

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROGER HALL, <u>et al.</u> ,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	C. A. No. 04-0814 HHK
	:	
CENTRAL INTELLIGENCE AGENCY,	:	
	:	
Defendant	:	

NOTICE OF FILING OF THE
PLAINTIFFS' REPORT TO THE COURT ON
CASE MANAGEMENT PLAN AND SCHEDULE

Plaintiffs Roger Hall, Studies Solutions Results, Inc., and Accuracy in Media Inc., submit the following report.

By order issued November 12, 2009, this Court directed the parties to prepare a Case Management Plan and Briefing Schedule ("Plan"). Because the parties were unable to agree on the specifics of the Plan, they agreed to submit separate reports. In light of this, plaintiffs spent considerable time yesterday responding to a 13-point plan which defendant had recently submitted in response to a counterproposal by plaintiffs. Late this afternoon plaintiffs learned that defendant had submitted a "Meet and Confer"

statement which attached a very terse Plan. Earlier, the CIA had submitted two more detailed proposals.

The CIA's new plan misrepresents plaintiffs as having taken the position that the CIA must review several thousand pages of documents within 60 days of the adoption of the Plan. The CIA initially proposed a 180-day period to review the "Senate" records, one of the 13 items it dealt with. Plaintiffs countered with a 120-day period for this and two other items, Sections III.A.4, III.A.1, and III.B.1.i of the Court's Memorandum Opinion. The CIA agreed. However, when plaintiffs received the new draft of the CIA's proposal yesterday, Item 1 on the CIA's proposed Plan (the "Senate" records) had been changed from the agreed upon 120 days to 180 days. In light of this, the failure of the CIA to provide any information on how many records were at issue with respect to the "Senate" documents, and a closer analysis of the implications of the CIA's proposed 13-point plan, plaintiffs prepared a counter proposal which, among other things, generally set a 60-day limit for providing supplemental declarations and/or briefs, and a 120-day limit for the provision of nonexempt materials. However, this morning plaintiffs' counsel received an email from counsel for the CIA advising that the CIA's "preliminary" estimate was that the "Senate" documents came to about 5,000 pages.

In light of this information, plaintiffs' counsel called the CIA's counsel this morning. CIA's counsel advised that the "180-day" figure for the provision of Senate records was an inadvertent error. Plaintiffs' counsel said that having now been informed that the amount of "Senate" records at issue was about 5,000 pages, he would agree to the 120-day figure. However, the CIA's counsel concluded that the parties should both file separate reports, and this ended the conversation.

Plaintiffs' difficulties with the Plan proposed by defendant are (1) the single 180-day date proposed by the CIA for all actions which must be undertaken is much too long; and (2) the 180-day date is particularly inappropriate where some of the tasks to be done involve simple legal issues, such as defining the nature and scope of a search, which can be accomplished long before any 180-day limit.

With respect to the first point, plaintiffs, with but one exception, have been provided with no information regarding the estimated amount of responsive records pertaining to each of the thirteen issues which must be addressed. The one exception, as noted above, is the provision, only today, weeks after plaintiffs had requested it, of the "preliminary" figure of 5,000 pages as the number of documents which may be involved in the review of the so-called "Senate" documents to determine whether or not they qualify

as CIA records. On the basis of this information, plaintiffs accept a date of 120 days for the provision of nonexempt records falling under this category (Section III.A.4) Plaintiffs note, in this regard, that in Judge Paul Friedman's August 10, 2000 order in Hall I, he specified that all searches, including the review of the Senate records, would be completed by October 16, 2000, only 67 days after the date of his order, a far cry from the 180 days now sought.

With respect to Section III.A.3, defendant's prior Plan proposed "CIA either perform the search of relevant CIA databases or provide supplemental briefing and/or a declaration within 180 days of the entry of the case management plan." This would also be its deadline for these actions under the proposed Plan it has now submitted to the court. Thus, plaintiffs are confronted with the prospect that 180 days after the adoption of the Plan the CIA will submit a declaration and/or briefing which delimits the search in some way only at that late date.

With respect to Section III.A.2, defendants' proposed Plan would allow the CIA up to 180 to determine whether that the requested search can be performed using the criteria supplied by plaintiffs. While defendant's proposal would also require release within 180 days, this is too long a period needed to make a simple determination, particularly if rolling releases are

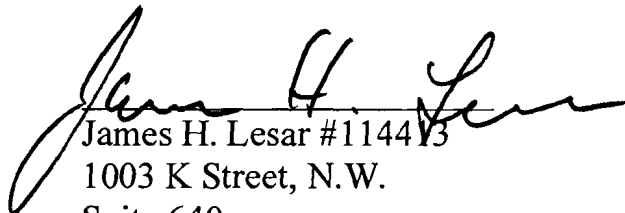
not made. That determination ought to be made within 60 days, and any responsive nonexempt records provided within 120 days. The present proposal leaves the prospect that at the end of 180 days the CIA will determine that searches using the criteria specified by plaintiffs will not be feasible and the briefing of this issue will commence only then.

With respect to all items of the Court's Memorandum Opinion (except III.C.1 and III.C.7) plaintiffs propose that supplemental declarations and/or Briefing shall be filed within 60 days of the issuance of the Court's Case Management Plan, and that any nonexempt materials responsive to these items shall be produced within 120 days thereof. There is no objection to defendant's Plan where Sections III.C.1 and III.C.7 are concerned.

The Case Management Plan should also provide that whenever a supplemental briefing or declaration results in the determination that records will be withheld or produced, the CIA shall provide a list of those records within 30 days after the expiration of the 120-day period, and that plaintiffs shall have 30 days after that in which to select a representative sample for purposes of compiling a Vaughn sample index. The CIA will then have 60 days after submission of these sample Vaughn indices to file a formal Vaughn index or indices and any

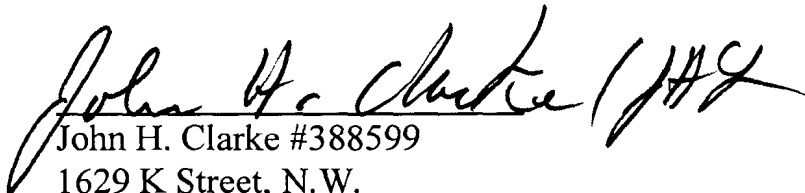
dispositive motion. Plaintiffs would have 30 days after that to respond to the CIA's motion.

Respectfully submitted,



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