of humanitarian reasons or court
15 requirements, or what not, but that is very seldom. We
16 usually work one at a time off the end.

17 Q Which is to say the Agency didn't think there was
18 a humanitarian reason for speeding up this request?

19 A I don't think so.

20 Q We have gone into the filing system a bit and the
21 manner in which documents are maintained under "United States
22 National Student Association". Now, I would like to show you
23 a copy of a memorandum from former Director Helms to Walt

1 Rostow, which is dated September 1, 1967, and we can mark
2 this as Deposition Exhibit 1.

3 (The document referred to
4 was marked Deposition Exhibit
5 No. 1 for identification)

6 BY MR. SOBEL:

7 Q Are you familiar with that document?

8 A I have heard of it, and I think I have been advised
9 by OGC that this document was the subject of or was a document
10 involved in the ^{HALKIN} ~~Halpern~~ v. Helms case.

11 MS. TASKER: It was an exhibit in that case, and I
12 learned that from Mr. Sobel.

13 MR. SOBEL: I have subsequently learned that it was
14 released pursuant to an FOIA request, as well, in the Halpern
15 and Marks case requesting documents concerning Agency activi-
16 ties on campuses, in addition to Halpern.

17 THE WITNESS: The only thing that I could say about
18 this document is that this would have been filed up in the
19 DCI's registry, and if it was pulled for those cases,
20 evidently the document was taken out and a copy wasn't made
21 of it, but the document was taken out and given to the OGC,
22 rather than what we should have done, make a copy of it and
23 put it back in the file, you see.

1 BY MR. SOBEL:

2 Q You indicate, in response to Interrogatory No. 10
3 of the third set of interrogatories, that the Office of
4 General Counsel was searched?

5 A Yes, but you can't retrieve just because you search.
6 They wouldn't know where to go for it. They didn't have it
7 indexed to their system. It was indexed to the DCI's docu-
8 ments.

9 Q Looking at that document now, in the normal course
10 of filing, would you expect that to be --

11 A In the OGC?

12 Q No, I am backing up. Would you expect that to
13 originally be maintained under the United States National
14 Student Association?

15 I would direct your attention to the caption on
16 ~~the second page of the document, where the report actually~~
17 begins.

18 A Yes, I would say that this should have been filed
19 in the National Student Association file. It should have
20 been, no doubt about it, but it wasn't.

21 Q Which I suppose raises the possibility that similar
22 documents have likewise not been located?

23 A No, I wouldn't say that. There are possibilities

1 that there are similar documents that we haven't retrieved,
2 that they weren't indexed and we couldn't retrieve them.

3 The only thing I could say on that would be that
4 it was written by the Director and it should have been in his
5 holdings up there, and perhaps when it was retrieved the
6 first time, in the first lawsuit that it appeared in, that the
7 document was, instead of being reproduced and the original
8 put back in its spot, that the whole document was taken out
9 and it was turned over to OGC for a court case.

10 Q Going back to interrogatory No. 10, I don't see any
11 indication that the Director's office was, in fact, searched;
12 is that correct?

13 A No, it was searched.

14 Q Which of these listed offices --

(See ERRATA SHEET)

15 A Through the Legislative Liaison. ^ You see, when you
16 raised this document to us, we again went looking for it and

17 we sent our searchers up there, and he says, "Don't ask me
18 about that document; I have looked all over for that damn
19 thing."

20 Q In the course of the various investigations that
21 have taken place over the years subsequent to 1967, is it
22 possible that other information concerning the National
23 Student Association was pulled out for one reason or another,

1 never returned to a file designated USNSA, and is now not re-
2 trievable through that method of search?

3 MS. TASKER: I would like to again say that Mr.
4 Dube is simply giving -- There is no way of knowing. He can
5 suppose.

6 THE WITNESS: It is possible.

7 MS. TASKER: As he says, it is possible.

8 THE WITNESS: Yes, it is possible. Anything is
9 possible.

10 BY MR. SOBEL:

11 Q In your experience, has this problem arisen in
12 other cases that you have been involved in?

13 A No. Usually when we do it, we make copies of the
14 document and we leave the original document where it belongs
15 and we just get copies of them. That is our standard oper-
16 ational procedure.

17 Q That is in accordance with a search and response to
18 an FOIA request?

19 A Right.

20 Q Do you have any knowledge concerning the procedures

21 A Litigation.

22 Q Well, I was going to ask about both litigation and,
23 say, a congressional investigation in which a document is

1 pulled out of a file.

2 A For litigation, that is also handled through our
3 offices and we make copies of them now. In the beginning
4 when these congressional things came about, back in the
5 Church Committee and what not, God knows what was going on in
6 this business, because we weren't used to it. People were
7 taking files down, showing them to the Committee, bringing
8 them back and some were left. Nobody knows what went on, and
9 it was a mess.

10 Now we are used to it. We have procedures set up
11 where this doesn't happen any more, but what happened back in
12 those days, nobody can attest to that.

13 Q Does the Agency have the ability to ascertain whether
14 any particular requested document has been previously released?

15 A Has previously been released?

16 Q Say you receive an FOIA request for document "X".
17 You go and search for it. Can you tell, once you retrieve
18 document "X", whether or not it has been previously released
19 in response to an earlier FOIA request?

20 A I believe that IPD has a system now where all FOIA
21 material is entered into that system in the form that it is
22 released, so if another individual came in requesting the
23 NSA files, IPD will say we will send them this and would send

1 it right then and there wouldn't be a second search.

2 Q Were you provided any information of that type in
3 conducting either the search or review of these documents?
4 Were you advised that any of the responsive documents had
5 been previously released?

6 MS. TASKER: Previously released how -- in other
7 FOIA cases?

8 MR. SOBEL: Well, I suppose, for purposes of the
9 question, released in any matter, whether it was for litigation
10 or --

11 THE WITNESS: We wouldn't ordinarily check to see
12 if each individual document has been released. We would go
13 by subject matter. Say we released stuff on the National
14 Student Association or we released stuff on John Doe. Now,
15 John Doe might have been a member of the National Student
16 Association, and under his Privacy Act request we might have
17 released a document to him that also mentioned National
18 Student Association, but we wouldn't go in and just run
19 through our entire releases to find out if that document
20 was in there. Follow me?

21 BY MR. SOBEL:

22 Q Is this to say that when you look at a particular
23 document there is no indication on that document as to its

1 release history?

2 A That is right.

3 Q If that is the case, then, is it possible that docu-
4 ments declassified and released under previous executive
5 orders have now been reclassified and withheld? Do you have
6 any way of knowing that that could have happened?

7 A If something was declassified under a previous
8 executive order?

9 Q Right. Suppose a request was received by the Agency
10 in 1977 or '78 requesting information concerning students --
11 not the National Student Association, but the more general
12 subject of students -- and some of these documents that are
13 at issue in this case were retrieved, and I assume they would
14 have been reviewed under the then current executive order.
15 Now if, during that process, they were declassified under
16 that executive order and released, would you have any way of
17 knowing that by looking at the documents currently in the
18 file?

19 A The classification of the document is always on the
20 original copy, the file copy of the document. Now, if that
21 document is downgraded, say, from secret to confidential,
22 that would be stamped on the document. If it is declassified,
23 it is going to be stamped on the document. We don't know

1 why that was done, whether it was a court case or something
2 else, necessarily, but when we find that document, we will
3 say, well, this thing was declassified, here is the date and
4 here is the individual who did it, by number, an employee,
5 so that is supposed to be on the original file copy of the
6 document. Now, if somebody doesn't have that original, you
7 know, and makes a determination, that still wouldn't affect
8 that document.

9 Q Now, is it your understanding under the current
10 Executive Order that you have the authority to reclassify?

11 A Yes, that is the authority to, but I don't think we
12 have done very much of it.

13 Q Have any of the documents at issue here been re-
14 classified in the course of your review?

15 A No.

16 Q I would like to get into the review process a little
17 now, and for that I have some questions concerning the affi-
18 davit that you submitted, dated September 7, 1982.

19 A September 7, 1982?

20 Q Right.

21 A Okay.

22 Q Now, what was your familiarity with the documents
23 at issue in this case at the time that the affidavit was

1 executed?

2 A I had seen them all. I had read them all and had
3 either agreed or disagreed with the recommendations that were
4 made to me.

