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U.S. INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

M. ALAN WOODS, OF THE DISTRICT OF COLUMBIA, TO BE ADMINISTRATOR OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT.

UNITED NATIONS

DOUG BEREUTER, U.S. REPRESENTATIVE FROM THE STATE OF NEBRASKA, TO BE A REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE 42D SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

GEORGE W. CROCKETT, JR. U.S. REPRESENTATIVE FROM THE STATE OF MICHIGAN, TO BE A REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE 42D SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

DC NY

HERBERT STUART OKUN, OF THE DISTRICT OF COLUMBIA, TO BE A REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE 42D SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

VERNON A. WALTERS, OF FLORIDA, TO BE A REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE 42D SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

PATRICIA MARY BYRNE, OF OHIO, TO BE AN ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE 42D SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

HUGH MONTGOMERY, OF VIRGINIA, TO BE AN ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE 42D SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

LESTER B. KORN, OF CALIFORNIA, TO BE AN ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE 42D SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

WILLIAM W. TREAT, OF NEW HAMPSHIRE, TO BE AN ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE 42D SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

DEPARTMENT OF JUSTICE

FRANK L. MCNAMARA, JR., OF MASSACHUSETTS, TO BE U.S. ATTORNEY FOR THE DISTRICT OF MASSACHUSETTS FOR THE TERM OF 4 YEARS.

THE JUDICIARY

David G. Larimer, of New York, to be U.S. District Judge for the Western District of New York.

Ernest C. Torres, of Rhode Island, to be U.S. District Judge for the District of Rhode Island.

William L. Standish, of Pennsylvania, to be U.S. District Judge for the Western District of Pennsylvania.

James A. Parker, of New Mexico, to be U.S. District Judge for the District of New Mexico.

William L. Dwyer, of Washington, to be U.S. District Judge for the Western District of Washington.

DEPARTMENT OF JUSTICE

Lawrence J. Siskind, of California, to be Special Counsel for Immigration-Related Unfair Employment Practices for a term of 4 years.

DEPARTMENT OF COMMERCE

Jeffrey M. Samuels, of Virginia, to be an Assistant Commissioner of Patents and Trademarks.

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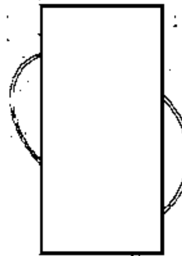
CONFIRMED 11-5-87



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July 21, 1987

BY COURIER

Mr. Louis Schwartz, Jr.
Director
Diplomatic Security Service
Department of State
Washington, D. C.

Dear Mr. Schwartz:

Reference is made to your letter dated May 28, 1987, to Ms. Jane Dannenhauer, Assistant to the Deputy Counsel to the President, the White House, which was received by the FBI on June 23, 1987. This letter requests the results of FBI background inquiries completed concerning Ambassador Vernon Anthony Walters to assist the Department of State in the necessary security procedures.

Enclosed for your review are copies of summary memoranda containing the results of expanded name checks completed by the FBI in February, 1985, and in June, 1987, concerning Ambassador Walters.

Sincerely yours,

Floyd I. Clarke
Assistant Director
Criminal Investigative Division

Enclosures (2)
[redacted] (5)

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NOTE: A letter dated May 28, 1987, from Mr. Schwartz, Director, Diplomatic Security Service, Department of State, to [redacted] Assistant to the Deputy Counsel to the President, requested copies of background investigation reports conducted on Ambassador Vernon Anthony Walters. Copies of the results of two expanded name checks completed concerning Ambassador Walters were furnished to the Department of State. These summary memoranda were provided to the White House on February 7, 1985, and June 17, 1987.

The referenced letter, which was received in the SPIR Unit, CID, on June 23, 1987, contained the "authorization to release" of Ms. Dannenhauer, with regard to the requested material.

RETURN TO [redacted] ROOM 18935

Treat as Original 2 6/Z

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

February 7, 1985

VERNON ANTHONY WALTERS

This summary memorandum contains the results of an expanded name check concerning Ambassador Walters, who was born on January 13, 1917, in New York, New York.

Agency Checks

Information has been received from the United States Attorney's Office in Washington, D. C., indicating its civil and criminal files contain no record concerning him.

Central files at FBI Headquarters and in the Washington Field Office, including the files of the Identification Division and appropriate computer data bases, contain no pertinent information identifiable with Ambassador Walters, except the following:

> Twenty-four individuals and two organizations, representing various anti-Vietnam War protest groups, filed a civil suit in November, 1977, in the United States District Court, Washington, D. C., against the Central Intelligence Agency (CIA) and other government agencies for alleged violations of their civil rights during the period 1967 to 1974. Ambassador Walters was one of the numerous defendants named in this suit in his official capacity at that time as Deputy Director of the CIA. No disposition concerning this matter is contained in FBI files.

> [redacted] filed suit in United States District Court, Los Angeles, California, on October 18, 1973, alleging that various illegal acts by the FBI and other defendants resulted in infringement of her civil rights. Ambassador Walters was one of the numerous defendants named in this case in his official capacity at that time as Deputy Director of the CIA. On May 2, 1979, this suit was dismissed by mutual consent of all parties.

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Copy of report as furnished to outside agency. Do not remove from file.

Vernon Anthony Walters

During the investigation of the Burglary of Democratic National Committee Headquarters in 1972, commonly referred to as Watergate, information came to the attention of the FBI that on June 23, 1972, Ambassador Walters, then Deputy Director of the CIA, met with then CIA Director Richard Helms and [redacted] of the White House staff. [redacted] reportedly instructed Ambassador Walters to instruct Acting FBI Director L. Patrick Gray, III, [redacted] Ambassador Walters reportedly did so in June, 1972. Acting Director Gray later reportedly asked CIA Director Helms for written notification of these instructions. Director Helms was said to have declined to do so and Ambassador Walters was reported to have told White House personnel that they could not use the CIA as an excuse in this matter. Ambassador Walters also reportedly advised Acting Director Gray that the FBI [redacted] No investigation was conducted by the FBI concerning Ambassador Walters.

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Ambassador Walters was interviewed on several occasions by the FBI in connection with a Protection of Foreign Officials investigation initiated as a result of the assassination of Chilean Legal Attache Orlando Letelier in Washington, D. C., on September 23, 1976. At the time of the assassination, Ambassador Walters had recently retired from the CIA as Deputy Director. During the investigation [redacted] At that time Ambassador Walters had contacts with the Chief of the Chilean Intelligence Service, who was later indicted (though never

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Vernon Anthony Walters

extradited to the United States) in connection with this case. The FBI investigation did not develop any unfavorable information concerning either [redacted] or Ambassador Walters.

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JUN 17 1987

VERNON ANTHONY WALTERS

This summary memorandum contains the results of an expanded name check concerning Mr. Vernon Anthony Walters, whom the White House indicated was born on June 3, 1917, in New York, New York.

Agency Checks

Information has been received from the United States Attorney's Offices in Miami, Florida, and New York, New York, which cover the areas where Mr. Walters currently resides and is employed, indicating their files contain no record concerning him.

A search of the records of the FBI, including central records at FBI Headquarters, the records of the Identification Division, the files of appropriate field offices, as well as appropriate computer data bases, did not identify any files that contain pertinent information identifiable with Mr. Walters, except the following:

> In 1986, at the direction of the Attorney General, Edwin Meese, an investigation was instituted by the FBI concerning the sale of arms to Iran and the possible diversion of proceeds from those sales to the Nicaraguan "Contras." This investigation has identified eight references to Mr. Walters.
>
> On December 19, 1986, [redacted] was named as Independent Counsel and [redacted] now has control over this investigation and FBI files concerning it.
>
> A representative from [redacted] staff has requested that the nature of the references to Mr. Walters not be provided to the White House at this time.
>
> FBI files indicate that an expanded name check concerning Mr. Walters was conducted in February, 1985. The results of that expanded name check were previously provided to the White House.

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FD-36 (Rev. 5-22-64)

FBI

Date: 12/3/75

Transmit the following in (Type in plaintext or code)

Via AIRTEL (Priority)

TO: DIRECTOR, FBI

FROM: SAC, WFO (62-0) ATTENTION: OFFICE OF LEGAL COUNCIL

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[redacted] Et. Al.
vs.
[redacted] Et. Al.
U.S. DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA
CIVIL ACTION #[redacted]

Enclosed for the Bureau are a summons and complaint delivered to the Washington Field Office by the U.S. Marshal's Service on 12/3/75.

Washington Field Office indices contained several references to plaintiffs of which the Bureau is already aware.

This is a class action suit against Government agencies and their heads by the plaintiffs for violation of plaintiffs constitutional rights by those agencies. Both injunctive relief and punitive damages are being sought.

EX 104 REC-15 62-116878

5 DEC 4 1975

2-Bureau
1-WFO
[redacted]
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CC 7326

10/30/89 SP4 [redacted] #88-1826

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 4/30/8[?] BY [redacted]

SP [redacted]
7/29/94 [redacted] #PP-1826

Approved: Special Agent in Charge Sent M Per

61 FEB 9 1976

U. S. GOVERNMENT PRINTING OFFICE : 1969 O - 346-090 (11)

BEST AVAILABLE COPY

SUMMONS IN A CIVIL ACTION CIV. 1a (2-64) (Formerly D.C. Form No.45a Rev. (6-49))

United States District Court

FOR THE

District of Columbia

CIVIL ACTION FILE NO. 75-1773

Mary Chandler, et al.

Plaintiff

v.

Richard Helms, et al.

Defendant

SUMMONS

To the above named Defendant Clarence Kelley

You are hereby summoned and required to serve upon Jerry J. Berman

plaintiff's attorney, whose address 122 Maryland Avenue, N
Washington, D.C. 20002

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

JAMES F. DAVEY

Clerk of Court.

Esther E. Brede [signature]

Deputy Clerk b6 b7C

[Seal of Court]

Date: 1975

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the day of 19 ,

I received this summons and served it together with the complaint herein as follows:

10/30/89 SP4 [redacted] # 88-1826

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 4/30/80 BY [illegible]

62 116878

SEARCHED ____ INDEXED ____
SERIALIZED ____ FILED ____
DEC 3 1975
FBI — WASH. F. O.

SP4 [redacted] 7/29/94 [redacted] #88-1826

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MARSHAL'S FEES

Travel ____ $ ____ United States Marshal.

Service ____ By ____ Deputy United States Marshal.

Subscribed and sworn to before me, a this

day of , 19

[SEAL]

Note:—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

No. ____

United States District Court
FOR THE

SUMMONS IN CIVIL ACTION

Returnable not later than days after service.

Attorney for Plaintiff.

FPI-MI—2-13-74-100M-1760

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RICHARD HELMS
Department of State
United States Embassy
Teheran, Iran;
JAMES R. SCHLESINGER
Department of Defense
The Pentagon
Washington, DC 20301;
RUFUS N. TAYLOR
90-A North Lake View Drive
Whispering Pines, North Carolina 28389;
ROBERT E. CUSHMAN, JR.
Commandant of the Marine Corps,
Navy Department, Washington, D.C. 20380;
VERNON A. WALTERS
22955 Ocean Boulevard
Palm Beach, Florida 33480;
WILLIAM E. COLBY
Central Intelligence
Washington, DC. 20505;
CORD MEYER, JR.
Central Intelligence Agency
Washington, DC 20505;
JAMES J. ANGLETON
4814 33rd Road
North Arlington, VA. 22210;
WILLIAM HOOD
4450 South Park Avenue
Chevy Chase, Maryland;
RAYMOND P. ROCCA
3355 Tennyson Street
Washington, D.C.;
RICHARD OBER
Old Executive Office Building
Washington, DC 20505;
HOWARD OSBORN
6803 East Avenue
Chevy Chase, Maryland;
JAMES MURPHY
Central Intelligence Agency
Washington, DC 20505;
MARSHALL CARTER
c/0 U.S. Milpercen
200 Stovall Street
Alexandria, Virginia 22332
Attn. DAPC-PAS-A;
NOEL GAYLER
Department of the Navy
The Pentagon
Washington, DC 20301;
SAMUEL C. PHILLIPS
Department of the Air Force
The Pentagon
Washington, DC 20301;
LEW ALLEN, JR
National Security Agency
Fort Meade, Maryland;
LOUIS W. TORDELLA
9518 E. Stanhope Road
Kensington, Maryland;
L. PATRICK GRAY III
325 State Street
New London, Connecticut 06320;

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

--X

MARY CHANDLER
11042 Newport Mill Road
Silver Spring, Maryland 20902;
ADELE HALKIN
56 E. Bellevue Place
Chicago, Illinois 60611;
STEVE HALLIWELL
c/o Goddard College
Plainfield, Vermont 05667;
DON LUCE
c/o Clergy and Laity Concerned
235 East 49th Street
New York, N.Y. 10017;
JONATHAN MIRSKY
Thetford, Vermont 05074;
SIDNEY PECK
15 Farrar
Cambridge, Mass. 02138;
NANCY ANN RAMSEY
1826 Varnum Street, N.W.
Washington, DC 20011;
DANIEL SCHECHTER
5005 Prudential Tower
Boston, Mass. 02199;
ETHEL TAYLOR
41 Conshohocken State Road
Apt. 714
Bala Cynwyd, Pa. 19004;
EDITH VILLASTRIGO
10216 Sutherland Road
Silver Spring, Maryland 20901;
CORA WEISS
5022 Waldo Road
Riverdale, New York 10471;
AMERICAN INDIAN MOVEMENT
704 University Avenue
St. Paul, Minnesota 55101;
AMERICAN FRIENDS SERVICE COMMITTEE, INC.
1501 Cherry Street
Philadelphia, Pennsylvania 19102;
CLERGY AND LAITY CONCERNED
235 East 49th Street
New York, New York 10017;
COMMITTEE OF CONCERNED
ASIAN SCHOLARS, c/o Angus
McDonald, National Coordinator,
614 Social Science Building,
University of Minnesota,
Minneapolis, Minn. 55455;
COMMITTEE OF LIAISON WITH
FAMILIES OF SERVICEMEN
DETAINED IN VIETNAM
365 West 42nd Street
New York, New York 10036;
WOMEN STRIKE FOR PEACE
145 South 13th Street, Room 407
Philadelphia, Pa. 19107;

on behalf of themselves and all other persons and organizations similarly situated,

Plaintiffs,

v.

CIVIL ACTION
NO. 75-1773
FIRST AMENDED
COMPLAINT-CLASS
ACTION FOR
DECLARATORY AND
INJUNCTIVE RELIEF
AND MONEY DAMAGES
(Judge Green)

(2)

62. 116878

CLARENCE KELLEY
Director, Federal Bureau of Investigation
Washington, D.C.;
JAMES J. ROWLEY
9615 Glencrest Lane
Kensington, Maryland;
H. STUART KNIGHT
Director, U.S. Secret Service
Department of the Treasury
Washington, D.C.;
JOSEPH CARROLL
7306 Rippon Road
Alexandria, Virginia;
DONALD BENNETT
c/o Defense Intelligence Agency
The Pentagon
Washington, D.C. 20301;
VINCENT DE POIX
2782 N. Wakefield
Arlington, Virginia;
JOHN INGERSOLL
c/o Drug Enforcement Administration
U.S. Department of Justice
Washington, D.C.;
JOHN R. BARTELS, JR
c/o Drug Enforcement Administration
U.S. Department of Justice
Washington, D.C.;
WESTERN UNION INTERNATIONAL, INC.
2100 M Street, NW
Washington, D.C.;
RCA GLOBAL COMMUNICATIONS, INC.
60 Broad Street
New York, N.Y. 10004;
ITT WORLD COMMUNICATIONS, INC.
67 Broad Street
New York, N.Y. 10004;
JOHN DOE, RICHARD ROE and other unknown
agents and employees of the United
States Government,

Defendants.

------------------------------------X

Plaintiffs, by their attorneys, allege as follows for their First Amended Complaint:

JURISDICTION

1. This is a civil action for declaratory and injunctive relief and money damages, arising under the First, Fourth, Fifth and Ninth Amendments to the Constitution; Title 18, United States Code, Sections 2510-2520; and Title 47, United States Code, Section 605; and Title 50 United States Code, Section 403(d)(3). The jurisdiction of this Court is predicated on Title 18, United States Code, Section 2520; Title 28, United States Code, Sections 1331(a), 1343(4) and 1361; Title 47, United States Code, Section 605; Title 42, United

States Code, Secti[illegible] 1985(3); and the First, [illegible]rth, Fifth and Ninth Amendments to the Constitution.

2. The matter in controversy, exclusive of interests and costs, exceeds $10,000.

PARTIES

3. Plaintiffs:

a. MARY CHANDLER is an American citizen and a member of Women Strike for Peace.

b. ADELE HALKIN is an American citizen and a member of Women Strike for Peace.

c. STEVE HALLIWELL is an American citizen, a former officer of Students for a Democratic Society and a founding member of the Committee for Liaison with Families of Servicemen Detained in Vietnam.

d. DON LUCE is an American citizen and Executive Director of Clergy and Laity Concerned.

e. JONATHAN MIRSKY is an American citizen and from 1963 to the present he has been a leader of anti-war activities.

f. SIDNEY PECK is an American citizen, a former Co-chairperson of the National Mobilization Committee to End the War in Vietnam and the former National Coordinator of People's Coalition for Peace and Justice.

g. NANCYANN RAMSEY is an American citizen and a member of Women Strike for Peace.

h. DANIEL SCHECHTER is an American citizen formerly associated with Ramparts Magazine and the Africa Research Group, and a participant in various anti-war activities over the last decade.

i. ETHEL TAYLOR is an American citizen and the National Coordinator of Women Strike for Peace.

j. EDITH VILLASTRIGO is an American citizen, a member of Women Strike for Peace and was a delegate to the 1973 World Congress of Peace Forces.

k. CORA WEISS is an American citizen, a leader of Women Strike for Peace, a former Co-chairperson of the New Mobilization

Committee to End th War in Vietnam, a member the Board of Direct-ors of Clergy and Laity Concerned and a former Co-chairperson of the Committee of Liaison with Families of Servicemen Detained in Vietnam.

l. THE AMERICAN INDIAN MOVEMENT (AIM) is a nonprofit corporation dedicated to advancing the well being, self-determination and cultural preservation of the native peoples of the American continents.

m. THE AMERICAN FRIENDS SERVICE COMMITTEE, INC. (AFSC) is a non-profit corporation dedicated to furthering the historic peace testimony and the social aims of the several branches of the Religious Society of Friends.

n. CLERGY AND LAITY CONCERNED (CALC) is a non-profit interfaith peace organization which has protested U.S. involvement in the Indochina War since 1965.

o. The COMMITTEE OF CONCERNED ASIAN SCHOLARS (CCAS) is a non-profit organization dedicated to opposing American intervention in the internal affairs of countries in Southeast Asia.

p. The COMMITTEE OF LIAISON WITH FAMILIES OF SERVICEMEN DETAINED IN VIETNAM (COLIAFAM) is a non-profit organization which has worked for an end to U.S. involvement in the War in Indochina and the release of prisoners of war.

q. WOMEN STRIKE FOR PEACE is a non-profit organization dedicated to anti-war activities, including activities to end the war in Indochina.

4. Defendants:

a. Defendant RICHARD HELMS is the United States Ambassador to Iran and was Director of the Central Intelligence Agency (hereinafter sometimes "CIA") from 1966 to 1973.

b. Defendant JAMES R. SCHLESINGER was Secretary of Defense from August 1973 to November 1975 and Director of the CIA from February to July 1973.

c. Defendant RUFUS N. TAYLOR is a Vice Admiral in the U.S. Navy and was Deputy Director of the CIA from 1966 to 1969.

d. Defendant ROBERT E. CUSHMAN, JR. is a General in the U.S. Marine Corps and a member of the Joint Chiefs of Staff, and was Deputy Director of the CIA from 1969 to 1971.

e. Defendant VERNON A. WALTERS is a Lieutenant General in the U.S. Army and was Deputy Director of the CIA in 1972.

f. Defendant WILLIAM E. COLBY is Director of Central Intelligence and of the CIA, and was Executive Director of the CIA from 1972 to 1973, and Deputy Director for Operations of the CIA in 1973.

g. Defendant CORD MEYER, JR. was, at times material to this complaint, Assistant Deputy Director for Plans of the CIA.

h. Defendant JAMES J. ANGLETON was, at times material to this complaint, Chief of the Counterintelligence Staff of the CIA.

i. Defendant WILLIAM HOOD was, at times material to this complaint, Deputy Chief of the Counterintelligence Staff of the CIA.

j. Defendant RAY ROCCA was, at times material to this complaint, Assistant to the Chief of the Counterintelligence Staff of the CIA.

k. Defendant RICHARD OBER was, at times material to this complaint, in charge of a domestic surveillance operation of the Counterintelligence Staff of the CIA designated as CHAOS.

l. Defendant HOWARD OSBORN was, at times material to this complaint, Director of Security of the CIA.

m. Defendant JAMES MURPHY was, at times material to this complaint, Director of the Office of Operations of the CIA.

n. Defendant MARSHALL CARTER, a retired Lieutenant-General in the U.S. Army, was Director of the National Security Agency (hereinafter sometimes "NSA") from 1967 to 1969.

o. Defendant NOEL GAYLER, Vice Admiral in the U.S. Navy, was Director of the NSA from January 1969 to July 1972.

p. Defendant SAMUEL C. PHILLIPS, a Lieutenant-General in the U.S. Air Force, was Director of the NSA from August 1972 to July 1973.

q. Defendant LEW ALLEN, JR., a Lieutenant-General in the U.S. Air Force, is Director of the NSA.

r. Defendant LOUIS TORDELLA was, at times material to this complaint, the Deputy Director of the NSA.

s. Defendant L. PATRICK GRAY III was, at times material to this complaint, Acting Director of the Federal Bureau of Investigation (hereinafter sometimes "FBI").

t. Defendant CLARENCE KELLEY is Director of the FBI.

u. Defendant JAMES J. ROWLEY was Director of the United States Secret Service (hereinafter sometimes "Secret Service") from 1967 until October 1973.

v. Defendant H. STUART KNIGHT is Director of the Secret Service.

w. Defendant JOSEPH CARROLL is a Lieutenant-General in the United States Air Force and was Director of the Defence Intelligence Agency (hereinafter sometimes "DIA") from 1961 to 1969.

x. Defendant DONALD BENNETT is a Lieutenant-General in the United States Army and was Director of DIA from September 1969 to August 1972.

y. Defendant VINCENT DE POIX is a Vice Admiral in the United States Navy and was Director of DIA from August 1972 until September 1974.

z. Defendant JOHN INGERSOLL was Director of the Bureau of Narcotics and Dangerous Drugs (hereinafter "BNDD") and its predecessor agency from 1968 to June 1973.

aa. Defendant JOHN R. BARTELS, JR. was Director of the BNDD and its successor agency from June 1973 to May 1975.

bb. Defendants JOHN DOE, RICHARD ROE and other unknown agents or employees of the United States Government are persons unknown to Plaintiffs who participated with the other Defendants in the actions alleged in this complaint.

cc. All the foregoing individual defendants are sued in their individual and official or former official capacities.

dd. Defendant WESTERN UNION INTERNATIONAL, INC. a communications common carrier, does business in the District of Columbia and provides overseas cable and telegraph service.

ee. Defendant RCA GLOBAL COMMUNICATIONS, INC., a communications common carrier, does business in the District of Columbia and provides overseas cable and telegraph service.

ff. Defendant ITT WORLD COMMUNICATIONS, INC., a communications common carrier, does business in the District of Columbia and provides overseas telegraph and cable service.

CLASS ACTION ALLEGATIONS

5. This suit is brought as a class action pursuant to Rule 23(a) of the Federal Rúles of Civil Procedure, and is maintainable under Rule 23(b)(1)(A), 23(b)(2) and 23(b)(3).

6. Plaintiffs represent a class of United States citizens and domestic organizations who at various times during and after 1967 engaged in activities in opposition to the war in Indochina or in other lawful political activities, as a result of which (a) their international wire, cable or radio communications were intercepted and divulged without any judicial or statutory authorization by the National Security Agency acting at the request of other United States government agencies, and/or (b) their political and other constituionally protected activities became the subject of intrusive counterintelligence actions and files, conducted and maintained by a Special Operations Group within the Central Intelligence Agency known as "Operation CHAOS".

7. The class is so numerous as to make joinder of all members impossible. The total number and identity of the class members is known only to the NSA and the CIA, but plaintiffs estimate, on information and belief, that the class numbers at least 8,820 individuals, and 1,000 organizations.

8. The common questions of law and fact affecting all members of the class predominate over any questions affecting only individual members to such a degree that a class action is the only method

available for the f[illegible]r and efficient adjudicat[illegible]n of this controversy. The prosecution of separate claims by the members of the class would constitute an undue burden on the vindication of their rights and create the risk of inconsistent or varying adjudications, and could establish incompatible standards for the defendants' conduct.

9. The claims of the representative parties have the same legal and factual basis as the claims of the members of the class, the defendants have acted on similar grounds with respect to all members of the class, common relief is sought, and plaintiffs will fairly and adequately protect the interests of the class.

FACTS

10. On information and belief, in and after August 1967 defendants HELMS, TAYLOR, COLBY, MEYER, ANGLETON, HOOD, ROCCA, OBER, OSBORN, SCHLESINGER, CUSHMAN, WALTERS and MURPHY (hereinafter sometimes "the CIA defendants") established and administered a Special Operations Group, known as Operation CHAOS (hereinafter "CHAOS"), within the CIA's counterintelligence staff.

11. On information and belief, the purpose of the CIA defendants in establishing CHAOS was to collect, coordinate, evaluate, file and report information on"foreign contacts" of American citizens resident in the United States who expressed in various forms their political and moral opposition to the war in Indochina and other policies of the national government.

12. On information and belief, reports prepared by CHAOS and other units of the CIA beginning in 1967 concluded that domestic opposition to the Indochina war, of which the activities of plaintiffs, and their class were a part, had no significant foreign connection.

13. On information and belief, CHAOS gathered information from other units of the CIA and from other agencies, including the FBI, much of which related to the constitutionally protected associational and domestic political activities of the plaintiff class.

14. On information and belief, CHAOS recruited and trained approximately 40 undercover agents who infiltrated domestic organi-

zations, and repor[illegible] on their constitutional[illegible] protected associational and domestic political activities, which reports, or information derived from them, were filed with CHAOS and disseminated to other units of the CIA and to other agencies.

14a. On information and belief, the CIA defendants authorized and directed their CHAOS agents and employees to discredit and disrupt the constitutionally protected associational and domestic political activities of the plaintiffs and their class through the actions of undercover agents who infiltrated the plaintiff organizations, and through other counterintelligence actions.

15. On information and belief, between 1967 and 1974 CHAOS opened and maintained "201" or "personality" files on approximately 7,200 individual United States citizens engaged in constitutionally protected associational and domestic political activities, including each of the named individual plaintiffs.

16. On information and belief, between 1967 and 1974 CHAOS opened and maintained approximately 1000 separate subject files on domestic organizations, including each of the named plaintiff organizations.

17. On information and belief, the information in the personality and organization files opened and maintained by CHAOS related to constitutionally protected associational and domestic political activities of the plaintiffs and members of their class.

18. On information and belief, information on the plaintiffs and members of their class which was gathered by CHAOS was conveyed by the CIA defendants to the White House, the FBI, and to other government agencies.

19. On information and belief, sometime after September 1969 CHAOS supplied a "watchlist" of United States citizens, including plaintiffs and their class, to another unit of the CIA, as a result of which first class mail from and to individuals on the watchlist was opened without any warrant or other form of judicial or legislative authorization, and copies of the opened letters or

information derived from them were supplied to CHAOS, made a part of the CHAOS files and used by the CIA defendants.

20. On information and belief, sometime after September 1969 CHAOS also supplied a "watchlist" to agents and employees of the NSA, which included the names of all the named plaintiffs.

21. On information and belief, for a period of time not known to plaintiffs, defendants, CARTER, GAYLER, PHILLIPS, TORDELLA and ALLEN (hereinafter sometimes "the NSA defendants"), have authorized and directed the monitoring or interception, by their agents and employees, of the international communications of United States citizens, including cable and radio channels between the United States and foreign countries, selected telephone channels between the United States and foreign countries, and selected telephone and cable channels between foreign countries, all without warrants or any other form of judicial or legislative authorization.

22. On information and belief, at various times beginning in 1967, the NSA defendants, without warrants or any other forms of judicial or legislative authorization, authorized and directed their agents and employees to intercept and divulge or procure the interception and divulgence, of wire, cable or radio communications of, or relating to, members of the plaintiff class on the CHAOS "watchlist" provided to NSA by the CIA, and on other "watchlists" provided to NSA by defendants GRAY, KELLEY and other officials of the Federal Bureau of Investigation ("the FBI defendants"); defendants ROWLEY, KNIGHT and other officials of the United States Secret Service ("the Secret Service defendants"); defendants CARROLL, BENNETT, DE POIX and other officials of the Defense Intelligence Agency ("the DIA defendants"); and defendants INGERSOLL and BARTELS and other officials in the Bureau of Narcotics and Dangerous Drugs ("the BNDD defendants").

23. On information and belief, agents and employees of the NSA defendants procured the assistance and cooperation of defendants WESTERN UNION INTERNATIONAL, INC., RCA GLOBAL COMMUNICATIONS INC.; and

ITT WORLD COMMUNICATIONS, INC. (hereinafter sometimes "the company defendants") in intercepting and divulging, without warrants or any other forms of judicial or legislative authorization, the wire, cable or radio communications of, or relating to the plaintiff class.

24. On information and belief, as a result of the warrantless and judicially and legislatively unauthorized interception and divulgence of the wire, cable or radio communications of plaintiffs and their class by the NSA and company defendants, at the request of the CIA, FBI, Secret Service, DIA and BNDD defendants, NSA supplied the CIA, FBI, Secret Service, DIA and BNDD defendants with summaries of the intercepted communications (hereinafter "the NSA materials") of the plaintiff class, which related to anti-war activities, travel abroad and other constitutionally protected movements and activities of members of the class.

25. On information and belief, information derived from the NSA materials was used and shared by the CIA, FBI, Secret Service, DIA and BNDD defendants and placed in files maintained by these defendants relating to the plaintiffs and their class.

26. On information and belief, in November 1974 some of the NSA materials were returned by the CIA defendants to NSA.

27. On information and belief, the CIA defendants caused the NSA materials to be returned to NSA because they knew the materials were the products of illegal and unconstitutional interceptions and divulgence of the plaintiffs' wire, cable or radio communications.

28. On information and belief, originals or copies of the NSA materials are intact in the possession of the NSA, FBI, Secret Service, DIA and BNDD.

29. On information and belief, the CIA, FBI, Secret Service, DIA and BNDD continue to maintain and disseminate files containing information about the constitutionally protected associational and political activities of the plaintiffs and their class, including information illegally and unconstitutionally obtained by intercepting and divulging the private mail and wire, cable or radio communications

of members of the class.

30. On information and belief, the individual and company defendants have engaged in an extended conspiracy unlawfully to conceal the acts complained of in paragraphs 10-29, supra, from the named plaintiffs and members of their class, from Congress, and from the public.

31. On information and belief, each of the defendants knew of and participated in, and/or concealed the illegal and unconstitutional activities described in paragraphs 10-29, supra.

32. On information and belief, each of the CIA defendants knew that their actions described above were taken in violation of the CIA's charter.

33. On information and belief, none of the defendants who participated in the actions described in paragraphs 10-29 above had a good faith belief that his or its actions were lawful.

FIRST CAUSE OF ACTION

34. The defendants' procurement of interception and divulgence and their interception and divulgence of the wire, cable or radio communications of plaintiffs and their class were unreasonable and illegal, and were not made in good faith reliance on any judicial, legislative or other valid authorization, or other reasonable belief in their legality.

35. The defendants' procurement of interception and divulgence, and their interception and divulgence of the wire, cable or radio communications of plaintiffs and their class violated Title 18, United States Code, Sections 2511 and 2520, and Title 47 United States Code, Section 605.

36. The defendants' procurement of interception and divulgence, and their interception and divulgence of the wire, cable or radio communications of plaintiffs and their class deprived plaintiffs of their rights of free speech and association under the First Amendment, their right to security against unreasonable searches and seizures guaranteed by the Fourth Amendment, and their right of privacy

guaranteed by the First, Fourth, Fifth and Ninth Amendments.

