

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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SETH ROSENFELD,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 07-CV-03240
	)	
FEDERAL BUREAU OF	)	
INVESTIGATION and	)	
U.S. DEPARTMENT OF JUSTICE,	)	
	)	
Defendants.	)	
_____	)	

**FIFTH DECLARATION OF DAVID M. HARDY**

I, David M. Hardy, declare as follows:

(1) I am currently the Section Chief of the Record/Information Dissemination Section (“RIDS”), Records Management Division (“RMD”), formerly at Federal Bureau of Investigation Headquarters (“FBIHQ”) in Washington, D.C., and currently relocated to Winchester, Virginia. I have held this position since August 1, 2002. Prior to joining the FBI, from May 1, 2001 to July 31, 2002, I was the Assistant Judge Advocate General of the Navy for Civil Law. In that capacity, I had direct oversight of Freedom of Information Act (“FOIA”) policy, procedures, appeals, and litigation for the Navy. From October 1, 1980 to April 30, 2001, I served as a Navy Judge Advocate at various commands and routinely worked with FOIA matters. I am also an attorney who has been licensed to practice law in the State of Texas since 1980.

(2) In my official capacity as Section Chief of RIDS, I supervise approximately 274 employees who staff a total of ten (10) units and two (2) field operational service center units

whose collective mission is to effectively plan, develop, direct, and manage responses to requests for access to Federal Bureau of Investigation (“FBI”) records and information pursuant to the FOIA, 5 U.S.C. § 552; Privacy Act of 1974, 5 U.S.C. § 552a; Executive Order 13526; Presidential, Attorney General and FBI policies and procedures; judicial decisions; and other Presidential and Congressional directives. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

(3) As Section Chief and managing supervisor of RIDS, I am responsible for tasking RIDS employees to oversee the initiation of FOIA searches. I personally reviewed search notes, search slips and all other documentation presented by employees from the Litigation Support Unit (“LSU”) regarding the automated and manual indices search initiation and results generated by FBIHQ and the various Field Offices in response to plaintiff’s requests. Following the Court’s August 22, 2008 Order and the subsequent agreement with plaintiff to conduct new, detailed searches, I reviewed the field office e-mail instructions regarding the methods to apply in conducting the FBIHQ and various Field Office automated and manual searches as well as reviewed letters from plaintiff regarding the additional searches requested during subsequent Case Management Conferences (“CMC”).<sup>1</sup>

(4) Due to the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to requests for information from its files pursuant to the provisions of the FOIA and the Privacy Act of 1974. Specifically, I am aware of the FBI’s response to

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<sup>1</sup> See Third Hardy Declaration (“Third Hardy”) executed on September 22, 2008 for an explanation of David M. Hardy as a qualified declarant.

plaintiff's request concerning nine individuals and organizations: Ronald Wilson Reagan, Herbert Ellingwood, Alexander C. Sheriffs, Roy M. Brewer, Neil Reagan, "80" Files, Motion Picture Industry Council ("MPIC"), Labor League of Hollywood Voters and Motion Picture Alliance for the Preservation of American Ideals. Further, I am aware that at the conclusion of the February 9, 2009 CMC, plaintiff agreed to focus the scope of this litigation to the adequacy of the search and exempt material on the FOIA requests pertaining to Ronald Wilson Reagan, Alexander C. Sheriffs, Neil Reagan as well as a page-by-page, line-by-line detailed search of the Screen Actors Guild ("SAG") records for the years 1946 to 1950. Although plaintiff indicated during the February 9, 2009 CMC, that he was not dismissing the issues regarding the other subjects (See page 30, line 19 of the February 9, 2009 CMC transcripts), the plaintiff indicated in the November 2, 2009 CMC Statement that "in the interest of reducing the burden of processing, plaintiff hereby offers to entirely eliminate these parts of his request..." regarding Roy M. Brewer, "80" Files, MPIC, Labor League of Hollywood Voters and Motion Picture Alliance for the Preservation of American Ideals. (See page 5, lines 5-7.)

(5) Additionally, I am aware that at the conclusion of the April 6, 2009 CMC, plaintiff requested specific searches of the "author set" of abstracts for documents authored by Ronald Wilson Reagan, Neil Reagan and Alexander C. Sherriffs. Further, at the April 6, 2009 CMC, I am aware that the FBI agreed to conduct a search for records related to an autobiography written by Ronald Reagan, with this search being conducted according to the title of the work, co-author, and additional search terms provided by the FBI. Specifically, the FBI agreed to conduct a search of the automated and manual indices for the book title "Where's the Rest of Me? The Ronald Reagan Story," a search of the co-author "Richard G. Hubler" and a search of

Ronald Wilson Reagan's official title as Governor, State of California as well as all appropriate variations.