5 Q Without giving me any names that you can't give me,
6 what was the source of those recommendations?

7 A The senior review officer that reviews the case.
8 We put an individual or a team -- in this case we put a
9 team -- on doing this case, and first of all they read all of
10 the documents in the case, go over what is involved, and they
11 go through and sanitize this out or deny in total, because
12 they have to protect the directorate, and then these documents
13 are brought to their boss, who is a Branch Chief, and they
14 went through the Group Chief, and he reviewed them, and then
15 it finally comes to me, and if I say no, we can't release
16 this, we send it back to them and say we can't do it, or I
17 may say I can't defend this in court, I've got to release
18 this, so all of that was done when I signed the affidavit.

19 Q So you had read all of the documents?

20 A Every document.

21 Q That was September 7?

22 A Yes.

23 Q If all of the documents had been read at that time,

1 why was it not until November 3, 1982, that a discrepancy
2 in the number of the responsive documents was discovered?
3 I believe there were 2,000 additional documents in the orig-
4 inal estimate.

5 A This was up to -- We were doing this in batches,
6 right?

7 Q Right. There were installments.

8 A Right. So we got this out at the end of this in-
9 stallment, right?

10 MS. TASKER: Yes.

11 BY MR. SOBEL:

12 Q Let's back up. Is that to say that you had not, in
13 September, read the 1,500 documents that we now know are at
14 issue?

15 A No, I don't think I had read those. I think I had
16 read up to 186 here.

17 Q So is that to say that the basis of your affidavit
18 was the material that you had read?

19 A Right, and as each other release was made, that is
20 when I read them.

21 Q Had you discussed the operation, the National
22 Student Association operation, with knowledgeable people
23 within the Agency prior to conducting your review?

1 A No, I don't think I ever talked to anybody over
2 there.

3 Q Then what was your source of information within
4 which to put these documents in some context?

5 A General knowledge of the operation.

6 Well, the reviewing officer, the analyst, came in
7 and told me what was involved with the case.

8 Q Do you know if he had spoken to any knowledgeable
9 people?

10 A I think, Molly, you spoke to one individual. I
11 think that one of the review officers had talked to him, as
12 well.

13 Q Now, would that have been the individual that is
14 mentioned in response to Interrogatory No. 1 of the third
15 set of interrogatories? A name of the individual hasn't been
16 provided, but you indicate that.

17 A Yes, I think he was the individual they talked to.
18 I think that Molly talked to him, as well.

19 Q This was the individual who testified at the Church
20 Committee on the relationship?

21 A Right.

22 Q So that that person was made aware of the fact --

23 A I think he is the one.

1 MR. SOBEL: Off the record.

2 (Discussion off record)

3 BY MR. SOBEL:

4 Q So that individual was made aware of the fact that
5 there had been an FOIA request made for the National Student
6 Association documents. Now, do you know how involved in the
7 review process that individual was?

8 A I don't think he was involved. I don't know. I
9 would have to ask the reviewer.

10 MS. TASKER: Do you want to go off the record?

11 MR. SOBEL: Off the record.

12 (Discussion off record)

13 THE WITNESS: So the answer to that would be ^yes.

14 BY MR. SOBEL:

15 Q What was this individual's familiarity with the
16 operation?

17 A I believe he was involved with it. He was running
18 it.

19 Q Would you know over what years this individual had
20 knowledge of the operation? Again, the documents apparently
21 span a 30 year period.

22 A No, I wouldn't know. I wouldn't be able to say. I
23 think he was involved with the operation itself at some time

1 when it was running, so it would have been previous to '67.

2 Q But you don't know how long his involvement might
3 have run?

4 A No. He has a long history in that kind of activity,
5 so I would assume that it was quite some time.

6 Q Now, at the time that you were, in effect, briefed
7 as to the information that had been derived from that individual
8 did you take any notes?

9 A No.

10 Q How much time would you say was spent in conveying
11 the information that had been derived from that individual to
12 you?

13 A Different times a couple of hours.

14 Q Now, again, these were not personal meetings between
15 you and the individual?

16 A No, but the officer that reviewed the case, the
17 primary officer reviewing the case would come in with questions
18 and she would ask my opinions and we would sit and talk about
19 the case, and she would tell me what she had found, the prob-
20 lems that come up, and she would go back over and come back
21 a week later with another problem, and it was this kind of
22 review that I got periodically.

23 Q So that she would have been versed in the specifics

1 of the operation than you were?

2 A Yes, because when they are doing these cases they
3 live with that case until it is done, and I have so many
4 cases that I am running from pillar to post, back and forth
5 all of the time. I can't put the time into it.

6 Q Do you know why she only found it necessary to dis-
7 cuss it with one person who had been operationally involved?

8 A I doubt if there are any more around that would know
9 about it. There have been an awful lot of retirements.

10 Q So that is to say this is the one individual who
11 is still here who goes back to that operation?

12 A Right.

13 Q Now I want to get back to the affidavit itself
14 and ask you some questions about the b(2)(1) exemption. When
15 was the review of the documents commenced?

16 A Well, the review of the documents, I can't answer
17 that off the top of my head. I know the search was run in --
18 was it September of '81? You answered that in one of the
19 interrogatories. There were two searches. September of '81.
20 Now, the search is conducted before the review, so I don't
21 know when they started working on them. The search was run
22 September, '81. I would assume that by October, '81 that the
23 documents would have all been pulled together and reproduced

1 and put in one spot. Now, whether it sat on a shelf then
2 until somebody was assigned to the task of doing it, and how
3 long it was, I don't know.

4 Q Well, would the review process have begun prior to
5 the filing of this lawsuit in June of 1982?

6 A I can't say. I can't say, because on the time
7 element, most of our cases are about two and a half years
8 old before we get to them, so whether we started on the case
9 before you brought suit, I don't know.

10 Also, the ^{QUEVE}~~cue~~ is twofold. ^{There} ~~It~~ is the initial cue
11 and then when you appealed, it was taken out of that ^{QUEVE}~~cue~~ and
12 put in the appeal ^{QUEVE}~~cue~~, with the appeals officer, so I would
13 suggest that it would be shortly after the time that you
14 appealed it when it began.

15 Q Did you maintain any notes during the course of
16 the review process that would indicate when the process was
17 begun?

18 A No, I don't have any notes. We have a note on each
19 document, that we call a worksheet, and that is basically our
20 record of what is done with the document and what not, but
21 there is nothing on there with dates.

22 Q Now, would the date that is stamped on the
23 document indicating that it has been approved for release be

1 the date of review, or are things reviewed in batches, set
2 aside, and then just sort of stamped in a mass manner?

3 A Well, I think if we released these in this case,
4 they were probably done in increments -- probably -- and that
5 date after "approved for release" would have been after I had
6 seen it.

7 Q So you can't say when the review was started?

8 A I would suppose that it started shortly after your
9 appeal.

10 Q That would have been in the latter part of 1981?

11 A The appeal was submitted 8 September 1981. We
12 acknowledged it 11 September.

13 MS. TASKER: I think the review didn't start until
14 September.

15 MR. JAKSETIC: I suggest we get back to you on that.

16 ~~THE WITNESS: I can't tell from this. I can't say~~
17 when we began the review today. It was either when we
18 finished one litigation and we had time to start the other
19 one --

20 MR. JAKSETIC: Wouldn't it be better to get back
21 to you on that? The question is when was the review under-
22 taken of the documents.

23 MS. TASKER: I think that information is already in

1 the record somewhere from our earlier stipulation. Part of
2 the problem was the time and the fact that it would take us
3 that amount of time to review for releasing those documents.
4 We stipulated we would do them then in increments and do
5 the monthly issuance, so it was sort of ongoing. I don't
6 think it really started until June of '82.

7 MR. SOBEL: That would be the late end.

8 MS. TASKER: That would be when the review by
9 the analyst going through Lou started up, and then we agreed
10 to do the monthly installments to keep the thing going, you
11 know, rather than sitting around for eight months and getting
12 one huge pile of documents, so we agreed to do it in monthly
13 installments.

14 BY MR. SOBEL:

15 Q Assuming that the review began in June, at that
16 time you were operating under Executive Order 12065. Then
17 the effective date of the current Executive Order 12356 was
18 August 1, 1982. As a result of that transition, do you recall
19 if there was any re-review conducted under the new Executive
20 Order?