SECOND CAUSE OF ACTION

37. Plaintiffs repeat and reallege each allegation in paragraphs 1-33, supra.

38. The defendants' maintenance and dissemination of files on the constitutionally protected associational and political activities of plaintiffs and their class deprived plaintiffs of their rights of free speech and association under the First Amendment and their right to privacy under the First, Fourth, Fifth and Ninth Amendments.

39. Defendants' infiltration of the plaintiff organizations and members of their class by the use of undercover agents with false or concealed identities who disrupted, discredited and reported on the plaintiffs' constitutionally protected associational and political activities deprived plaintiffs of their freedom of speech and association protected by the First Amendment, their right to security against unreasonable searches and seizures protected by the Fourth Amendment and their right to privacy protected by the First, Fourth, Fifth and Ninth Amendments.

40. The activities of the defendants set forth above continue to interfere with, discourage and deter the plaintiffs in the exercise of their rights of free speech, assembly and association, and their right to petition the government for redress of grievances, guaranteed by the First Amendment.

THIRD CAUSE OF ACTION

41. Plaintiffs repeat and reallege each allegation in paragraphs 1-33, supra.

42. The CIA defendants' actions described above are in violation of Title 50, United States Code, Section 403(d)(3).

WHEREFORE, plaintiffs request that the Court grant the following relief:

A. A declaratory judgment that the course of conduct and activities of the defendants set forth above are illegal and unconstitutional;

B. Prelimin[illegible] and permanent injunctio[illegible]joining the defendants from engaging in the activities declared to be illegal and unconstitutional;

C. A mandatory injunction or writ of mandamus ordering the defendants to produce before the Court, for delivery to the plaintiffs and members of their class for destruction, all files, reports, records, photographs, data computer tapes and cards, and all other materials derived from defendants' illegal and unconstitutional activities relating to plaintiffs and all other persons similarly situated;

D. Each named plaintiff and member of the plaintiff class have judgment against each defendant in the sum of $100.00 per day of procurement of interception, divulgence and use, and interception, divulgence and use of the plaintiffs' wire, cabl or radio communications, as liquidated damages pursuant to Title 18, United States Code Section 2520 and Title 47, United States Code, Section 605.

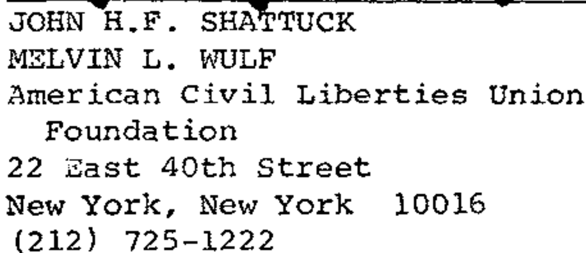
E. Each named plaintiff and member of the plaintiff class have judgment against each defendant in a sum to be determined by the Court for violation of plaintiffs' First, Fourth, Fifth and Ninth Amendment rights.

F. Recovery in the amount of $50,000 punitive damages for the willful violation of constitutional rights for each plaintiff and each member of the plaintiff class.

G. The reasonable costs of this action and attorneys' fees of plaintiffs.

H. Such other and further relief as the Court shall deem just and proper.

Respectfully submitted,



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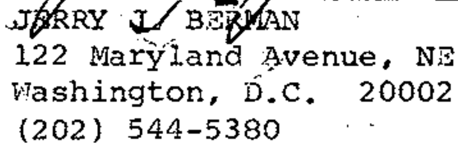

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Dated: November 1975

Attorneys for Plaintiffs

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27

5010-106

UNITED STATES GOVERNMENT

Memorandum

Assoc. Dir. ___
Dep. AD Adm. ___
Dep. AD Inv. ___
Asst. Dir.:
Admin. ___
Comp. Syst. ___
Ext. Affairs ___
Files & Com. ___
Training ___
Telephone Rm. ___
Director Sec'y ___

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TO :

DATE: 1/14/76

FROM : Legal Counsel

SUBJECT: et al. v. et al.,
CIVIL ACTION NO. (D.D.C.)

Plaintiffs in captioned civil action represent a class of United States citizens and domestic organizations who at various times during and after 1967 engaged in activities opposing United States involvement in the Indochina War. In their complaint plaintiffs allege that their wire, cable or radio communications were intercepted and divulged by the National Security Agency acting at the request of other Government agencies and that their political activities became the subject of counterintelligence actions, including mail openings, by the CIA, which gathered information furnished by the FBI. Defendants include former Acting Director Gray, Director Kelley, and numerous other present and former Federal officials.

By attached memorandum dated 12/23/75, the Assistant Attorney General, Criminal Division, requested a litigation report concerning captioned civil action. As a part of this report, he requested that we advise whether this Bureau, or anyone on behalf of this Bureau, engaged in the following at any times material to the allegations in the complaint (during and after 1967):

a. Authorized, conducted or procured electronic surveillance of any plaintiff or the interception or opening of any plaintiff's mail;

Enclosure

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7/29/94 #88-1826

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b. Intercepted or monitored any conversation or other communication to which any plaintiff was a party;

c. Received from any source, used, or disclosed to any other agency of the United States or any governmental instrumentality or personnel thereof any communication of any plaintiff obtained by mail interception or any kind of electronic surveillance or interception; or

d. Otherwise been involved in the use, disclosure, or interception of any of the plaintiffs' postal or electrical communications, including the provision of, generation of, or contribution to a watchlist or functionally similar compilation whereby any plaintiff's name was provided for the purpose of obtaining information about the plaintiff from such postal or electrical communications.

In his memorandum, the Assistant Attorney General noted that the Department is presently conducting an investigation of possible criminal violations concerning mail openings and the interception of wire, cable or radio communications. Accordingly, any information submitted by this Bureau in connection with these allegations may be made available to Departmental Attorneys engaged in such investigations.

A response to the complaint in this civil action is to be filed on behalf of Director Kelley on or before February 6, 1976.

(CONTINUED - OVER)

Memo to [redacted]
Re: [redacted] et al., v. [redacted] et al.
CIVIL ACTION NO. [redacted] (D.D.C.)

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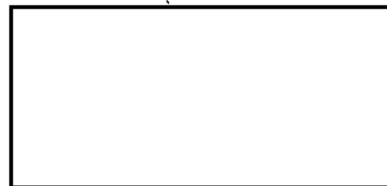
RECOMMENDATIONS:

1. That the Intelligence Division furnish pertinent factual information responsive to allegations in the complaint against the FBI.

2. That the Intelligence Division furnish information responsive to the Department's inquiry concerning electronic surveillance of any of the plaintiffs or the interception or opening of any plaintiff's mail, etc. (A - D).

3. That upon receipt of above Legal Counsel Division correspond with the Department.



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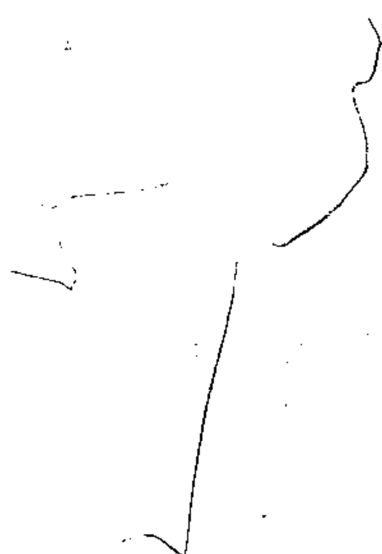

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6
UNITED STATES GOVERNMENT

Memorandum

TO : Director, FBI
Attention: Office of Legal Counsel

DATE: DEC 23 1975

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FROM :

Assistant Attorney General
Criminal Division

SUBJECT:

et al. v. et al.,
Civil Action No. (D.D.C.)

Enclosed herewith is a copy of the amended complaint in the above civil action filed in District Court on December 2, 1975, naming, inter alia, Director Clarence M. Kelley, as a defendant. (Director Kelley was not named in the original complaint, which was filed October 28, 1975.) According to court records based upon the marshal's returns, service of process was accomplished upon Director Kelley on December 3, 1975.

To assist us in preparing appropriate responses on behalf of the above named defendant, it is requested that you examine the allegations contained in the enclosed amended complaint and, as to those allegations pertaining to your organization and to present or former officers thereof, advise this division of your views as to which allegations should be admitted and which should be denied, together with supporting reasons. Where an allegation pertains to more than one individual or organizational plaintiff, please indicate in your reply how your views pertain to each such plaintiff. An amplifying statement, narrative, or explanation of pertinent facts relating to your organization's involvement in the acts alleged in the amended complaint would also be helpful to our developing

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Buy U.S. Savings Bonds Regularly on the Payroll Savings Pl

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a factual background for the defense of these allegations. In addition, we would welcome your suggestions as to any defenses, affirmative allegations, and interrogatories which might be presented together with your views as to legal theories applicable to the defense of this civil action, presently or in the future.

Inasmuch as certain allegations in the amended complaint pertain to mail opening and interception or disclosure of wire, cable, or radio communications, it is requested that you advise whether your agency, any components thereof, or anyone on behalf of your agency engaged in the following at any times material to the allegations of the complaint:

a. Authorized, conducted or procured electronic surveillance of any plaintiff or the interception or opening of any plaintiff's mail;

b. Intercepted or monitored any conversation or other communication to which any plaintiff was a party;

c. Received from any source, used, or disclosed to any other agency of the United States or any governmental instrumentality or personnel thereof any communication of any plaintiff obtained by mail interception or any kind of electronic surveillance or interception; or

d. Otherwise been involved in the use, disclosure, or interception of any of the plaintiffs' postal or electrical communications, including the provision of, generation of, or contribution to a watchlist or functionally similar compilation whereby any plaintiff's name was provided for the purpose of obtaining information about the plaintiff from such postal or electrical communications.

Your response to these inquiries, should also include any information within your agency's possession pertaining to actions of any other agencies or their instrumentalities concerning the foregoing activities.

With respect to the allegations in the amended complaint pertaining to mail opening and the interception of wire, cable, or radio communications, please note that the Department is conducting an investigation of possible criminal violations of applicable federal laws concerning those areas of activity. Accordingly, information submitted by your office in connection with these allegations and the above inquiries may be made available to attorneys engaged in such investigations.

Pursuant to our representation requirements, please advise whether or not each of the above named defendants was, with respect to the allegations in the amended complaint pertaining to them, at all material times acting within the scope of his authority. It is also requested that this Division be notified at such time as you receive a request for representation from these defendants.

A response to the amended complaint is due to be filed with the District Court on or before February 6, 1975. Your timely cooperation in this matter will be appreciated.

Enclosure

UNITED STATES GOVERNMENT

memorandum

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DATE: 95-16-3837

MAY 5 1977

REPLY TO ATTN OF: Assistant Attorney General
Civil Division

FEDERAL GOVERNMENT

SUBJECT: et al. v. et al.,
Civil Action No. (D.D.C.)

TO: Mr. Clarence M. Kelley
Director
Federal Bureau of Investigation
Attn: Assistant Director
Legal Counsel Division

Enclosed for your information and files is a copy of the district court's Order of April 12, 1977, denying class action treatment of any part of the above referenced case. Please note that the court did grant leave to join additional parties plaintiff, however. To date, we have received no notice that additional plaintiffs have been joined.

There is also enclosed a copy of our April 25, 1977 answer to the plaintiffs' petition for writ of mandamus, which was filed with the Court of Appeals for the District of Columbia Circuit on March 31, 1977. The petition seeks an extraordinary writ from the court of appeals vacating Judge Green's protective order of February 14, 1977. That order prohibits extra-judicial publication or comment by the parties or their counsel of any information provided during the course of pretrial discovery. The CIA documents and plaintiffs' proposed press release which precipitated this discovery controversy have been filed with the court of appeals under seal. The common carrier defendants, RCA Global, ITT Worldcom, and WUI, have also filed a joint answer to the petition.

Enclosures (2)

ENCLOSURE

EXP. PROC. 33 MAY 6 1977

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MAY 6 1977

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Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

OPTIONAL FORM NO. 10
(REV. 7-76)
GSA FPMR (41 CFR) 101-11.6
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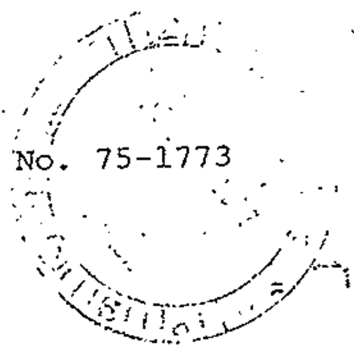
APR 15 Rec'd

FILED

APR 12 1977

JAMES F. DAVEY, Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA



ADELE HALKIN, et al Plaintiffs v. RICHARD HELMS, et al Defendants	:	Civil Action No. 75-1773

ORDER

Plaintiffs having moved this Court for class action certification pursuant to Rule 23 of the Federal Rules of Civil Procedure, and the Court having considered plaintiffs' memorandum of points and authorities in support of the motion, defendants' opposition thereto, and the entire record herein, and it appearing to the Court that this action is not appropriate for class action certification, it is by the Court this 12th day of April 1977,

ORDERED that plaintiffs' motion for class action certification be and hereby is denied; and it is further

ORDERED that, pursuant to Rule 21 of the Federal Rules of Civil Procedure, plaintiffs be permitted to amend the complaint to add named party plaintiffs as necessary.

JUNE L. GREEN
U.S. District Judge

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DATE 6/26/99 BY SP7

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95-16-3837

DEPARTMENT OF JUSTICE
APR 15 1977
CIVIL DIV.
GENERAL LITIGATION SEC.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 77-1313

In re Adele Halkin, *et al.*, Petitioners

CERTIFICATE REQUIRED BY RULE 8(c) OF THE GENERAL RULES OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The undersigned, counsel of record for Respondents (Federal defendants below), certifies that the following listed parties appeared below:

Petitioners (Plaintiffs below):

Adele Halkin	Edith Villastrigo
Steve Halliwell	Cora Weiss
Don Luce	American Indian Movement
Jonathan Mirsky	American Friends Service Committee, Inc.
Sidney Peck	Clergy and Laity Concerned
Nancy Ann Ramsey	Committee of Concerned Asian Scholars
Daniel Schechter	Committee of Liaison with Families of Servicemen Detained in Vietnam
Ethel [illegible]	Women Strike for Peace
	Institute for Policy Studies

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Respondents (Federal defendants below)

Richard Helms
James R. Schlesinger
Rufus N. Taylor
Robert E. Cushman, Jr.
Vernon A. Walters
William E. Colby
Cord Meyer, Jr.
James J. Angleton
William Hood
Raymond P. Rocca
Richard Ober
James J. Rowley
H. Stuart Knight
Donald Bennett
John Ingersoll
Howard Osborn
James Murphy
Marshall Carter
Noel Gayler
Samuel C. Phillips
Lew Allen, Jr.
Louis W. Tordella
L. Patrick Gray, III
Clarence Kelley
Joseph Carroll
Vincent de Poix
John R. Bartels, Jr.

Respondents (Carrier Defendants below):

RCA Global Communications, Inc.
Western Union International, Inc.
ITT World Communications, Inc.

Positions of Parties:

Petitioners (Plaintiffs below) seek review, by way of a petition for a writ of mandamus/prohibition, of a protective order entered by the District Court on the motion of the Director of the CIA.

Respondents (Federal defendants below) oppose the grant of the requested writ.

Respondents (Carrier defendants below) also oppose the grant of the requested writ.

* * *

These representations are made in order that the Judges of this Court, inter alia,, may evaluate possible disqualification or recusal. */

Elizabeth Gere Whitaker
ELIZABETH GERE WHITAKER
Attorney of record for
Respondents (Federal defendants below)

---

*/ Although they were sued in their individual capacities by the Amended Complaint, several of the Federal defendants have not yet been served. The insufficiency of the service of process and lack of in personam jurisdiction, inter alia, will be presented to the District Court by motion.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 77-1313

In re Adele Halkin, *et al.*, Petitioners

ANSWER TO PETITION FOR
MANDAMUS/PROHIBITION

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*Cases and authorities chiefly relied upon are marked by asterisks.

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 77-1313

In re Adele Halkin, *et al.*, Petitioners

ANSWER TO PETITION FOR
MANDAMUS/PROHIBITION

STATEMENT OF ISSUES PRESENTED

1. Whether, in an action for damages against individual defendants, mandamus can be used to review a District Court protective order prohibiting extra-judicial statements and comment about documents and information obtained through pretrial discovery, which interlocutory order was entered to protect the individuals' rights to a fair trial and which was entered in view of counsel's obligations under the Code of Professional Responsibility and District Court Local Rule 1-27(d)?

2. Whether the District Court acted within its discretion in entering a protective order pursuant to Local Rule 1-27(d) and Rules 26(c) and 34, F.R.Civ.P., under the above circumstances?

STATEMENT OF FACTS

The petitioners, who are ten individuals [1/] and seven organizations, instituted this lawsuit with allegations that investigative and intelligence activities of certain Government agencies--particularly NSA's Operation SHAMROCK and CIA's Operation CHAOS--violated their statutory and constitutional rights, including their right to engage in political activities in opposition to the Vietnam war. They seek an injunction, a declaratory judgment, and monetary damages in excess of one million dollars from the 27 present and former federal officials, whom they have named as defendants, and from three commercial communications common carriers. As an action for damages brought on statutory and Bivens [2/] theories of recovery, petitioners maintain the suit solely to compensate themselves for the defendants' alleged interference with their asserted statutory and constitutional rights.

1/ Petitioners' General Rule 8(c) certification omitted the Institute for Policy Studies, a plaintiff in District Court.

2/ Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971).

In the course of discovery petitioners sought production of documents by Rule 34, F.R.Civ.P., from the Central Intelligence Agency. After excision of information to protect the national security and the privacy interests of third persons not parties to the litigation, more than three thousand pages of documents were made available to petitioners in three installments. The individual defendants' names appear throughout documents that were made available to the petitioners.

The first installment of documents, which contained those documents submitted to this Court under seal, was released to petitioners and their counsel without any express constraints or caveats, but with the assumption that members of the bar practicing before the United States District Court for the District of Columbia were bound by its published rules and by the ABA Code of Professional Responsibility as interpreted by the District of Columbia Court of Appeals, and with the further assumption that counsel would abide by them. Those rules prohibit extra-judicial statements, other than a quotation from or reference to public records, if there is a reasonable likelihood that such dissemination would

interfere with a fair trial. [Local Rule 1-27(d); Disciplinary Rules of the Code of Professional Responsibility, §§ 107(G) and (H).]

However, upon notification by plaintiffs' counsel that they planned a press conference to release selected documents and a commentary on them, respondents immediately sought a protective order from the District Court. The protective order was sought to ensure an uncolored and unbiased climate including a fair trial, for the adjudication of all claims against the respondents. The respondents sought and continue to seek resolution of this lawsuit in the courts rather than in the public media.

On February 14, 1977, shortly after the entry of this Court's opinion in Dellums, et al. v. Powell, et al., ____U.S.App.D.C.____, ____F. 2d____, (D.C. Cir. Jan. 28, 1977), the District Court, upon consideration of all the pleadings and the petitioners' proposed press release, entered a protective order prohibiting extra-judicial comment on or disclosure of material not a part of the public record except in proceedings before the Court, until further order of the Court. The petitioners continued to inspect and copy documents after the Court entered its Protective Order on February 14, 1977, as that order did not impede or restrict the availability of documents for discovery.

SUMMARY OF ARGUMENT

Petitioners seek to have this Court review the entry by the District Court of a discovery order that implements a Local Rule of the District Court. Under the circumstances at bar the extraordinary relief of a writ of mandamus is inappropriate. Even assuming, arguendo, the availability of review by mandamus, petitioners have failed to demonstrate that the District Court's Order was inappropriate or in contravention of any rule of the District Court, the Federal Rules of Civil Procedure or the Constitution, or that the entry of the Order has in any manner impeded petitioners' ability to fully litigate their claims in a court of law whose jurisdiction they have invoked.

ARGUMENT

I. MANDAMUS CANNOT BE USED AS A SUBSTITUTE FOR APPEAL FROM THE DISCRETIONARY ORDER ENTERED BY THE DISTRICT COURT.

This matter arises from petitioners' discovery request in District Court for internal Central Intelligence Agency documents relating to Operation CHAOS. This request encompasses several thousand documents. Individually, the documents are not self-explanatory, but only provide fragments of a larger picture. Consequently, what these

documents reflect about Operation CHAOS and the defendants' actions normally would await development by the parties in their open record presentation through trial testimony and briefs.

Nevertheless, while the documents were still being produced, counsel for petitioners announced their intention to release a press statement on behalf of two organizations which are not parties to this litigation, the American Civil Liberties Union and the Center for National Security Studies. The stated purpose of the press release was to enable counsel to 'interpret' for the media what they had received. By counsel's letter of January 24, 1977, they further advised that they and their staff and consultants would be available ". . . to explain the significance of such documents, and to answer any questions from the public or press regarding such documents. . . ." [Pet. App. at 19.] Under these circumstances and in light of Local Rule 1-27(d), the District Court entered the protective order at issue here.

The threshold question is whether mandamus is available in this situation. The general rule, of course, is that piecemeal appeals are to be assiduously avoided, in view of the congressional policy that appeals should be had only after a final judgment or where certification of

an interlocutory appeal is appropriate under 28 U.S.C. § 1292(b). See generally, Will v. United States, 389 U.S. 90, 104 (1967); Donnelly v. Parker, 158 U.S.App.D.C. 335, 486 F. 2d 402, 408 (1973). As this Court recently cautioned along a similar vein:

> . . . a final judgment is effective only if it deters mandamus petitions in the first place. So if there are to be exemptions to the final judgment rule, those exemptions should be indulged only in clearly and narrowly defined areas to maintain the wholesome deterrence of the final judgment rule.

Colonial Times, Inc. v. Gasch, ____U.S.App.D.C.____, 509 F. 2d 517, 523 (1975) [Footnote omitted].

In view of this policy, the availability of mandamus has always been restricted. Traditionally, mandamus has only been proper where the action of the district court amounted to a ". . . clear abuse of discretion or usurpation of judicial power' . . . ." Bankers Life & Cas. Co. v. Holland, 346 U.S. 379, 383 (1953) [Citation omitted]. More recently, both the Supreme Court and this Court have recognized that mandamus should also be available in limited circumstances for supervisory or advisory purposes. See generally, Schlagenhauf v. Holder, 379 U.S. 104 (1964); National Right to Work Legal Defense v. Richey, ____U.S.App.D.C.____, 510 F. 2d 1239

(1975), cert. denied, 422 U.S. 1008 (1975) [hereinafter Right to Work]. But regardless of the type of mandamus involved, the availability of the writ is independent of the existence of error vel non in the trial court's ruling:

> Mandamus, it must be remembered, does not "run the gauntlet of reversible errors." Bankers Life & Cas. Co. v. Holland, 346 U.S. 379, 382 (1953). Its office is not to "control the decision of the trial court," but rather merely to confine the lower court to the sphere of its discretionary power. Id., at 383.

Will v. United States, supra, at 104.

Turning to the petition here, it is claimed that mandamus is appropriate in the traditional sense--that the District Court's entry of the protective order was an usurpation of judicial power or a clear abuse of discretion. [Pet. at 25.] This is so, petitioners contend, because the protective order violated their constiutional rights.

First, the ability of a party to allege that a trial court order violated his constitutional rights does not automatically entitle the party to appellate review, nor do the cases cited by petitioners support such an exception to the general policy against piecemeal

appeals. [Pet. at 26] [3/] To the contrary, this Court has previously recognized that discovery orders which allegedly violate constitutional rights are not appealable, at least prior to entry of an order of contempt. See United States v. Anderson, 150 U.S.App.D.C. 336, 464 F. 2d 1390, 1392 (1972); Right to Work, supra, at 1245. Likewise, petitioners cannot claim that the district court exceeded its power or abused its discretion simply by entering (in their view) an erroneous order. This theory was expressly rejected by the Supreme Court:

> Acceptance of this semantic fallacy would undermine the settled limitations upon the power of an appellate court to review interlocutory orders. Courts faced with petitions for the peremptory writs must be careful lest they suffer themselves to be misled by labels such as "abuse of discretion" and "want of power" into interlocutory review of nonappealable orders on the mere ground that they may be erroneous.

Will v. United States, supra, at 98 n. 6; see also Bankers Life & Cas. Co. v. Holland, supra, at 383.

3/ Petitioners cite the concurring opinion of Justice Brennan in New York Times Co. v. United States, 403 U.S. 713, 725 (1971), which does not discuss mandamus; Carroll v. President and Commissioners of Princess Anne, 393 U.S. 175 (1968), which concerned an appeal pursuant to 28 U.S.C. § 1257(3); and Bridges v. California, 314 U.S. 252 (1941), which concerned an appeal from an order of contempt.

This was explained further in Colonial Times, where the Court wrote:

> This view of "jurisdiction" errors suggests the possibility that a trial court has no jurisdiction to enter an erroneous ruling; but that suggestion has been specifically rejected. The concept of legal power to act implies not only a limitation on the type of error cognizable in mandamus (i.e. whether the court merely abused its discretion or instead acted in a manner in which it had no discretion to act) but also on the class of errors so cognizable. . . . As a general proposition, discovery orders are not jurisdictional and thus may not be reached under traditional concepts of mandamus except in the most extraordinary circumstances.

509 F. 2d at 523-24 [Footnotes omitted] [Emphasis in original].

Here, the District Court clearly had the power to enter a protective order. Not only was there a local rule of the district court which expressly provided restrictions on counsel in this situation (notably, petitioners do not argue the rule itself is unconstitutional), but the Court also had before it the proposed press statement and petitioners' avowed intention to continue to publicize their interpretations and comments.. Confronted with these circumstances, it cannot be said that entry of the protective order to preserve the right of fair trial constituted a clear abuse of discretion--

particularly in view of this Court's recent statement in Dellums v. Powell, supra, that:

> Disclosure because of the potential needs of litigation need not be made to the public and indeed in a case of this kind should be restricted to counsel, unless and until the documents are made a part of the public trial record.

[Slip Op. at 14.] See Kerr v. United States District Court for the Northern District of California, 426 U.S. 394, 403-04 (1976).

As stated previously, there are also supervisory and advisory concepts of mandamus, in addition to the traditional functions of the writ. Petitioners do not rely on these concepts, and it is submitted that both are inapplicable. The supervisory writ of mandamus is not available unless the district court has shown a ". . . persistent or deliberate disregard of limiting rules . . . ." Right to Work, supra, at 1243; see also, Donnelly v. Parker, supra, at 409 n. 29. For example in La Buy v. United States, 352 U.S. 249, 259-60 (1957), the Supreme Court agreed with the Seventh Circuit that mandamus was appropriate, where judges of the district court had consistently referred antitrust cases for trial before a master, contrary to repeated admonishment from the

court of appeals that the practice should be limited to unusual situations only.

There is no persistent or deliberate disregard of the rules here, however.[4/] The Local Rule relied upon by the District Court, Local Rule 1-27(d), specifically provides for restraints on extra-judicial statements of counsel to protect the right of fair trial. Indeed, Rule 34, itself, does not provide for automatic public filing of responses, unlike other rules of discovery. Thus, rather than showing a deliberate disregard of governing rules, the District Court's entry of the protective order concerned enforcement of a Local Rule. Consequently, the criteria for supervisory mandamus is not met.

Likewise, advisory mandamus is not available in this situation. Although advisory mandamus is available ". . . to clarify novel and important questions of law . . ." [Right to Work, supra, at 1243],[5/] this Court cautioned

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4/ See United States v. Di Stefano, 464 F. 2d 845, 850 (2nd Cir. 1972):

> Will v. United States, 389 U.S. 90, 95, 104, 88 S.Ct. 269, 19 L.Ed. 2d 305 (1967), makes plain that mere error, even gross error in a particular case, as distinguished from a calculated and repeated disregard of governing rules, does not suffice to support issuance of the writ.

5/ Such advice already appears in the portion of Dellums v. Powell, supra, quoted above.

in Colonial Times that, "Not every issue of first impression or every 'basic, undecided' problem should be the basis for mandamus relief." 509 F. 2d at 525. Rather, advisory mandamus is appropriate

> . . . only where the decision will serve to clarify a question that is likely to confront a number of lower court judges in a number of suits before appellate review is possible, as, for example, where the district judges are in error, doubt, or conflict of the meaning of a rule of procedure.

Right to Work, supra, at 1243 [Citations omitted]. There is little likelihood that this issue will arise frequently before appellate review can be had, however. Consequently, this situation is identical to that confronting this Court in Right to Work:

> No deliberate avoidance of applicable rules or holdings is evident such as would justify supervisory mandamus--indeed, petitioners conceed that this is a novel question. Petitioners rely principally on the concept of advisory mandamus in regard to this question, arguing that it is novel, and that it will determine whether the discovery--and consequent alleged First Amendment violations--goes forward in the manner ordered. The question is not, however, one likely of significant repetition prior to effective review, such as is required for advisory mandamus.

510 F. 2d at 1244 [Emphasis added].

Nor are there equitable reasons to support review by mandamus. Unlike the situation in Colonial Times, denial of the writ will not affect the record before the District

Court and, in the event of appellate review, before this Court. 510 F. 2d at 525. Indeed, petitioners here are asking that they be permitted to build a record before the press, not before the District Court, which is precisely what the local rule seeks to avoid.

Likewise, this is not a case where the petitioners lack any adequate means of appellate review. As this Court held in Right to Work: ". . . mandamus is neither necessary nor appropriate in the instant case since the order may be challenged through disobedience." 510 F. 2d at 1245.[6/] See also, Ryan v. United States, 402 U.S. 530, 533 (1971). And ". . . this principle extends even to the assertion of constitutional privilege." Ibid., citing United States v. Anderson, 150 U.S.App.D.C. 336, 462 F. 2d 1390 (1972).

* * *

The congressional policy against piecemeal appeals argues strongly against frequent use of the mandamus writ. As this Court stressed in Colonial Times

> . . . if there are to be exemptions to the final judgment rule, those exemptions should be indulged only in clearly and narrowly defined areas to maintain the wholesome deterrence of the final judgment rule.

6/ This Court went on to distinguish the situation in Right to Work from the situation where the person who would have to risk contempt was not sufficiently interested in the issue to do so, citing Perlman v. United States, 247 U.S. 7 (1918) (custodian of property to be produced was a court clerk).

509 F. 2d at 523 [Footnote omitted]. Petitioners have given no reason why this principle should be abandoned here. In the absence of circumstances which would justify the exercise of this Court's traditional, supervisory, or advisory mandamus power over the trial court, the Court should conclude the writ is not available.

II. THE DISTRICT COURT'S ORDER WAS A REASONABLE EXERCISE OF ITS DISCRETION IN IMPLEMENTING LOCAL RULE 1-27(d) AND THE FEDERAL RULES OF CIVIL PROCEDURE.

Petitioners' counsel's announced intention of selectively releasing and commenting on documents produced pursuant to Rule 34, F.R.Civ.P., was a patent violation of Local Rule 1-27(d) of the Local Rules of the District Court for the District of Columbia. That rule expressly prohibits an attorney in a civil action from

> . . . participat[ing] in making an extra-judicial statement [about evidence regarding the occurrence involved], other than a quotation from or reference to public records . . . if there is a reasonable likelihood that such dissemination will interfere with a fair trial. 7/

7/ The District of Columbia Court of Appeals has recently amended the Disciplinary Rules of the Code of Professional Responsibility, sections 107(G) and (H). The Court condemned newspaper publications by a lawyer ". . . as to pending or anticipated litigation [which] may interfere with a fair trial in the courts and otherwise prejudice the due administration of justice." [Pertinent portions are attached.]

The District Court in entering its Order of February 14, 1977 simply reduced the prohibitions of the Local Rule to a specific order of the District Court.

The District Court, of course, has a large measure of discretion in applying its Local Rules since those Rules are promulgated primarily to promote the efficiency of the court. United States v. Simmons, 476 F. 2d 33, 35 (9th Cir. 1973); Harves v. Club Ecuestre El Commandante, 535 F. 2d 140, 143-44 (1st Cir. 1976). "Noncompliance with any Local Rule is a practice to be strongly condemned and one which will be penalized if the circumstances warrant such action." Wiss v. Weinberger, 415 F. Supp. 293, 294 n. 4 (E.D. Pa. 1976).