(6) Additionally, I am aware that the FBI received four letters from plaintiff dated April 20, 2009, September 8, 2009, October 9, 2009 and December 17, 2009, respectively, requesting additional searches and/or additional processing to be conducted.<sup>2</sup> These letters were written by plaintiff as a result of discussions between the parties at the pre-conference meetings at the CMCs and in subsequent conference calls between the parties and their counsel.

(7) In accordance with Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), this declaration, which is being submitted in support of the FBI's renewed motion for summary judgment, will provide the Court and plaintiff with a detailed explanation of all aspects of the numerous searches conducted by the FBI regarding subjects Ronald Wilson Reagan, Neil Reagan and Alexander C. Sherriffs. This declaration will clarify further information regarding searches the FBI conducted at FBIHQ, the San Francisco Field Office ("SFFO"), the Los Angeles Field Office ("LAFO"), the San Diego Field Office ("SDFO"), the Sacramento Field Office ("SCFO"), and the Washington Field Office ("WFO") for Ronald Wilson Reagan, the specified SAG search from 1946 to 1950, Richard G. Huber, the book title search, and the official title search as agreed upon by the parties. This declaration will also provide information regarding searches conducted at the LAFO and WFO for Neil Reagan and for searches conducted at the SFFO for Alexander C. Sherriffs.

(8) In addition, this declaration will provide detailed explanations regarding those

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<sup>2</sup> The FBI will discuss the additional searches and/or processing conducted as a result of these letters in further detail, infra.

documents which the FBI has not been able to locate (“Unable to Locate”); files which the FBI has destroyed pursuant to published destruction regulations (“Destroyed files”); files transferred to the National Archives and Records Administration (“NARA”); searches of the Electronic Surveillance (ELSUR) Index; searches of the Abstract Cards; Cross-References; and a clear explanation of documents which the FBI determined not responsive to and/or outside the scope of plaintiff’s request. In this declaration the FBI will also provide a detailed explanation of automated searches; specifics of searches it has performed; its search for -- and processing of -- cross references; re-processing of specific Reagan requests; manual searches; search slips; abstract card systems; and records identified but not released. Moreover, the FBI will provide detailed explanations regarding the FBI’s searches for -- and production of -- materials which are intended to resolve the outstanding issues which remain in this litigation: 1) cross references not searched or processed in the manner specified by plaintiff; 2) failure to search particular indices; 3) inadequate or non-existent search slips; 4) records on search slips not produced; 5) failure to search abstract cards; 6) records identified but not released; 7) failure to re-process Ronald Reagan records; and 8) failure to produce “office of origin” files.

(9) In accordance with the standards set forth in Wiener v. FBI, 943 F.2d 972 (9<sup>th</sup> Cir. 1991), in this declaration the FBI will also provide justifications in a narrative format, for the withholding of information from the 179 pages selected by plaintiff pursuant to FOIA Exemptions 1, 2, 3, 6, 7(C) and 7(D), 5 U.S.C. §§ 552 (b)(1), (b)(2), (b)(3), (b)(6), (b)(7)(C), and (b)(7)(D).

#### **CORRESPONDENCE PERTAINING TO PLAINTIFF’S REQUEST**

(10) Set forth below is a description of the pertinent correspondence concerning



plaintiff's multiple requests.<sup>3</sup> Copies of this correspondence are attached hereto as **Exhibits A through YY**.

**FOIA REQUEST REGARDING ALEXANDER C. SHERRIFFS**

(11) By letter dated July 8, 2004, plaintiff submitted a FOIA request to FBIHQ and SFFO seeking access to the following:

I am requesting any and all records, in each and every record system maintained by the FBI, on or off site, including but not limited to main files, see references, ELSUR, Official and Confidential files, Official and Personal Files, JUNE Files and Do Not File files. This includes any public source information that may be contained in responsive records, as well as any and all administrative markings and handwritten notations that may appear on responsive records (**See Exhibit A.**)

(12) By letter dated November 18, 2008, the FBI released two pages of index cards from the SFFO that were not previously released. (**See Exhibit B.**)

(13) By letter dated March 30, 2009, the FBI released 158 pages as a result of a new search that it conducted on November 19, 2008. (**See Exhibit C.**)

(14) By letter dated June 30, 2009, the FBI released 165 pages in response to plaintiff's April 20, 2009 letter and discussions at the April 6, 2009 CMC. (**See Exhibit D.**) The FBI re-examined, re-processed, and released records it had located during the November 19, 2008 search along with all search slips.