21 A I don't recall that we had a re-review, but we had
22 the classification problem.

23 MS. TASKER: There was nothing in the new executive

1 order that would have altered or called for a re-review.

2 THE WITNESS: The second one is more restrictive
3 than the first one.

4 MR. SOBEL: That is right. That is why I am wonder-
5 ing whether some initial determinations had been made under
6 the previous Order that had been then withdrawn once the
7 new authority was granted.

8 THE WITNESS: No. Actually the new Executive Order
9 had little effect on us, and we didn't reclassify anything.

10 BY MR. SOBEL:

11 Q You are saying in terms of the manner in which the
12 Executive Order was applied to this case, in your experience
13 there wasn't that much difference between that and the manner
14 previous to that?

15 A Our sources and methods are about the same under
16 both executive orders. It had no real bearing on our actions,
17 on our determinations.

18 Q As long as you have said that, let me ask you if
19 under the previous order you would have thought there was
20 some public interest in the release of this information.

21 A My feeling is that the sources and methods have to
22 be protected.

23 Q And that would outweigh any public interest in

1 disclosure?

2 A That would outweigh it, yes.

3 Q In the affidavit you state that material has been
4 classified on the ground that its release - quote - reason-
5 ably can be expected to cause the following types of damage -
6 unquote - and then you list a couple, one of which is the
7 disclosure and resulting impairment of sensitive intelligence
8 methods utilized by the CIA, and then - quote - the disclosure
9 and resulting impairment of foreign intelligence sources and
10 operations - unquote. Can you explain how such damage might
11 result from the release of information which is, in some
12 cases, over 30 years old?

13 A Well, --

14 MR. JAKSETIC: Excuse me. Point of clarification:
15 Are you referencing this specific question or are you asking
16 sort of a generic question?

17 MR. SOBFL: No, I am asking as to these specific
18 documents.

19 THE WITNESS: There is nothing in any Executive
20 Order or the National Security Act of 1947 or the Act of '49
21 which stipulates any time element about protecting sources,
22 and we have to assume that that is for life, and if a source
23 is identified in a document 40 years ago, we would still deny

1 that information. The same way with our methods. Although
2 our methods, a lot of them, are in the public domain, whether
3 we are using those methods or whether we are using the same
4 ones today, we can't acknowledge that.

5 BY MR. SOBEL:

6 Q In analyzing the harm that might reasonably be ex-
7 pected to flow from disclosure, did you consider the age of
8 the documents?

9 A I don't consider the age of the document to be im-
10 portant. I think what is important is whether this infor-
11 mation is going to identify a source or a method.

12 Now, we have made a determination to release a lot
13 of OSS material. It was for a set period of time -- talking
14 about World War II -- and the determination has been made
15 that we will release informati'n about the OSS operations of
16 World War II, but there is no determination that has been
17 made that any CIA information is to be let loose.

18 Q At least in terms of this affidavit, as you testified
19 earlier, you had only read through document 186 at the time
20 the affidavit was executed?

21 A Yes.

22 Q So that the documents that you were dealing with at
23 that time were not 30 years old?

1 A No, they were new documents.

2 MS. TASKER: That is not to say Mr. Dube was unaware
3 that there were other older documents.

4 THE WITNESS: Yes.

5 BY MR. SOBEL:

6 Q Were any of the documents that you reviewed
7 previously designated for automatic declassification at the
8 time that they had originally been classified?

9 A I don't believe so. During that period of time we
10 were covered by that Executive Order, we had our notation that
11 the date could not be determinative, or something to that
12 effect. I forget how it used to read, but we never had that
13 at six years or twelve years.

14 MS. TASKER: Excuse me.

15 (Record temporarily suspended)

16 THE WITNESS: Under the Executive Order, we didn't
17 use that automatically declassifying as of a certain date. We
18 never used that.

19 BY MR. SOBEL:

20 Q You prefaced that by referring to the Executive
21 Order. "Under the Executive Order", I think you said, "we
22 don't use that".

23 A I think it was 11065. I forget what the number is.

1 It was a very early one which said, you know, the documents
2 will be declassified, something like the end of six years,
3 and there was another one the end of twelve years, and then
4 there is one that it has to be determined by the agency that
5 created the document, if and when it could be, and we took
6 that choice because we knew we wouldn't be automatically de-
7 classifying documents at the end of six years.

8 Q That is to say none of these documents had a date
9 designated for automatic declassification review?

10 A No

11 Q Were there any events upon which such declassification
12 review would take place designated?

13 A We have a process under the old Executive Order that
14 was called a systematic review of classification, and there
15 was a component that reviewed documents when they reached a
16 certain date, and they were going to review all archival
17 documents, and that ran for about four years, I believe, and
18 there has been a lot of work, so they declassified very, very
19 little. I forget -- it was a one or two year period, I be-
20 lieve.

21 Q During what years was that?

22 A I think that was during the Carter administration.
23 It was a systematic declassification review, and that was

1 called for in an executive order.

2 Q But, in any event, none of the documents at issue
3 here had been so designated?

4 A No.

5 Well, we did a classification review on all of these
6 documents, and any of them that were declassified were so
7 marked and so identified.

8 Q This was by virtue of the fact that they had been
9 requested under the Freedom of Information Act?

10 A Right.

11 Q Now, the current Executive Order, in Section 3.1(a),
12 provides that - quote - information shall be declassified or
13 downgraded as soon as national security considerations permit
14 unquote. Under that standard, in your opinion, what circum-
15 stances would justify the declassification or downgrading of
16 this material?

17 MS. TASKER: Just a moment. I think you are asking
18 him too broad a question.

19 MR. SOBEL: Okay, the gist of this question is that
20 if you applied this standard -- this is the applicable stan-
21 dard under the Executive Order -- I assume you must have some
22 sense of what this means, "as soon as national security con-
23 siderations permit", and that is what I am trying to get

1 at.

2 BY MR. SOBEL:

3 Q What does that mean in actual operation, when you
4 are reviewing documents?

5 A I have to look at sources and methods. I am re-
6 quired, by law, to protect sources and methods, and as long
7 as a document has sources and methods information in it, I
8 am going to deny it.

9 Now, you know, if there was a revolution in Russia
10 today and the Communist powers were overthrown completely,
11 and there was no more need for a Central Intelligence Agency,
12 maybe some of this stuff would be written into memoirs and
13 released and what not.

14 Q So that is what it would take?

15 A I would say so, as much as I hate to say it, but
16 we are going to be using these sources and methods as long
17 as we have enemies that are trying to destroy us.

18 Q Has any material concerning the National Student
19 Association, to your knowledge, been transferred to any other
20 agency or to the National Archives?

21 A No.

22 Q How definitively can you say that?

23 A Well, you mean to sort of hide it from the public

1 view?

2 Q No, no, just in the course of the general business
3 of the Agency. Now, of course, we have had documents --

4 MR. JAKSETIC: I want to object to that question.
5 As I understand it, this is ^{not} a tort case. In a tort case we
6 are ~~not~~ in a position of, for civil discovery, of finding
7 documents located in other agencies. I believe the Agency's
8 obligations under FOIA are to locate any documents which are
9 reasonably identifiable in its own files, and that there is
10 no obligation of this Agency or any Federal agency to under-
11 take steps to go there to find documents that may or may not
12 exist in other agency files.

13 MS. TASKER: May I add to that that it is already
14 in the index as to which documents were referred to or which
15 documents contain other agency information, such as the FBI.

16 MR. SOBEL: That is right. I was going to make note
17 of the fact that there is that class of document that we have
18 been advised of, but I just wanted to clarify that, and the
19 relevance of the question comes under the Executive Order,
20 Section 3.2, concerning the transferred information, so if the
21 Executive Order governs the manner in which you conducted the
22 review, I wanted to know if you were made aware of the fact
23 that any of the information had been transferred.

1 MR. JAKSETIC: "Transferred"? I am not sure I
2 understand the question. Does the question mean documents
3 physically transferred, or is this a matter of referring, for
4 example, other agency information? For example, is the
5 question if we find an FBI document in our files or if we
6 find FBI information in one of our own documents, do we, in
7 the course of a FOIA case, coordinate with them to make a
8 determination. Is that what you are asking? I am trying to
9 understand what you are getting at.