The appropriateness of the District Court's Order is particularly apparent in the context of the entire litigation. The subject matter of petitioners' claims has already generated publicity and discussion. Both the Congress and a Presidential Commission have reviewed mnay of the activities referred to by petitioners in their complaint. [See Report to the President by the Commission on CIA Activities Within the United States (Rockefeller Commission Report); Final Report of the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, S. Rep. No. 94-755, 94th Cong.

2d Sess. (1976).] Thus, the Court took cognizance not only of the complexity of the issues and the time needed to resolve those issues, but also the potential for exacerbating a highly charged and controversial issue. Accordingly, the District Court entered a narrowly drawn protective order to minimize the prejudicial effect of pretrial publicity and to prevent parties from abusing the judicial process by seeking discovery for non-litigation purposes.

That this particular Local Rule, Local Rule 1-27(d), had been given careful scrutiny, not just by this District Court, is of significance. This Local Rule is the result of a report on the "Free Press-Fair Trial" issue by a committee composed of twelve federal court judges from throughout the country. The report was ultimately adopted by the Judicial Conference of the United States. 8/ Thus, Local Rule 1-27(d) has undergone serious study and review by jurists who must daily resolve problems of publicity, fair trials and the free press. Those jurists concluded

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8/ Supplemental Report of the Committee on the Operation of the Jury System on the "Free Press-Fair Trial" Issue, chaired by the Honorable Irving R. Kaufman, 51 F.R.D. 135, 138 (1970), noting:

> . . . civil litigants, as well as criminal, can be prejudiced in their right to a fair trial by out-of-court statements. [This provision] is based on, but is not identical with, paragraph (G) of Disciplinary Rule 7-107 of the ABA Code of Professional Responsibility.

that the language contained in Local Rule 1-27(d) was both necessary and proper. 9/

Petitioners urge that there was no violation of the Local Rule because the documents were public records upon which they were permitted to comment. This argument is miscast in that documents provided to counsel pursuant to a Rule 34, F.R.Civ.P., request are not public documents, since responses to such requests are made only to counsel. The responses are not filed with the court and do not become a part of the court or public record until such time as a party seeks to introduce them into evidence or to rely on them in a pleading. In contrast, the other methods of discovering information set forth in the Federal Rules, including the taking of depositions under Rule 30, F.R.Civ.P., responding to interrogatories under Rule 33, F.R.Civ.P., and filing responses to requests for admissions under Rule 36, F.R.Civ.P., provide that such responsive material be filed with the Court and thus made a part of the public record.

Different treatment is accorded to discovered material under Rule 34 for a variety of reasons. In each of the other instances which require response to discovery requests (Rules 30, 33 and 36), the responses are prepared in an adversarial setting. No party is forced to respond without aid of counsel in framing suitable

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9/ Although the United States Court of Appeals for The Seventh Circuit has reached a contrary conclusion in Chicago Council of Lawyers v. Bauer, 522 F. 2d 242, (7th Cir. 1975), cert. denied, 427 U.S. 912 (1976), respondents submit that this Court, faced with different facts, need not reach or adopt the Seventh Circuit's conclusion.

responses.[10] However, in responding to a Rule 34 request, which is customarily very broad,[11] a party has no opportunity to comment on or offer an explanation about any document, or its contents. Additionally, the party inspecting the proffered documents may pick and choose for copying and use only those documents which are helpful to his case. He may well not be interested in exculpatory documents, knowing that his opponent will, at time of trial, have ample opportunity to bring such documents to the Court or jury's attention. Thus, initial production under Rule 34 lacks the adversarial safeguards which attend Rules 30, 33 and 36. In addition, public filing of every document made available for inspection and copying would place an unmanageable physical burden on the court, its personnel and its storage facilities. It is for these reasons that responses to Rule 34 requests are

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10/ In fact, one must obtain a special order of court under Rule 30, F.R.Civ.P., to preclude the public filing of a deposition. International Products Corporation v. Koons, 325 F. 2d 403 (2nd Cir. 1963).

11/ Rule 34 permits inspection and copying of any documents which are relevant to the subject matter of the litigation or which appear reasonably calculated to lead to the discovery of admissible evidence.

not automatically made a part of the public record. 12/

This Court has recently recognized the intention of the Federal Rules to guard against potential harm to a litigant by premature public disclosure of documents which are produced to counsel in response to a discovery request, saying:

> Disclosure because of the potential needs of litigation need not be made to the public, and indeed in a case of this kind <u>should be restricted to counsel, unless and until the documents are made part of the public trial record</u>.

<u>Dellums</u> v. <u>Powell</u>, <u>supra</u>, [Slip op. at 14] [Citation omitted] [Emphasis added]. In <u>Dellums</u>, the Court concluded that former President Nixon, whose taped presidential conversations were sought pursuant to a subpoena, would be entitled to a protective order. The Court further stated that Mr. Nixon would have an opportunity, prior to any public disclosure by those receiving material, ". . . to litigate the issue of need for public disclosure. . . ." <u>Ibid</u>. Here, similarly, the petitioners

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12/ And, of course, documents produced pursuant to Rule 34 need only be produced for inspection and copying. Copies of all documents need not be physically given to an opposing party pursuant to a Rule 34 request. "If the request [for production] is granted, the inspection will take place without any involvement of the Court." 8 Wright & Miller, Federal Practice and Procedure § 2207.

have demonstrated no need for public statement or disclosures, nor have they been denied an opportunity to litigate an asserted need. Thus, not only did the petitioners fail to establish that the discovered documents were a part of the public record [13/] upon which they could comment, but they failed, in the District Court, to establish the requisite necessity for public disclosure, as required in Dellums, supra.

Assuming, arguendo, that petitioners could establish that these documents were part of the public record, their actions still exceeded the bounds of Local Rule 1-27(d), for the Rule permits only a "quotation from" or "reference to" public records. Petitioners' proposed press conference and press release clearly demonstrate that much more was contemplated. It is noted that there is considerable difficulty in identifying whether the interests herein are those of the petitioners or their counsel. For example, the proposed press release and comment were to be made by counsel, rather than the petitioners. It is respondents' position that the Local Rule, although

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13/ Petitioners argue that these documents are public records because they are Central Intelligence Agency documents which could be obtained under the Freedom of Information Act. Simply because the documents may be obtained via another method does not make them public records.

applicable specifically to counsel, cannot be subverted by using a party as a spokesman for those things which counsel is prohibited from voicing. First, only selected documents were to be released by petitioners. The selectively, in itself, exercised by petitioners is prejudicial, since petitioners have intentionally chosen only documents which they believe support their allegations. The remaining fifty-two documents of the first installment, which may be exculpatory or explanatory of the respondents' actions, were retained by petitioners, and they elected not to comment on them. Such selective presentation of evidence cannot be construed as a "quotation from" or "reference to" public records. 14/

14/ Additionally, respondents may believe that those remaining documents refute petitioners' conclusions. But, for the respondents to hold a "counter" press conference to assert their opinions would quickly lead to a degeneration of the litigation into a battle of press statements. Such a battle in no way advances the orderly disposition of the lawsuit.

As the United States Court of Appeals for the First Circuit has recently stated, the proper function of an attorney is

> . . . to present his case in the courtroom, not to make extrajudicial statements interpreting or explaining the evidence, anticipating his own or his adversary's strategy, or attempting to build a favorable climate of opinion.

United States v. Coast of Maine Lobster Co., 538 F. 2d 899, 901-02 (1st Cir. 1976).

Second, the proposed press release is not merely a quotation or reference to public records. Instead, it is a series of arbitrary and highly colored inferences and characterizations. In many instances, petitioners' proposed commentary goes to the ultimate facts and conclusions to be resolved by the District Court. Such selective presentation of evidence and commentary thereon are not permitted by Local Rule 1-27(d).

Faced with a blatant disregard for the Local Rule, the District Court upon respondents' motion for a protective order, found that the entry of such an order was indeed justified. Although petitioners assert that the requirements of Rule 26(c), F.R.Civ.P., specifically the showing of good cause, were not met by respondents, the facts and the record indicate otherwise. As conceded by petitioners, subsections (5) and (6) of Rule 26(c) are available to shield a producing party from prejudicial publicity. [Pet. at 24]. Petitioners' proposed press release and comment clearly provided "good cause" for the entry of an order to restrict prejudicial publicity. That the release and comment would be prejudicial to defendants' right to a fair trial is similarly apparent from the face of the petitioners' proposed release and comment. The petitioners' announced course of action was specifically designed to generate a hostile atmosphere in a forum

(the press) within which the respondents could neither respond nor defend themselves.[15/]

Moreover, petitioners overlook the fact that individuals are personally sued for recovery of money damages. Documents which have been produced contain, where they appear, the names of such individuals. To permit selective and colored commentary on the roles and actions of these individuals is tantamount to trying the issue of liability not at the time of trial before the District Court, but in the media, prior to presentation of all evidence. The individuals named as defendants, many of whom have not even been properly served with process, may have additional and independent reasons for non-disclosure of documents. Indeed, for a variety of reasons, the documents released in discovery may not be admissible at trial. As recognized by the District Court, the

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15/ Petitioners (and their counsel) also made their proposed course of litigation very clear in their Opposition to the Protective Order, filed in the District Court in which they stated

> . . . counsel and their associates . . . should be free to set these documents in context with information disclosed in other forums and to express their views on the significance of the documents.

[Plaintiffs' Opp. at 15] [Emphasis added].

defendants should not be deprived of the right to timely present their objections to ensure their right to a fair trial.

Although petitioners are quick to point out that there has been no jury demand and thus, they claim, there is less likelihood of prejudicing potential jurors, prejudicial public disclosure can have a similar detrimental effect on the court in a bench trial. As the Seventh Circuit stated in Chicago Council of Lawyers v. Bauer, supra, at 256-57, "judges are human" and prejudicial material should be kept from coming to the attention of a judge in a bench trial for the same reasons it should be kept from a jury.

In sum, the District Court entered an order which was entirely proper and within its discretion to enforce the Local Rule, to maintain control over its own calendar of cases, and to ensure that the defendants receive a fair trial.[16/] As the Sixth Circuit has noted in an analagous case, the entry of such a non-disclosure ruling

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16/ Former Chief Judge Jones of this District, in a similar situation, entered a protective order directing counsel not to publicly disclose material submitted to them under a request for documents ". . . unless and until such material is publicly filed with the Court . . ." Nader v. Butz (D.D.C. Civil No. 148-72, December 21, 1973). (A copy is attached hereto).

may be necessary to achieve such ends for:

> Every trial judge is charged with the primary responsibility of ensuring that the judicial proceedings over which he presides are carried out with decorum and dispatch and thus has a very broad discretion in ordering the day to day activities of his court.

C.B.S. v. Young, 522 F. 2d 234, 241 (6th Cir. 1975). 17/

Here, as in the Sixth Circuit, a trial judge may take appropriate steps to ensure the integrity and dignity of proceedings in his or her court. The protective order which petitioners attack was a reasonable method of discharging the trial court's responsibility.

III. NEITHER LOCAL RULE 1-27(d) NOR THE DISTRICT COURT'S APPLICATION OF IT IS VIOLATIVE OF THE FIRST AMENDMENT.

Petitioners seek to endow the issue before this Court with constitutional dimensions, claiming that the District Court's application of the Local Rule is violative of the First Amendment. 18/ However, those

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17/ Contrary to petitioners' characterizations of C.B.S. v. Young, *supra*, the Court did not condemn the use of non-disclosure orders in appropriate circumstances, but rather found the particular language in the non-disclosure order before it to be overbroad and thus unacceptable.

18/ It is unclear whether petitioners also attack the constitutionality of the Local Rule, for while they rely heavily on Chicago Council of Lawyers, *supra*, they stop short of arguing unconstitutionality of the Local Rule here. [Pet. at 21 n.3.]

constitutional overtones arise only from petitioners' desire to invest this Court with jurisdiction over and interest in resolution of this issue.

Succintly stated, petitioners' contention is that they have been precluded by the non-disclosure order ". . . from revealing to the public important new information about CIA surveillance programs . . ." [Pet. at 9.] Petitioners label this prohibition as a "prior restraint" which they claim to be a violation of their First Amendment rights. 19/

When faced with a similar contention, the District Court for the District of Columbia, in an opinion affirmed by this Court, stated

> Plaintiffs raise an argument that because they seek files . . . which will contribute to the public knowledge and information they are somehow clothed with First Amendment interests in this case. This Court firmly rejects the effort to imply a Constitutional right to disclosure of Government files. . . . The First Amendment cannot be said to impose an affirmative duty on the part of the Government to assist in [that] research or to disclose Government files.

19/ Petitioners conceded in pleadings before the District Court that Local Rule 1-27(d) did not constitute a prior restraint. [Plaintiffs' Opposition to Motion for Protective Order at 13.]

Wolfe v. Froehlke, 358 F. Supp. 1318, 1321 (D.D.C. 1973), aff'd, ____ U.S.App.D.C. ____, 510 F. 2d 654 (1974) [Emphasis in original]. Similarly petitioners' asserted "right" to disclose documents obtained in litigation does not rise to the level of a Constitutional guarantee, nor does the "right" to public disclosure serve any conceivable need for a full adjudication of petitioners' claims. 20/ In fact, petitioners have continued to inspect and copy documents just as they did before the protective order was entered.

Petitioners' asserted demand to disclose and comment upon documents does, however, interfere with respondents' right to a fair trial. It is a fundamental tenet of our system of justice that

> . . . the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print.

Patterson v. Colorado, 205 U.S. 454, 462 (1907). Moreover, Chicago Council of Lawyers v. Bauer, supra, a case upon which petitioners rely heavily, specifically rejects the contention that nondisclosure orders constitute a prior restraint forbidden by the First Amendment.

20/ Petitioners have not filed this lawsuit under any "private attorney general theory" to assist the public. Rather, relief is sought only on behalf of a narrow group of persons and organizations claiming to have suffered personal injury.

Id. at 247-9.[21/] Thus, petitioners' efforts to portray the District Court's order as a violation of their First Amendment rights is without legal foundation.

Even assuming that petitioners have some protectable First Amendment right, the Local Rule and the District Court's application of it do not contravene any constitutional guarantee. Petitioners again in this regard rely on *Chicago Council of Lawyers*, *supra*, which held a similar local rule unconstitutional because it was overbroad, for the proposition that this District Court's Local Rule is unconstitutional. Petitioners' argument ignores the fact that the Seventh Circuit was asked in the *Chicago Council* case for a general, non-specific review of the Local Rules of the District Court of the Northern District of Illinois pertaining to pretrial publicity in both civil and criminal cases. Such a general review by the court caused Judge Wyzanski to observe that

> . . . the nature of this proceeding raises questions whether as a matter of discretion it is consistent with the *prudent* exercise of discretionary judicial power . . . for this Court

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21/ Particularly instructive on this issue is the District Court's opinion in the *Chicago Council of Lawyers* case (*Chicago Council of Lawyers* v. *Bauer*, 371 F. Supp. 689 (N.D. Ill. 1974)), which was apparently adopted by the Court of Appeals. Counsel for petitioners orally advised undersigned counsel they will also rely on *Reliance Insur. Co.* v. *Barron's*, 45 U.S.L.W. 2454 (S.D.N.Y., Mar. 16, 1977), where the district court denied a protective order to prevent the defendants, a magazine and writer, from disclosing in a libel action information received pursuant to a Rule 34 request. The court ruled that the plaintiff had not established a need for the protective order, focusing in part on the fact that the defendants were an intrinsic part of (Footnote continued on following page)

to pass judgment upon imaginary cases sometimes scorned as "a parade of horribles."

Chicago Council of Lawyers, supra, 522 F. 2d at 259 (Wyzanski, J., concurring) [Emphasis in the original]. This Court, however, is presented with a specific breach by petitioners of the Local Rule that is likely to deprive the respondents of a fair trial. Under these circumstances, this Court can assess the impact of an extra-judicial statement.

The Court of Appeals for the Seventh Circuit's primary criticism of the district court's local rules lay with the standard enunciated in those rules which the circuit court found to be overbroad. That standard was, as it is in the District of Columbia District Court's Local Rule 1-27, that lawyers' comments about pending litigation must be proscribed if ". . . there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice." Chicago Council of Lawyers, supra, at 249. The Seventh Circuit, however, concluded that a "narrower and more restrictive standard" should apply. "Only those comments that pose a 'serious and imminent threat' of interference with the fair administration of justice can be constitutionally proscribed."

(Footnote continued from previous page) the press and on the court's inability to enforce the requested protective order. But see Int'l. Products Corp. v. Koons, 325 F. 2d 403 (2nd Cir. 1963). Here, the need for an order has been demonstrated. That need is the fundamental right to a fair trial as contrasted with the asserted need in Reliance Insurance v. Barron's to protect business secrets.

Ibid.[22/] This is the standard which petitioners urge in the matter at bar, yet the "reasonable likelihood" standard is one whose language is taken verbatim from the guidance enunciated by the Supreme Court in its seminal opinion on prejudicial pretrial publicity, Sheppard v. Maxwell, 384 U.S. 333, 362-63 (1966), reaffirmed last term in Nebraska Press Association v. Stuart, 427 U.S. 539 (1976). In light of those two decisions, the "reasonable likelihood" standard is, in the Supreme Court's view, sufficiently narrow. See also United States v. Tijerina, 412 F. 2d 661, 666 (10th Cir. 1969), cert. denied, 396 U.S. 990 (1969) and In Re Sawyer, 260 F. 2d 189 (9th Cir. 1958), rev'd on other grounds, 360 U.S. 622 (1959) which held that the proper standard in forbidding extra-judicial statements was the "reasonable likelihood" standard. The standard embodied in Local Rule 1-27 is thus constitutionally acceptable.

Petitioners' final argument is that even if the Local Rule passes constitutional muster, the District Court's order applying it does not, again because of some constitutional infirmity. Assuming arguendo that the respondents must overcome a heavy presumption against the

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22/ The Seventh Circuit Court thus reiterated a standard which it had previously enunciated in Chase v. Robson, 435 F. 2d 1059, 1061-1062 (7th Cir. 1970).

entry of a non-disclosure order, that burden has been met. First, petitioners have not demonstrated that the prosecution of their claims is any way injured by the order; and certainly they have not established that any such alleged injury outweighs the respondents' right to a fair trial (See pp. 17-18 supra.) Second, the District Court drew its order, in the given circumstances, in the narrowest manner possible.

The potential necessity for an order restricting comment was even recognized by the court in Chicago Council of Lawyers, supra, at 259--as long as the order was narrowly drawn. Accord C.B.S. v. Young, supra; Reliance Insurance Co. v. Barron's, 45 U.S.L.W. 2454 (S.D. N.Y. April 5, 1977). Here, the District Court's Order of non-disclosure was limited only to documents which are not a part of the public record. Petitioners are free to quote from or refer to all other pleadings and discovery materials. The coverage of the Order extends only to the parties and their counsel. It does not extend to "Court personnel, relatives and friends", C.B.S. v. Young, supra, nor does it extend to the media. It is apparent that the public's right to know, about which petitioners are concerned, is not substantially impaired. See Red Lion Broadcasting Co. v. F.C.C., 395 U.S. 367 (1969). The media as well as private citizens remain

unrestrained in their ability to comment on pending proceedings.

Finally, the duration of the Order is not excessive. It expires of course at the conclusion of the litigation. [23/] Petitioners state that this case will be in litigation for many months and that any delay in their ability to comment is violative of their rights. However, the longer the case is in litigation, the more extra-judicial comments and disclosures can be made and the greater the likelihood of prejudice to the respondents: it will be months before respondents can present their defense to a court of law. Under these circumstances non-disclosure during pendency of the litigation is reasonable.

23/ The District Court's Order does not preclude its modification before conclusion of the litigation.

CONCLUSION

For the foregoing reasons, this Court should deny petitioners' Petition for a Writ of Mandamus and/or Prohibition.

Respectfully submitted,

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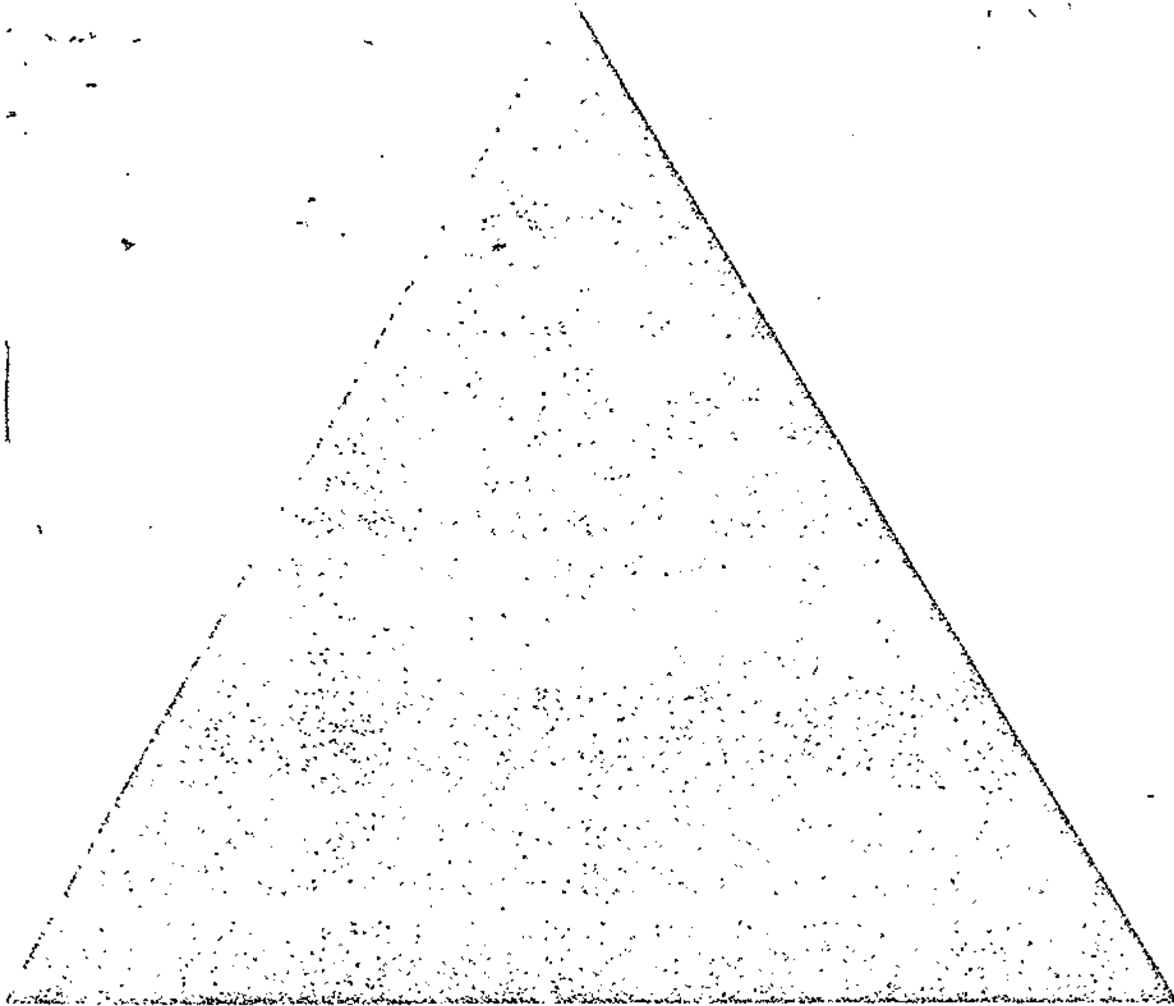


CODE OF PROFESSIONAL RESPONSIBILITY AS AMENDED BY THE DISTRICT OF COLUMBIA COURT OF APPEALS

DISTRICT OF COLUMBIA COURT OF APPEALS

4. DR 2-105(A)(1) is amended to read as follows:

"(1) A lawyer admitted to practice before the United States Patent Office may use the designation 'Patents,' 'Patent Attorney,' or 'Patent Lawyer,' or any combination of those terms, on his letterhead and office sign. A lawyer engaged in the trademark practice may use the designation 'Trademarks,' 'Trademark Attorney,' or 'Trademark Lawyer,' or any combination of those terms, on his letterhead and office sign, and a lawyer engaged in the admiralty practice may use the designation 'Admiralty,' 'Proctor in Admiralty,' or 'Admiralty Lawyer,' or any combination of those terms, on his letterhead and office sign."

5. DR 2-108(B) is amended to read as follows:

"In connection with the settlement of a controversy or suit, a lawyer shall not enter into an agreement that restricts his right to practice law."

6. DR 7-102(B)(1) is amended to read as follows:

"(B) A lawyer who receives information clearly establishing that:

(1) His client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon his client to rectify the same."

7. DR 7-107(G) and (H) are deleted and in lieu thereof Canon 20 of the Canons of Professional Ethics is retained. Canon 20 reads as follows:

"20. Newspaper Discussion of Pending Litigation.

Newspaper publications by a lawyer as to pending or anticipated litigation may interfere with a fair trial in the Courts and otherwise prejudice the due administration of justice. Generally they are to be condemned. If the extreme circumstances of a particular case justify statement to the public, it is unprofessional to make it anonymously. An ex parte reference to the facts should not go beyond quotation from the records and papers on file in the court; but even in extreme cases it is better to avoid any ex parte statement."

8. There is added to the DEFINITIONS section a new subsection:

"7. 'A bar association representative of the general bar' includes a bar association of specialists as referred to in DR 2-105(A)(1) or (4)."

he has no counsel, of the existence of evidence, known to the prosecutor or other government lawyer, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment.

DR 7-104 Communicating With One of Adverse Interest.[74]

(A) During the course of his representation of a client a lawyer shall not:

(1) Communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party[75] or is authorized by law to do so.

(2) Give advice to a person who is not represented by a lawyer, other than the advice to secure counsel,[76] if the interests of such person are or have a reasonable possibility of being in conflict with the interests of his client.[77]

DR 7-105 Threatening Criminal Prosecution.

(A) A lawyer shall not present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter.

DR 7-106 Trial Conduct.

(A) A lawyer shall not disregard or advise his client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding, but he may take appropriate steps in good faith to test the validity of such rule or ruling.

(B) In presenting a matter to a tribunal, a lawyer shall disclose:[78]

(1) Legal authority in the controlling jurisdiction known to him to be directly adverse to the position of his client and which is not disclosed by opposing counsel.[79]

(2) Unless privileged or irrelevant, the identities of the clients he represents and of the persons who employed him.[80]

(C) In appearing in his professional capacity before a tribunal, a lawyer shall not:

(1) State or allude to any matter that he has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.[81]

(2) Ask any question that he has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person.[82]

(3) Assert his personal knowledge of the facts in issue, except when testifying as a witness.

(4) Assert his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused;[83] but he may argue, on his analysis of the evidence, for any position or conclusion with respect to the matters stated herein.

(5) Fail to comply with known local customs of courtesy or practice of the bar or a particular tribunal without giving to opposing counsel timely notice of his intent not to comply.[84]

(6) Engage in undignified or discourteous conduct which is degrading to a tribunal.

(7) Intentionally or habitually violate any established rule of procedure or of evidence.

DR 7-107 Trial Publicity.[85]

(A) A lawyer participating in or associated with the investigation of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that does more than state without elaboration:

(1) Information contained in a public record.

(2) That the investigation is in progress.

(3) The general scope of the investigation including a description of the offense and, if permitted by law, the identity of the victim.

(4) A request for assistance in apprehending a suspect or assistance in other matters and the information necessary thereto.

(5) A warning to the public of any dangers.

(B) A lawyer or law firm associated with the prosecution or defense of a criminal matter shall not, from the time of the filing of a complaint, information, or indictment, the issuance of an arrest warrant, or arrest until the commencement of the trial or disposition without trial, make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to:

(1) The character, reputation, or prior criminal record (including arrests, indictments, or other charges of crime) of the accused.

(2) The possibility of a plea of guilty to the offense charged or to a lesser offense.

(3) The existence or contents of any confession, admission, or statement given by the accused or his refusal or failure to make a statement.

(4) The performance or results of any examinations or tests or the refusal or failure of the accused to submit to examinations or tests.

(5) The identity, testimony, or credibility of a prospective witness.

(6) Any opinion as to the guilt or innocence of the accused, the evidence, or the merits of the case.

(C) DR 7-107 (B) does not preclude a lawyer during such period from announcing:

(1) The name, age, residence, occupation, and family status of the accused.

(2) If the accused has not been apprehended, any information necessary to aid in his apprehension or to warn the public of any dangers he may present.

(3) A request for assistance in obtaining evidence.

(4) The identity of the victim of the crime.

(5) The fact, time, and place of arrest, resistance, pursuit, and use of weapons.

(6) The identity of investigating and arresting officers or agencies and the length of the investigation.

(7) At the time of seizure, a description of the physical evidence seized, other than a confession, admission, or statement.

(8) The nature, substance, or text of the charge.

(9) Quotations from or references to public records of the court in the case.

(10) The scheduling or result of any step in the judicial proceedings.

(11) That the accused denies the charges made against him.

(D) During the selection of a jury or the trial of a criminal matter, a lawyer or law firm associated with the prosecution or defense of a criminal matter shall not make or participate in making an extra-judicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to the trial, parties, or issues in the trial or other matters that are reasonably likely to interfere with a fair trial, except that he may quote from or refer without comment to public records of the court in the case.

(E) After the completion of a trial or disposition without trial of a criminal matter and prior to the imposition of sentence, a lawyer or law firm associated with the prosecution or defense shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by public communication and that is reasonably likely to affect the imposition of sentence.

(F) The foregoing provisions of DR 7-107 also apply to professional disciplinary proceedings and juvenile disciplinary proceedings when pertinent and consistent with other law applicable to such proceedings.

*(G) A lawyer or law firm associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication and that relates to:

(1) Evidence regarding the occurrence of transaction involved.

(2) The character, credibility, or criminal record of a party, witness, or prospective witness.

(3) The performance or results of any examinations or tests or the refusal or failure of a party to submit to such.

(4) His opinion as to the merits of the claims or defenses of a party, except as required by law or administrative rule.

*See amendments p. 2

(5) Any other matter reasonably likely to interfere with a fair trial of the action.

*(H) During the pendency of an administrative proceeding, a lawyer or law firm associated therewith shall not make or participate in making a statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication if it is made outside the official course of the proceeding and relates to:

(1) Evidence regarding the occurrence or transaction involved.

(2) The character, credibility, or criminal record of a party, witness, or prospective witness.

(3) Physical evidence or the performance or results of any examinations or tests or the refusal or failure of a party to submit to such.

(4) His opinion as to the merits of the claims, defenses, or positions of an interested person.

(5) Any other matter reasonably likely to interfere with a fair hearing.

(I) The foregoing provisions of DR 7-107 do not preclude a lawyer from replying to charges of misconduct publicly made against him or from participating in the proceedings of legislative, administrative, or other investigative bodies.

(J) A lawyer shall exercise reasonable care to prevent his employees and associates from making an extrajudicial statement that he would be prohibited from making under DR 7-107.

DR 7-108 Communication with or Investigation of Jurors.

(A) Before the trial of a case a lawyer connected therewith shall not communicate with or cause another to communicate with anyone he knows to be a member of the venire from which the jury will be selected for the trial of the case.

(B) During the trial of a case:

(1) A lawyer connected therewith shall not communicate with or cause another to communicate with any member of the jury.[56]

(2) A lawyer who is not connected therewith shall not communicate with or cause another to communicate with a juror concerning the case.

(C) DR 7-108 (A) and (B) do not prohibit a lawyer from communicating with veniremen or jurors in the course of official proceedings.

(D) After discharge of the jury from further consideration of a case with which the lawyer was connected, the lawyer shall not ask questions of or make comments to a member of that jury that are calculated merely to harass or embarrass the juror or to influence his actions in future jury service.[57]

(E) A lawyer shall not conduct or cause, by financial support or otherwise, another to conduct a vexatious or harassing investigation of either a venireman or a juror.

(F) All restrictions imposed by DR 7-108 upon a lawyer also apply to communications with or investigations of members of a family of a venireman or a juror.