(15) By letter dated July 2, 2009, the FBI provided plaintiff with a list of file numbers it located during the November 19, 2008 search that had been destroyed in accordance with the Federal Records Act, accessioned to NARA, or those records it was unable to locate. (**See**

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<sup>3</sup> Correspondence prior to the August 22, 2008 Court Order, outside of the initial request letters from plaintiff for those subjects mentioned herein, is referenced in the Declaration of David M. Hardy ("First Hardy").

**Exhibit E.)** The FBI provided plaintiff with NARA's address in order to allow plaintiff to pursue access to those records which the FBI had accessioned to NARA.

**FOIA REQUEST REGARDING NEIL REAGAN**

(16) By letter dated March 23, 2005, plaintiff submitted a FOIA request to FBIHQ, LAFO and WFO seeking access to the following:

This is a request pursuant to the Freedom of Information Act, 5 U.S.C. § 552, as amended, for any and all records in any way concerning Neil Reagan, who died December 11, 1996 and was the brother of the late President Ronald Reagan.

I wish to make clear that I want any and all records including but not limited to main files, see references, Do Not File files, channelized records, search slips, including search slips used to process this request, ELSUR records, index cards, records that are or were maintained in SAC safes, and bulky exhibits. **(See Exhibit F.)**

(17) By letter dated November 28, 2008, the FBI released 100 pages of cross-references which it reprocessed to comply with the Court's August 22, 2008 Order. **(See Exhibit G.)**

(18) By letter dated March 30, 2009, the FBI made a first interim release of 106 pages which were located as a result of the new search that was conducted on November 19, 2008. **(See Exhibit H.)**

(19) By letter dated April 20, 2009, the FBI made a final release of one additional page as a result of the new search that was conducted on November 19, 2008. **(See Exhibit I.)**

(20) By letter dated June 30, 2009, the FBI released 163 pages in response to plaintiff's April 20, 2009 letter and discussions at the April 6, 2009 CMC. **(See Exhibit J.)** The FBI re-examined and re-processed the documents that were located during the November 19, 2008 search, and the documents produced from March 30, 2009 through April 20,

2009 were re-examined and reprocessed. In addition, the FBI produced copies of all search slips, as well as new, legible copies of index cards that were previously illegible.

(21) By letter dated July 2, 2009, the FBI provided plaintiff with a list of file numbers it located during the November 19, 2008 search which had been destroyed in accordance with the Federal Records Act, accessioned to NARA or those records it was unable to locate. (See Exhibit K.) The FBI provided plaintiff with NARA's address so that plaintiff could pursue access to those records which the FBI had accessioned to NARA.

**FOIA REQUEST REGARDING RONALD WILSON REAGAN**

(22) By letter dated August 6, 2007, plaintiff submitted a FOIA request to FBIHQ, SFFO, LAFO, SCFO, SDFO and WFO seeking access to the following:

any and all records at FBIHQ, San Francisco, Los Angeles, Sacramento, San Diego, Washington Field Office, and all offices of origin on Ronald W. Reagan (date of birth 2/06/11; UC Regent ex officio c. 1966-1978), from the earliest records through January 1, 1979. (See Exhibit L.)

(23) By letter dated November 28, 2008, the FBI released 24 pages of cross references. The FBI re-processed these cross references in order to comply with the Court's August 22, 2008 Order. Plaintiff later identified these cross references in his April 20, 2009 letter, but which the FBI identified as cross references which were previously processed correctly. (See Exhibit M.)

(24) The FBI made six separate releases of documents to plaintiff it had located as a result of its new search on November 19, 2008: 1) February 6, 2008 - 911 pages; 2) March 9, 2009 - 1,159 pages; 3) March 12, 2009 - 902 pages; 4) April 1, 2009 - 698 pages; 5) April 20, 2009 - 1,418 pages; and 6) May 8, 2009 - 161 pages. (See Exhibits N through S.)

(25) By letter dated July 2, 2009, the FBI provided plaintiff with a list of file numbers



it had identified during the November 19, 2009 search which had been destroyed in accordance with the Federal Records Act, accessioned to NARA or records it was unable to locate. (See Exhibit T.) The FBI provided plaintiff with NARA's address so that plaintiff could pursue access to those records which the FBI had accessioned to NARA.

(26) By letter dated July 24, 2009, the FBI released 5,251 pages in response to plaintiff's April 20, 2009 letter and discussions at the April 6, 2009 CMC. (See Exhibit U.) The FBI re-examined and re-processed the records which it had located during the November 19, 2008 search and which it had produced from February 6, 2009 through May 8, 2009. In addition, the FBI produced copies of all search slips as well as new, legible copies of index cards that were previously illegible.