10 MR. SOBEL: It could go either way, and the reason
11 I ask is that the Executive Order provides that - quote - in
12 the case of classified information transferred in conjunction
13 with a transfer of funding, and not merely for storage pur-
14 poses, the receiving agency shall be deemed to be the orig-
15 inating agency for purposes of this Order, so I just wanted
16 to clarify that there isn't any information that would apply
17 in either case, whether it was transferred with a transfer
18 of functions or merely for storage purposes.

19 MR. JAKSETIC: To another agency?

20 MR. SOBEL: Yes.

21 MR. JAKSETIC: I am not trying to make it difficult.
22 I just wanted to understand the question.

23 BY MR. SOBEL:

1 Q Now, you said that this material did undergo manda-
2 tory review for declassification?

3 A Yes, we did that classification review when we re-
4 viewed the case.

5 Q I would now like to get into the (b)(3) exemptions.
6 I will start with the intelligence sources. Your affidavit
7 generally discusses the need for the confidentiality of
8 sources. Is it your position that the release of information
9 in this case would have a negative impact on other relation-
10 ships not involved in this case?

11 A Oh, yes. If CIA were releasing names and sources,
12 we wouldn't get any cooperation from anybody.

13 Q Is it primarily for that reason the sources are
14 being protected here?

15 A No. We are required by law to protect sources in any
16 case, this case or any case.

17 Q I got the sense from your affidavit that you were
18 really discussing other relationships more than the relation-
19 ship that was involved in this case?

20 A Well, no. I think that we have to protect our
21 sources in this case, as well as other cases, or in any case
22 in which we are involved, we have to protect the sources.

23

1 MS. TASKER: I am not too clear on that question.
2 What other relationships?

3 MR. SOBEL: I get the impression from Mr. Dube's
4 affidavit that he is claiming that the harm that would flow
5 from the release of this information is to other relationships,
6 not this specific relationship that was involved in this
7 case.

8 MS. TASKER: The NSA is a relationship.

9 MR. SOBEL: Right. He seems to be saying that
10 just the general fact of disclosing any source information
11 will, down the road, impair the Agency's ability to enter into
12 confidential relationships.

13 THE WITNESS: That is true.

14 MS. TASKER: I think that is one of the things he is
15 saying. You are saying that there are other specific individual
16 source CIA relationships?

17 MR. SOBEL: That is the impression that I get from
18 the affidavit.

19 MS. TASKER: That is accurate.

20 BY MR. SOBEL:

21 Q However, isn't this case unique in that the CIA-NSA
22 relationship has been officially confirmed?

23 A The relationship has been confirmed, but no source

1 has been named. That doesn't name everyone or how many
2 or who were actually aware of the relationship or were in-
3 volved in the relationship, nor the degrees of involvement in
4 the relationship.

5 Q Now, the definition of intelligence source, if I am
6 not mistaken, can include both individuals and organizations,
7 is that correct?

8 A Yes.

9 Q Now, if the National Student Association were con-
10 sidered a source, is that information withheld?

11 A No. As the National Student Association, no. In-
12 dividuals within the National Student Association, yes.

13 Q Now, we get into some fine points, I guess, in that
14 distinction because, of course, an organization is comprised
15 of individuals. Now, how do you make that distinction between
16 an individual as a source or an organization as a source?

17 A If his name is included or other identifying infor-
18 mation is included, then I would think he is a source and he
19 has to be protected. If this were provided to us by the
20 National Student Association without who did it or how they
21 did it, I would have no problem with releasing that because
22 the relationship has been acknowledged.

23 Q Did you come across any documents of that type?

1 A If I did, you got them.

2 Q Then I assume the answer is no?

3 A Well, you got 31 documents, I think, the full texts.

4 Q I am still not clear why information indicating
5 relationships with the individuals who compromised the National
6 Student Association would jeopardize other relationships.

7 A Because that same type of relationship is going on
8 with other organizations, perhaps, and you know the individ-
9 uals, and, as you say, the organization is comprised of
10 people. Would they, in their organizational mode, feel that
11 they would cooperate with CIA if their names might be
12 released 20 years from now. Look what happened to the
13 National Student Association.

14 Q Well, as a practical matter, if there were an organi-
15 zation which currently had a covert relationship with the CIA
16 and the Agency were to publicly acknowledge the existence of
17 that relationship, would you really think that the president
18 of that organization would be operating under the assumption
19 that his relationship with the Agency was not known?

20 MS. TASKER: This is -- I really don't want to
21 object, but this is really part of the record. You inquired
22 the same thing in your interrogatories. As we all know,
23 through the Church Committee report, it was acknowledged that

1 all presidents and international affairs vice presidents were
2 briefed and witting of the relationship between the Agency
3 and the National Student Association. However, there were
4 individuals, both the presidents and vice presidents, some
5 of the presidents and vice presidents of international affairs,
6 other officers of the National Student Association who were
7 not just witting, but were cooperating sources on an individ-
8 ual basis, and it is for that reason, because we don't wish to
9 identify those individuals one by one, that we were protect-
10 ing sources. We all knew that all presidents, international
11 affairs vice presidents, were witting of the National Student
12 Association associating with the CIA, but we also know that
13 some of those people were cooperating in individual efforts
14 on individual operations, not all of them.

15 MR. SOBEL: But that is not the question I am ask-
16 ing. My question involves the damage to other relationships
17 that might be caused by the acknowledgement --

18 MS. TASKER: That is correct, because there are
19 other relationships with other organizations, and there may
20 be individuals who are more than just witting and cooperating,
21 in general, as part of the organization; they are, in fact,
22 cooperating as individual sources, on individual, more narrow
23 operations.

1 MR. SOBEL: Again I feel that there are unique
2 considerations in this case and the unique consideration is
3 the fact the CIA has acknowledged the existence of the re-
4 lationship.

5 MS. TASKER: That is correct and, therefore, we
6 withheld no information that simply reveals or further repeats
7 or anything else that there was such an association between
8 the National Student Association and the Agency.

9 MR. SOBEL: But my question to Mr. Dube is whether
10 in making the determination that source information in this
11 case could have a negative impact on other relationships,
12 whether he considered the situation, whether the analogy that
13 he drew was to a current organization that has an officially
14 confirmed relationship with the CIA or whether he was con-
15 sidering organizations that do not have an officially acknowl-
16 edged relationship with the CIA in making that determination.

17 THE WITNESS: Yes, I considered that.

18 BY MR. SOBEL:

19 Q Could you clarify that a bit?

20 A It was not our doing that put this into the public
21 domain, not the Director^{ATE} of Operations, for sure, so the
22 details of this are still secret, sources are still secret,
23 the methods we used are still secret, and in a similar

1 organization we would be doing the same thing, we would be
2 talking to the same level people, we would be using the same
3 methods of funding.

4 Q We are getting into methods now, and I am going to
5 ask you those questions. In terms of sources within the
6 organization, did you consider the impact on just an organi-
7 zation that has a covert relationship with the DCI and the
8 effect that a disclosure here could have on that relationship?

9 A Yes.

10 Q Or did you look at an organization that had an
11 overt relationship with the CIA?

12 A This was not an overt association. There was
13 nothing overt about this.

14 Q At the time?

15 A At the time, and as far as official acknowledgment,
16 ~~there is very little in the public domain of what was involved~~
17 with this operation.

18 Q That is right, but my point is that disclosure of
19 sources within the National Student Association at this point
20 in time could only send the message to other sources and in-
21 dividuals or organizations involved in covert relationships
22 that well after the CIA acknowledges a relationship, they
23 might also acknowledge sources.

1 Do you understand what I am saying?

2 A Yes, and I would think that we cannot acknowledge
3 the sources.

4 Q Now, I would like to ask you a little bit about
5 the intelligence methods. Is it your position that information
6 can be withheld if it involves methods that are no longer
7 legally available to the Agency?

8 A No longer legally available?

9 MR. JAKSETIC: Let me raise an objection to the
10 question in the sense it is legally irrelevant. The reason is
11 there have been a number of cases, including court cases in
12 the D.C. Circuit, which hold that, even for the sake of argument,
13 that if information is unlawfully obtained, it may still,
14 nevertheless, be exempt under one or more of the exemptions
15 in the FOIA and that the FOIA case is not a proper forum in
16 which to ask questions about the legality of how information
17 was gathered and obtained.