(G) A lawyer shall reveal promptly to the court improper conduct by a venireman or a juror, or by another toward a venireman or a juror or a member of his family, of which the lawyer has knowledge.

DR 7-109 Contact with Witnesses.

(A) A lawyer shall not suppress any evidence that he or his client has a legal obligation to reveal or produce.[58]

(B) A lawyer shall not advise or cause a person to secrete himself or to leave the jurisdiction of a tribunal for the purpose of making him unavailable as a witness therein.[59]

(C) A lawyer shall not pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of his testimony or the outcome of the case.[60] But a lawyer may advance, guarantee, or acquiesce in the payment of:

(1) Expenses reasonably incurred by a witness in attending or testifying.

(2) Reasonable compensation to a witness for his loss of time in attending or testifying.

(3) A reasonable fee for the professional services of an expert witness.

DR 7-110 Contact with Officials.[61]

(A) A lawyer shall not give or lend any thing of value to a judge, official, or employee of a tribunal.

(B) In an adversary proceeding, a lawyer shall not communicate, or cause another to communicate, as to the merits of the cause with a judge or an official before whom the proceeding is pending, except:

(1) In the course of official proceedings in the cause.

(2) In writing if he promptly delivers a copy of the writing to opposing counsel or to the adverse party if he is not represented by a lawyer.

(3) Orally upon adequate notice to opposing counsel or to the adverse party if he is not represented by a lawyer.

(4) As otherwise authorized by law.[62]

NOTES

1. "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law." Powell v. Alabama, 287 U.S. 45, 68-69, 77 L. Ed. 158, 170, 53 S. Ct. 55, 64 (1932).

2. *Cf.* ABA CANON 4.

"At times . . . [the tax lawyer] will be wise to discard some arguments and he should exercise discretion to emphasize the arguments which in his judgment are most likely to be persuasive. But this process involves legal judgment rather than moral attitudes. The tax lawyer should put aside private disagreements with Congressional and Treasury policies. His own notions of policy, and his personal view of what the law should be, are irrelevant. The job entrusted to him by his client is to use all his learning and ability to protect his client's rights, not to help in the process of promoting a better tax system. The tax lawyer need not accept his client's economic and social opinions, but the client is paying for technical attention and undivided concentration upon his affairs. He is equally entitled to performance unfettered by his attorney's economic and social predilections." Paul, *The Lawyer as a Tax Adviser*, 25 ROCKY MT. L. REV. 412, 418 (1953).

3. *See* ABA CANONS 15 and 32.

ABA Canon 5, although only speaking of one accused of crime, imposes a similar obligation on the lawyer: "[T]he lawyer is bound, by all fair and honorable means, to present every defense that the law of the land permits, to the end that no person may be deprived of life or liberty, but by due process of law."

"Any persuasion or pressure on the advocate which deters him from planning and carrying out the litigation on the basis of 'what, within the framework of the law, is best for my client's interest?' interferes with the obligation to represent the client fully within the law.

"This obligation, in its fullest sense, is the heart of the adversary process. Each attorney, as an advocate, acts for and seeks that which in his judgment is best for his client, within the bounds authoritatively established. The advocate does not *decide* what is just in this case—he would be usurping the function of the judge and jury—he acts for and seeks for his client that which he is entitled to under the law. He can do no less and properly represent the client." Thode, *The Ethical Standard for the Advocate*, 39 TEXAS L. REV. 575, 584 (1961).

"The [Texas public opinion] survey indicates that distrust of the lawyer can be traced directly to certain factors. Foremost of these is a basic misunderstanding of the function of the lawyer as an advocate in an adversary system.

"Lawyers are accused of taking advantage of 'loopholes' and 'technicalities' to win. Persons who make this charge are unaware, or do not understand, that the lawyer is hired to win, and if he does not exercise every legitimate effort in his client's behalf, then he is betraying a sacred trust." Rochelle & Payne, *The Struggle for Public Understanding*, 25 TEXAS B.J. 109, 159 (1962).

"The importance of the attorney's undivided allegiance and faithful service to one accused of crime, irrespective of the attorney's personal opinion as to the guilt of his client, lies in Canon 5 of the American Bar Association Canon of Ethics.

"The difficulty lies, of course, in ascertaining whether the attorney has been guilty of an error of judgment, such as an election with respect to trial tactics, or has otherwise been actuated by his conscience or belief that his client should be convicted in any event. All too frequently courts are called upon to review actions of defense counsel which are, at the most, errors of judgment, not properly reviewable on habeas corpus unless the trial is a farce and a mockery of justice which requires the court to intervene. . . . But when defense counsel, in a truly adverse proceeding, admits that his conscience would not permit him to adopt certain customary trial procedures, this extends beyond the realm of judgment and strongly suggests an invasion of constitutional rights." Johns v. Smyth, 176 F. Supp. 949, 952 (E.D. Va. 1959), *modified*, United States ex rel. Wilkins v. Banmiller, 205 F. Supp. 123, 128, n. 5 (E.D. Pa. 1962), *aff'd*, 325 F. 2d 514 (3d Cir. 1963), *cert. denied*, 379 U.S. 847, 13 L. Ed. 2d 51, 85 S. Ct. 87 (1964).

* See amendments p. 2

which the lawyer expressly relies, which would reasonably be considered important by the judge sitting on the case.

. . . . The test in every case should be: Is the decision which opposing counsel has overlooked one which the court should clearly consider in deciding the case? Would a reasonable judge properly feel that a lawyer who advanced, as the law, a proposition adverse to the undisclosed decision, was lacking in candor and fairness to him? Might the judge consider himself misled by an implied representation that the lawyer knew of no adverse authority?" *ABA Opinion* 280 (1949).

80. "The authorities are substantially uniform against any privilege as applied to the fact of retainer or identity of the client. The privilege is limited to confidential communications, and a retainer is not a confidential communication, although it cannot come into existence without some communication between the attorney and the—at that stage prospective—client." United States v. Pape, 144 F.2d 778, 782 (2d Cir. 1944), *cert. denied*, 323 U.S. 752, 89 L. Ed. 2d 602, 65 S. Ct. 86 (1944).

"To be sure, there may be circumstances under which the identification of a client may amount to the prejudicial disclosure of a confidential communication, as where the substance of a disclosure has already been revealed but not its source." Colton v. United States, 306 F. 2d 633, 637 (2d Cir. 1962).

81. *See* ABA CANON 22; *cf.* ABA CANON 17.

"The rule allowing counsel when addressing the jury the widest latitude in discussing the evidence and presenting the client's theories falls far short of authorizing the statement by counsel of matter not in evidence, or indulging in argument founded on no proof, or demanding verdicts for purposes other than the just settlement of the matters at issue between the litigants, or appealing to prejudice or passion. The rule confining counsel to legitimate argument is not based on etiquette, but on justice. Its violation is not merely an overstepping of the bounds of propriety, but a violation of a party's rights. The jurors must determine the issues upon the evidence. Counsel's address should help them do this, not tend to lead them astray." Cherry Creek Nat. Bank v. Fidelity & Cas. Co., 207 App. Div. 787, 790-91, 202 N. Y. S. 611, 614 (1924).

82. *Cf.* ABA CANON 18.

"§6068. . . . It is the duty of an attorney:

. . . .

"(f) To abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged." CAL. BUSINESS AND PROFESSIONS CODE §6068 (West 1962).

83. "The record in the case at bar was silent concerning the qualities and character of the deceased. It is especially improper, in addressing the jury in a murder case, for the prosecuting attorney to make reference to his knowledge of the good qualities of the deceased where there is no evidence in the record bearing upon his character. . . . A prosecutor should never inject into his argument evidence not introduced at the trial." People v. Dukes, 12 Ill. 2d 334, 341, 146 N. E. 2d 14, 17-18 (1957).

84. "A lawyer should not ignore known customs or practice of the Bar or of a particular Court, even when the law permits, without giving timely notice to the opposing counsel." ABA CANON 25.

85. The provisions of Sections (A), (B), (C), and (D) of this Disciplinary Rule incorporate the fair trial-free press standards which apply to lawyers as adopted by the ABA House of Delegates, Feb. 19, 1968, upon the recommendation of the Fair Trial and Free Press Advisory Committee of the ABA Special Committee on Minimum Standards for the Administration of Criminal Justice.

Cf. ABA CANON 20; *see generally* ABA ADVISORY COMMITTEE ON FAIR TRIAL AND FREE PRESS, STANDARDS RELATING TO FAIR TRIAL AND FREE PRESS (1966).

"From the cases coming here we note that unfair and prejudicial news comment on pending trials has become increasingly prevalent. Due process requires that the accused receive a trial by an impartial jury free from outside influences. Given the pervasiveness of modern communications and the difficulty of effacing prejudicial publicity from the minds of the jurors, the trial courts must take strong measures to ensure that the balance is never weighed against the accused. And appellate tribunals have the duty to make an independent evaluation of the circumstances. Of course, there is nothing that proscribes the press from reporting events that transpire in the courtroom. But where there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial, the judge should continue the case until the threat abates, or transfer it to another county not so permeated with publicity. . . . The courts must take such steps by rule and regulation that will protect their processes from prejudicial outside interferences. Neither prosecutors, counsel for defense, the accused, witnesses, court staff nor enforcement officers coming under the jurisdiction of the court should be permitted to frustrate its function. Collaboration between counsel and the press as to information affecting the fairness of a criminal trial is not only subject to regulation, but is highly censurable and worthy of disciplinary measures." Sheppard v. Maxwell, 384 U.S. 333, 362-63, 16 L. Ed. 2d 600, 620, 86 S. Ct. 1507, 1522 (1966).

86. *See* ABA CANON 23.

87. "[I]t would be unethical for a lawyer to harass, entice, induce or exert influence on a juror to obtain his testimony." *ABA Opinion* 319 (1968).

88. *See* ABA CANON 5.

89. *Cf.* ABA CANON 5.

"*Rule 15.* . . . A member of the State Bar shall not advise a person, whose testimony could establish or tend to establish a material fact, to avoid service of process, or secrete himself, or otherwise to make his testimony unavailable." CAL. BUSINESS AND PROFESSIONS CODE §6076 (West 1962).

90. *See In re* O'Keefe, 49 Mont. 369, 142 P. 638 (1914).

91. *Cf.* ABA CANON 3.

92. "*Rule 16.* . . . A member of the State Bar shall not, in the absence of opposing counsel, communicate with or argue to a judge or judicial officer except in open court upon the merits of a contested matter pending before such judge or judicial officer; nor shall he, without furnishing opposing counsel with a copy thereof, address a written communication to a judge or judicial officer concerning the merits of a contested matter pending before such judge or judicial officer. This rule shall not apply to ex parte matters." CAL. BUSINESS AND PROFESSIONS CODE §6076 (West 1962).

CANON 8

A Lawyer Should Assist in Improving the Legal System

ETHICAL CONSIDERATIONS

EC 8-1 Changes in human affairs and imperfections in human institutions make necessary constant efforts to maintain and improve our legal system.[1] This system should function in a manner that commands public respect and fosters the use of legal remedies to achieve redress of grievances. By reason of education and experience, lawyers are especially qualified to recognize deficiencies in the legal system and to initiate corrective measures therein. Thus they should participate in proposing and supporting legislation and programs to improve the system,[2] without regard to the general interests or desires of clients or former clients.[3]

EC 8-2 Rules of law are deficient if they are not just, understandable, and responsive to the needs of society. If a lawyer believes that the existence or absence of a rule of law, substantive or procedural, causes or contributes to an unjust result, he should endeavor by lawful means to obtain appropriate changes in the law. He should encourage the simplification of laws and the repeal or amendment of laws that are outmoded.[4] Likewise, legal procedures should be improved whenever experience indicates a change is needed.

EC 8-3 The fair administration of justice requires the availability of competent lawyers. Members of the public should be educated to recognize the existence of legal problems and the resultant need for legal services, and should be provided methods for intelligent selection of counsel. Those persons unable to pay for legal services should be provided needed services. Clients and lawyers should not be penalized by undue geographical restraints upon representation in legal matters, and the bar should address itself to improvements in licensing, reciprocity, and admission procedures consistent with the needs of modern commerce.

EC 8-4 Whenever a lawyer seeks legislative or administrative changes, he should identify the capacity in which he appears, whether on behalf of himself, a client, or the public.[5] A lawyer may advocate such changes on behalf of a client even though he does not agree with them. But when a lawyer purports to act on behalf of the public, he should espouse only those changes which he conscientiously believes to be in the public interest.

EC 8-5 Fraudulent, deceptive, or otherwise illegal con-

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

FILED

JAMES F. DAVEY, Clerk

RALPH NADER, et al.,

Plaintiffs,

v.

EARL BUTZ, et al.,

Defendants.

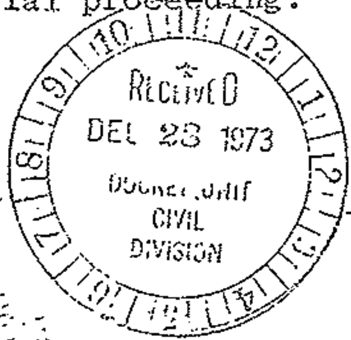
CIVIL ACTION NO. 148-72

PROTECTIVE ORDER

This matter having come before the Court at a hearing on December 19, 1973, and defendants having orally moved for a protective order which would prohibit the premature disclosure by counsel of material furnished under subpoena in this case but not yet publicly filed with the Court, and counsel for plaintiffs having indicated that plaintiffs offered no objection to said motion as limited, and the Court finding that good cause exists for the issuance of such an order, it is, therefore, this 21st day of December 1973 hereby

ORDERED

That counsel in this case are directed not to publicly disclose material submitted to them under subpoena unless and until such material is publicly filed with the Court in some appropriate manner or otherwise appropriately utilized in this judicial proceeding.



UNITED STATES DISTRICT JUDGE

145-8-969

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 77-1313

IN RE ADELE HALKIN, ET AL.

CERTIFICATE OF SERVICE

On April 25, 1977, two copies each of the attached Answer to Petition for Mandamus/Prohibition were served by prepaid first class mail upon counsel for the petitioners, Mark H. Lynch, Esq., 2000 P Street, N.W., Washington, D.C., 20036; upon the Honorable June L. Green, United States District Judge, Room 2333 United States Courthouse, Washington, D.C., 20001; and upon the following counsel for co-respondents:

Charles P. Sifton, Esq.
LeBoeuf, Lamb, Leiby & MacRae
140 Broadway
New York, New York 10005

Alvin K. Hellerstein, Esq.
Stoock & Stroock & Lavan
61 Broadway
New York, New York 10006

H. Richard Schumacher, Esq.
Cahill, Gordon & Reindel
80 Pine Street
New York, New York 10005

Donald J. Mulvihill, Esq.
Cahill, Gordon & Reindel
1819 H Street, N.W.
Washington, D.C. 20006

GORDON W. DAIGER
Attorney, Department of Justice

Attorney Respondents (Federal
Defendants below)
Washington, D.C. 20530
Telephone: 202/739-3688

MARK H. LYNCH
ATTORNEY AT LAW
600 PENNSYLVANIA AVENUE, S. E., SUITE 301
WASHINGTON, D. C. 20003
(202) 544-1681

August 29, 1977

OUTSIDE SOURCE

32/45

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Assistant Attorney General
Department of Justice
Washington, D.C.

(D.D.C.)

Dear

A pleading which you filed on August 15, 1977 in the above-captioned case states that no appearance has yet been entered on behalf of certain present and former government officials who have been sued in their individual capacities. Memorandum of Points and Authorities in Support of Federal Defendants' Motion to Stay Certain Discovery Pending Disposition of Current Motions. I have checked the docket sheet and have found that the appearance of Justice Department attorneys in this case has been limited to representation of the following agency heads in their official capacities: the Director of Central Intelligence, the Director of the National Security Agency, the Director of the Federal Bureau of Investigation, the Secretary of Defense, and the Director of the Secret Service. The purpose of this letter is to request you to determine, pursuant to 28 C.F.R. §§ 50.15 and 50.16, whether the Department of Justice will represent the current and former government officials who have been sued in their individual capacities in this action.

REC-76 62-116878-34 SEP 21 1977 EX-110

In regard to this matter I would like to point out that although Justice Department attorneys have not entered formal appearances on behalf of the individual defendants, a number of the actions taken by the attorneys assigned to this case have created the impression that they were representing the individual defendants. A few examples, should suffice to demonstrate this point. (1) At the first status conference in this

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242

70 SEP 29 1977

CORRESPONDENCE

case, [redacted] stated to the Court: "I would like to preserve on behalf of all named defendants the opportunity to contest the Court's jurisdiction...." Transcript, p.9 (emphasis added). (2) The certificates of service on all of the pleadings filed by the Department indicate that these pleadings have not been served on the individual defendants. If the Department attorneys have not been representing these individuals, they have failed in their obligation to serve pleadings directly on parties whom they know to be unrepresented. (3) Federal Defendants' First Interrogatories to plaintiffs include numerous questions which would be irrelevant if the Department attorneys who propounded the interrogatories were only representing heads of agencies sued in their official capacities for injunctive relief. (4) In a discussion over which of those interrogatories plaintiffs would have to answer, [redacted] proposed that certain interrogatories could be withdrawn if plaintiffs would drop their claims for damages. This proposal was wholly inappropriate if the Justice Department is not representing the defendants in their individual capacities.

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In view of this past pattern of conduct, the fact that the Attorney General was served with a copy of the complaint on October 30, 1975, and the fact that the above-referenced regulation became effective on January 31, 1977, I urge you to give your prompt attention to this matter. Both the individual defendants and the plaintiffs deserve to know whether the Department will represent these defendants.

Sincerely,

[redacted]

Attorney for Plaintiffs

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[redacted]

cc: [redacted] Esquire
Counsel of record for the carrier defendants

[redacted]

General Vernon A. Walters

[redacted]

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FBI/DOJ

OPTIONAL FORM NO. 10
1973 EDITION
GSA FPMR (41 CFR) 101-11.6
UNITED STATES GOVERNMENT

Memorandum

TO : Clarence M. Kelley
Director
Federal Bureau of Investigation

DATE: OCT 19 1977

[redacted]
Assistant Attorney General
Civil Division

[redacted] 91-16-3738

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[redacted] et al.
Civil Action No. [redacted] (D.D.C.)

Attn: Legal Counsel

Please find enclosed a copy of plaintiffs' Second Amended Complaint which the Court has ordered be responded to by November 1, 1977.

In that you are sued in your individual as well as official capacity, it will be necessary to file an answer on your behalf based on your personal knowledge of the allegations in the Complaint. Accordingly, in order to assist us in preparing an answer on your behalf, please review carefully each of the allegations in the Second Amended Complaint and advise us which, based on your personal knowledge, should be admitted, which should be denied, and which you lack sufficient knowledge of in order to form a reasonable belief as to their accuracy.

We would appreciate receiving your response by Tuesday, October 25, 1977 in order to prepare a timely answer on your behalf.

#3

33 OCT 20 1977
EXP. PROC.

REC-134 62-116878-35X
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2 OCT 31 1977

ENCLOSURE ATTACHED
ENCLOSURE
ENCL BEHIND FILE

1 - ICC
RM 7338

RECEIVED BY CIVIL LITIGATION UNIT ON 10-25-77
SA [redacted]

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DATE 11/8/99 BY SP[redacted]

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SP[redacted]
6/2[redacted] # 88-1826

ENCLOSURE

62-116878-35X

B. Preliminary and permanent injunctions enjoining the defendants from engaging in the activities declared to be illegal and unconstitutional;

C. A mandatory injunction or writ of mandamus ordering the defendants to produce before the Court, for delivery to the plaintiffs and members of their class for destruction, all files, reports, records, photographs, data computer tapes and cards, and all other materials derived from defendants' illegal and unconstitutional activities relating to plaintiffs and all other persons similarly situated;

D. Each named plaintiff and member of the plaintiff class have judgment against each defendant in the sum of $100.00 per day of procurement of interception, divulgence and use, and interception, divulgence and use of the plaintiffs' wire, cable or radio communications, as liquidated damages pursuant to Title 18, United States Code Section 2520 and Title 47, United States Code, Section 605.

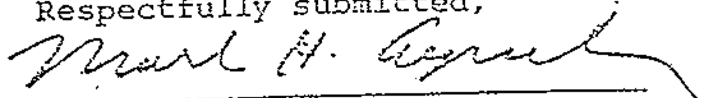
E. Each named plaintiff and member of the plaintiff class have judgment against each defendant in a sum to be determined by the Court for violation of plaintiffs' First, Fourth, Fifth and Ninth Amendment rights.

F. Recovery in the amount of $50,000 punitive damages for the willful violation of constitutional rights for each plaintiff and each member of the plaintiff class.

G. The reasonable costs of this action and attorneys' fees of plaintiffs.

H. Such other and further relief as the Court shall deem just and proper.

Respectfully submitted,



Mark H. Lynch
John H. F. Shattuck
American Civil Liberties Union
Foundation
600 Pennsylvania Ave., S.E.
Suite 301
Washington, D.C. 20003
(202)544-1681

b6
b7C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SECOND AMENDED COMPLAINT

ADELE HALKIN
14 West Elm Street
Apartment 1104
Chicago, Illinois 60611
(312) 664-5930;
STEVE HALLIWELL
30 Loomis Street
Montpelier, Vermont 05602
(802) 223-3501;
DON LUCE
159 Second Avenue
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(212) 677-5262;
JOHATHAN MIRSKY
Thetford, Vermont 05074
(802) 785-2042;
SIDNEY PECK
15 Farrar Street
Cambridge, Mass. 02138
(617) 547-3849;
DANIEL SCHECHTER
38 Dartmouth Street
Somerville, Mass. 02145
(617) 266-1111;
ETHEL TAYLOR
41 Conshohocken State Rd.
Apartment 714
Bala Cynwyd, Pa. 19004
(215) 644-5646;
~~CORA WEISS~~
~~5022 Waldo Road~~
~~Riverdale, New York 10471~~
~~(212) 490-3910~~
~~AMERICAN FRIENDS SERVICE COMMITTEE,~~ INC.
~~1501 Cherry Street~~
~~Philadelphia, Pennsylvania~~ 19102
~~(215) 241-7000~~;
~~CLERGY AND LAITY CONCERNED~~
198 Broadway
~~New York, New York 10038~~
~~(212) 964-6730;~~
COMMITTEE OF CONCERNED ASIAN SCHOLARS,
c/o Angus McDonald, National Coordinator,
614 Social Science Building,
University of Minnesota,
Minneapolis, Minn. 55455
(612) 378-2571;
WOMEN STRIKE FOR PEACE
145 South 13th Street, Room 407
Philadelphia, Pa. 19107
(215) 923-0861;
NINA S. ADAMS
1717 South Whittier Avenue
Springfield, Illinois 62704
(217) 528-7247;
LEONARD PALMER ADAMS, II
1717 South Whittier Avenue
Springfield, Illinois 62704
(217) 528-7247;
DAVID F. ADDLESTONE
2301 - 39th Street, N.W.
Washington, D.C. 20007
(202) 338-3877;

Civil Action
No. 75-1773

FILED
JUL 28 1977
JAMES F. DAVEY, CLERK

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DATE 6/26/94 BY SP
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per review of 6/21/94
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69 Elsie Street
San Francisco, Calif. 94110
(415) 821-1043;
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Bath Road
R.D. #1
Dundee, New York 14837
(607) 292-3842;
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CARL WHITNEY JACOBSON
1915 McIntyre Drive
Ann Arbor, Michigan 48105
(313) 769-4733;
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New York, New York 10016
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St. Paul, Minnesota 55104
(612) 644-8800;
RICHARD CLARK KAGAN
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(612) 644-8800;
ANGUS W. MC DONALD, JR.
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Minneapolis, Minnesota 55414
(612) 387-2571;
HUGH I. MANKE
20 Second Avenue
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235 Emerson Street, N.W.
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JOSEPH REMCHO
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El Cerrito, California 94530
(415) 237-6471;
GEORGE WILLIAMS WEBBER
315 East 106th Street
Apartment 20-B
New York, New York 10029
(212) TE 1-1082;
~~MARTHA KENDELL WINNEGAR~~
~~1404 Berkeley Way~~
~~Berkeley, California~~ 94702
~~(415) 841-1439~~;
~~PAUL M. WINNEGAR~~
~~1404 Berkeley Way~~
~~Berkeley, California~~ 94702
~~(415) 841-1439;~~

Plaintiffs,

v.

RICHARD HELMS)
Department of State)
United States Embassy)
Teheran, Iran;)
JAMES R. SCHLESINGER)
Department of Defense)
The Pentagon)
Washington, D.C. 20301;)
RUFUS N. TAYLOR)
90-A North Lake View Drive)
Whispering Pines, North Carolina 28389;)
ROBERT E. CUSHMAN, JR.)
Commandant of the Marine Corps,)
Navy Department)
Washington, D.C. 20380;)
VERNON A. WALTERS)
22955 Ocean Boulevard)
Palm Beach, Florida 33480;)
WILLIAM E. COLBY)
Central Intelligence Agency)
Washington, D.C. 20505;)
CORD MEYER, JR.)
Central Intelligence Agency)
Washington, D.C. 20505;)
JAMES J. ANGLETON)
4814 - 33rd Road)
North Arlington, Va. 22210;)
WILLIAM HOOD)
4450 South Park Avenue)
Chevy Chase, Maryland;)
RICHARD OBER)
Old Executive Office Building)
Washington, D.C. 20505;)
HOWARD OSBORN)
6803 East Avenue)
Chevy Chase, Maryland 20015;)
JAMES MURPHY)
Central Intelligence Agency)
Washington, D.C. 20505;)
MARSHALL CARTER)
c/o U.S. Milpercen)
200 Stovall Street)
Alexandria, Virginia 22332)
Attn. DAPC-PAS-A;)
NOEL GAYLER)
Department of the Navy)
The Pentagon)
Washington, D.C. 20301;)
SAMUEL C. PHILLIPS)
Department of the Air Force)
The Pentagon)
Washington, D.C. 20301;)
LEW ALLEN, JR.)
National Security Agency)
Fort Meade, Maryland;)
LOUIS W. TORDELLA)
9518 E. Stanhope Road)
Kensington, Maryland 20795;)
L. PATRICK GRAY, III)
325 State Street)
New London, Conn. 06320;)
CLARENCE KELLEY)
Director, Federal Bureau of Investigation)
Washington, D.C.;)
JAMES J. ROWLEY)
9615 Glencrest Lane)
Kensington, Maryland 20795;)

H. STUART KNIGHT
Director, U.S. Secret Service
Department of the Treasury
Washington, D.C.;
JOSEPH CARROLL
7306 Rippon Road
Alexandria, Vriginia;
DONALD BENNETT
c/o Defense Intelligence Agency
The Pentagon
Washington, D.C. 20301;
VINCENT DE POIX
2782 N. Wakefield
Arlington, Virginia;
WESTERN UNION INTERNATIONAL, INC.
2100 M Street, N.W.
Washington, D.C.;
RCA GLOBAL COMMUNICATIONS, INC.
60 Broad Street
New York, N.Y. 10004;
ITT WORLD COMMUNICATIONS, INC.
67 Broad Street
New York, N.Y. 10004;
JOHN DOE, RICHARD ROE and other unknown agents and employees of the United States Government.

Defendants.

Plaintiffs, by their attorneys, allege as follows for their Second Amended Complaint:

JURISDICTION

1. This is a civil action for declaratory and injunctive relief and money damages, arising under the First, Fourth, Fifth and Ninth Amendments to the Constitution; Title 18, United States Code, Sections 2510-2520; and Title 47, United States Code, Section 605; and Title 50 United States Code, Section 403(d)(3). The jurisdiction of this Court is predicated on Title 18, United States Code, Section 2520; Title 28, United States Code, Sections 1331(a), 1343(4) and 1361; Title 47, United States Code, Section 605; Title 42, United States Code, Section 1985(3); and the First, Fourth, Fifth and Ninth Amendments to the Constitution.

2. The matter in controversy, exclusive of interests and costs, exceeds $10.000.

PARTIES

3. Plaintiffs:

a. ADELE HALKIN is an American citizen and a member of Women Strike for Peace.

b. STEVE HALLIWELL is an American citizen, a former officer of Students for a Democratic Society and a founding member of the Committee for Liaison with Families of Servicemen Detained in Vietnam.

c. DON LUCE is an American citizen and Executive Director of Clergy and Laity Concerned.

d. JONATHAN MIRSKY is an American citizen and from 1963 to the present he has been a leader of anti-war activities.

e. SIDNEY PECK is an American citizen, a former Co-chairperson of the National Mobilization Committee to End the War in Vietnam and the former National Coordinator of People's Coalition for Peace and Justice.

f. DANIEL SCHECHTER is an American citizen formerly associated with Ramparts Magazine and the Africa Research Group, and a participant in various anti-war activities over the last decade.

g. ETHEL TAYLOR is an American citizen and the National Coordinator of Women Strike for Peace.

h. CORA WEISS is an American citizen, a leader of Women Strike for Peace, a former Co-chairperson of the New Mobilization Committee to End the War in Vietnam, a member of the Board of Directors of Clergy and Laity Concerned and a former Co-chairperson of the Committee of Liaison with Families of Servicemen Detained in Vietnam.

i. THE AMERICAN FRIENDS SERVICE COMMITTEE, INC. (AFSC) is a non-profit corporation dedicated to furthering the historic peace testimony and the social aims of the several branches of the Religious Society of Friends.

j. CLERGY AND LAITY CONCERNED (CALC) is a non-profit interfaith peace organization which has protested U.S. involvement in the Indochina War since 1965.

k. The COMMITTEE OF CONCERNED ASIAN SCHOLARS (CCAS) is a non-profit organization dedicated to opposing American intervention in the internal affairs of countries in Southeast Asia.

l. WOMEN STRIKE FOR PEACE is a non-profit organization dedicated to anti-war activities, including activities to end the war in Indochina.

m. NINA S. ADAMS is an American citizen, and at times material to the complaint was a member of the Committee of Concerned Asian Scholars, which was a target of Operation CHAOS.

n. LEONARD PALMER ADAMS, II is an American citizen and at times material to the complaint was a member of the Committee of Concerned Asian Scholars, which was a target of Operation CHAOS.

o. DAVID F. ADDLESTONE is an American citizen, and at times material to the complaint was an attorney associated with the Lawyers Military Defense Committee which was a target of Operation CHAOS.

p. SAMUEL W. BROWN, JR. is an American citizen, and at times material to the complaint was an organizer of the Vietnam Moratorium Committee.

q. HOWARD J. DE NIKE is an American citizen, and at times material to the complaint was an attorney associated with the Lawyers Military Defense Committee which was a target of Operation CHAOS.

r. DOLORES A. DONOVAN is an American citizen, and at times material to the complaint was an attorney associated with the Lawyers Military Defense Committee which was a target of Operation CHAOS.

s. THE REV. THOMAS L. HAYES is an American citizen, and at times material to the complaint was employed by Clergy and Laity Concerned and conducted a ministry to draft resisters and deserters in Sweden.

t. PATRICIA FITTS JACOBSON is an American citizen, and at times material to the complaint was a member of the Committee of Concerned Asian Scholars, which was a target of Operation CHAOS.

u. CARL WHITNEY JACOBSON is an American citizen, and at times material to the complaint was a member of the Committee of Concerned Asian Scholars, which was a target of

Operation CHAOS.

v. BRENNON JONES is an American citizen, and at times material to the complaint worked for Vietnam Christian Service, Dispatch News Service, the Indochina Mobile Education Project, and was an associate producer of Hearts and Minds, an Academy Award winning film about Vietnam.

w. LEIGH KAGAN is an American citizen, and at times material to the complaint was a member of the Committee of Concerned Asian Scholars, which was a target of Operation CHAOS. She has also received documents from the CIA under the Freedom of Information Act which indicate that she was a target of Operation CHAOS.

x. RICHARD CLARK KAGAN is an American citizen, and at times material to the complaint was a member of the Committee of Concerned Asian Scholars, which was a target of Operation CHAOS. He has also received documents from the CIA under the Freedom of Information Act which indicate that he was a target of Operation CHAOS.

y. ANGUS W. MC DONALD, JR. is an American citizen, and at times material to the complaint was a member of the Committee of Concerned Asian Scholars, which was a target of Operation CHAOS.

z. HUGH I. MANKE is an American citizen, and at times material to the complaint was a member and subsequently Director of International Voluntary Services' Vietnam Team.

aa. DAVID GARETH PORTER is an American citizen, and at times material to the complaint was a member of the Committee of Concerned Asian Scholars, a correspondent with Dispatch News Service, and a co-director of the Indochina Resource Center.

bb. JOSEPH REMCHO is an American citizen, and at times material to the complaint was an attorney associated with the Lawyers Military Defense Committee which was a target of Operation CHAOS.

cc. MARTHA KENDALL WINNEGAR is an American citizen, and at times material to the complaint was a member of the

Committee of Concerned Asian Scholars, which was a target of Operation CHAOS.

dd. PAUL M. WINNEGAR is an American citizen, and at times material to the complaint was a member of the Committee of Concerned Asian Scholars, which was a target of Operation CHAOS.

