

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ROGER HALL, et al., :

Plaintiffs, :

v. : **C. A. No. 04-0814 HHK**

:

CENTRAL INTELLIGENCE AGENCY, :

Defendant :

DECLARATION OF ROGER HALL PURSUANT TO RULE 56(f)

I, Roger Hall, pursuant to Rule 56(f) of the Federal Rules of Civil Procedure, declare and say as follows:

- 1. I am a plaintiff in the above-entitled cause of action.**
- 2. I am unable to present by affidavit all of the facts essential to countering all aspects of the motion which defendant Central Intelligence Agency (“CIA”) has filed for dismissal or partial summary judgment. There are a number of reasons why this is the case. First, this case concerns the operations and activities of the CIA regarding Prisoners of War (POWs) and persons Missing in Action (MIAs) and records pertaining thereto. To a considerable degree, information pertinent to whether or not certain responsive records were created, and where they might be located, is exclusively within the possession of the CIA; without discovery I cannot establish that certain important operations and activities created records or categories of records pertaining to POW/MIAs which are likely still maintained by the CIA.**

3. Second, the existence and content of many records which may be pertinent to this case is concealed because their existence or content is still allegedly properly classified. Again, without discovery, I have no means of establishing this evidence.

4. Third, this Court has stricken a considerable body of evidence known to me which impugns the adequacy of the CIA's search on the grounds that it is inadmissible in evidence under Rule 56(e). The only way I have of rehabilitating that evidence and making potent use of it is through discovery.

5. Fourth, persons who provided significant information to me about CIA operations or activities or records when I interviewed or corresponded with them are no longer living and thus are not available to provide affidavits or deposition testimony as to what they told me that bears on the adequacy of the CIA's search.

6. Fifth, several persons who have given me significant information about CIA operations and activities which would have generated records pertaining to POW/MIAs have refused to provide such information without what they regard as the protection of a court subpoena.

7. In the paragraphs which follow, I set forth some of the material which this Court has stricken as inadmissible evidence under Rule 56(e). This material contains significant evidence which, if admissible, would severely undercut the CIA's claims that it has conducted an adequate search for records responsive to my request. Discovery is needed in order to make this material admissible in evidence.

8. During the Vietnam War, the CIA Political Adviser ("POLARD") at the Commander in Chief Pacific ("CINCPAC") was the originator and/or party to

MA/POW operations. That the CIA's POLARD received information concerning POW matters is indicated by a May 1972 telegram from the American Ambassador to Laos directed to CINCPAC POLARD which reported on information received from a source on the status of POWs in Laos. See Exhibit 28 [Bates 000200]. I have not been provided this or other related records by the CIA.

9. In a deposition given to the Senate Select Committee on POW/MIA Affairs, Admiral Richard Secord stated that the CIA conducted a raid—he thought it was in late 1967—in connection with Americans who were reportedly being held at Mahaxay, Laos. See Exhibit 23-A, Deposition of Admiral Richard Secord at 58-59 [Bates 000174-000175]. I have not been supplied with any records pertaining to this raid. In 1965 there was a planned rescue attempt under the auspices of Air America, codenamed “DUCK SOUP,” which utilized the CIA asset referred to by Secord in his testimony. See Exhibit 23-B at 151 [Bates 000178]. This was an attempt to rescue then Captain David Hrdlicka and Captain Charles B. Shelton in the Sam Nuea area of Laos. These two POWs held by the Pathet Lao were rescued using CIA ASSETS, INCLUDING Air America, a CIA proprietary, and American military assets, and indigenous Controlled American Source (“CAS”) personnel from the H'mong tribe of northern Laos, Thai forces, and others. One American participant was Air Force pilot Clifford Reese. These POWs were then recaptured. This information is corroborated to a considerable extent by a FLASH telegram from Laotian Ambassador William Sullivan dated June 20, 1965. See Exhibit 5 [Bates 000100]. I obtained this telegram and other State Department documents regarding this raid from the Lyndon Baines Johnson Library in Austin, Texas. The

CIA has not provided me with any records regarding this raid. In his deposition, Secord refers to photography taken in connection with this raid. See Exhibit 23-A at 54 [Bates 000173]. I have not been provided with any photographs made regarding this raid.

10. Another rescue attempt was planned for and occurred in Laos in 1971 or 1972. Special Forces Sgt. John Cavaiani was involved in the rescue or planned rescue. Such an attempt would not even have reached the planning stage unless the identities and locations of the POWs had been confirmed. I have not been given any records related to this.

11. Admiral Elmo Zumwalt revealed to me in a conversation I had with him in 1965 regarding documents on the CIA's ongoing POW/MIA tracking after March, 1973, that the CIA wanted to present information on their ongoing POW/MIA operations in Laos to him in 1973 when he was Chief of Naval Operations. I have not been provided with any records pertinent to this.