18 MR. SOBEL: I think that is a different issue. I am
19 asking whether Mr. Dube believes that there is a valid intelli-
20 gence method protection for a method which is foreclosed to
21 the Agency. To use the clearest hypothetical, I guess, under
22 the current Executive Order on intelligence activities,
23 assassination may not be resorted to as a method. The question

1 to be using here.

2 MR. JAKSETIC: I still object to that line of
3 questioning. I don't know -- I will be up front -- I know
4 nothing about the documents, so I have no personal knowledge,
5 but even assuming, for the sake of argument, that there is one
6 or more illegal methods discussed or described in any of
7 these documents --

8 MR. SOBEL: That is currently illegal.

9 MR. JAKSETIC: Yes, currently illegal. Even assume,
10 for the sake of argument, if the Agency could determine that
11 disclosure of that would disclose intelligence sources or
12 methods, the fact of its current legal or illegal status,
13 even if it was illegal at the time, under case law is irrele-
14 vant if the Agency is ^{OTHERWISE} entitled to exemption under FOIA.
15 There was a case involving the FBI in which the FBI got in-
16 formation through illegal bag-jobs on the basis of national
17 security. The legality or non-legality of the bag-jobs is
18 irrelevant.

19 Again hypothetically, not knowing anything about
20 the documents or the specific methods, even assuming, for the
21 sake of argument, there is one or more methods, one or more
22 documents that discuss currently illegal methods, or that
23 had been, for the sake of argument, had been illegal at the

1 time, if it is otherwise protectable under FOIA, the legality
2 or non-legality is irrelevant.

3 MR. SOBEL: I am not sure I draw that analogy from
4 the situation that you cite, but I just wanted to know whether
5 Mr. Dube took into account whether or not methods that you
6 came across in these documents are or are not presently avail-
7 able to the Agency.

8 THE WITNESS: I think they are.

9 MR. SOBEL: Excuse me?

10 THE WITNESS: I think they are. The methods that
11 we used in this operation are presently available to the
12 Agency.

13 BY MR. SOBEL:

14 Q But did you take into account the question of
15 whether or not they are?

16 A No. I just know that -- I don't believe that any
17 thing said to be illegal, except for assassination, is spelled
18 out. And I don't think that is spelled out as illegal, is
19 it? I think it is sort of a directive that we will not do
20 this.

21 Q Fortunately this case doesn't involve that, so we
22 don't have to resolve that.

23 Do you characterize covert funding of a private

1 domestic organization as an intelligence method?

2 A Yes.

3 Q Hadn't that method been disclosed?

4 A Yes. Not all of it, but the fact that we do it has
5 been exposed, but not the particulars of it.

6 MR. JAKSETIC: Just to refresh Lou's recollection
7 with another example, the example of the Military Audit Project
8 v. Casey, litigation involving the Gomar Explorer, where the
9 fact of covert funding was acknowledged, but the specifics
10 thereof were not and were found to be protected. The mere
11 fact of the Agency's involvement in the project involving
12 covert funding is not a secret. The specific project or
13 specific details of a specific project may well be.

14 THE WITNESS: When we use it and how we use it is
15 secret.

16 BY MR. SOBEL:

17 Q Which is to say that you have not withheld any
18 information which merely states the fact that the CIA covertly
19 funded the National Student Association?

20 A No, we would let that statement go, but if it said
21 X, Y, and Z, in going through it X, Y, and Z came out.

22 Q I will get back to that later.

23 In the Vaughn Index you occasionally refer to -

1 quote - methods used to support intelligence activity -
2 unquote. Is that the same as an intelligence method?

3 A Yes, it would be a support type, like the funding.
4 If we are running an operation, we need support funding. It
5 would be that type.

6 Q That would be the same type of situation that you
7 referred to when you speak of - quote - specific support
8 activity associated with an intelligence operation - unquote?

9 A Yes.

10 Q Now that we have touched upon the question of
11 funding, I would like to ask you about the documents that you
12 have designated as funding documents. In the preliminary
13 note to the Vaughn Index, installment 6, you discuss a group
14 of so-called funding documents. Were these documents that
15 were generated by the CIA?

16 A Yes. Well, they were not all generated by us, but
17 they were generated through people that work in clandestine
18 that is in touch with us. The fact is that some of them might
19 show that a check was being mailed from someplace to some-
20 place.

21 Q Would something such as a NSA proposal for funding
22 fall within this category?

23 MS. TASKER: I object. National security grounds.

1 Mr. Dube will not either confirm or deny that is part of this,
2 and he is directed not to answer.

3 BY MR. SOBEL:

4 Q Why are the dates of these documents deleted?

5 A To show the time frame, when it began and when it
6 stopped.

7 Q When what began and what stopped?

8 MS. TASKER: Does the preliminary note address
9 that?

10 MR. SOBEL: Well, I don't think it is very clear.

11 MS. TASKER: What does it say? Could we read that
12 into the record?

13 MR. SOBEL: Sure. Do you have it?

14 THE WITNESS: No, I don't have ^{INSTALLMENT} 6 with me. It is
15 the only one I don't have.

16 MR. SOBEL: ~~It is part of the record.~~

17 MS. TASKER: That is Mr. Dube's answer.

18 THE WITNESS: What?

19 MS. TASKER: The note to ^{INSTALLMENT} 6 addresses the date.

20 BY MR. SOBEL:

21 Q Getting back to my earlier question about funding
22 proposals, it is your position that you will not confirm or
23 deny whether such documents are within these 1,500?

1 MS. TASKER: Mr. Sobel, Mr. Dube cannot officially
2 acknowledge whether those documents are or are not within the
3 Agency.

4 THE WITNESS: Wait a minute. I don't understand.

5 MS. TASKER: We would like a minute to confer.

6 (Witness and counsel withdraw from hearing room)

7 THE WITNESS: Yes, I neither confirm nor deny.

8 MR. SOBEL: If that is your answer, I suppose we
9 might need to define what a funding proposal would be that you
10 are refusing to confirm or deny the existence of, so that we
11 know what the extent of that answer runs to. Is that counsel's
12 understanding, that if we are using a term, it is appropriate
13 to know what we are talking about?

14 MS. TASKER: Let me make a suggestion that if you
15 want to ask a specific question and you want to try to clarify
16 the fine terms, by all means do so. All I would do is counsel
17 Mr. Dube to ^{wait} until ^{you} he finishes the question before ^{he} you
18 jumps in, so we have a clear understanding of what, exactly,
19 the question is.

20 BY MR. SOBEL:

21 Q I would like to give Mr. Dube a document and ask him
22 if, in his opinion, this document would be considered a fund-
23 ing document?

1 MS. TASKER: Would you identify the document,
2 please?

3 MR. SOBEL: We can identify this as Deposition Ex-
4 hibit No. 2. It is titled "Prospectus", and this document was
5 obtained from the files of the National Student Association.

6 (The document referred to was
7 marked Deposition Exhibit No.
8 2 for identification)

9 MS. JAKSETIC: Take a look at it, but don't answer
10 until we take a look at it, too.

11 MS. TASKER: What you are saying is that this docu-
12 ment, this is a copy of a document provided to you, Plaintiff's
13 counsel, by the National Student Association?

14 MR. SOBEL: I said that this document comes from
15 the files of the National Student Association.

16 MS. TASKER: I don't think Mr. Dube can determine
17 whether that is a funding document. That is not an Agency
18 document, and I will not permit him to answer whether he con-
19 siders that a funding document of the CIA or not.

20 MR. SOBEL: I am not asking him that question; I am
21 asking him if this is the type of document that his answer
22 extends to.

23 MS. TASKER: Mr. Dube, you are directed not to answer

1 that question.

2 BY MR. SOBEL:

3 Q I will now provide you with another document, which
4 we will designate as Deposition Exhibit 3, which is also Docu-
5 ment No. 464 in this litigation. I assume that counsel will
6 not object to the introduction or inspection of that document.