4. Defendants:

a. Defendant RICHARD HELMS is the United States Ambassador to Iran and was Director of the Central Intelligence Agency (hereinafter sometimes "CIA") from 1966 to 1973.

b. Defendant JAMES R. SCHLESINGER was Secretary of Defense from August 1973 to November 1975 and Director of the CIA from February to July 1973.

c. Defendant RUFUS N. TAYLOR is a Vice Admiral in the U.S. Navy and was Deputy Director of the CIA from 1966 to 1969.

d. Defendant ROBERT E. CUSHMAN, JR. is a General in the U.S. Marine Corps and a member of the Joint Chiefs of Staff, and was Deputy Director of the CIA from 1969 to 1971.

e. Defendant VERNON A. WALTERS is a Lieutenant General in the U.S. Army and was Deputy Director of the CIA in 1972.

f. Defendant WILLIAM E. COLBY is Director of Central Intelligence and of the CIA, and was Executive Director of the CIA from 1972 to 1973, and Deputy Director for Operations of the CIA in 1973.

g. Defendant CORD MEYER, JR. was, at times material to this complaint, Assistant Deputy Director for Plans of the CIA.

h. Defendant JAMES J. ANGLETON was, at times material to this complaint, Chief of the Counterintelligence Staff of the CIA.

i. Defendant WILLIAM HOOD was, at times material to this complaint, Deputy Chief of the Counter-intelligence Staff of the CIA.

j. Defendant RICHARD OBER was, at times material

to this complaint, in charge of a domestic surveillance operation of the Counterintelligence Staff of the CIA designated as CHAOS.

k. Defendant HOWARD OSBORN was, at times material to this complaint, Director of Security of the CIA.

l. Defendant JAMES MURPHY was, at times material to this complaint, Director of the Office of Operations of the CIA.

m. Defendant MARSHALL CARTER, a retired Lieutenant-General in the U.S. Army, was Director of the National Security Agency (hereinafter sometimes "NSA") from 1967 to 1969.

n. Defendant NOEL GAYLER, Vice Admiral in the U.S. Navy, was Director of the NSA from January 1969 to July 1972.

o. Defendant SAMUEL C. PHILLIPS, a Lieutenant-General in the U.S. Air Force, was Director of the NSA from August 1972 to July 1973.

p. Defendant LEW ALLEN, JR., a Lieutenant-General in the U.S. Air Force, is Director of the NSA.

q. Defendant LOUIS TORDELLA was, at times material to this complaint, the Deputy Director of the NSA.

r. Defendant L. PATRICK GRAY, III was, at times material to this complaint, Acting Director of the Federal Bureau of Investigation (hereinafter sometimes "FBI").

s. Defendant CLARENCE KELLEY is Director of the FBI.

t. Defendant JAMES J. ROWLEY was Director of the United States Secret Service (hereinafter sometimes "Secret Service") from 1967 until October 1973.

u. Defendant H. STUART KNIGHT is Director of the Secret Service.

v. Defendant JOSEPH CARROLL is a Lieutenant-General in the United States Air Force and was Director of the Defence Intelligence Agency (hereinafter sometimes "DIA") from 1961 to 1969.

w. Defendant DONALD BENNETT is a Lieutenant-General in the United States Army and was Director of DIA from September 1969 to August 1972.

x. Defendant VINCENT DE POIX is a Vice Admiral in the United States Navy and was Director of DIA from August 1972 until September 1974.

y. Defendants JOHN DOE, RICHARD ROE and other unknown agents or employees of the United States Government are persons unknown to Plaintiffs who participated with the other Defendants in the actions alleged in this complaint.

z. All the foregoing individual defendants are sued in their individual and official or former official capacities.

aa. Defendant WESTERN UNION INTERNATIONAL, INC. a communications common carrier, does business in the District of Columbia and provides overseas cable and telegraph service.

bb. Defendant RCA GLOBAL COMMUNICATIONS, INC., a communications common carrier, does business in the District of Columbia and provides overseas cable and telegraph service.

cc. Defendant ITT WORLD COMMUNICATIONS, INC., a communications common carrier, does business in the District of Columbia and provides overseas telegraph and cable service.

CLASS ACTION ALLEGATIONS

5. This suit is brought as a class action pursuant to Rule 23(a) of the Federal Rules of Civil Procedure, and is maintainable under Rule 23(b)(1)(A), 23(b)(2) and 23(b)(3).

6. Plaintiffs represent a class of United States citizens and domestic organizations who at various times during and after 1967 engaged in activities in opposition to the war in Indochina or in other lawful political activities, as a result of which (a) their international wire, cable or radio communications were intercepted and divulged without any judicial or statutory authorization by the National Security Agency acting at the request of other United States government agencies, and/or (b) their political and other constituionally protected activities became the subject of intrusive counterintelligence actions and files, conducted and maintained by a Special Operations Group within the Central Intelligence Agency known as "Operation CHAOS".

7. The class is so numerous as to make joinder of all members impossible. The total number and identity of the class members is known only to the NSA and the CIA, but plaintiffs estimate, on information and belief, that the class numbers at least 8,820 individuals, and 1,000 organizations.

8. The common questions of law and fact affecting all members of the class predominate over any questions affecting only individual members to such a degree that a class action is the only method

available for the fair and efficient adjudication of this controversy. The prosecution of separate claims by the members of the class would constitute an undue burden on the vindication of their rights and create the risk of inconsistent or varying adjudications, and could establish incompatible standards for the defendants' conduct.

9. The claims of the representative parties have the same legal and factual basis as the claims of the members of the class, the defendants have acted on similar grounds with respect to all members of the class, common relief is sought, and plaintiffs will fairly and adequately protect the interests of the class.

FACTS

10. On information and belief, in and after August 1967 defendants HELMS, TAYLOR, COLBY, MEYER, ANGLETON, HOOD, ROCCA, OBER, OSBORN, SCHLESINGER, CUSHMAN, WALTERS and MURPHY (hereinafter sometimes "the CIA defendants") established and administered a Special Operations Group, known as Operation CHAOS (hereinafter "CHAOS"), within the CIA's counterintelligence staff.

11. On information and belief, the purpose of the CIA defendants in establishing CHAOS was to collect, coordinate, evaluate, file and report information on"foreign contacts" of American citizens resident in the United States who expressed in various forms their political and moral opposition to the war in Indochina and other policies of the national government.

12. On information and belief, reports prepared by CHAOS and other units of the CIA beginning in 1967 concluded that domestic opposition to the Indochina war, of which the activities of plaintiffs, and their class were a part, had no significant foreign connection.

13. On information and belief, CHAOS gathered information from other units of the CIA and from other agencies, including the FBI, much of which related to the constitutionally protected associational and domestic political activities of the plaintiff class.

14. On information and belief, CHAOS recruited and trained approximately 40 undercover agents who infiltrated domestic organi-

zations, and reported on their constitutionally protected associational and domestic political activities, which reports, or information derived from them, were filed with CHAOS and disseminated to other units of the CIA and to other agencies.

14a. On information and belief, the CIA defendants authorized and directed their CHAOS agents and employees to discredit and disrupt the constitutionally protected associational and domestic political activities of the plaintiffs and their class through the actions of undercover agents who infiltrated the plaintiff organizations, and through other counterintelligence actions.

15. On information and belief, between 1967 and 1974 CHAOS opened and maintained "201" or "personality" files on approximately 7,200 individual United States citizens engaged in constitutionally protected associational and domestic political activities, including each of the named individual plaintiffs.

16. On information and belief, between 1967 and 1974 CHAOS opened and maintained approximately 1000 separate subject files on domestic organizations, including each of the named plaintiff organizations.

17. On information and belief, the information in the personality and organization files opened and maintained by CHAOS related to constitutionally protected associational and domestic political activities of the plaintiffs and members of their class.

18. On information and belief, information on the plaintiffs and members of their class which was gathered by CHAOS was conveyed by the CIA defendants to the White House, the FBI, and to other government agencies.

19. On information and belief, sometime after September 1969 CHAOS supplied a "watchlist" of United States citizens, including plaintiffs and their class, to another unit of the CIA, as a result of which first class mail from and to individuals on the watchlist was opened without any warrant or other form of judicial or legislative authorization, and copies of the opened letters or

of the CHAOS files and used by the CIA defendants.

20. On information and belief, sometime after September 1969 CHAOS also supplied a "watchlist" to agents and employees of the NSA, which included the names of all the named plaintiffs.

21. On information and belief, for a period of time not known to plaintiffs, defendants, CARTER, GAYLER, PHILLIPS, TORDELLA and ALLEN (hereinafter sometimes "the NSA defendants"), have authorized and directed the monitoring or interception, by their agents and employees, of the international communications of United States citizens, including cable and radio channels between the United States and foreign countries, selected telephone channels between the United States and foreign countries, and selected telephone and cable channels between foreign countries, all without warrants or any other form of judicial or legislative authorization.

22. On information and belief, at various times beginning in 1967, the NSA defendants, without warrants or any other forms of judicial or legislative authorization, authorized and directed their agents and employees to intercept and divulge or procure the interception and divulgence, of wire, cable or radio communications of, or relating to, members of the plaintiff class on the CHAOS "watchlist" provided to NSA by the CIA, and on other "watchlists" provided to NSA by defendants GRAY, KELLEY and other officials of the Federal Bureau of Investigation ("the FBI defendants"); defendants ROWLEY, KNIGHT and other officials of the United States Secret Service ("the Secret Service defendants"); and defendants CARROLL, BENNETT, DE POIX and other officials of the Defense Intelligence Agency ("the DIA defendants").

23. On information and belief, agents and employees of the NSA defendants procured the assistance and cooperation of defendants WESTERN UNION INTERNATIONAL, INC., RCA GLOBAL COMMUNICATIONS INC., and

ITT WORLD COMMUNICATIONS, INC. (hereinafter sometimes "the company defendants") in intercepting and divulging, without warrants or any other forms of judicial or legislative authorization, the wire, cable or radio communications of, or relating to the plaintiff class.

24. On information and belief, as a result of the warrantless and judicially and legislatively unauthorized interception and divulgence of the wire, cable or radio communications of plaintiffs and their class by the NSA and company defendants, at the request of the CIA, FBI, Secret Service, and DIA defendants, NSA supplied the CIA, FBI, Secret Service, and DIA defendants with summaries of the intercepted communications (hereinafter "the NSA materials") of the plaintiff class, which related to anti-war activities, travel abroad and other constitutionally protected movements and activities of members of the class.

25. On information and belief, information derived from the NSA materials was used and shared by the CIA, FBI, Secret Service, and DIA defendants and placed in files maintained by these defendants relating to the plaintiffs and their class.

26. On information and belief, in November 1974 some of the NSA materials were returned by the CIA defendants to NSA.

27. On information and belief, the CIA defendants caused the NSA materials to be returned to NSA because they knew the materials were the products of illegal and unconstitutional interceptions and divulgence of the plaintiffs' wire, cable or radio communications.

28. On information and belief, originals or copies of the NSA materials are intact in the possession of the NSA, FBI, Secret Service, and DIA.

29. On information and belief, the CIA, FBI, Secret Service, and DIA continue to maintain and disseminate files containing information about the constitutionally protected associational and political activities of the plaintiffs and their class, including information illegally and unconstitutionally obtained by intercepting and divulging the private mail and wire, cable or radio communications

of members of the class.

30. On information and belief, the individual and company defendants have engaged in an extended conspiracy unlawfully to conceal the acts complained of in paragraphs 10-29, supra, from the named plaintiffs and members of their class, from Congress, and from the public.

31. On information and belief, each of the defendants knew of and participated in, and/or concealed the illegal and unconstitutional activities described in paragraphs 10-29, supra.

32. On information and belief, each of the CIA defendants knew that their actions described above were taken in violation of the CIA's charter.

33. On information and belief, none of the defendants who participated in the actions described in paragraphs 10-29 above had a good faith belief that his or its actions were lawful.

FIRST CAUSE OF ACTION

34. The defendants' procurement of interception and divulgence and their interception and divulgence of the wire, cable or radio communications of plaintiffs and their class were unreasonable and illegal, and were not made in good faith reliance on any judicial, legislative or other valid authorization, or other reasonable belief in their legality.

35. The defendants' procurement of interception and divulgence, and their interception and divulgence of the wire, cable or radio communications of plaintiffs and their class violated Title 18, United States Code, Sections 2511 and 2520, and Title 47 United States Code, Section 605.

36. The defendants' procurement of interception and divulgence, and their interception and divulgence of the wire, cable or radio communications of plaintiffs and their class deprived plaintiffs of their rights of free speech and association under the First Amendment, their right to security against unreasonable searches and seizures guaranteed by the Fourth Amendment, and their right of privacy

guaranteed by the First, Fourth, Fifth and Ninth Amendments.

SECOND CAUSE OF ACTION

37. Plaintiffs repeat and reallege each allegation in paragraphs 1-33, *supra*.

38. The defendants' maintenance and dissemination of files on the constitutionally protected associational and political activities of plaintiffs and their class deprived plaintiffs of their rights of free speech and association under the First Amendment and their right to privacy under the First, Fourth, Fifth and Ninth Amendments.

39. Defendants' infiltration of the plaintiff organizations and members of their class by the use of undercover agents with false or concealed identities who disrupted, discredited and reported on the plaintiffs' constitutionally protected associational and political activities deprived plaintiffs of their freedom of speech and association protected by the First Amendment, their right to security against unreasonable searches and seizures protected by the Fourth Amendment and their right to privacy protected by the First, Fourth, Fifth and Ninth Amendments.

40. The activities of the defendants set forth above continue to interfere with, discourage and deter the plaintiffs in the exercise of their rights of free speech, assembly and association, and their right to petition the government for redress of grievances, guaranteed by the First Amendment.

THIRD CAUSE OF ACTION

41. Plaintiffs repeat and reallege each allegation in paragraphs 1-33, *supra*.

42. The CIA defendants' actions described above are in violation of Title 50, United States Code, Section 403(d)(3).

WHEREFORE, plaintiffs request that the Court grant the following relief:

A. A declaratory judgment that the course of conduct and activities of the defendants set forth above are illegal and unconstitutional;

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6
UNITED STATES GOVERNMENT

Memorandum

FEDERAL GOVERNMENT

TO : Director
Federal Bureau of Investigation

DATE: October 14, 1977

FROM : [redacted]
Assistant Attorney General
Civil Division

[redacted]
95-16-3837

b6
b7C

SUBJECT: [redacted] et al.,
Civil Action No [redacted] (D.D.C.)

Attention: [redacted]
Legal Counsel Office

Reference is made to our memorandum dated December 23, 1975, requesting a litigation report in the above-captioned civil action. The purpose of the requested litigation report was to enable Department attorneys to prepare an answer on behalf of your agency. The obligation to answer the Amended Complaint was stayed, however, pending the Court's decision on a claim of state secrets privilege asserted by the Secretary of Defense with regard to National Security Agency acquisition activities and on a related motion to dismiss that part of the civil action which pertains to those activities.

On June 30, 1977, the Court granted and denied in part the claim of privilege and, to the extent the Court granted the claim, dismissed that part of the action with prejudice. A copy of the Memorandum and Order is attached. Cross-appeals have been noticed from the District Court's decision.

By its Order dated October 5, 1977, the Court established an answer and discovery schedule (enclosed) for that part of the litigation which remains in the District Court. Additionally, the Court allowed the plaintiffs to amend their complaint to add 17 additional plaintiffs. Please note that the Second Amended Complaint (enclosed) excludes several of the original group of plaintiffs who voluntarily dismissed rather than respond to discovery. Motions to dismiss five other plaintiffs are pending before the Court; however, we do not expect a decision until after our answer is due.

62-116878-35
6 APR 19 1978

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2338

3 ENCLOSURE

ALL FBI INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 6/26/97 BY SP7 [redacted]
#88-1826

84 APR 17 1978

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

Under the Court's schedule, an answer must be filed to the Second Amended Complaint by November 1, 1977. Consequently, you are requested to review your files and records and prepare a proposed answer as to any allegations involving your agency. Additionally, as the attached discovery schedule reflects, we will now have to respond to interrogatories and Rule 34 requests by November 25, 1977.

In order that we can comply with the Court's schedule, you are requested to provide a draft answer, and documents pertinent thereto, by October 21, 1977. Additionally, you are requested to provide us with proposed responses to the discovery requests by November 10, 1977.

If you have any questions, you may contact either [redacted] [redacted]

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b7C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SECOND AMENDED COMPLAINT

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Civil Action
No. 75-1773

FILED
JUL 28 1977
JAMES F. DAVEY, Clerk

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ALL FBI INFORMATION CONTAINED
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DATE 6/26/96 BY SP
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~~PAUL M. WINNECAR~~
~~1404 Berkeley Way~~
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~~(415) 841-1439;~~

Plaintiffs,

v.

RICHARD HELMS
Department of State
United States Embassy
Teheran, Iran;
JAMES R. SCHLESINGER
Department of Defense
The Pentagon
Washington, D.C. 20301;
RUFUS N. TAYLOR
90-A North Lake View Drive
Whispering Pines, North Carolina 28389;
ROBERT E. CUSHMAN, JR.
Commandant of the Marine Corps,
Navy Department
Washington, D.C. 20380;
VERNON A. WALTERS
22955 Ocean Boulevard
Palm Beach, Florida 33480;
WILLIAM E. COLBY
Central Intelligence Agency
Washington, D.C. 20505;
CORD MEYER, JR.
Central Intelligence Agency
Washington, D.C. 20505;
JAMES J. ANGLETON
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WILLIAM HOOD
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Chevy Chase, Maryland;
RICHARD OBER
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HOWARD OSBORN
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JAMES MURPHY
Central Intelligence Agency
Washington, D.C. 20505;
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c/o U.S. Milpercen
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Attn. DAPC-PAS-A;
NOEL GAYLER
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The Pentagon
Washington, D.C. 20301;
SAMUEL C. PHILLIPS
Department of the Air Force
The Pentagon
Washington, D.C. 20301;
LEW ALLEN, JR.
National Security Agency
Fort Meade, Maryland;
LOUIS W. TORDELLA
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Kensington, Maryland 20796;
L. PATRICK GRAY, III
325 State Street
New London, Conn. 06320;
CLARENCE KELLEY
Director, Federal Bureau of Investigation
Washington, D.C.;
JAMES J. ROWLEY
9615 Glencrest Lane
Kensington, Maryland 20795;

H. STUART KNIGHT
Director, U.S. Secret Service
Department of the Treasury
Washington, D.C.;
JOSEPH CARROLL
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DONALD BENNETT
c/o Defense Intelligence Agency
The Pentagon
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VINCENT DE POIX
2782 N. Wakefield
Arlington, Virginia;
WESTERN UNION INTERNATIONAL, INC.
2100 M Street, N.W.
Washington, D.C.;
RCA GLOBAL COMMUNICATIONS, INC.
60 Broad Street
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ITT WORLD COMMUNICATIONS, INC.
67 Broad Street
New York, N.Y. 10004;
JOHN DOE, RICHARD ROE and other unknown agents and employees of the United States Government.

Defendants.

Plaintiffs, by their attorneys, allege as follows for their Second Amended Complaint:

JURISDICTION

1. This is a civil action for declaratory and injunctive relief and money damages, arising under the First, Fourth, Fifth and Ninth Amendments to the Constitution; Title 18, United States Code, Sections 2510-2520; and Title 47, United States Code, Section 605; and Title 50 United States Code, Section 403(d)(3). The jurisdiction of this Court is predicated on Title 18, United States Code, Section 2520; Title 28, United States Code, Sections 1331(a), 1343(4) and 1361; Title 47, United States Code, Section 605; Title 42, United States Code, Section 1985(3); and the First, Fourth, Fifth and Ninth Amendments to the Constitution.

2. The matter in controversy, exclusive of interests and costs, exceeds $10,000.

PARTIES

3. Plaintiffs:

a. ADELE HALKIN is an American citizen and a member of Women Strike for Peace.

b. STEVE HALLIWELL is an American citizen, a former officer of Students for a Democratic Society and a founding member of the Committee for Liaison with Families of Servicemen Detained in Vietnam.

c. DON LUCE is an American citizen and Executive Director of Clergy and Laity Concerned.

d. JONATHAN MIRSKY is an American citizen and from 1963 to the present he has been a leader of anti-war activities.

e. SIDNEY PECK is an American citizen, a former Co-chairperson of the National Mobilization Committee to End the War in Vietnam and the former National Coordinator of People's Coalition for Peace and Justice.

f. DANIEL SCHECHTER is an American citizen formerly associated with Ramparts Magazine and the Africa Research Group, and a participant in various anti-war activities over the last decade.

g. ETHEL TAYLOR is an American citizen and the National Coordinator of Women Strike for Peace.

h. CORA WEISS is an American citizen, a leader of Women Strike for Peace, a former Co-chairperson of the New Mobilization Committee to End the War in Vietnam, a member of the Board of Directors of Clergy and Laity Concerned and a former Co-chairperson of the Committee of Liaison with Families of Servicemen Detained in Vietnam.

i. THE AMERICAN FRIENDS SERVICE COMMITTEE, INC. (AFSC) is a non-profit corporation dedicated to furthering the historic peace testimony and the social aims of the several branches of the Religious Society of Friends.

j. CLERGY AND LAITY CONCERNED (CALC) is a non-profit interfaith peace organization which has protested U.S. involvement in the Indochina War since 1965.

k. The COMMITTEE OF CONCERNED ASIAN SCHOLARS (CCAS) is a non-profit organization dedicated to opposing American intervention in the internal affairs of countries in Southeast Asia.

Operation CHAOS.

v. BRENNON JONES is an American citizen, and at times material to the complaint worked for Vietnam Christian Service, Dispatch News Service, the Indochina Mobile Education Project, and was an associate producer of Hearts and Minds, an Academy Award winning film about Vietnam.

w. LEIGH KAGAN is an American citizen, and at times material to the complaint was a member of the Committee of Concerned Asian Scholars, which was a target of Operation CHAOS. She has also received documents from the CIA under the Freedom of Information Act which indicate that she was a target of Operation CHAOS.

x. RICHARD CLARK KAGAN is an American citizen, and at times material to the complaint was a member of the Committee of Concerned Asian Scholars, which was a target of Operation CHAOS. He has also received documents from the CIA under the Freedom of Information Act which indicate that he was a target of Operation CHAOS.

y. ANGUS W. MC DONALD, JR. is an American citizen, and at times material to the complaint was a member of the Committee of Concerned Asian Scholars, which was a target of Operation CHAOS.

z. HUGH I. MANKE is an American citizen, and at times material to the complaint was a member and subsequently Director of International Voluntary Services' Vietnam Team.

aa. DAVID GARETH PORTER is an American citizen, and at times material to the complaint was a member of the Committee of Concerned Asian Scholars, a correspondent with Dispatch News Service, and a co-director of the Indochina Resource Center.

bb. JOSEPH REMCHO is an American citizen, and at times material to the complaint was an attorney associated with the Lawyers Military Defense Committee which was a target of Operation CHAOS.

cc. MARTHA KENDALL WINNEGAR is an American citizen, and at times material to the complaint was a member of the

l. WOMEN STRIKE FOR PEACE is a non-profit organization dedicated to anti-war activities, including activities to end the war in Indochina.

m. NINA S. ADAMS is an American citizen, and at times material to the complaint was a member of the Committee of Concerned Asian Scholars, which was a target of Operation CHAOS.

n. LEONARD PALMER ADAMS, II is an American citizen and at times material to the complaint was a member of the Committee of Concerned Asian Scholars, which was a target of Operation CHAOS.

o. DAVID F. ADDLESTONE is an American citizen, and at times material to the complaint was an attorney associated with the Lawyers Military Defense Committee which was a target of Operation CHAOS.

p. SAMUEL W. BROWN, JR. is an American citizen, and at times material to the complaint was an organizer of the Vietnam Moratorium Committee.

q. HOWARD J. DE NIKE is an American citizen, and at times material to the complaint was an attorney associated with the Lawyers Military Defense Committee which was a target of Operation CHAOS.

r. DOLORES A. DONOVAN is an American citizen, and at times material to the complaint was an attorney associated with the Lawyers Military Defense Committee which was a target of Operation CHAOS.

s. THE REV. THOMAS L. HAYES is an American citizen, and at times material to the complaint was employed by Clergy and Laity Concerned and conducted a ministry to draft resisters and deserters in Sweden.

t. PATRICIA FITTS JACOBSON is an American citizen, and at times material to the complaint was a member of the Committee of Concerned Asian Scholars, which was a target of Operation CHAOS.

u. CARL WHITNEY JACOBSON is an American citizen, and at times material to the complaint was a member of the Committee of Concerned Asian Scholars, which was a target of

Committee of Concerned Asian Scholars, which was a target of Operation CHAOS.

dd. PAUL M. WINNECAR is an American citizen, and at times material to the complaint was a member of the Committee of Concerned Asian Scholars, which was a target of Operation CHAOS.

4. Defendants:

a. Defendant RICHARD HELMS ~~is~~ the United States Ambassador to Iran and was Director of the Central Intelligence Agency (hereinafter sometimes "CIA") from 1966 to 1973.

b. Defendant JAMES R. SCHLESINGER was Secretary of Defense from August 1973 to November 1975 and Director of the CIA from February to July 1973.

c. Defendant RUFUS N. TAYLOR is a Vice Admiral in the U.S. Navy and was Deputy Director of the CIA from 1966 to 1969.

d. Defendant ROBERT E. CUSHMAN, JR. is a General in the U.S. Marine Corps and a member of the Joint Chiefs of Staff, and was Deputy Director of the CIA from 1969 to 1971.

e. Defendant VERNON A. WALTERS is a Lieutenant General in the U.S. Army and was Deputy Director of the CIA in 1972.

f. Defendant WILLIAM E. COLBY is Director of Central Intelligence and of the CIA, and was Executive Director of the CIA from 1972 to 1973, and Deputy Director for Operations of the CIA in 1973.

g. Defendant CORD MEYER, JR. was, at times material to this complaint, Assistant Deputy Director for Plans of the CIA.

h. Defendant JAMES J. ANGLETON was, at times material to this complaint, Chief of the Counterintelligence Staff of the CIA.

i. Defendant WILLIAM HOOD was, at times material to this complaint, Deputy Chief of the Counter-intelligence Staff of the CIA.

j. Defendant RICHARD OBER was, at times material

to this complaint, in charge of a domestic surveillance operation of the Counterintelligence Staff of the CIA designated as CHAOS.

k. Defendant HOWARD OSBORN was, at times material to this complaint, Director of Security of the CIA.

l. Defendant JAMES MURPHY was, at times material to this complaint, Director of the Office of Operations of the CIA.

m. Defendant MARSHALL CARTER, a retired Lieutenant-General in the U.S. Army, was Director of the National Security Agency (hereinafter sometimes "NSA") from 1967 to 1969.

n. Defendant NOEL GAYLER, Vice Admiral in the U.S. Navy, was Director of the NSA from January 1969 to July 1972.

o. Defendant SAMUEL C. PHILLIPS, a Lieutenant-General in the U.S. Air Force, was Director of the NSA from August 1972 to July 1973.

p. Defendant LEW ALLEN, JR., a Lieutenant-General in the U.S. Air Force, is Director of the NSA.

q. Defendant LOUIS TORDELLA was, at times material to this complaint, the Deputy Director of the NSA.

r. Defendant L. PATRICK GRAY, III was, at times material to this complaint, Acting Director of the Federal Bureau of Investigation (hereinafter sometimes "FBI").

s. Defendant CLARENCE KELLEY is Director of the FBI.

t. Defendant JAMES J. ROWLEY was Director of the United States Secret Service (hereinafter sometimes "Secret Service") from 1967 until October 1973.

u. Defendant H. STUART KNIGHT is Director of the Secret Service.

v. Defendant JOSEPH CARROLL is a Lieutenant-General in the United States Air Force and was Director of the Defence Intelligence Agency (hereinafter sometimes "DIA") from 1961 to 1969.

w. Defendant DONALD BENNETT is a Lieutenant-General in the United States Army and was Director of DIA from September 1969 to August 1972.

x. Defendant VINCENT DE POIX is a Vice Admiral in the United States Navy and was Director of DIA from August 1972 until September 1974.

y. Defendants JOHN DOE, RICHARD ROE and other unknown agents or employees of the United States Government are persons unknown to Plaintiffs who participated with the other Defendants in the actions alleged in this complaint.

z. All the foregoing individual defendants are sued in their individual and official or former official capacities.

aa. Defendant WESTERN UNION INTERNATIONAL, INC. a communications common carrier, does business in the District of Columbia and provides overseas cable and telegraph service.

bb. Defendant RCA GLOBAL COMMUNICATIONS, INC., a communications common carrier, does business in the District of Columbia and provides overseas cable and telegraph service.

cc. Defendant ITT WORLD COMMUNICATIONS, INC., a communications common carrier, does business in the District of Columbia and provides overseas telegraph and cable service.

CLASS ACTION ALLEGATIONS

5. This suit is brought as a class action pursuant to Rule 23(a) of the Federal Rules of Civil Procedure, and is maintainable under Rule 23(b)(1)(A), 23(b)(2) and 23(b)(3).

6. Plaintiffs represent a class of United States citizens and domestic organizations who at various times during and after 1967 engaged in activities in opposition to the war in Indochina or in other lawful political activities, as a result of which (a) their international wire, cable or radio communications were intercepted and divulged without any judicial or statutory authorization by the National Security Agency acting at the request of other United States government agencies, and/or (b) their political and other constituionally protected activities became the subject of intrusive counterintelligence actions and files, conducted and maintained by a Special Operations Group within the Central Intelligence Agency known as "Operation CHAOS".

7. The class is so numerous as to make joinder of all members impossible. The total number and identity of the class members is known only to the NSA and the CIA, but plaintiffs estimate, on information and belief, that the class numbers at least 8,820 individuals, and 1,000 organizations.

8. The common questions of law and fact affecting all members of the class predominate over any questions affecting only individual members to such a degree that a class action is the only method

available for the fair and efficient adjudication of this controversy. The prosecution of separate claims by the members of the class would constitute an undue burden on the vindication of their rights and create the risk of inconsistent or varying adjudications, and could establish incompatible standards for the defendants' conduct.

9. The claims of the representative parties have the same legal and factual basis as the claims of the members of the class, the defendants have acted on similar grounds with respect to all members of the class, common relief is sought, and plaintiffs will fairly and adequately protect the interests of the class.

FACTS

10. On information and belief, in and after August 1967 defendants HELMS, TAYLOR, COLBY, MEYER, ANGLETON, HOOD, ROCCA, OBER, OSBORN, SCHLESINGER, CUSHMAN, WALTERS and MURPHY (hereinafter sometimes "the CIA defendants") established and administered a Special Operations Group, known as Operation CHAOS (hereinafter "CHAOS"), within the CIA's counterintelligence staff.

11. On information and belief, the purpose of the CIA defendants in establishing CHAOS was to collect, coordinate, evaluate, file and report information on "foreign contacts" of American citizens resident in the United States who expressed in various forms their political and moral opposition to the war in Indochina and other policies of the national government.

12. On information and belief, reports prepared by CHAOS and other units of the CIA beginning in 1967 concluded that domestic opposition to the Indochina war, of which the activities of plaintiffs, and their class were a part, had no significant foreign connection.