12. Operation Tailwind was a CIA project. Deposition of Admiral Thomas Moorer Robert Van Buskirk v. CNN, No. C99-20899 (N.D.Calif. Jan. 17, 2000), Exh. 6 at 0258 [Bates 000158]. According to Wikipedia article on Tailwind, two foot lockers of documents were removed from the POW interrogation site that was the focus of Operation Tailwind. See Exhibit 34 at 3 [Bates 000240].

13. In 1994-1995, I interviewed Admiral Thomas Moorer, former Chairman of the Joints Chiefs of Staff. He told me that in 1972 he had authorized a rescue of 60 POWs in Laos. Admiral Moorer told me that, as planned, this raid was second in complexity only to the Son Tay raid. The rescue attempt was cancelled because of

the pending Peace Agreement of January 1973. Admiral Moorer stated that the CIA and the Department of Defense had information on this planned operation, and that I should check with the indigenous personnel files known as Controlled American Source (“CAS”) or at the CIA. He said this was a joint CIA/military operation. I have not received records regarding this planned rescue operation.

14. From 1993-1995 I interviewed Jerry Mooney on several occasions. Mr. Mooney was a United States Air Force analyst who worked for the National Security Agency (“NSA”) during the Vietnam War. He informed me that the CIA had bugged the North Vietnamese Embassy in Vientiane, Laos, as well as other embassies. It is my belief that he was in a position to know this and that he was telling me the truth. The CIA has not provided me with any records related to this.

15. In 1993-1995, I spoke with Harry Pugh, a CIA employee about American POWs in China. He told me over the telephone that all documentation was in the basement of the CIA, and he did not have to go through it all, and that nobody had gone through it. The record in this case does not reflect a search of this location.

16. The CIA has not stated that it searched any overseas field stations for responsive records. Witnesses before the Senate Committee repeatedly testified to the involvement of the CIA field stations in Vietnam, Laos, Cambodia, and Thailand in the gathering of information about POW/MIAs. At NARA I reviewed the testimony of the Chief, East Asian Division (1976-1981). It supports this statement. See Attachment 1-A [Bates 000026]. I did not, however, copy the test of his testimony at that time, and it has since been reclassified.

17. In my review of publicly-released reports and documents from the CIA and other agencies, the following code names have surfaced as the designations for operations released to or connected with POW/MIAs. Bright Light (a DOD collection and reporting system on POWs and prison camps), Trail Watch (a CIA project using, among others, Controlled American Sources and “indigenous personnel” to observe POW and military movements on routes in Laos and elsewhere), Project Alpha (an Air force mission to track the location of POW/MIAs to protect them against inadvertent U.S. bombings, Operation Pocket Change (a 1981 plan to reconnoiter—including using photographs and listening devices—and rescue those believed held in Laos), Project Corona (an operation to photograph—including imagery taken by satellite—and interpret troop movements in Southeast Asia, including along the Ho Chi Minh Trail), and Duck Soup (the CINCPAC Air America name for a supply operation also used to rescue POWs, possibly including Col. Hrdlicke, from Laos). In each of these operations there is publicly available evidence of the CIA’s involvement. The CIA should have searched under these names, and under the CIA’s own codenames for these operations, if it had any.

18. With respect to currently withheld materials whose disclosure would seem quite likely to lead to admissible evidence regarding the CIA’s activities regarding POWs, I cite the deposition of Richard Secord that was taken by the Senate Select Committee on POW/MIA Affairs. Pages 23-41 of Secord’s deposition are “Denied for Declassification by CIA.” Attachment 2 is a National Archives record which indicates that the deposition of Bill Graver, formerly of the CIA is to be taken regarding Nhom Marrot. Graver’s deposition is not publicly available, yet

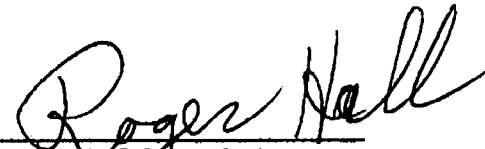
what he had to say about Nhom Marrot would clearly be relevant to issues in this case. Neither is the deposition of John Mason, referred to in Attachment 3, available. An April 22, 2008 letter from Kristen Wilhelm of the National Archives to me attached a list of 26 depositions withdrawn in full from the records of the Senate Select Committee. See Attachment 4.

19. Attachment 5 is a record which I obtained from the National Archives which indicates that a Memorandum for the Record by Admiral Bobby Inman was removed from the records of the Senate Select Committee on POW/MIA Affairs at NARA. My note at the top of this record indicates that it pertains to Nhom Marrot. Attachment 6 is yet another document which has been removed from the National Archives which pertains to Nhom Marrot. It is not available. These are just two from among hundreds of such records that have been pulled from the collection of records pertaining to the Senate Select Committee's investigation.

20. Attachment 7 is another document from the National Archives collection of records of the Senate Select Committee. It indicates that the document was "Being Removed by the CIA." It is not available.

21. Attachments 8-10 appear to me to be CIA documents. They are highly redacted. Confirmation on discovery that they are CIA documents would establish their relevancy to the issue of the adequacy of the CIA's search in this case.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 17th day of December, 2008.


ROGER HALL