7 (The document referred to was
8 marked Deposition Exhibit No.
9 3 for identification)

10 BY MR. SOBEL:

11 Q Can you identify this document as being Document 464
12 that has been released to the plaintiff?

13 A It looks like it.

14 MR. JASKSETIC: It appears to be.

15 MS. TASKER: Was this in installment 6?

16 MR. SOBEL: No.

17 MR. JASKSETIC: Okay, it appears to be, and the
18 question is?

19 BY MR. SOBEL:

20 Q Would you call this a funding document?

21 MR. JASKSETIC: I object for two reasons: First
22 of all, to the extent that the Agency has taken a position that
23 it can neither confirm nor deny any question that would try to

1 collaterally get behind that answer; I also would refuse to
2 allow him to answer the question on the same ground, and that
3 is on the ground of privilege, and ultimately confirming or
4 denying whether it is, in any fashion, a funding document.
5 Also, it is immaterial and irrelevant, because the government's
6 obligation in the production of documents is to produce docu-
7 ments that are not exempt, not to explain, describe, identify,
8 or otherwise give an exegesis of the document. Its obligation
9 was merely to produce documents which are not otherwise exempt.

10 MR. SOBEL: "Funding document" is not my term. It
11 is a term introduced by the Agency into this litigation, and I
12 have now presented a document which has been released --

13 MS. TASKER: Mr. Sobel, you requested us to categor-
14 ize. It was in an atmosphere of cooperation that we did that.
15 Otherwise we would have simply included all of those documents
16 in a huge clump of 1,500 documents.

17 MR. SOBEL: And I appreciate that, nonetheless, the
18 Agency is taking the position that there is a discrete category
19 of documents that you have designated as funding documents.

20 MS. TASKER: That is correct. Was that document in-
21 cluded in that installment labeled "funding documents"?

22 MR. SOBEL: If it was not, I don't know why Mr. Dube
23 will not answer the question whether or not he would consider

1 this to be a funding document.

2 MS. TASKER: Having noted our objection, then, Mr.
3 Dube, answer the question.

4 THE WITNESS: No.

5 BY MR. SOBEL:

6 Q You would not consider this to be a funding document?

7 A No.

8 Q So this is not the type of document that you are
9 refusing to confirm or deny the existence of in the Agency
10 files?

11 A I am talking about this specific document.

12 Q That would not be a funding document?

13 A That would not be a funding document.

14 MR. JAKSETIC: Could I take a minute break? I want
15 to confer with Agency counsel on the outside for a moment, and
16 I would just ask you not to answer any questions while we are
17 out of the room.

18 (Counsel Tasker and Jaksetic withdrew from hearing
19 room)

20 MR. SOBEL: Back on the record.

21 BY MR. SOBEL:

22 Q Since we will need to leave this room where the
23 originals of the documents are located, we are going to go

1 ahead and authenticate three more documents at this time.
2 I will mark this document as Deposition Exhibit 4, and it is
3 Document No. 465 in the litigation. I will mark the next docu-
4 ment Deposition Exhibit 5, and that is Document No. 466, and
5 I will designate as Deposition Exhibit 6 this document which
6 is numbered 209 in the litigation.

7 (The documents referred to were
8 marked Deposition Exhibits Nos.
9 4, 5, and 6 for identification)

10 BY MR. SOBEL:

11 Q Are these three documents accurate copies of docu-
12 ments of the numbers that I have mentioned that you have re-
13 leased to the plaintiff?

14 A Yes.

15 Q Going back to Deposition Exhibit 3, would that appear
16 to you to be a funding proposal in which the United States
17 National Student Association is soliciting funding from a
18 foundation?

19 MR. JAKSETIC: Again I object in the sense you are
20 asking a question that is totally irrelevant to a FOIA case.
21 In a FOIA case, the only obligation of the government is to
22 locate reasonably identifiable documents responsive to the re-
23 quest, process them, and ^{RELEASE} ~~replace~~ them, subject to any lawful

1 withholdings. There is no obligation under the FOIA for the
2 United States Government, or any agency thereof, to give
3 editorial comment, elaboration, description, or otherwise, of
4 those documents. Its only obligation is to find reasonably
5 identifiable documents and release them, subject to any hold-
6 ings, and that is his only obligation, and this line of
7 questioning, really I don't see where it is going. As a matter
8 of fact, I think it is getting to where we are going in
9 circles over something that has nothing to do with this case.
10 I fail to see what it has to do with this case.

11 MR. SOBEL: I think it is leading somewhere which is
12 very relevant, which is a determination whether a document,
13 the type of which was released at one point in the processing,
14 is now being withheld, and if Mr. Dube will categorically tell
15 me documents of this type are not considered to be funding
16 documents and have not been withheld, then the line of ques-
17 tioning will end.

18 MS. TASKER: Mr. Dube can address whether a docu-
19 ment, an Agency document, is an Agency funding document. You
20 have asked him, however, if this appears to be a solicitation
21 by the National Student Association to a foundation for funds.
22 It may well appear to be that. Mr. Dube has already answered
23 as to whether -- this is a different document. I think the
answer is the same.

1 MR. SOBEL: The reason I am asking these questions
2 is that early on, when I referred to the term "funding docu-
3 ment", I asked Mr. Dube if these were documents that were
4 generated by the CIA, and he told me that they were not
5 necessarily, which does not foreclose the possibility that
6 the document that I presented to him might come within the
7 definition of "funding document".

8 THE WITNESS: No, what I meant there would be that
9 there might be checks or things like that that are funding
10 documents.

11 BY MR. SOBEL:

12 Q Are you then prepared to say that a document of
13 this type is not being withheld?

14 MS. TASKER: Wait a minute.

15 MR. JAKSETIC: Time out.

16 MR. SOBEL: Go off the record.

17 (Discussion off record)

18 MR. SOBEL: Back on the record.

19 BY MR. SOBEL:

20 Q Mr. Dube, I would like to show you the documents
21 which have been designated as Exhibits 4 and 5 for the deposi-
22 tion, which are Document Nos. 465 and 466 in this litigation.
23 Have you had a chance to review those?

1 A Yes.

2 Q These documents appear to be requests from the
3 National Student Association for funding from a foundation
4 and they were obviously deemed to be releasable at one point
5 in your processing, is that correct?

6 A Yes.

7 Q During subsequent processing of the documents, was
8 any decision made to withhold documents of this type?

9 A No.

10 Q Now, again discussing funding documents, if the
11 CIA's relationship with a particular foundation has previously
12 been officially confirmed, would documents concerning that
13 relationship be withheld?

14 A Yes.

15 Q Why is that?

16 A Because if a relationship -- again, just the fact
17 that we had a relationship with a foundation, that doesn't
18 mean that we ran the entire foundation, that they didn't have
19 things in their own right, and how much of our involvement was
20 in there is not known, so we would continue to deny infor-
21 mation of that type. The degree, again, would still be de-
22 nied.

23 Q But would any information concerning the relation-

1 ship be releasable, assuming, again, that the relationship
2 itself had been officially confirmed?

3 A Probably not without seeing specific documents, but
4 the fact that we had a relationship with a foundation, if that
5 is all that is in the public domain, that is all we are going
6 to put in the public domain. We are not going to go into de-
7 tails of how much activity we had with that particular founda-
8 tion.

9 Q Are you familiar with the Asia Foundation?

10 A Yes.

11 Q Are you aware of the fact that the Asia Foundation
12 was identified by the Rockefeller Commission as a CIA conduit
13 foundation?

14 A Yes.

15 Q Did you go into the processing of these particular
16 documents with that knowledge?

17 A Yes.

18 Q And do any of the funding documents involve the Asia
19 Foundation?

20 A I can't answer that.

21 Q Why?

22 A Because, again, there would be particulars of the
23 foundation.

1 Q I am only asking you about the fact of whether any
2 of them involve the Asia Foundation, the relationship with
3 which is acknowledged.

4 MS. TASKER: I object. Mr. Dube cannot confirm or
5 deny that. Through the process of elimination, you may or may
6 not go through a number of foundations simply to learn whether
7 it involved this foundation, that foundation, X foundation,
8 Y foundation, and if he responds no to all but one of those,
9 you will have, through the process of elimination determined
10 which foundation the agency had a relationship with.

11 MR. SOBEL: But we have already established that
12 they did have a relationship, which was confirmed by the
13 Rockefeller Commission, with this particular foundation.

14 MS. TASKER: That is correct.

15 MR. SOBEL: So that fact would appear to remove the
16 Asia Foundation from the general category of possible founda-
17 tions that had relationships with the Agency, so we are speak-
18 ing of a very particular instance, and I don't see how there
19 could be any process of elimination involved.