13. On information and belief, CHAOS gathered information from other units of the CIA and from other agencies, including the FBI, much of which related to the constitutionally protected associational and domestic political activities of the plaintiff class.

14. On information and belief, CHAOS recruited and trained approximately 40 undercover agents who infiltrated domestic organi-

zations, and reported on their constitutionally protected associational and domestic political activities, which reports, or information derived from them, were filed with CHAOS and disseminated to other units of the CIA and to other agencies.

14a. On information and belief, the CIA defendants authorized and directed their CHAOS agents and employees to discredit and disrupt the constitutionally protected associational and domestic political activities of the plaintiffs and their class through the actions of undercover agents who infiltrated the plaintiff organizations, and through other counterintelligence actions.

15. On information and belief, between 1967 and 1974 CHAOS opened and maintained "201" or "personality" files on approximately 7,200 individual United States citizens engaged in constitutionally protected associational and domestic political activities, including each of the named individual plaintiffs.

16. On information and belief, between 1967 and 1974 CHAOS opened and maintained approximately 1000 separate subject files on domestic organizations, including each of the named plaintiff organizations.

17. On information and belief, the information in the personality and organization files opened and maintained by CHAOS related to constitutionally protected associational and domestic political activities of the plaintiffs and members of their class.

18. On information and belief, information on the plaintiffs and members of their class which was gathered by CHAOS was conveyed by the CIA defendants to the White House, the FBI, and to other government agencies.

19. On information and belief, sometime after September 1969 CHAOS supplied a "watchlist" of United States citizens, including plaintiffs and their class, to another unit of the CIA, as a result of which first class mail from and to individuals on the watchlist was opened without any warrant or other form of judicial or legislative authorization, and copies of the opened letters or

of the CHAOS fil[illegible] by the CIA defendants.

20. On information and belief, sometime after September 1969, CHAOS also supplied a "watchlist" to agents and employees of the NSA, which included the names of all the named plaintiffs.

21. On information and belief, for a period of time not known to plaintiffs, defendants, CARTER, GAYLER, PHILLIPS, TORDELLA and ALLEN (hereinafter sometimes "the NSA defendants"), have authorized and directed the monitoring or interception, by their agents and employees, of the international communications of United States citizens, including cable and radio channels between the United States and foreign countries, selected telephone channels between the United States and foreign countries, and selected telephone and cable channels between foreign countries, all without warrants or any other form of judicial or legislative authorization.

22. On information and belief, at various times beginning in 1967, the NSA defendants, without warrants or any other forms of judicial or legislative authorization, authorized and directed their agents and employees to intercept and divulge or procure the interception and divulgence, of wire, cable or radio communications of, or relating to, members of the plaintiff class on the CHAOS "watchlist" provided to NSA by the CIA, and on other "watchlists" provided to NSA by defendants GRAY, KELLEY and other officials of the Federal Bureau of Investigation ("the FBI defendants"); defendants ROWLEY, KNIGHT and other officials of the United States Secret Service ("the Secret Service defendants"); and defendants CARROLL, BENNETT, DE POIX and other officials of the Defense Intelligence Agency ("the DIA defendants").

23. On information and belief, agents and employees of the NSA defendants procured the assistance and cooperation of defendants WESTERN UNION INTERNATIONAL, INC., RCA GLOBAL COMMUNICATIONS INC.; and

... WORLD COMMUNICATIONS, INC. (hereinafter sometimes "the company defendants") in [illegible] and divulging, [illegible] warrants or any other forms of judicial or legislative authorization, the wire, cable or radio communications of, or relating to the plaintiff class.

24. On information and belief, as a result of the warrantless and judicially and legislatively unauthorized interception and divulgence of the wire, cable or radio communications of plaintiffs and their class by the NSA and company defendants, at the request of the CIA, FBI, Secret Service, and DIA defendants, NSA supplied the CIA, FBI, Secret Service, and DIA defendants with summaries of the intercepted communications (hereinafter "the NSA materials") of the plaintiff class, which related to anti-war activities, travel abroad and other constitutionally protected movements and activities of members of the class.

25. On information and belief, information derived from the NSA materials was used and shared by the CIA, FBI, Secret Service, and DIA defendants and placed in files maintained by these defendants relating to the plaintiffs and their class.

26. On information and belief, in November 1974 some of the NSA materials were returned by the CIA defendants to NSA.

27. On information and belief, the CIA defendants caused the NSA materials to be returned to NSA because they knew the materials were the products of illegal and unconstitutional interceptions and divulgence of the plaintiffs' wire, cable or radio communications.

28. On information and belief, originals or copies of the NSA materials are intact in the possession of the NSA, FBI, Secret Service, and DIA.

29. On information and belief, the CIA, FBI, Secret Service, and DIA continue to maintain and disseminate files containing information about the constitutionally protected associational and political activities of the plaintiffs and their class, including information illegally and unconstitutionally obtained by intercepting and divulging the private mail and wire, cable or radio communications

of members of the class.

30. On information and belief, the individual and company defendants have engaged in an extended conspiracy unlawfully to conceal the acts complained of in paragraphs 10-29, *supra*, from the named plaintiffs and members of their class, from Congress, and from the public.

31. On information and belief, each of the defendants knew of and participated in, and/or concealed the illegal and unconstitutional activities described in paragraphs 10-29, *supra*.

32. On information and belief, each of the CIA defendants knew that their actions described above were taken in violation of the CIA's charter.

33. On information and belief, none of the defendants who participated in the actions described in paragraphs 10-29 above had a good faith belief that his or its actions were lawful.

FIRST CAUSE OF ACTION

34. The defendants' procurement of interception and divulgence and their interception and divulgence of the wire, cable or radio communications of plaintiffs and their class were unreasonable and illegal, and were not made in good faith reliance on any judicial, legislative or other valid authorization, or other reasonable belief in their legality.

35. The defendants' procurement of interception and divulgence, and their interception and divulgence of the wire, cable or radio communications of plaintiffs and their class violated Title 18, United States Code, Sections 2511 and 2520, and Title 47 United States Code, Section 605.

36. The defendants' procurement of interception and divulgence, and their interception and divulgence of the wire, cable or radio communications of plaintiffs and their class deprived plaintiffs of their rights of free speech and association under the First Amendment, their right to security against unreasonable searches and seizures guaranteed by the Fourth Amendment, and their right of privacy

guaranteed by the First, Fourth, Fifth and Ninth Amendments.

SECOND CAUSE OF ACTION

37. Plaintiffs repeat and reallege each allegation in paragraphs 1-33, supra.

38. The defendants' maintenance and dissemination of files on the constitutionally protected associational and political activities of plaintiffs and their class deprived plaintiffs of their rights of free speech and association under the First Amendment and their right to privacy under the First, Fourth, Fifth and Ninth Amendments.

39. Defendants' infiltration of the plaintiff organizations and members of their class by the use of undercover agents with false or concealed identities who disrupted, discredited and reported on the plaintiffs' constitutionally protected associational and political activities deprived plaintiffs of their freedom of speech and association protected by the First Amendment, their right to security against unreasonable searches and seizures protected by the Fourth Amendment and their right to privacy protected by the First, Fourth, Fifth and Ninth Amendments.

40. The activities of the defendants set forth above continue to interfere with, discourage and deter the plaintiffs in the exercise of their rights of free speech, assembly and association, and their right to petition the government for redress of grievances, guaranteed by the First Amendment.

THIRD CAUSE OF ACTION

41. Plaintiffs repeat and reallege each allegation in paragraphs 1-33, supra.

42. The CIA defendants' actions described above are in violation of Title 50, United States Code, Section 403(d)(3).

WHEREFORE, plaintiffs request that the Court grant the following relief:

A. A declaratory judgment that the course of conduct and activities of the defendants set forth above are illegal and unconstitutional;

B. Preliminary and permanent injunctions enjoining the defendants from engaging in the activities declared to be illegal and unconstitutional;

C. A mandatory injunction or writ of mandamus ordering the defendants to produce before the Court, for delivery to the plaintiffs and members of their class for destruction, all files, reports, records, photographs, data computer tapes and cards, and all other materials derived from defendants' illegal and unconstitutional activities relating to plaintiffs and all other persons similarly situated;

D. Each named plaintiff and member of the plaintiff class have judgment against each defendant in the sum of $100.00 per day of procurement of interception, divulgence and use, and interception, divulgence and use of the plaintiffs' wire, cable or radio communications, as liquidated damages pursuant to Title 18, United States Code Section 2520 and Title 47, United States Code, Section 605.

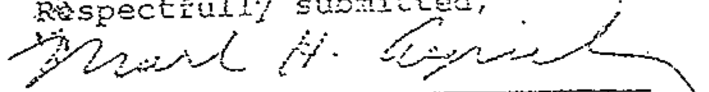
E. Each named plaintiff and member of the plaintiff class have judgment against each defendant in a sum to be determined by the Court for violation of plaintiffs' First, Fourth, Fifth and Ninth Amendment rights.

F. Recovery in the amount of $50,000 punitive damages for the willful violation of constitutional rights for each plaintiff and each member of the plaintiff class.

G. The reasonable costs of this action and attorneys' fees of plaintiffs.

H. Such other and further relief as the Court shall deem just and proper.

Respectfully submitted,



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FILED

JUN 30 1977

JAMES F. DAVEY, Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ADELE HALKIN, et al	:	
Plaintiffs	:	
v.	:	Civil Action No. 75-1773
RICHARD HELMS, et al	:	
Defendants	:	

MEMORANDUM AND ORDER

Two matters in this case are before the Court; a claim of state secrets privilege asserted by the Secretary of Defense and a motion to dismiss claims of the plaintiffs based upon communications interception activities of the National Security Agency (NSA). As is explained in more detail below, the Court accepts the claim of privilege, except as it might extend to communications originated within the United States by the plaintiffs 1/ and acquired by NSA through its Operation SHAMROCK, and it dismisses plaintiffs' claims to the extent they are encompassed or affected by the portion of the claim of privilege which is upheld. As for the aforementioned excepted matters, the Court will defer ruling on certain aspects of the claim pending further proceedings on legal issues raised by the pleadings. Before discussing the reasons for this decision, it is useful to review the proceedings on these matters to date.

By their First Amended Complaint, the plaintiffs seek damages and equitable relief for, *inter alia*, alleged interception of their international wire, cable, and radio communications by employees of the National Security Agency. 2/ They further allege

---

1/ Defendants distinguish between those plaintiffs who were "watch-listed" and those who were not. The Court does not consider this to be a valid distinction. Therefore, communications originating in the United States by all plaintiffs, whether or not their names appeared on a "watchlist", are excepted from the claim of privilege. It will not be necessary at this time, however, for defendants to distinguish between those plaintiffs which were or were not on a "watchlist".

2/ Plaintiffs instituted this suit as a class action. The Court [illegible] class action certification [illegible] April 12, [illegible].

that these interceptions were procured by employees of several other Government agencies through "watchlists" submitted by them to NSA.

During the initial calendar conference held in this case on February 26, 1976, the Government advised that a formal claim of privilege to protect secrets of state would be asserted with respect to claims based upon the activities of NSA. 3/ On April 30, 1976, the Secretary of Defense asserted that claim of privilege, stating in pertinent part in an open record affidavit that:

> Civil discovery or a responsive pleading which would (1) confirm the identity of individuals or organizations whose foreign communications were acquired by NSA, (2) disclose the dates and contents of such communications, or (3) divulge the methods and techniques by which the communications were acquired by NSA, would severely jeopardize the intelligence collection mission of NSA by identifying present communications collection and analysis capabilities.

(Rumsfeld Aff., April 30, 1976, ¶10). The Government also submitted a classified affidavit executed by Secretary Rumsfeld for examination by the Court, ex parte, in camera. The Director of Central Intelligence also submitted an open record affidavit in support of the claim of privilege. 4/ Concurrently, the federal defendants moved to dismiss claims alleged in the First Amended Complaint to the extent those allegations were encompassed by the claim of privilege. 5/

3/ Order dated February 27, 1976; filed of record March 2, 1976.

4/ Plaintiffs initially by a letter addressed to the Court objected to any in camera procedure, and the Court returned the sealed classified affidavit of the Secretary of Defense to Government counsel pending filing and consideration of appropriate motions for in camera procedure. On November 15, 1976, in camera procedure was granted. See generally, Kerr v. United States District Court, 426 U.S. 394 (1976); United States v. Nixon, 418 U.S. 683 (1974); United States v. Reynolds, 345 U.S. 1 (1953); Kinoy v. Mitchell, 67 F.R.D. 1 (S.D.N.Y. 1975).

5/ At the initial calendar conference on February 26, 1976, the Court directed Government counsel to submit any motions based upon a claim of privilege when the claim was asserted so that the Court might have presented to it the full procedural consequences of the claim. The motion to dismiss was therefore constructed so as to be operative coextensively with those aspects of the claim of privilege ultimately upheld by the Court.

are appropriate for the claim of privilege. It therefore accepts the claim of the Secretary of Defense.

(3) Accordingly, since the claim of privilege made herein must prevail in order to prevent disclosures injurious to the national security, United States v. Reynolds, supra, at 10, those claims of the plaintiffs contained in the First Amended Complaint which are predicated upon the aforementioned communications interception activities by NSA [7/] shall be dismissed and the First Amended Complaint shall be deemed amended accordingly. Rule 15, F.R.Civ.P. Dismissal is in order because the threshold and ultimate issue -- the fact of interception -- cannot be admitted or denied without forcing concomitant disclosure of privileged information. See Totten v. United States, 92 U.S. 105 (1875); United States v. Reynolds, supra, 11 n. 26; Kinoy v. Mitchell, supra, 9. Consequently, the interests of the nation as a whole must prevail over the private individual interests of the plaintiffs. See Duncan v. Cammell, Laird & Co., [1942] A.C. 624, 641-42, cited and quoted in United States v. Reynolds, supra, at 7 n. 15, and 8 nn. 20, 21, 22.

(4) With respect to NSA communications interception activities pertaining to wire or telegraphic communications appearing to have been originated by certain of the plaintiffs within the United States and to have been acquired by NSA through the SHAMROCK source, however, the Court finds and concludes that, in view of matters which have to date been made public about the SHAMROCK source, the claim of privilege cannot be extended to preclude the federal defendants from admitting or denying the fact vel non of acquisition of a plaintiff's communication originated in the United States for transmission abroad, where it conclusively can be determined from records and materials now retained by NSA that such

7/ These claims are asserted in paragraphs 21 through 24 and paragraph 28 of the First Amended Complaint.

camera, from a Government witness competent to testify about NSA operations. On April 12, 1977, NSA's Deputy Director for Operations appeared and testified before the Court in camera. This proceeding was transcribed by a reporter from the Department of State who possessed a security clearance satisfactory to the Department of Defense. That transcript was filed with the Court, together with an affidavit executed by the Deputy Director, in camera, on June 17, 1977.

In light of the extensive foregoing proceedings and submissions by the Secretary of Defense, the Director of NSA, the plaintiffs, and the federal defendants, and in view of the singular facts and circumstances disclosed to the Court on the open record and through the matter considered in camera affecting questions of great sensitivity to the national interest, the Court finds and orders as follows:

(1) The claim of privilege asserted by the Secretary of Defense here in order to protect secrets of state from disclosures which might be injurious to the national security meets the technical requisites for such a claim. The claim was asserted by the head of that Government agency of which NSA is a part, the Department of Defense, and the detailed nature of the Secretary's three submissions to the Court in support of the claim clearly reflect "personal consideration" by the Secretary of the matters relating to the claim. See United States v. Reynolds, 345 U.S. at 7-8; cf. Kinoy v. Mitchell, supra, at 9. The Court therefore finds that the claim of privilege has been duly asserted in the manner prescribed by law.

(2) With respect to NSA communications interception activities other than those relating to international wire or telegraphic communications appearing to have been originated by certain of the plaintiffs within the United States and to have been acquired, more likely than not, by the National Security Agency through the SHAMROCK source, the Court finds and concludes that the circumstances

On November 26, 1976, following the decision of the Court of Appeals in Phillippi v. Central Intelligence Agency, 546 F.2d 1009 (D.C.Cir. 1976), plaintiffs noticed the deposition of Secretary Rumsfeld and requested the Court to defer in camera examination of the Secretary's classified affidavit pending his deposition. The federal defendants moved for a protective order that no discovery be had. After a hearing on November 30, 1976, the Court concluded that the proposed scope of discovery was too broad; however, in light of Phillippi, plaintiffs were permitted to submit questions for the Court's consideration and approval to be directed to the Secretary for clarification of the claim of privilege. Memorandum Order of December 3, 1976. Secretary of Defense Rumsfeld then submitted an open record affidavit dated December 20, 1976, in response to the questions set forth in the Court's Order. On December 31, 1976, plaintiffs moved for leave to formulate further questions for submission to the Secretary of Defense or his designee. The federal defendants opposed this motion and the proposed questions, relying in part on representations set forth in a concurrently submitted classified affidavit of the Director of the National Security Agency, which was filed in camera January 19, 1977.

On April 7, 1977, another calendar conference was held, at which time the Court indicated to counsel for all parties that the Court was inclined to deny the claim if privilege insofar as it might relate to NSA communications interception activities implemented by way of the SHAMROCK program. [6] Counsel were further advised that the Court would examine and hear testimony ex parte, in

6/ The term "SHAMROCK" refers to an arrangement whereby the National Security Agency received copies or magnetic tapes of international communications handled by certain privately owned common access communications carriers corporations. See Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities, United States Senate, Book III, 765-776, 94th Cong., 2d Sess.

communication was obtained through the SHAMROCK source. Accordingly, the federal defendants shall be required to respond to those claims of the plaintiffs contained in the First Amended Complaint which are predicated upon the aforementioned acquisition of communications through the SHAMROCK source insofar as such communications appear to have been originated by a plaintiff within the United States.

(5) Upon consideration of the Secretary's request, however, the Court agrees that good cause has been shown to defer ruling whether the claim of privilege precludes disclosure of the actual number relating to any plaintiff of acquisitions of outgoing communications obtained by NSA from the SHAMROCK source. This question relates primarily to damages, and deferring a ruling will not impede resolution of the legal issues raised by SHAMROCK, particularly the issue of whether it affords the plaintiffs a cause of action. See United States v. Standard Oil Co. (New Jersey), 23, F.R.D. 1, 4 (S.D.N.Y. 1958). The Court also finds that good cause has been shown to defer ruling on whether the claim of privilege precludes disclosure of the text of any reports derived from plaintiffs' outgoing communications acquired by NSA through the SHAMROCK source.

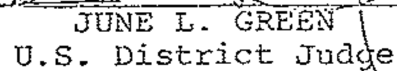
It is therefore by the Court this 30th day of June 1977,

ORDERED that the claim of state secrets privilege is upheld and the First Amended Complaint dismissed with prejudice as to all allegations of NSA interception activities except as they relate to acquisition of plaintiffs' outgoing communications from the SHAMROCK source; and it is further

ORDERED that the Court will defer ruling whether the claim of privilege protects from disclosure the apparent or actual number of any acquisitions of outgoing communications from the SHAMROCK source relating to any plaintiff and the text of any reports derived from plaintiffs' outgoing communications acquired by NSA

through the SHAMROCK source, pending consideration of legal briefs on whether SHAMROCK gives rise to a cause of action, such briefs to be submitted within forty-five days from the date of this Order; and it is further

ORDERED that all defendants shall respond to the remaining allegations of the First Amended Complaint, either by answer or by motion, within forty-five days from the date of this Order.



JUNE L. GREEN
U.S. District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ADELE HALKIN, ET AL.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 75-1773
RICHARD HELMS, ET AL.,	)	
Defendants.	)	

PLAINTIFFS' FIRST INTERROGATORIES
TO DEFENDANTS KELLEY, KNIGHT AND BROWN

Pursuant to Rule 33, Fed. R. Civ. P., plaintiffs request that defendants Clarence Kelley, H. Stuart Knight, and Harold Brown answer the following interrogatories.* As used herein, "your agency" means the agency which each defendant now heads; viz: for defendant Kelley, the Federal Bureau of Investigation; for defendant Knight, the Secret Service; for defendant Brown, the Department of Defense and all components thereof, including the Defense Intelligence Agency. Also as used herein, "information received from NSA" is limited to plaintiffs' outgoing communications or information derived therefrom which the National Security Agency acquired through its SHAMROCK source.

1(a). Has your agency at any time since August, 1967 requested in any manner -- including submission of "watchlists" -- information from the Central Intelligence Agency (CIA) concerning any of the plaintiffs in this lawsuit.

1(b). If the answer to interrogatory 1(a) is affirmative, state which plaintiffs and the dates on which such request were made.

*Harold Brown is the current Secretary of Defense and is automatically substituted as a defendant in his official capacity for defendants Schlesinger and Rumsfeld.

2(a). Has your agency ever requested in any manner -- including submission of "watchlists" -- information from the National Security Agency (NSA) concerning any of the plaintiffs in this lawsuit?

2(b). If the answer to interrogatory 2(a) is affirmative, state which plaintiffs and the dates on which such requests were made.

3(a). Has your agency at any time since August, 1967 received information, whether requested or not, concerning any of the plaintiffs in this lawsuit from the CIA.

3(b). If the answer to interrogatory 3(a) is affirmative, state which plaintiffs and the dates on which such information was received.

4(a). Has your agency ever received information from NSA, whether requested or not, concerning any of the plaintiffs in this lawsuit?

4(b). If the answer to interrogatory 4(a) is affirmative, state which plaintiffs and the date on which such information was received.

5(a). Does your agency currently have in its files any records concerning any of the plaintiffs which were received from the CIA, or derived from information received from the CIA?

5(b). If the answer to interrogatory 5(a) is negative and the answer to interrogatory 3(a) is affirmative, please provide: (i) the dates on which records concerning each of the plaintiffs were removed from the files of your agency; (ii) the method of removal; (iii) the reason for removal; and (iv) the identity of the person who authorized the removal.

6(a). Does your agency currently have in its files any records concerning any of the plaintiffs which were received from NSA, or derived from information received from NSA.

6(b). If the answer to interrogatory 6(a) is negative and the answer to interrogatory 4(a) is affirmative, please provide: (i) the dates on which records concerning each of the plaintiffs were removed from the files of your agency; (ii) the method of removal; (iii) the reason for removal; and (iv) the identity of the person who authorized the removal.

7(a). Has your agency ever provided information concerning any of the plaintiffs in this lawsuit to the CIA or to the NSA.

7(b). If the answer to interrogatory 7(a) is affirmative, state which plaintiffs and the dates on which the information was provided.

7(c). Does your agency currently have in its files any records concerning any of the plaintiffs in this lawsuit, copies of which or the substance of which were provided to the CIA or NSA.

7(d). If the answer to interrogatory 7(a) is affirmative and the answer to interrogatory 7(c) is negative, please provide: (i) the dates on which records concerning each of the plaintiffs were removed from the files of your agency; (ii) the method of removal; (iii) the reason for removal; and (iv) the identity of the person who authorized the removal.

The following interrogatory is addressed solely to defendant Brown.

8. Please provide the current address at which each of the following individuals resides. If the current address is unavailable to you, please provide the

last known address at which each individual resided. Please specify whether the address provided is the current or last known address.

(a). Donald Bennet, who served as Director of the Defense Intelligence Agency from 1969 to 1972.

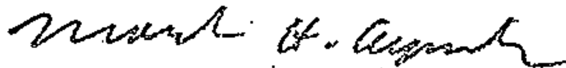
(b). Vincent dePoix, who served as Director of the Defense Intelligence Agency from 1972 to 1974.

(c). Vernon Walters, a General in the United States Army, who served as Deputy Director of the CIA in 1972.

(d). Marshall Carter, who served as Director of the National Security Agency from 1967 to 1969.

DATED: Washington, D.C.
July 15, 1977

Respectfully Submitted,



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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ADELE HALKIN, ET AL.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 75-1773
RICHARD HELMS, ET AL.,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Plaintiffs' First Interrogatories to Defendants Kelley, Knight and Brown was mailed first class, postage paid, this 15th day of July, 1977 to the following:

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Mark H. Lynch

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ADELE HALKIN, ET AL.,)
Plaintiffs,)
v.) Civil Action No. 75-1773
RICHARD HELMS, ET AL.,)
Defendants.)

PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANTS KELLEY, KNIGHT AND BROWN

Pursuant to Rule 34, Fed. R. Civ. P. plaintiffs request that defendants Kelley, Knight, and Brown produce for inspection and copying at the undersigned attorneys' office the following documents.* As used herein "document" includes correspondence, memoranda, papers, records, reports, minutes or information carried electronically, on computer equipment, tape recorder, or any other form of written or electronic recordation. "Documents received from NSA" means outgoing communications which NSA acquired from its SHAMROCK source or documents derived from outgoing communications which NSA acquired from its SHAMROCK source. "Your agency" means the agency which each defendant now heads, viz: for defendant Knight, the Secret Service; for defendant Brown, the Department of Defense and all components thereof, including the Defense Intelligence Agency; for defendant Kelley, the FBI

1. All documents concerning any of the plaintiffs which your agency has received ~~from the~~ CIA since August, 1967.

*Harold Brown is the current Secretary of Defense and therefore is automatically substituted as a defendant in his official capacity for defendants Schlesinger and Rumsfeld.

95-16-3832
DEPARTMENT OF JUSTICE
22
JUL 19 1977
R.A.O.
RECORD

RECEIVED
JUL 20 1977
Special Litigation Section

2. All documents concerning any of the plaintiffs, copies of which your agency has transmitted to the CIA since August, 1967.

3. All documents concerning any of the plaintiffs which your agency has ever received from the NSA.

4. All documents concerning any of the plaintiffs, copies of which your agency has transmitted to the NSA.

DATED: Washington, D.C.
July 15, 1977

Respectfully Submitted,

Mark H. Lynch

John H. F. Shattuck

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ADELE HALKIN, ET AL.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 75-1773
RICHARD HELMS, ET AL.,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Plaintiffs' First Request for Production of Documents to Defendants Kelley, Knight and Brown was mailed first class, postage paid this 15th day of July, 1977 to the following:

Gordon Daiger, Esq.
Department of Justice
Washington, D.C. 20530

R. Bruce Dickson, Esq.
Cahill Gordon & Reindel
1819 H Street, N.W.
Washington, D.C. 20006

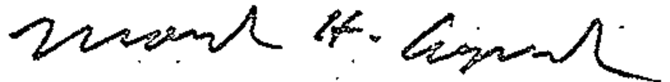
H. Richard Schumacher, Esq.
Cahill Gordon & Reindel
80 Pine Street
New York, N.Y. 10005

Walter Pozen, Esq.
Stroock, Stroock & Lavan
1150 Seventeenth St., N.W.
Washington, D.C. 20036

Alvin K. Hellerstein, Esq.
Stroock, Stroock & Lavan
61 Broadway
New York, N.Y. 10006

Charles P. Sifton, Esq.
LeBoeuf, Lamb, Leiby & McRae
140 Broadway
New York, N.Y. 10005

Jay G. Safer, Esq.
LeBoeuf, Lamb, Leiby & McRae
1757 N Street, N.W.
Washington, D.C. 20036



Mark H. Lynch

FILED
OCT 4 1977
JAMES F. DAVEY, Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ADELE HALKIN, et al.,)
Plaintiffs,)
v.) Civil Action No. 75-1773
RICHARD HELMS, et al.,)
Defendants.)

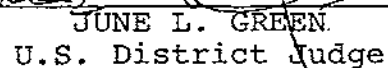
ORDER

This matter is currently before the Court on the federal defendants' motion to vacate the second amended complaint and plaintiffs' opposition thereto. The Court has fully reviewed the second amended complaint and the memorandum submitted by plaintiffs in support thereof. While the Court is certainly cognizant of the burden that 19 additional plaintiffs place on defendants, it is equally aware of plaintiffs' difficulty in specifying the precise extent to which, or the exact manner in which, they were affected by the activities complained of pending receipt of responses to certain of their discovery requests. The Court has previously ordered plaintiffs to answer the majority of interrogatories which the federal defendants propounded in order to further define the specific allegations of each plaintiff with respect to each defendant. While said answers may not have completely determined the scope of each plaintiff's allegations, in view of the nature of the suit, the Court cannot deny the additional 19 plaintiffs leave to join in this action, especially when it appears they have

complied with the minimal requirements of both Rules 20(a) and 24(b), Federal Rules of Civil Procedure.

Accordingly, it is by the Court this 4th day of October, 1977,

ORDERED that the federal defendant's motion to vacate the second amended complaint is hereby denied and the 19 additional plaintiffs shall be permitted to join in this action.



JUNE L. GREEN
U.S. District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED
OCT 4 1977
JAMES F. DAVEY, Clerk

ADELE HALKIN, et al.,)
Plaintiffs,)
v.) Civil Action No. 75-1773
RICHARD HELMS, et al.,)
Defendants.)

ORDER

Upon consideration of the plaintiffs' MOTION TO COMPEL PRODUCTION OF DOCUMENTS and the memoranda submitted in support thereof and in opposition thereto, and upon further consideration of defendant's offer to treat plaintiffs' motion as a request for production of documents pursuant to Rule 34 of the Federal Rules of Civil Procedure, it appearing to the Court that plaintiffs have now more specifically identified or described the documents which they seek; it is by the Court this 4th day of October, 1977,

ORDERED that plaintiffs' motion to compel is hereby denied and that the motion shall be treated as a request for production of documents pursuant to Rule 34 of the Federal Rules of Civil Procedure to the extent the motion does not encompass documents which already have been provided plaintiffs, and that defendants' response shall be due thirty days from the date hereof.

JUNE L. GREEN
U.S. District Judge

ED STATES DISTRICT CO[illegible]
THE DISTRICT OF COLUM[illegible]

FILED.
OCT 4 1977
JAMES F. DAVEY, Clerk

ADELE HALKIN, ET AL.,
Plaintiffs,

v.

RICHARD HELMS, ET AL.,
Defendants.

Civil Action No. 75-1773

ORDER

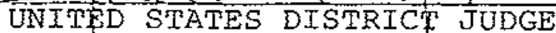
Upon consideration of plaintiffs' motion to make clerical changes in the second amended complaint, federal defendants' response thereto, and the entire record herein, it is this 4th day of October, 1977

ORDERED that the Clerk of the Court is hereby directed to note in the record the following changes in the second amended complaint:

1. The Institute for Policy Studies be listed as a plaintiff.

2. Admiral Stansfield Turner, the Director of Central Intelligence, Mr. Harold Brown, the Secretary of Defense, and Vice Admiral Bobby R. Inman, the Director of the National Security Agency be listed as defendants in their official capacities.

3. Paul and Martha Winnegar be striken as plaintiffs.



UNITED STATES DISTRICT JUDGE

(2)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED
OCT 4 1977
JAMES F. DAVEY, Clerk

ADELE HALKIN, et al.,

Plaintiffs,

v. Civil Action No. 75-1773

RICHARD HELMS, et al.,

Defendants.

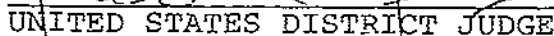
ORDER

Upon consideration of the motion of the Federal defendants for an extension of time in which to respond to the complaint, and the Court finding that good cause has been shown for such an extension, it is hereby

ORDERED that all defendants shall have to and including November 1, 1977 in which to respond to the complaint.

Date: Oct. 4, 1977

UNITED STATES DISTRICT JUDGE

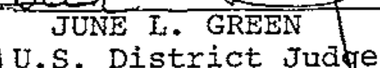


(N)

As for paragraph 29, insofar as it relates to activities separate from maintenance and dissemination of information which was allegedly derived from NSA acquisitions,[2/] said matters are, in the Court's view, relevant to this case and shall not be stayed.

Accordingly, upon consideration of federal defendants' motion to stay proceedings; plaintiffs' response thereto; and the entire record herein, it is by the Court this 5th day of October, 1977,

ORDERED that all proceedings which concern allegations that the NSA acquired plaintiffs' messages shall be stayed pending appellate review of this Court's Memorandum Opinion and Order of June 30, 1977. Specifically, this stay includes the allegations contained in paragraphs 20 through 29 of the second amended complaint and to paragraphs 30 through 42 (to the extent those paragraphs incorporate by reference paragraphs 20 through 29), except as paragraphs 20 and 22 extend to allegations that the CIA, FBI, Secret Service, and Defense Intelligence Agency defendants submitted "watchlists" containing plaintiffs' names to NSA, and as paragraph 29 extends to files maintained and disseminated with regard to activities separate from any alleged NSA acquisitions.



JUNE L. GREEN
U.S. District Judge

2/ Plaintiffs have indicated that this refers to Operations RESISTENCE and MERRIMAC.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED
OCT 5 1977
JAMES F. DAVEY, Clerk

ADELE HALKIN, ET AL., Plaintiffs,	)	
v.	)	Civil Action No. 75-1773
RICHARD HELMS, ET AL., Defendants	)	

ORDER

Upon consideration of federal defendants' motion to stay certain discovery; plaintiffs' partial opposition and partial consent thereto; and the entire record herein, the Court having already ruled that it will not vacate plaintiffs' second amended complaint and that all proceedings concerning NSA's alleged acquisition of plaintiffs' messages shall be stayed pending appellate review of this Court's Memorandum and Order of June 30, 1977 except for paragraphs 20 and 22 of the second amended complaint as they relate to the submission of"watchlists" and paragraph 29 as it relates to activities other than alleged NSA interceptions, it is by the Court this 5th day of October, 1977,

ORDERED that the 19 plaintiffs who were joined in the second amended complaint shall respond to defendants' first interrogatories within 30 days of the entry of this Order; and it is further

ORDERED that defendants' obligations to respond to plaintiffs' discovery requests served July 15 and July 26, 1977 are stayed insofar as the questions relate to NSA's alleged acquisition of plaintiffs' messages which is currently pending appellate review. Insofar as they relate to other matters, including the presence of plaintiffs' names on any"watchlists" submitted to NSA, but not extending to Operations MERRIMAC and RESISTENCE, defendants shall respond as to all plaintiffs within 20 days following the filing of the answers to interrogatories of the

FEDERAL BUREAU OF INVESTIGATION
FOI/PA
DELETED PAGE INFORMATION SHEET
FOI/PA# 1441439-000

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Assistant Attorney General
Civil Division
Attention: [redacted] Esq.
Assistant Director - Legal Counsel
Federal Bureau of Investigation

FEDERAL GOVERNMENT

December 6, 1977

1-Acting Asst. Dir.
Special Investigative Div.
(Attn: G. J. Lex)
1 [redacted]
1-Civ. Lit. Unit

b6
b7C

ADELE HALKIN, et al., v.
RICHARD HELMS, et al.
(U.S.D.C., D.C.)
CIVIL ACTION NO. 75-1773

Reference is made to my communication dated October 28, 1977, and your communications dated October 19, 1977, with enclosures, your file reference [redacted] [redacted] 91-16-3738, and October 14, 1977, with enclosures, your file reference [redacted] 95-06-3837.

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Your communication dated October 14, 1977, requested that this Bureau furnish you proposed responses to Plaintiffs' First Interrogatories to Defendants [redacted] [redacted] and Plaintiffs' First Request for Production of Documents to Defendants [redacted] This communication will confirm delivery of proposed responses to the interrogatories to [redacted] of your office on November 18, 1977. It further confirms delivery of documents responsive to the document request to [redacted] on November 23, 1977.

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Your communication dated October 19, 1977, requested suggested answers to the allegations in the Second Amended Complaint on behalf of Director Clarence M. Kelley, inasmuch as he is named individually as a defendant in this suit.

My communication dated October 28, 1977, advised you that Director Kelley had never been personally served and requested that a Motion to Dismiss for insufficiency of service of process be filed on behalf of Mr. Kelley, insofar as the complaint alleges that he is sued individually. The requested Motion to Dismiss was filed on [redacted] 1, 1977.

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 5/21/80

Assoc. Dir.
Dep. AD Adm.
Dep. AD Inv.
Asst. Dir.:
Adm. Serv.
Crim. Inv.
Fin. & Pers.
Ident.
Intell.
Laboratory
Legal Coun.
Plan. & Insp.
Rec. Mgnt.
Spec. Inv.
Tech. Servs.
Training
Public Affs. Off.
Telephone Rm.
Director's Sec'y

MAILED 7
DEC 8 1977
FBI

REC- 85
SEE NOTE - PAGE 2
62-116878-38
ST-132
11 DEC 9 1977

[E]NCLOSURE
"[E]NCLOSURE IN BULKY ROOM"
[TY]PE UNIT

54 DEC 16 1977

FBI/DOJ

Assistant Attorney General
Civil Division

For your information, on November 17, 1977, a representative of the United States Marshals Service, Washington, D.C., served a copy of the Summons and Complaint in this matter on a representative of Legal Counsel Division who was authorized by appointment to accept service of process on behalf of Mr. Kelley. A copy of the Summons was delivered to [redacted] on November 18, 1977, at which time [redacted] advised that no response to the allegations in the complaint on behalf of Mr. Kelley is necessary at this time, in view of the pending Motion to Dismiss which is now before the Court.

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Should an answer on behalf of Mr. Kelley be required or any questions arise concerning this matter, please contact Special Agent [redacted] Legal Counsel Division, telephone [redacted]

NOTE: Twenty-four individual and two organizational plaintiffs in captioned civil suit seek declaratory, injunctive, and monetary relief for alleged violation of certain constitutional and statutory rights as a result of the action of a Special Operations Group within the CIA Counterintelligence Staff, known as "Operation CHAOS." Plaintiffs allege, inter alia, that the Bureau furnished the NSA "watch lists", requested interception of their communications, and used, shared, placed in files, maintained and disseminated information derived from summaries of intercepted communications supplied to the Bureau by the NSA. Among those named as defendants are Director Kelley and former Acting Director L. Patrick Gray, III. Both are sued individually and in their official and former official capacities. The Department requested that we furnish proposed responses to Plaintiffs' First Interrogatories to Defendants Kelley, [redacted] and documents responsive to Plaintiffs' First Request for Production of Documents to Defendants Kelley, [redacted] This communication confirms delivery of the proposed responses and copies of the documents to the Department. This communication further advises the Department that Legal Counsel Division accepted service of process in this suit on behalf of Director Kelley and that a copy of the Summons directed to Mr. Kelley has been furnished to the Department. The Department has advised Legal Counsel Division that no answer on behalf of Director Kelley is necessary at this time due to a pending Motion to Dismiss filed on his behalf.

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APPROVED:

Director___	Adm. Serv.___	Legal C___
Assoc. Dir.___	Crim. Inv.___	Plan. & ___
Dep. AD Adm.___	Fin. & Pers.___	Rec. M___
Dep. AD Inv.___	Ident.___	Spec. Inv.___
	Intell.___	Tech. Servs.___
	Laboratory___	Training___
		Public Affs. Off.___

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11/13/09 BY SP4 b6 b7C
488-1826
SP4
8/11/94 # 88-1826

ENCLOSURE

62-116878-

SUMMONS IN A CIVIL ACTION

CIV. 1a (2-64) (Formerly D.C. Form No.45a Rev. (6-49))

United States District Court

FOR THE

District of Columbia

CIVIL ACTION FILE NO. 75-1773

ADELE HALKIN, ET AL.,

Plaintiffs

v.

RICHARD HELMS, ET AL.,

Defendants

SUMMONS

To the above named Defendant : Clarence M. Kelley

You are hereby summoned and required to serve upon

Mark H. Lynch, Esquire

plaintiff's attorney , whose address
Suite 301
600 Pennsylvania Avenue, S.E.
Washington, D.C. 20003

ENCLOSURE ATTACHED

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

JAMES F. DAVEY
Clerk of Court.

Esther E. Creeden
Deputy Clerk.

[Seal of Court]

Date: November 14, 1977

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

NOT RECORDED
21 NOV 29 1

11/13/89 SP4 [redacted] b6 b7C
ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 5-2-80 BY [redacted]
SP 7 [redacted]
8/11/94 [redacted] # 88-1846

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the day of 19 ,

I received this summons and served it together with the complaint herein as follows:

RECEIVED
NOV 28 11 12 AM 1977
...UNSEL

JAMES F. DAVEY

MARSHAL'S FEES

Travel ---- $

Service ----

United States Marshal.

By

Deputy United States Marshal.

Subscribed and sworn to before me, a

this

day of , 19

[SEAL]

11/13/77

Note:—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

No. 75-1773

United States District Court FOR THE District of Columbia

ADELE HALKIN, ET AL, Plaintiffs,

RICHARD HELMS, ET AL., Defendants.

SUMMONS IN CIVIL ACTION

Returnable not later than 20 days after service.

Mark H. Lynch, Esquire

Attorney for Plaintiffs

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b7C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA.

ADELE HALKIN, et al., Plaintiffs,	)	
v.	)	Civil Action No. 75-1773
RICHARD HELMS, et al., Defendants.	)	

ANSWERS TO PLAINTIFFS' FIRST INTERROGATORIES
TO DEFENDANT KELLEY

William F. Shubatt, Special Agent of the Federal Bureau of Investigation (FBI), having been designated to answer PLAINTIFFS' FIRST INTERROGATORIES TO DEFENDANT KELLEY on behalf of Clarence M. Kelley, Director of the FBI, hereby deposes and answers as follows on the basis of a review of the main files (except criminal and FOIA) maintained on the plaintiffs at the Federal Bureau of Investigation Headquarters:

INTERROGATORY NO. 1:

1(a). Has your agency at any time since August, 1967 requested in any manner -- including submission of "watchlists" -- information from the Central Intelligence Agency (CIA) concerning any of the plaintiffs in this lawsuit.

1(b). If the answer to interrogatory 1(a) is affirmative, state which plaintiffs and the dates on which such requests were made.

ANSWER TO INTERROGATORY NO. 1:

NOT RECORDED
2 NOV 29 1977

1(a). Yes.

1(b). The files reveal that information was requested of the Central Intelligence Agency with respect to plaintiff Committee of Concerned Asian Scholars, plaintiff Peck, and plaintiff Schechter. The dates on which such information was

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE

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5 ... 1977

requested are reflected in the documents made available in response to PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT KELLEY, Request No. 1.

INTERROGATORY NO. 3:

3(a). Has your agency at any time since August, 1967 received information, whether requested or not, concerning any of the plaintiffs in this lawsuit from the CIA.

3(b). If the answer to interrogatory 3(a) is affirmative, state which plaintiffs and the dates on which such information was received.

ANSWER TO INTERROGATORY NO. 3:

3(a). Yes.

3(b). The files reveal that information was received from the Central Intelligence Agency with respect to plaintiffs Leonard Palmer Adams, III, Nina Adams, Howard J. DeNike, Adele Halkin, Steve Halliwell, Don Luce, Sidney Peck, Daniel Schechter, Committee of Concerned Asian Scholars, and Women Strike for Peace. The dates on which such information was received are reflected in the documents made available in response to PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT KELLEY, Request No. 1.

INTERROGATORY NO. 4:

4(a). Has your agency ever received information from NSA, whether requested or not, concerning any of the plaintiffs in this lawsuit?

4(b). If the answer to interrogatory 4(a) is affirmative, state which plaintiffs and the date on which such information was received.

RESPONSE TO INTERROGATORY NO. 4:

(a-b). An answer is not required to this interrogatory in view of the Court's Order of October 5, 1977, staying all proceedings with respect to allegations that the National Security Agency acquired plaintiffs' messages.

INTERROGATORY NO. 5:

5(a). Does your agency currently have in its files any records concerning any of the plaintiffs which were received from the CIA, or derived from information received from the CIA?

5(b). If the answer to interrogatory 5(a) is negative and the answer to interrogatory 3(a) is affirmative, please provide: (i) the dates on which records concerning each of the plaintiffs were removed from the files of your agency; (ii) the method of removal; (iii) the reason for removal; and (iv) the identity of the person who authorized the removal.

ANSWER TO INTERROGATORY NO. 5:

5(a). Yes.

5(b). Not applicable, please see my answer to sub-part (a), above.

INTERROGATORY NO. 6:

6(a). Does your agency currently have in its files any records concerning any of the plaintiffs which were received from NSA, or derived from information received from NSA.

6(b). If the answer to interrogaotry 6(a) is negative and the answer to interrogatory 4(a) is affirmative, please provide: (i) the dates on which records concerning each of the plaintiffs were removed from the files of your agency; (ii) the method of removal; (iii) the reason for removal; and (iv) the identity of the person who authorized the removal.

RESPONSE TO INTERROGATORY NO. 6:

(a-b) An answer is not required to this interrogatory in view of the Court's Order of October 5, 1977, staying all proceedings with respect to allegations that the National Security Agency acquired plaintiffs' messages.

INTERROGATORY NO. 7:

7(a). Has your agency ever provided information concerning any of the plaintiffs in this lawsuit to the CIA or to the NSA.

7(b). If the answer to interrogatory 7(a) is affirmative, state which plaintiffs and the dates on which the information was provided.

7(c). Does your agency currently have in its files any records concerning any of the plaintiffs in this lawsuit, copies of which or the substance of which were provided to the CIA or NSA.

7(d). If the answer to interrogatory 7(a) is affirmative and the answer to interrogatory 7(c) is negative, please provide: (i) the dates on which records concerning each of the plaintiffs were removed from the files of your agency; (ii) the method of removal; (iii) the reason for removal; and (iv) the identity of the person who authorized the removal.

PARTIAL ANSWER TO INTERROGATORY NO. 7:

7(a). The files reveal that the Federal Bureau of Investigation has provided information concerning some of the plaintiffs to the Central Intelligence Agency.

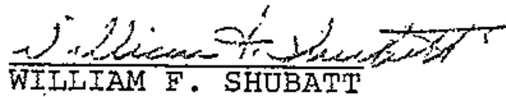
7(b). The files reveal that information was provided to the Central Intelligence Agency with respect to plaintiffs Leonard Palmer Adams III, Nina Adams, Adele Halkin, Steve Halliwell, Carl Whitney Jacobson, Leigh Kagan, Richard Clark Kagan, Jonathan Mirsky, Sidney Peck, David Gareth Porter, Daniel Schechter, Ethel Taylor, Committee of Concerned Asian Scholars, and Women Strike for Peace. The dates on which such information was provided are reflected in the documents made available in response to PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT KELLEY, Request No. 2.

7(c). The Federal Bureau of Investigation currently has in its files copies of or the substance of records concerning some of the plaintiffs which were provided by the Central Intelligence Agency.

7(d). Not applicable, please see my answer to subpart (c), above.

I. William F. Shubatt, declare under penalty of perjury that the foregoing answers are true and correct based on the main files (except criminal and FOIA) maintained on the plaintiff at the Federal Bureau of Investigation Headquarters.

Signed by me this 23rd day of November, 1977.



WILLIAM F. SHUBATT

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ADELE HALKIN, et al.,

Plaintiffs,

v. Civil Action No. 75-1773

RICHARD HELMS, et al.,

Defendants.

______________________________/

OBJECTIONS TO PLAINTIFFS' FIRST INTERROGATORIES TO DEFENDANT KELLEY

Pursuant to Rule 33, Federal Rules of Civil Procedure, Clarence M. Kelley, Director of the Federal Bureau of Investigation, by his undersigned attorneys, hereby objects as follows to certain of PLAINTIFFS' FIRST INTERROGATORIES TO DEFENDANT KELLEY:

INTERROGATORY NO. 2:

(a) Has your agency ever requested in any manner -- including submission of "watchlists" -- information from the National Security Agency (NSA) concerning any of the plaintiffs in this lawsuit?

(b) If the answer to interrogatory 2(a) is affirmative, state which plaintiffs and the dates on which such requests were made.

OBJECTION TO INTERROG. 2:

The defendant objects to answering this interrogatory pending the disposition of the MOTION OF OFFICIAL DEFENDANTS FOR PARTIAL DISMISSAL AND, ALTERNATIVELY, TO RECONSIDER THE DENIAL OF A STAY.

INTERROGATORY NO. 7:

(a) Has your agency ever provided information concerning any of the plaintiffs in this lawsuit to the CIA or to the NSA.

(b) If the answer to interrogatory 7(a) is affirmative,

ENCLOSURE 62-116878-

state which plaintiffs and the dates on which the information was provided.

(c) Does your agency currently have in its files any records concerning any of the plaintiffs in this lawsuit, copies of which or the substance of which were provided to the CIA or NSA.

(d) If the answer to interrogatory 7(a) is affirmative and the answer to interrogatory 7(c) is negative, please provide: (i) the dates on which records concerning each of the plaintiffs were removed from the files of your agency; (ii) the method of removal; (iii) the reason for removal; and (iv) the identity of the person who authorized the removal.

PARTIAL OBJECTION TO INTERROGATORY NO. 7:

The defendant objects to answering this interrogatory, insofar as is pertains to the submission of names to the National Security Agency, pending disposition of the MOTION OF OFFICIAL DEFENDANTS FOR PARTIAL DISMISSAL AND, ALTERNATIVELY, TO RECONSIDER THE DENIAL OF A STAY.

Respectfully submitted,

BARBARA ALLEN BABCOCK
Assistant Attorney General

DAVID J. ANDERSON

LARRY L. GREGG

R. JOHN SEIBERT

PAUL A. GAUKLER

Attorneys, Department of Justice
Washington, D.C. 20530
Telephone: 202/739-4686

Attorneys for Defendant Kelley

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ADELE HALKIN, et al.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 75-1773
RICHARD HELMS, et al.,	)	
Defendants.	)	

OBJECTIONS OF DEFENDANT KELLEY TO
PLAINTIFFS' FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and in response to PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANTS KELLEY, KNIGHT AND BROWN, now comes defendant Clarence M. Kelley in his official capacity as Director of the Federal Bureau of Investigation, through his undersigned counsel, and states that subject to the objections set forth below he will produce for inspection and copying matetials sought by the foregoing request for documents in the offices of Larry L. Gregg, Department of Justice, Room 3330, Washington, D.C. on November 25, 1977.

REQUEST NO. 1 All documents concerning any of the plaintiffs which your agency has received from the CIA since August, 1967.

REQUEST NO. 2 All documents concerning any of the plaintiffs, copies of which your agency has transmitted to the CIA since August, 1967.

OBJECTION TO REQUESTS NO. 1 AND NO. 2 Defendant Kelley objects to producing the requested documents or portions thereof, which would reveal the following information:

1. Identities of confidential FBI sources and informants normally precluded from disclosure in the public interest of encouraging

ENCLOSURE 62-116878-

the providing of useful intelligence and law enforcement information;

2. Information obtained from or about the investigative or intelligence activities of another United States Government Agency;

3. Information concerning the privacy interests of a non-party normally precluded from disclosure to prevent embarassment and prejudice to personal and professional interests;

4. Information revealing that non-party individuals are or have been the subjects of an FBI investigation, the disclosure of which is precluded in the public interest of furthering the investigative function;

5. Information revealing that non-party organizations are the subjects of an FBI investigation, the disclosure of which is precluded in the public interest of furthering the investigative function;

6. Information obtained by the FBI from or revealing the identity of a cooperating foreign intelligence source, disclosure or which is precluded in the interest of avoiding harm to the national security; and

7. FBI administrative markings, including but not limited to classification stamps, internal routing slips, and file numbers, which are not related to the subject matter of the litigation in that they have

no substantive association with the purpose or motivation behind the preparation of the document on which they appear;

Defendant Kelley further objects to those portions of requested FBI files containing information provided by the CIA whose disclosure has been objected to by the defendant Director of Central Intelligence, Stansfield Turner, in his response to Plaintiffs' First Request to Defendant Turner for Production of Documents. Defendant Kelley accordingly incorporates herein by reference all objections made by defendant Turner to plaintiffs' aforementioned request for documents to the extent they pertain to those portions of FBI documents containing information supplied by CIA which has been deleted.

In order to assist plaintiffs in matching the foregoing objections to documents sought by Requests No. 1, and No. 2 the following letters have been used in place of excised information to denote the particular objection and grounds therefor:

AA -- Informants' identities;

BB -- Information obtained from or about the investigative or intelligence activities of another United States Government agency;

CC -- Information concerning the privacy of non-party individuals;

DD -- Information concerning non-party individuals who are or have been the subjects of an FBI investigation;

EE -- Information concerning non-party organizations who are the subjects of current FBI investigations;

FF -- Information received from or disclosing the [illegible]entity of cooperating fo[illegible]gn intelligence sources;

GG -- Administrative markings containing information not relevant to the subject matter of the litigation;

HH -- Classification markings; and

II -- File numbers.

The use of the foregoing abbreviated objection symbols in the accompanying documents is not exclusive or conclusive as to all pertinent objections, and the absence of a letter or number in a space corresponding to a deletion should not be deemed at waiver or failure to assert any of the objections set forth in the preceding paragraph.

REQUEST NO. 3 All documents concerning any of the plaintiffs which your agency has ever received from the NSA.

OBJECTION TO REQUEST NO. 3 Defendant Kelley objects to responding to Request No. 3 in view of the Court's Order of October 5, 1977 staying all proceedings relating to allegations that NSA acquired plaintiffs' messages.

REQUEST NO. 4 All documents concerning any of the plaintiffs, copies of which your agency has transmitted to the NSA.

OBJECTION TO REQUEST NO. 4 Defendant Kelley objects to responding to Request No. 4 pending disposition of the MOTION OF OFFICIAL DEFENDANTS FOR PARTIAL DISMISSAL AND, ALTERNATIVELY, TO RECONSIDER THE DENIAL OF A STAY.

Respectfully submitted,

BARBARA ALLEN BABCOCK
Assistant Attorney General

DAVID J. ANDERSON

R. JOHN SEIBERT
LARRY L. GREGG
PAUL A GAUKLER

Attorneys, Department of Justice
Washington, D.C. 20530
Telephone: (202) 739-4686

Attorneys for defendant
Kelley in official capacity

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL GOVERNMENT

ADELE HALKIN, et al.,

Plaintiffs,

v.

RICHARD HELMS, et al.,

Defendants.

Civil Action No. 75-1773

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS OF DEFENDANTS GRAY, KELLEY, KNIGHT, ROWLEY, ALLEN, AND CARROLL

Respectfully submitted,

BARBARA ALLEN BABCOCK
Assistant Attorney General

DAVID J. ANDERSON
LARRY L. GREGG
R. JOHN SEIBERT
PAUL A. GAUKLER

Attorneys, Department of Justice
Washington, D.C. 20530
Telephone: 202/ 739-4686

Attorneys for defendants Gray, Kelley, Knight, Rowley, Allen, and Carroll in their individual capacities

62-116,828-

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ENCLOSURE
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SP 7 [redacted] #88-1826
8/11/94 [redacted]

In support of their motions, defendants submit their Memorandum in Support of Motion to Dismiss of Defendants Gray, Kelley, Knight, Rowley, Allen and Carroll, supporting Exhibits, and a proposed Order.

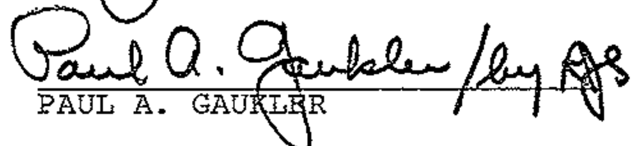
Respectfully submitted,

BARBARA ALLEN BABCOCK
Assistant Attorney General

DAVID J. ANDERSON

LARRY L. GREGG

R. JOHN SEIBERT



PAUL A. GAUKLER

Attorneys, Department of Justice
Washington, D.C. 20530
Telephone: (202) 739-4267

Attorneys for Federal Defendants

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

OCT 5 1977

JAMES F. DAVEY, Clerk

ADELE HALKIN, ET AL.,
Plaintiffs,

v.

RICHARD HELMS, ET AL.,
Defendants

Civil Action No. 75-1773

ORDER

This matter is currently before the Court on federal defendants' motion to stay proceedings relating to NSA-Shamrock matters and plaintiffs' response thereto.[1/] Plaintiffs have indicated they do not oppose this motion except as it relates to those aspects of paragraphs 20 and 22 of the second amended complaint which deal with the submission of "watchlists" to NSA, and paragraph 29 which deals with maintenance and dissemination of files relating to activities separate and apart from any NSA acquisitions.

The Court is basically in agreement with plaintiffs' position as to paragraphs 20 and 22. This is not to be construed, however, as an indication of any determination by the Court as to whether the allegations contained in paragraphs 20 and 22 are actionable in and of themselves without the actual fact of interception. Rather the Court at this time finds only that plaintiffs are entitled to know whether their names are contained on any watchlists submitted to NSA by the CIA, FBI, DIA, and the Secret Service. The Court considers this information to be independent of those allegations concerning NSA's acquisition of plaintiffs' international communications.

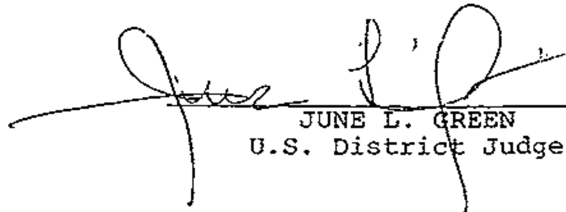
1/ On September 30, 1977 the United States Court of Appeals for the District of Columbia granted defendants' petition for permission to file an interlocutory appeal of this Court's June 30, 1977 Memorandum Opinion and Order dealing with these matters. Therefore, only those objections to the stay specifically raised by plaintiffs remain to be ruled on by this Court.

19 new plaintiffs; and it is further

ORDERED that defendants shall respond to any discovery requests concerning Operations MERRIMAC and RESISTANCE as to all plaintiffs within 30 days following the filing of the answers to interrogatories of the 19 new plaintiffs; and it is further

ORDERED that counsel for the individual defendants shall enter his/her appearance on the record, if in fact this has not yet been done, within 20 days of the filing of this Order; and it is further

ORDERED that any further discovery or other matters regarding plaintiffs Weiss, Institute for Policy Studies, American Friends Service Committee, and Clergy and Laity Concerned is hereby stayed pending an oral hearing on October 19, 1977 at 10:00 a.m. on the possible imposition of sanctions.



JUNE L. GREEN
U.S. District Judge

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JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

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Director's Sec'y ___

TO : Assistant Di[redacted] Special Inve[redacted]e Division

DATE: 7/29/77

FROM : Legal Counse[redacted]

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE

DECLASSIFIED BY SP-5 [redacted] ON 1/17/94

SUBJECT: ADELE HALKIN, et al., v. RICHARD HELMS, et al. (U.S.D.C., D.C.) CIVIL ACTION NO. 75-1773

PURPOSE: To report a request from the Department for suggested answers to the allegations in the Complaint in captioned civil suit which pertain to the Bureau and the actions of present or former officials thereof.

SYNOPSIS: Eight individual and five organizational plaintiffs in captioned civil suit seek declaratory, injunctive and monetary relief for alleged violations of certain constitutional and statutory rights as a result of the actions of a Special Operations Group within the Central Intelligence Agency (CIA) Counterintelligence Staff, known as "Operation CHAOS." Plaintiffs allege, inter alia, that the Bureau furnished the National Security Agency (NSA) "watchlists", requested interception of their communications, and used, shared, placed in files, maintained and disseminated information derived from summaries of intercepted communications supplied to the Bureau by the NSA.

The Department has requested that we furnish information responsive to the allegations in the Complaint that pertain to actions taken by the Bureau with regard to the plaintiffs. The Department must file an answer to the Complaint by 8/15/77.

This memorandum requests that the Special Projects Review Unit (SPRU) or the Special Case Review Unit (SCRU), Special Investigative Division (SID) review FBIHQ main files on the plaintiffs and furnish Legal

Classified by SP-5 [illegible]
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EX-120 REC-24 62-116878-489

Enclosures (4)

OCT. 3 1978

1 - [redacted]
Attn: [redacted]
1 - [redacted]
1 - Civ. Lit. Unit

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CLASS. & EXT. BY SP-1 ... REASON FCIM II, 1-2.4.2 DATE OF REVIEW 7/29/97

SECRET MATERIAL ATTACHED

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Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

62 OCT 12 1978 ENCLOSURE

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Counsel Division (LCD) information responsive to specific questions set forth in the Details of this memorandum.

The information is requested by 8/5/77, in order that LCD can respond to the Department by 8/15/77.

RECOMMENDATION: That the SPRU or SCRU, SID furnish LCD information responsive to the specific questions set forth in the Details of this memorandum.

On 8-2-77 [redacted] advised additional file reviews would be needed & additional plaintiffs was being added, therefore, no deadline is set at this time for the compilation of requested info.

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APPROVED:		
Director	Adm. Serv.	Legal Coun.
Assoc. Dir.	Crim. Inv.	Plan. &
Dep. AD Adm.	Fin. & Pers.	Rec. M
Dep. AD Inv.	Ident.	Spec. I
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	Laboratory	Training
		Public Affs. Off.

DETAILS: Captioned civil suit was originally filed in U.S. District Court for the District of Columbia by eleven individual and six organizational plaintiffs seeking declaratory, injunctive, and monetary relief for alleged violations of certain constitutional and statutory rights as a result of the actions of a Special Operations Group within the CIA Counterintelligence Staff, known as "Operation CHAOS." Plaintiffs alleged, inter alia, that the Bureau furnished the NSA "watchlists", requested interception of their communications, and used, shared, placed in files, maintained and disseminated information derived from summaries of intercepted communications supplied to the Bureau by the NSA. Among those named as defendants are Director Kelley and former Acting Director L. Patrick Gray, III. Both are sued individually and in their official and former official capacities. A copy of the Complaint is attached.

Subsequent to the filing of the suit,

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The American Indian Movement (AIM) and The Committee of Liaison With Families of Servicemen Detained in Vietnam (COLIAFAM) were voluntarily dismissed as plaintiffs and the Complaint was amended to add The Institute For Policy Studies (IPS) as a plaintiff.

By memorandum dated 12/23/75, the Department

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Legal Counsel to Special Investigative Division
Re: ADELE HALKIN, et al., v.
RICHARD HELMS, et al.

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requested a litigation report in this civil suit, including information responsive to four specific questions concerning electronic surveillance and interception of plaintiffs' postal or electrical communications. By memorandum (attached) from [redacted] dated 6/17/76, information responsive to those requests as to all the plaintiffs except IPS was furnished to LCD.

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On 6/17/76, the Department advised LCD that no litigation report would be necessary at that time.

[redacted]

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On 7/18/77, Departmental Attorney [redacted] requested a litigation report in captioned civil suit and advised LCD that an answer to the Complaint must be filed by 8/15/77.

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The SPRU or SCRU, SID is requested to review the following file sections to ascertain whether any [redacted] reports or communications described in the 11/3/76, Departmental memorandum are contained therein:

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Plaintiff	File	Section
[redacted]		
[redacted]	100-442267	1, 2
American Friends Service Committees, Inc.	100-11392	23, 25
[redacted]		

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Legal Counsel to Special Investigative Division
Re: ADELE HALKIN, et al., v.
RICHARD HELMS, et al.

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IPS	100-447935 44-56700	3, 4
Women Strike For Peace	62-107350	1-40, 50-end

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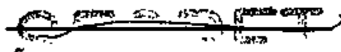

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Legal Counsel to Special Investigative Division
Re: ADELE HALKIN, et al., v.
RICHARD HELMS, et al.

The SPRU or SCRU, SID is requested to furnish the information requested above by 8/5/77, in order that LCD can furnish the Department suggested answers to the allegations in the Complaint by 8/12/77.