20 MS. TASKER: If you can show me where it has been
21 officially acknowledged that this foundation was used in connec-
22 tion with the covert funding of the National Student Associa-
23 tion, I will allow Mr. Dube to answer the question.

1 MR. SOBEL: Fine.

2 BY MR. SOBEL:

3 Q Are you familiar with the Independence Foundation?

4 A I am not sure.

5 Q Are you familiar with a separation agreement executed
6 between the Agency and the National Student Association, which
7 I do not have to present to you, but which is Document No. 208
8 in this litigation?

9 A Yes.

10 Q Do you attribute any significance to the reference
11 in that agreement to the Independence Foundation?

12 MR. JADSETIC: I would object. Again, the basis of
13 the earlier objection is that under the FOIA the government
14 has no obligation to make commentary or describe or discuss
15 the significance of the contents of the documents that it
16 releases.

17 MR. SOBEL: I would like to know, since one of the
18 issues in this case is whether or not officially acknowledged
19 information has been withheld, whether in the process of con-
20 ducting his review Mr. Dube attributed any significance to
21 that document as it might relate to officially acknowledged
22 information.

23 MR. JAKBETIC: I guess the question would be better
~~proposed~~ proposed if you put the document in front of him so he could

1 see the conte^xpt of the actual requirement.

2 BY MR. SOBEL:

3 Q Do you have that document before you?

4 A I don't have 208.

5 MS. TASKER: We have 208 in that stack somewhere.

6 THE WITNESS: No, 209.

7 BY MR. SOBEL:

8 Q Let's go to 209, because I think we can get to the
9 same point on the basis of this document. This document appears
10 to be a draft resolution for presentation to the annual
11 Congress of the National Student Association, with a cover
12 routing slip from former agency General Counsel of Houston;
13 is that correct?

14 A Yes.

15 Q Now, in the first paragraph of the tentative resolu-
16 tion, the document states - quote - the National Student Assoc-
17 iation, in congress assembled, hereby ratifies the settlement
18 previously made between the Association, the Central Intelli-
19 gence Agency, and the Independence Foundation to terminate all
20 relationships between the three groups - unquote -- is that
21 correct?

22 A That is correct.

23 Q Now, in reviewing that document, did you conclude that

1 this document covered information which had been officially
2 confirmed?

3 MR. JADSETIC: Just a minute. I am not sure I under-
4 stand the question.

5 Let me point out one thing. The thing I am not clear
6 about is this understanding of what "officially confirmed" means.
7 It has been the position of the CIA and the United States
8 Government that official acknowledgement can only be done by
9 authorized officials of the Executive Branch, not members of
10 the public domain, and the reason I am raising the point is, as
11 I understand the question, plaintiff's counsel is suggesting
12 that the fact of a document that at least appears to have
13 been generated by an entity outside the CIA would contain infor-
14 mation or is purporting to make statements, which I do not know
15 whether they are true or false, that that would constitute
16 official acknowledgment.

17 Now, as I said, the legal position of the Agency and
18 the United States Government is official acknowledgment cannot
19 be achieved by third parties or non-executive branch officials
20 making statements about matters, or purporting to make state-
21 ments on behalf of the United States Government, so that an
22 individual, a third party, can make all the allegations they
23 wish, with whatever specificity they wish, and whether it is

1 correct or not cannot constitute official acknowledgment by
2 the Executive Branch. So I just want to put that in the
3 record. I am trying to get an idea of what is the question.

4 MR. SOBEL: Here we have a statement of fact con-
5 tained in this tentative resolution that a relationship exists
6 between the National Student Association, the CIA, and the
7 Independent Foundation. That is stated in the terms of the
8 document.

9 MR. JADSETIC: Which is not a CIA originated docu-
10 ment.

11 MR. SOBEL: Which is not a CIA originated document,
12 but contains a cover routing slip from the General Counsel of
13 the CIA, in which he expresses his satisfaction with the con-
14 tents of the document, and I am trying to ascertain, since
15 definition of "officially confirmed" is not clear, if Mr. Dube
16 attributed any significance to this document in making a
17 determination as to what is or is not officially confirmed for
18 purposes of this litigation.

19 THE WITNESS: As I see this document, this document
20 purports that the relationship between the three organizations
21 is only the fact that the Foundation evidently owns the build-
22 ing --

23 MS. TASKER: It is a public document, period.

1 THE WITNESS: (Continuing) -- that housed the
2 National Student Association and the fact that we were paying
3 their rent, I think, so when we terminated the lease, evidently,
4 from this, it reads that we had the lease, we were paying the
5 lease on it, and we said okay, we are not going to pay your
6 lease anymore.

7 MS. TASKER: That's enough.

8 BY MR. SOBEL:

9 Q You have indicated in the indexes that many of the
10 documents are being withheld because access was - quote - very
11 limited. This was the subject of an earlier interrogatory and
12 I haven't expanded upon the question of the previous interog-
13 atories because I thought that this was the type of thing that
14 would be best discussed in the deposition. How do you define
15 "very limited".

16 A We have in the Agency a "need to know" principle,
17 that if I am involved in a certain activity and I am in charge
18 of that, the information will come to me. I will not send it
19 throughout the rest of the Agency. What goes on in this
20 office is not known by the individual sitting in the next
21 office, and we hold the stuff very closely, so only a limited
22 number of people, usually my superior and the people that are
23 working directly for me, would know that this activity is going

(SEE ERRATA SHEET)

1 on. It wouldn't be broadcast throughout the entire Agency.

2 MS. TASKER: Could I speak to Lou just a second?

3 (Counsel and witness confer)

4 BY MR. SOBEL:

5 Q I believe, however, that your use of that rationale
6 in the indexes indicates that this is not material which was
7 generated by the Agency, but which was obtained from the
8 source and since access to the material was very limited, that
9 disclosure of the fact that you possess it would indicate the
10 source?

11 A Right.

12 Q So in that context I am asking you how limited is
13 "limited" so as to come within that rationale.

14 A Maybe one or two people knew it, one or two people
15 had access to the information.

16 Q Would this, therefore, include internal National
17 Student Association material, something that would have been
18 in NSA's own files?

19 A It could be.

20 Q If that is true, then how can you now, ten, fifteen,
21 twenty years later, ascertain how limited access was if it was
22 just sitting in a file cabinet at the National Student Assoc-
23 iation?

1 A Well, because the revelation of that document would
2 show the source. That is why it is denied. It is not the
3 general term that you are using, but it would specifically cite
4 the source that provided the document. That is why it is de-
5 nied.

6 Q But I assume that the designation of the source on
7 the document would be something that would be reasonably
8 segregable, that if it is an internal NSA memorandum to all
9 of the officers, for instance, and you obtained it from some-
10 one, and there is a handwritten note on it that, you know, so-
11 and-so gave this to us, that that could be deleted and the
12 document itself could be released?

13 A Yes, but I don't think the material that we denied
14 to you is of that type. What we released to you in the first
15 31 documents was of that type, and we couldn't see any source
16 in them whatsoever, but the stuff that we are denying, we know
17 and we can't segregate it and give it to you because you could
18 turn up a copy of it and blow the source.

19 Q That is what my concern is, that is that is material
20 which was generally available in the Association files, then
21 all you can really deduce from the fact that you have it is
22 that the source was the National Student Association?

23 A No, that kind of stuff we released to you.

1 You got that. What we denied was where it says Joe Blow was
2 the source and he gave us this.

3 Q Okay, but my question, I guess, is with the text.
4 Why can't that part of it be released?

5 A The information we are denying is so inherent that
6 it could only have been coming from one or two people. I think
7 that you are supposing that we have a lot of general documents
8 that we denied, but we didn't. We denied because the individ-
9 uals are named as sources or they originated the documents in
10 a lot of cases. And if we sanitized that document and took
11 his name off and you went to the documents in the NSA files
12 and found it there, you would know who the source was.

13 Q But you did acknowledge the possibility that some of
14 these materials were generally available in the Association's
15 own files?

16 A Possibly, yes. They are not general. They are very
17 specific.

18 Q Okay. Well, I am wondering how an acknowledgment by
19 the Agency that it has a document that is available in NSA's own
20 files might reveal a source.

21 A Because it says it. The document will say it.

22 Q Again, if there was a file cabinet in the office of
23 the Association and any student who worked with the Association

1 could go after hours and take a document out --

2 A No, we don't have those kind of documents. That is
3 not the kind of documents we have. Those are the general type
4 that we gave to you in the first 31.