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Assistant Attorney General FEDERAL GOVERNMENT
Criminal Division
(Attn: [redacted]

November 18, 1976

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Assistant Director - Legal Counsel
Federal Bureau of Investigation

ADELE HALKIN, et al. v.
RICHARD HELMS, et al.
(U.S.D.C., D.C.)
CIVIL ACTION FILE NO. 75-1773

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Assistant Attorney General
Criminal Division

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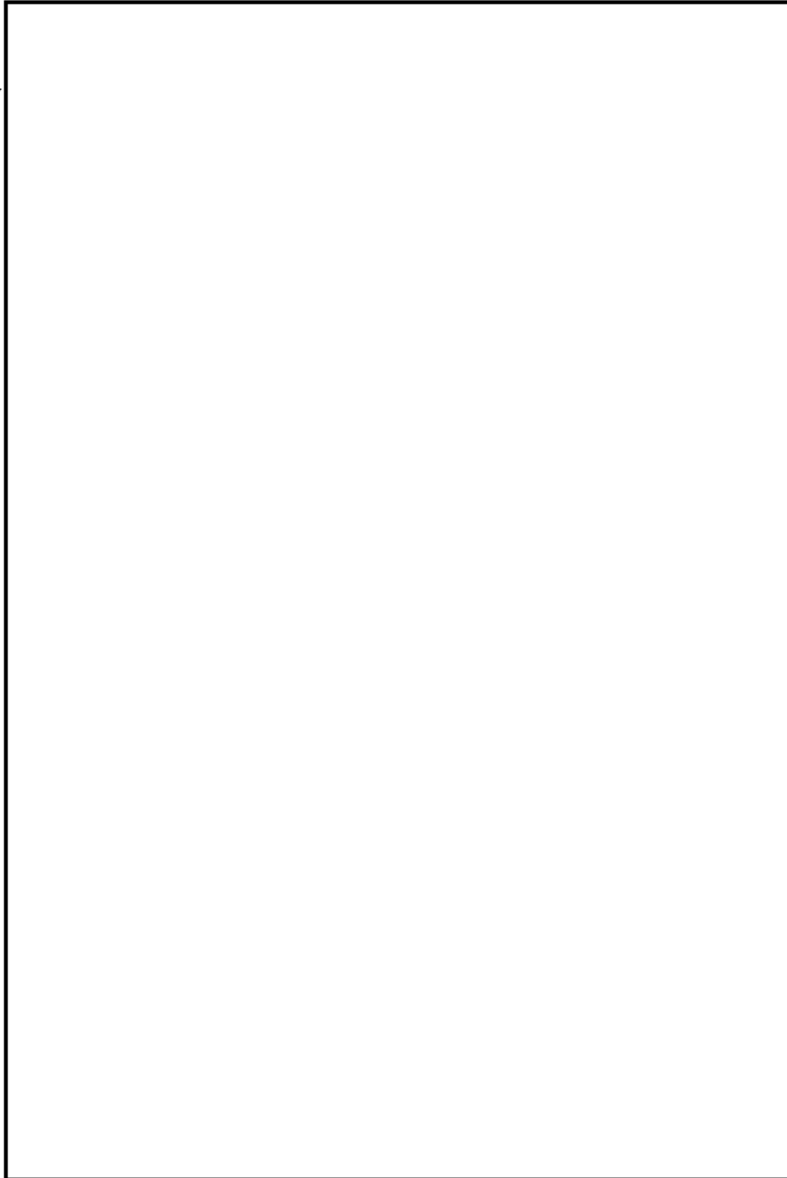
Assistant Attorney General
Criminal Division



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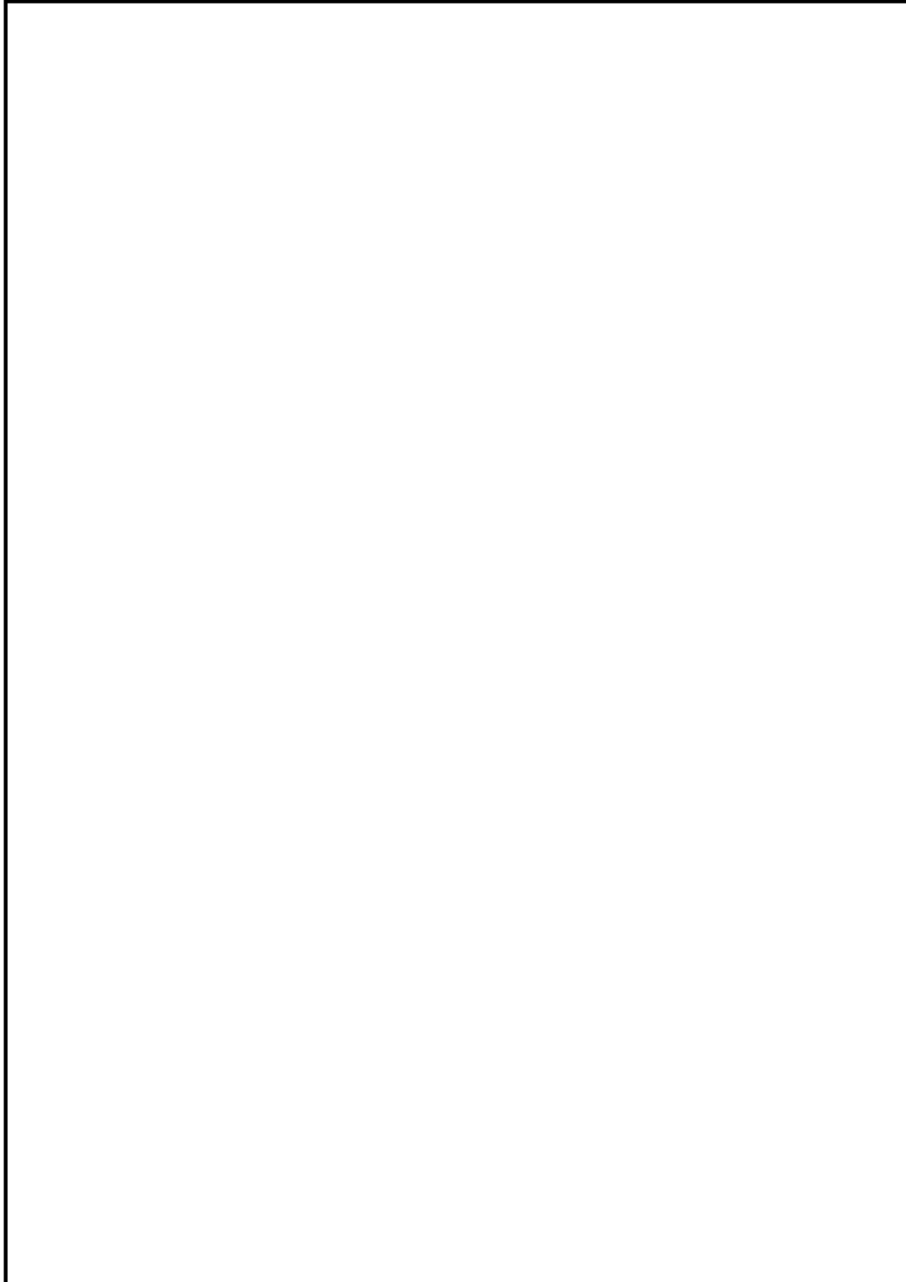
Criminal Division



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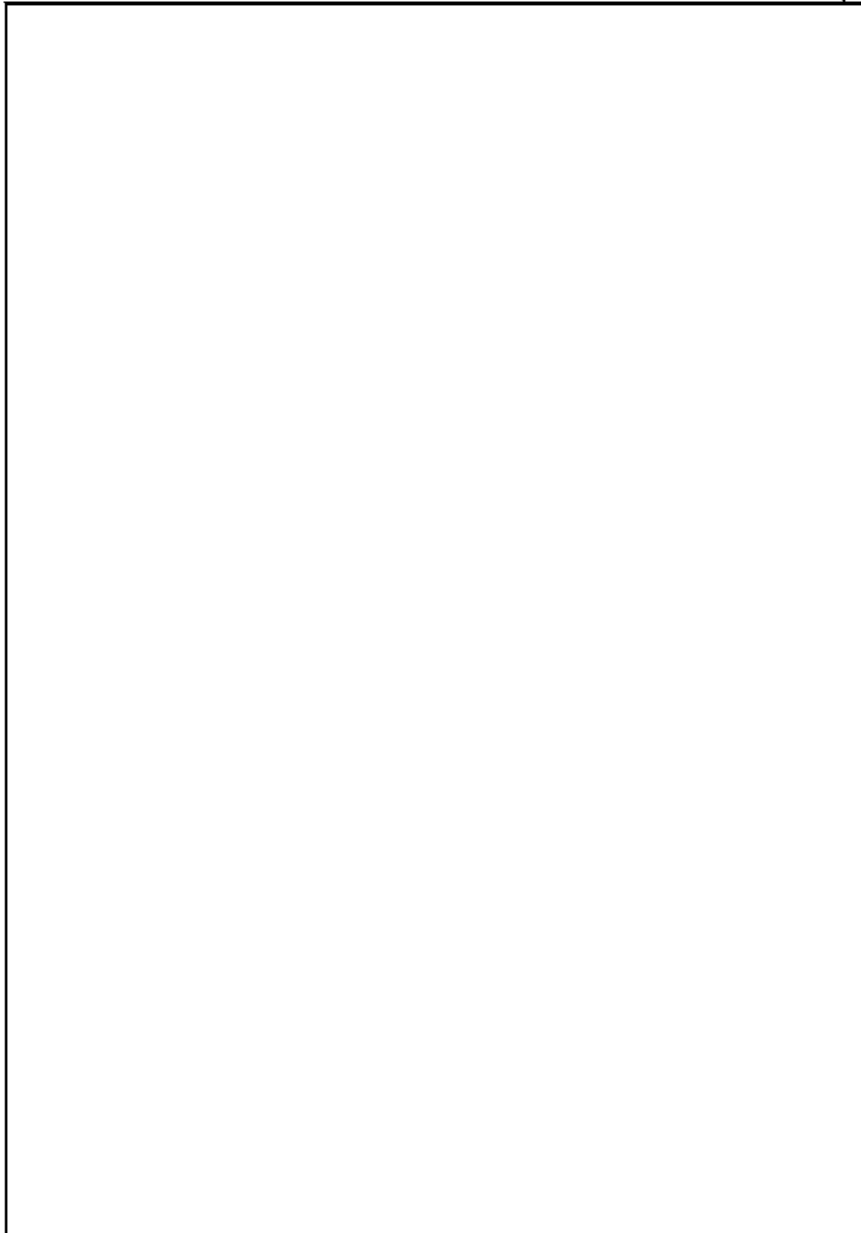
Criminal Division



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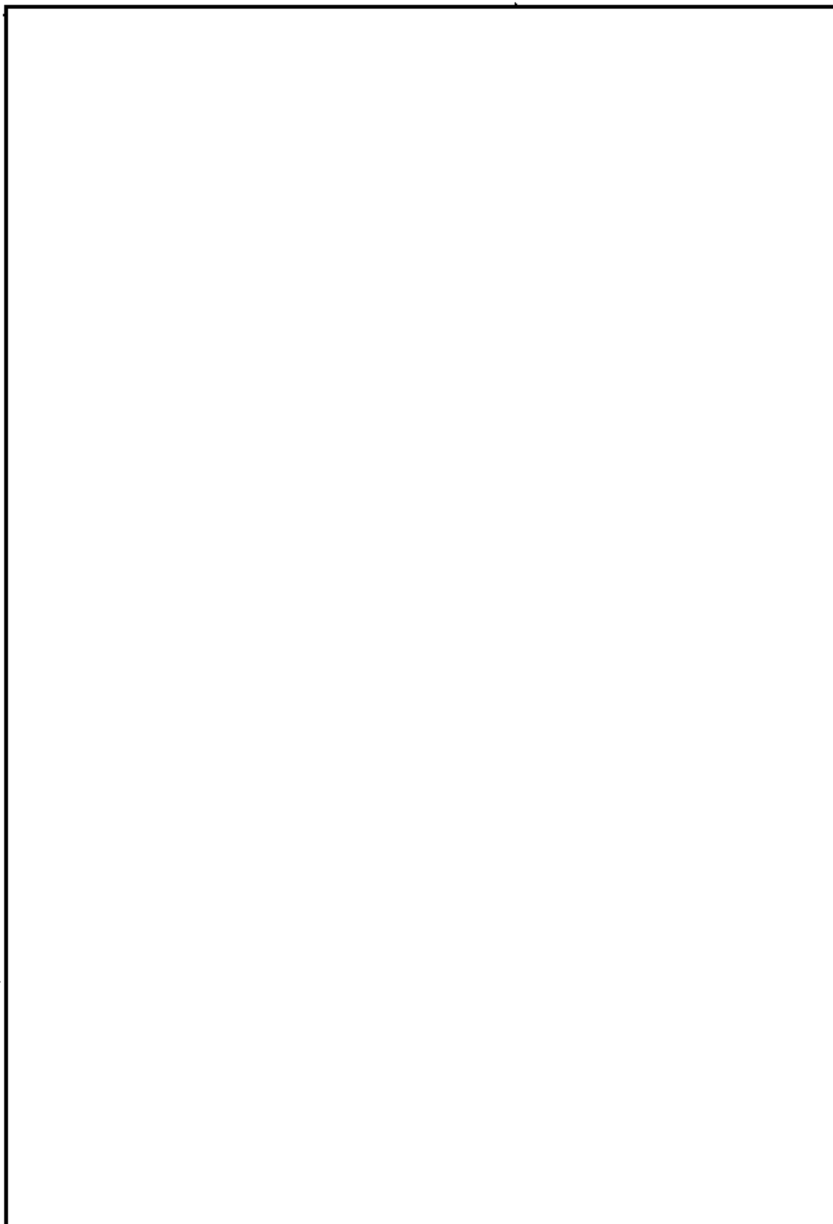
Assistant Attorney General
Criminal Division



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Assistant Attorney General
Criminal Division

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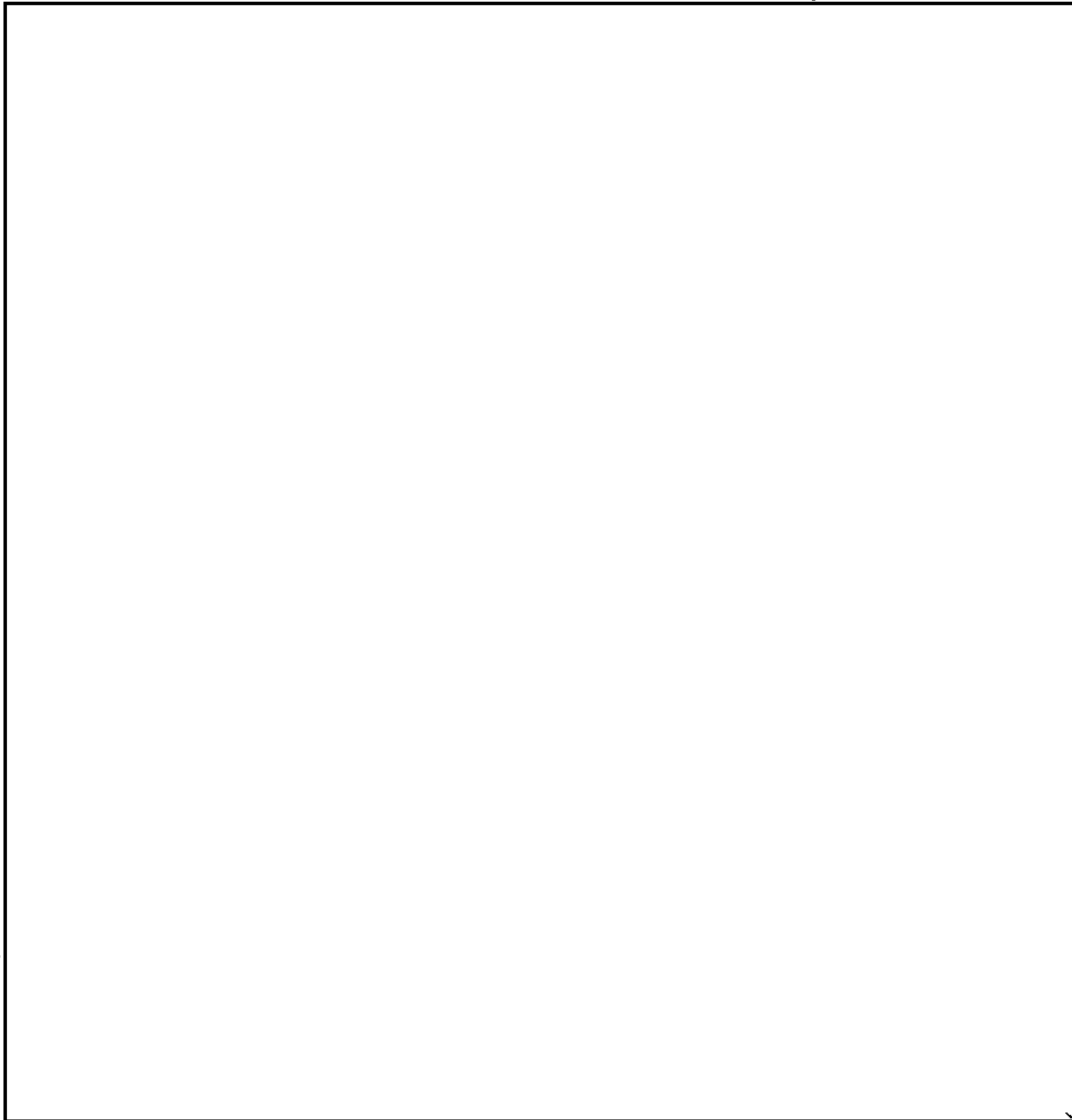

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Assistant Attorney General
Criminal Division

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Assistant Attorney General
Criminal Division

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APPROVED:

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Dep. AD Inv.

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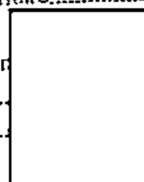

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

---X

~~[illegible] CHANDLER~~
~~11042 Newport Mill Road~~
~~Silver Spring, Maryland 20902~~;
ADELE HALKIN
56 E. Bellevue Place
Chicago, Illinois 60611;
STEVE HALLIWELL
c/o Goddard College
Plainfield, Vermont 05667;
DON LUCE
c/o Clergy and Laity Concerned
235 East 49th Street
New York, N.Y. 10017;
JONATHAN MIRSKY
Thetford, Vermont 05074;
SIDNEY PECK
15 Farrar
Cambridge, Mass. 02138;
~~NANCY ANN RAMSEY~~
~~1826 Vernon Street, N.W.~~
~~Washington, DC 20011~~;
DANIEL SCHECHTER
5005 Prudential Tower
Boston, Mass. 02199;
ETHEL TAYLOR
41 Conshohocken State Road
Apt. 714
Bala Cynwyd, Pa. 19004;
~~EDITH VILLASTRIGO~~
~~10216 Sutherland Road~~
~~Silver Spring, Maryland 20901~~;
CORA WEISS
5022 Waldo Road
Riverdale, New York 10471;
~~AMERICAN INDIAN MOVEMENT~~
~~704 University Avenue~~
~~St. Paul, Minnesota 55101~~;
AMERICAN FRIENDS SERVICE COMMITTEE, INC.
1501 Cherry Street
Philadelphia, Pennsylvania 19102;
CLERGY AND LAITY CONCERNED
235 East 49th Street
New York, New York 10017;
COMMITTEE OF CONCERNED
ASIAN SCHOLARS, c/o Angus
McDonald, National Coordinator,
614 Social Science Building,
University of Minnesota,
Minneapolis, Minn. 55455;
~~COMMITTEE OF LIAISON WITH~~
~~FAMILIES OF SERVICEMEN~~
~~DETAINED IN VIETNAM~~
~~365 West 42nd Street~~
~~New York, New York 10036~~;
WOMEN STRIKE FOR PEACE
145 South 13th Street, Room 407
Philadelphia, Pa. 19107;
INSTITUTE FOR POLICY STUDIES
1520 NEW HAMPSHIRE AVE, N.W., WDC
on behalf of themselves and all other persons
and organizations similarly situated,

Plaintiffs,

v.

CIVIL ACTION
NO. 75-1773
FIRST AMENDED
COMPLAINT-CLASS
ACTION FOR
DECLARATORY AND
INJUNCTIVE RELIEF
AND MONEY DAMAGES
(Judge Green)

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ENCLOSURE (3)

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U.S. Department of Justice

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FEDERAL GOVERNMENT

United States Attorney
Northern District of Ohio

Suite 500
1404 East Ninth Street
Cleveland, Ohio 44114

June 15, 1983

[redacted] SA
Legal Counsel Division
Federal Bureau of Investigation
U. S. Department of Justice
Washington, D.C. 20535

Re: Sidney M. Peck v. Federal Bureau of Investigation, et al., C 79-486
USDC ND Ohio ED

Dear [redacted]

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Enclosed herewith please find one time-stamped copy of Defendants' Reply to Plaintiff's Objection to Defendants' Motion for Summary Judgment relative to the above-captioned action.

Very truly yours,

[redacted]
United States Attorney

62-116875-65

By: Alan J. Ross
Patrick M. McLaughlin
Chief, Civil Division
Assistant U. S. Attorney
[redacted]
Assistant U. S. Attorney
FTS [redacted]
FTS [redacted]

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ENCLOSURE

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CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

SIDNEY M. PECK, Plaintiff,	)	Case No. C79-486
v.	)	Senior Judge William K. Thomas
FEDERAL BUREAU OF INVESTIGATION, et al., Defendants.	)	DEFENDANTS' REPLY TO PLAINTIFF'S OBJECTION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Plaintiff has raised numerous objections to defendants' motion for summary judgment. None of them are substantive in nature, and thus do not raise questions of fact. Rather, plaintiff's counsel, the American Civil Liberties Union (the "ACLU"), continues to use this case a platform for their attempts to expand the government's obligations under the FOIA. In this vein, plaintiff again argues that a representative sampling approach does not afford an adequate basis for summary judgment. The enormous expenditure of government and judicial time in connection with the first representative Vaughn index was not sufficient for the ACLU. They wish to expand it by a factor of fifty. The government finds this approach irresponsible and unnecessary. The ACLU has raised many other issues in its brief. The government will attempt to refute them where appropriate, and respond to them where the government finds the argument compelling.

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OVERVIEW

The ACLU raises three main points in its brief. They are:

1. The representative Vaughn index does not afford an adequate basis for summary judgment.

2. Judgment should be denied on the National Security (b(1)) exemptions.

3. Defendants should be required to establish that the investigations which generated the records at issue were criminal investigations.

These three will be addressed in order.

I. THE REPRESENTATIVE INDEX

With respect to its first point, the ACLU raised the following arguments:

a. Application of E.O. 12356 is incorrect; E.O. 12065 should have been applied.

b. Four documents in the sample reveal information not provided in the administrative release.

c. Some of the exemptions claimed in the administrative release are not claimed in the sample, and thus not treated in the Vaughn index.

d. Justifications have not been provided for several non-FBI documents.

e. The entire sequence of the sample was thrown off because there are only 42 documents between documents 3 and 4 in the administrative release.

A response to the first of these arguments is developed more fully in connection with Point II. There the government points to the recent decision in Afshar v. Dept. of State, Case No. 81-1299 (D.C. Cir. March 15, 1983) (attached as exhibit "A"), where the court treated the points raised by the ACLU, and flatly rejected the approach sought by the ACLU.

The second argument raised by the ACLU is even more disingenuous. Three of the documents about which the ACLU complains, document nos. 3, 7, and 14,

constitute twelve pages of material. The sum total of the information that appears on these pages are the respective subjects of the documents:

Document	Information
#3	National Mobilization Committee to End the War in Vietnam Information Concerning (is).
#7	New Mobilization Committee to End the War in Vietnam, Demonstration at Washington, D.C., November 15, 1969.
#14	Demonstrations Protesting United State Intervention in Vietnam Washington, D.C.

When processing FOIA requests and all that remains after redactions for exemptions is innocuous information, the policy of the FBI is to substitute a cover sheet for the requested documents. The purpose behind the policy is to save the requestor the cost of copying records that have essentially no information in them. Here, the information on documents 3, 7, and 14 is clearly innocuous. The ACLU does not suggest otherwise. Rather, it makes some nonsensical argument that because this information was not released with the administrative release, the representative sample "does not provide a reliable basis for a de novo review of the remaining 760 documents." (Brief at 6). The leap of logic is simply too much for the government to follow.

The ACLU also cites to document No. 8 in this complaint. Document No. 8 was referred to the Naval Investigative Service ("NIS"), the agency from which the document originated. At that point it was the obligation of the NIS to respond to plaintiff's request. The FBI has no reason to believe that the NIS did not respond to plaintiff.

The ACLU next castigates the government because not all the exemptions claimed in the administrative release are addressed in the representative sample. While this may be true, the government does not find it particularly relevant. This is nothing more than a criticism of the sampling method. The

ACLU had the opportunity to propose alternative representative or sampling procedures at a much earlier point in this case. In its pleading of July 13, 1981, responding to the government's motion for an Order to proceed by way of a representative Vaughn index, the ACLU failed to suggest any alternative approach. Now that defendants' have relied on the Court's Order to proceed in this fashion, it is far too late for the ACLU to cite what should have been obvious flaws in the approach advocated by the government. The government's motion in this regard stated:

> While the enclosed affidavit suggests a sample composed of every fiftieth document, the FBI is agreeable to any reasonable variation the plaintiff may suggest. For example, instead of every fiftieth document, the plaintiff may wish to choose particular documents which were either withheld in part or in total. Again, the FBI has no objection to this approach as long as the number of documents to be addressed is not overly burdensome. Additionally, the court may wish to impose its own sampling technique and the FBI has no objection to this approach.

The ACLU failed to suggest an alternative approach, and it should not now be heard to complain after the representative documents have been selected and the indices prepared. 1/

The ACLU next raises the fact that there are no justifications provided for documents 5 and 11, and for a portion of document 8. These are documents that originated with other agencies and were referred to them for processing. The government agrees with the position taken by the ACLU, and, accordingly, has forwarded these documents to the originating agencies for preparation of a public affidavit justifying their exemptions.

Finally, the ACLU argues that there are only 42 documents between documents 3 and 4 in the representative sample, rather than 50 documents as was originally

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1/ This is not the first time that the ACLU has challenged the representative indexing approach. In virtually every major pleading filed in this case, the ACLU has argued that the Court should reverse itself on this issue.

intended. The FBI has checked its records several times at the request of the U.S. Attorney's Office, and has found that there are 50 documents between documents 3 and 4.

More importantly, the government is unable to discern how this type of clerical error would so prejudice plaintiff that the entire process would be discarded. Yet this is precisely the argument that the ACLU makes in its brief. The government contends that the sampling approach adopted in this case was a well reasoned approach to a difficult, time-consuming problem. This fact has not changed now that the results of the approach are becoming clear. The ACLU's arguments to the contrary, the representative sample offers the Court an efficient, workable solution to the issues presented by this case. The Court should accept the representative sample, with all its limitations, and proceed to rule on the defendants' motion for summary judgment.

II. THE NATIONAL SECURITY EXEMPTIONS

Relying on Lesar v. United States Department of Justice, 636 F.2d 472 (D.C. Cir. 1980), the ACLU argues that E.O. 12065 provides the governing standard for review of classified documents, not its successor E.O. 12356, on the rationale that (1) E.O. 12065 was in effect at the time the documents were administratively processed for release to plaintiff; and (2) application of the successor order would deny plaintiff antecedent rights that were available at the time the administrative review was completed. The government finds the ACLU's analogy to unconditional antecedent rights granted by statute to be inapplicable, and its reliance on the order in effect at the time the documents were processed to be irrelevant.

The government's analysis of this issue is as follows:

1. In Lesar, the court was considering the effect of a new executive order issued during the pendency of an appeal. This is a distinctly different situation than

the one before this Court. The Lesar court did not remand the documents to the defendant agency for additional processing and therefore did not determine what order would have been applied.

2. The court in Afshar v. Department of State, Case No. 81-1299 (D. Cir. March 15, 1983) (attached as Exhibit "A"), observed that "Lesar and other cases suggest that the agency may if it desires reclassify documents under new Executive Orders issued after its initial classification decision, . . . or even while the case is pending in district court." Slip opinion at 20.

3. As the Afshar court noted, "the rationale for allowing the Executive to apply new Executive Orders to documents in a pending suit is that the needs of national security change and that the Executive should be able to respond quickly to those changes." Slip opinion at 21.

4. The Afshar court also found that FOIA and the applicable Executive Order do not create substantive rights that rest in plaintiff at the time of final administrative action. "FOIA is not the kind of statute that is primarily concerned with individual rights. . . . Rather, it is primarily a 'good government' law, designed first and foremost to ensure an informed citizenry . . . " Slip opinion at 22. Thus, the Afshar court held, the primary interest working against the government's position is "the Act's concern with encouraging speedy resolution of requests." Id.

5. Here, speedy resolution is not an issue, or if it is, it works against the plaintiff's position because the documents have already been reviewed under E.O. 12356, and to review them again, as plaintiff suggests, under the old executive order, would merely delay the resolution of this case.

6. The Afshar court concluded that the national interest in permitting the President to respond quickly to shifts in the need for secrecy must take precedence over the interests of the public in a speedy resolution of FOIA requests. This Court should do the same.

The ACLU also argues that the substantive requirements of E.O. 12356 are not met by the government. The ACLU's concern is that the agency might be able to avoid embarassment and that the Court's upholding of the defendants' coded approach to the indexing of documents might have some collateral estoppel-like

effect on future FOIA litigation. Several times in its brief, the ACLU cites the government's attempts to avoid embarrassment, complete with its now-standard references to the COINTELPRO file. The government has, however, released numerous COINTELPRO documents in this case without concern over its own embarrassment. The ACLU's repeated references to agency embarrassment is nothing more than the worst form of speculation, based upon no facts, and clearly intended to raise a question of fact without ever raising a single fact.

The government will stand on its use of the coded approach to the Vaughn index for b(1) material. It facilitates expeditious handling of FOIA appeals, which as the Afshar court noted, is a primary interest in FOIA litigation. Slip opinion at 22. The ACLU argues that several of the code categories are too broad or not sufficiently detailed, so that plaintiff is forced to argue in the alternative or is unable to argue effectively. In fact, plaintiff has not raised a single fact that refutes the government's b(1) claims. It is quite clear that plaintiff has no facts that might support its various positions, and is unable to argue in the alternaive or any other way. The ACLU's approach is simply to make the government supply more and more facts in order to justify the claimed exemptions. This the government is unable to do without revealing the very information for which protection is sought. Should the court be unwilling to accept the government's coded affidavit, the government is quite willing to submit this material for in camera inspection.

III. THE b(7) THRESHOLD ISSUE

In this Court's December 14, 1982 Order, the Court devoted thirteen pages to a discussion of the b(7) threshold issue (pp. 24-36). The Court concluded that "in examining a particular FBI document, this court will conclusively

presume that the investigation which generated the document was undertaken for a law enforcement purpose." Memorandum and Order (December 14, 1982) at p. 36. The ACLU has since raised reconsideration of this order, which the Court rejected. It is being raised here again, and again it should be summarily rejected.

IV. CONCLUSION

Plaintiff has raised several arguments against granting defendants' motion for summary judgment. None of them include any facts that raise a question of fact about any of the exemptions claimed by defendants. The plaintiff's arguments should be rejected, and the government should be granted summary judgment.

Respectfully submitted,

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United States Attorney

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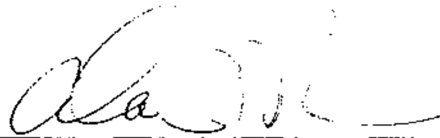
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Defendant's Reply to Plaintiff's Objection to Defendant's Motion for Summary Judgment was mailed to Gordon J. Beggs, Esq., American Civil Liberties Union of Cleveland Foundation, Inc., 1223 West Sixth Street, Cleveland, Ohio 44113 this 15th day of June, 1983.



Alan J. Ross
Assistant U.S. Attorney

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June 12, 1989

Honorable Vernon A. Walters
American Ambassador
The American Embassy
APO New York 09080

Dear Ambassador Walters:

The purpose of this letter is to introduce you to Supervisory Special Agent [redacted] who is being assigned as the new Legal Attache on your staff ~~in Bonn~~. I have attached a brief biographical summary concerning [redacted] for your use.

All FBI Legal Attaches are counseled that they are assigned abroad not only to represent the interests of the FBI and the Department of Justice, but are to be fully available to the Ambassador in whatever capacity the Ambassador requires their assistance. I hope that you will find [redacted] a valuable addition to your staff.

Please do not hesitate to contact me concerning any assistance we may be to you in your most important responsibilities.

MAILED JUN 13 1989

Sincerely yours,

William S. Sessions

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William S. Sessions
Director

1 ENCLOSURE

62-116898-79

Enclosure

AUG 30

Exec AD Adm.
Exec AD Inv.
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Asst. Dir.:
Adm. Servs.
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Director's Sec'y

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APPROVED:
Director
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Exec. AD-Inv.
Exec. AD-LES

Adm. Servs.
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Off. of Cong. & Public Affs.
Off. of Lia. & Intl. Affs.
Rec. Mgmt.
Tech. Servs.
Training

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