5 Q But you can't categorically say that material that
6 is being withheld is information which is available in NSA's
7 own files?

8 A Some of it is, but it very specifically identifies
9 the source.

10 Q I would like to try to clarify some of your responses
11 to the third set of interrogatories. Now, on question No. 1
12 concerning the individual who testified to the Church Committee,
13 what was the position of that individual?

14 A At this time or --

15 Q At the time of their testimony.

16 A I would assume -- this is an assumption on my part,
17 because it would be that he was an officer in the component
18 that had the ultimate responsibility for running this kind of
19 operation. He was probably a staff member at that time.

20 Q What position title would that translate to?

21 MR. JAKSETIC: Let me object to that, Lou.

22 Strictly speaking, that kind of material, material about
23 names, titles, functions, positions, and duties of CIA personnel

1 is, first of all, privileged under FIOA, but also under
2 civil discovery.

3 MR. SOBEL: But the Agency has responded to this
4 interrogatory by reporting from the Church Committee's notes
5 on this type of question, indicating that - quote - consequently
6 footnote citations to testimony and documents occasionally con-
7 tain only descriptions of an individual's position", so it
8 appears to be the Agency's position that that is what they
9 are limited to, and that is what I am asking.

10 THE WITNESS: He was probably a Chief of a Branch or
11 I sort of think that -- or Deputy Chief of a Branch that en-
12 gaged in this type of activity.

13 BY MR. SOBEL:

14 Q Going to Interrogatory No. 2, you say that a deter-
15 mination of whether any documents were given to the Church
16 Committee would require a re-review. Were you conscious of
17 that question, when you originally reviewed the documents,
18 whether or not they had gone to the Church Committee?

19 A No. It is awfully difficult to prove what went to
20 the Church Committee because of the way it went out of here.

21 MR. JAKSETIC: Could I ask a point of clarification
22 on the question? Is it a matter of what went to the Church
23 Committee or what was disclosed by the Church Committee, becaus

1 I know when we have, in a generic sense -- I don't know
2 specifically about the Church Committee -- in a generic sense,
3 when dealing with congressional committees, there are times
4 when information, documents, or verbal communications are made
5 on a confidential basis that are not subsequently disclosed by
6 the Committee, and there are other things that are publicly dis-
7 closed, so what I am wondering is are you asking about something
8 that might have been shown to the Committee on a confidential
9 basis or are you asking about something that was shown to the
10 Committee in public session?

11 MR. SOBEL: I am asking about either, whether there
12 was any way for Mr. Dube to ascertain in his review whether
13 these documents that he reviewed had been reviewed in one manner
14 or another by the Church Committee.

15 THE WITNESS: I can't tell that. I couldn't tell
16 that from the documents.

17 MS. TASKER: Excuse me. Add in that quote - quote,
18 would require full re-review and unfathomable research efforts.

19 MR. SOBEL: I understand that it would be unfathom-
20 able, but I am trying to fathom it.

21 MS. TASKER: You can't.

22 THE WITNESS: As I said, stuff was taken to the
23 Committee. They carried it down. It wasn't given to them, it

1 wasn't discussed, some of it was brought back. You know, some
2 stuff was shown to them, some wasn't, some was discussed and
3 shown to them and brought back, some was given to the Church
4 Committee.

5 BY MR. SOBEL:

6 Q Although there is an index, you indicated in re-
7 sponse to another interrogatory that there was an index of
8 what was given to them?

9 A Yes, given to them -- I mean turned over to them.

10 Q Was that reviewed in the course of your review of
11 these documents?

12 A No.

13 MS. TASKER: Excuse me. Mr. Dube did not respond
14 to the interrogatory. I believe Mr. Clair George responded
15 to that interrogatory. I was there. If you would like ^{MY} ~~me~~
16 semi-official statement on that, I can describe it to you.

17 MR. SOBEL: Sure. Please do.

18 MS. TASKER: We maintain a log -- Is that Interrog-
19 atory No. 3?

20 MR. SOBEL: Yes.

(21 MS. TASKER: There is, indeed, a log, a very thick
22 log. The people in charge of that log, the registry people
(23 in the Executive and the registry for Legislative Liaison
went through that, spent days going through that, and found

1 no Agency document indexed on National Student Association,
2 or any variation, and they had already reviewed that log in
3 searching for documents in general. There are none listed.
4 As Mr. Dube has said, at that time people were evidently going
5 down carrying some files with them, some documents with them,
6 and no record was made of what was shown to them, what was
7 with them, what was brought back.

8 BY MR. SOBEL:

9 Q Now going ahead to Interrogatory No. 5 concerning
10 the individuals who were involved in reviewing the documents,
11 I think earlier we discussed individuals involved in the
12 search.

13 A Yes.

14 Q How many people were involved in the review process?

15 A There were three actual reviewers, three people
16 working on the review, and their supervisors. There were two
17 immediate supervisors and there was a final review before it
18 came to me.

19 Q Now, you indicated that you had final review author-
20 ity?

21 A Yes.

22 Q What does that mean?

23 A That I can accept -- They will go through and they

1 will make a recommendation and they will say either release,
2 or this can be released or it can be denied, and they make a
3 recommendation to me, but when I see it, I say, no, I will not
4 accept that, I can't defend that position in court, or I think
5 that this other information should be denied, and I will have
6 the document redone. That is my authority and responsibility.

7 Q Now, you had earlier said that you had personally
8 reviewed 186 documents prior to submitting the affidavit?

9 A Yes.

10 Q Did you subsequently personally review the remaining
11 documents in the 1,500?

12 A Yes, every document.

13 Q And you previously said, going to questions Nos. 10
14 and 11, which, again, are listings of components that were
15 searched, you previously told me that the Director's office was
16 searched?

17 A Yes, it was searched ^{AT} ^{REQUEST OF THE} ~~under~~ the Legislative Liaison
18 group.

19 Q While we are speaking about the Legislative Liaison,
20 I believe a small number of documents have had an exemption
21 claimed as being congressional information, is that correct?

22 A I don't recall.

23 MS. TASKER: Congressional or b(5)?

1 THE WITNESS: It was b(5), advisory, but I don't
2 know if it was because of congressional. I don't recall
3 congressional. I recall some b(5).

4 BY MR. SOBEL:

5 Q But that would not have been congressional infor-
6 mation?

7 A Not necessarily. It could have been a proposal
8 put forward that wasn't accepted, a course of action.

9 Q Which is to say, I suppose, that if there is not
10 any congressional information involved that, getting back to
11 the Church Committee, that there isn't any correspondence or
12 other material concerning the Church Committee's investigation
13 on this particular aspect of the National Student Association?

14 A No, unless it was turned up in the search, we
15 wouldn't have any. I don't believe there was any.

16 MR. SOBEL: Those are all of the questions I have.

17 Would you like the opportunity to review the trans-
18 cript?

19 THE WITNESS: Yes, I would.

20 MR. SOBEL: Do you have any questions.

21 MS. TASKER: No questions.

22 (Whereupon, at 12:30 p.m., the taking of the
23 deposition was concluded.)

1 I have read the foregoing _____ pages, which
2 contain a correct transcript of the answers made by me
3 to the questions therein recorded.

4
5
6 _____
7 Louis J. Dube

8
9
10 Subscribed and sworn to before me this _____
11 day of _____.

12
13 _____
14 NOTARY PUBLIC

15
16 My Commission expires _____
17
18
19
20
21
22
23

C E R T I F I C A T E

1
2
3 I, Mary Surplice Smith, the officer before whom
4 the foregoing deposition was taken, do hereby certify
5 that the witness whose testimony appears in the foregoing
6 deposition was first duly sworn by me, that the testimony
7 of said witness was taken by me in stenotype and there-
8 after, reduced to typewriting by me, or under my direction;
9 that said deposition is a true record of the testimony
10 given by said witness; that I am neither counsel for,
11 related to, nor employed by any of the parties to the
12 action in which this deposition was taken, and, further,
13 that I am not a relative or employee of any attorney or
14 counsel employed by the parties thereto, nor financially
15 or otherwise interested in the outcome of the action.
16

17
18
19 Mary Surplice Smith
20 Notary Public in and for the
21 Commonwealth of Virginia at Large

22 My Commission expires
23 April 21, 1986