(27) By letter dated November 13, 2009, the FBI provided additional information to plaintiff following the November 2, 2009 CMC. (See Exhibit V.) The FBI provided a CD copy of the file disposition charts that it had provided previously in paper to plaintiff; it reprocessed two pages from the June 24, 2009 release to release additional information that had been previously inadvertently withheld; it provided public liaison contact information regarding outstanding referrals and; it provided plaintiff with an update regarding the status of the search for serials from additional file numbers included in plaintiff's October 9, 2009 letter.

(28) By letter dated November 24, 2009, the FBI released 14 pages in response to plaintiff's October 9, 2009 letter. (See Exhibit W.) The FBI provided two additional cross references that it had not located in the original search; this was due to the fact that the subject of the request had not been indexed to those file numbers. The file numbers were located within a summary of a document located in a responsive file. In addition, the FBI located missing pages

of one responsive serial. These pages were not originally produced as only selected documents referencing the subject of the request were included in that subject's file.

(29) By letter dated January 29, 2010, the FBI released 730 pages of cross-references in response to an agreement made between the FBI and plaintiff during a meeting prior to the November 2, 2009 CMC. (**See Exhibit X.**) The FBI agreed to re-review all responsive cross references it had located during the November 19, 2008 search. In addition, the FBI agreed to re-process all cross-references not previously processed within the guidelines of the Court's August 22, 2008 Order. This re-examination resulted in seven cross-references being re-processed.

**“FILE NUMBER” ABSTRACT SEARCH FOR RONALD WILSON REAGAN,  
NEIL REAGAN AND ALEXANDER C. SHERIFFS**

(30) By letter dated November 21, 2008, plaintiff submitted a request through counsel for the FBI to search the “file numbering” set of abstract cards for four file numbers regarding Ronald Wilson Reagan, one file number regarding Neil Reagan and one file number regarding Alexander C. Sheriffs.<sup>4</sup> (**See Exhibit Y.**)

(31) Following the search for the file numbers described above, by letter dated February 6, 2009, the FBI released to plaintiff approximately 911 pages, of which 296 pages were responsive abstracts to subject Ronald Wilson Reagan. (**See Exhibit N.**)

(32) By letter dated March 20, 2009, the FBI informed plaintiff that the indicated file number was not responsive to Neil Reagan, the subject of the request; therefore, no abstracts were being released. The file was a main file to the Ku Klux Klan (“KKK”). (**See Exhibit Z.**)

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<sup>4</sup> Further discussion and results of the search of the “file numbering” set of abstracts is discussed in ¶¶ 79-82, *infra*.

**FOIA REQUEST REGARDING RICHARD G. HUBLER, ET. AL**

(33) One of the outstanding issues plaintiff raised during the pre-meeting of the April 6, 2009, CMC concerned the search of Ronald Reagan's official title as Governor of California and the search of Reagan's autobiography. During this conference, plaintiff made reference to a copy of a letter dated May 4, 2006 plaintiff had written to former Assistant United States Attorney ("AUSA") Mark Quinlivan regarding outstanding settlement issues. (See Exhibit AA.) Specifically, in this letter, located on page 9 item number 5, and page 10 item number 8, plaintiff requested the following:

(5) Conduct searches under Reagan's official title, "Governor, State of California," and "California, Governor's Office" and reasonable variations thereof.

(8) Search for information concerning Reagan's 1965 book "Where's the Rest of Me? The Ronald Reagan Story." Please search by reasonable variations of the title, and under the names of Reagan and his co-author, Richard G. Hubler.

(34) By letter dated June 10, 2009, the FBI released 45 pages regarding material located as a result of an automated and manual search of the indices as well as the search slips utilized pursuant to that search. (See Exhibit BB.)

**FOIA REQUEST REGARDING SCREEN ACTORS GUILD (SAG)  
AGREEMENT TO NARROW SEARCH**

(35) Plaintiff offered in his February 9, 2009 Case Management Statement to narrow one component of the Ronald Reagan search in regard to SAG files. (See Exhibit CC.) During the February 9, 2009 CMC, plaintiff and the FBI agreed and put on the record before the Court the following:

(Plaintiff) still requests the FBI to search the SAG files for references to Reagan for the five years 1946 through 1950, inclusive (See page 4 lines 22-23.)

(36) By letter dated March 6, 2009, the FBI released 44 pages of search slips utilized during the February 26, 2009 search for the items listed above. **(See Exhibit DD.)**

(37) By letter dated April 30, 2009, the FBI released 747 pages as a result of the new search that was conducted on February 26, 2009. **(See Exhibit EE.)**

(38) By letter dated June 30, 2009, the FBI released 808 pages in response to plaintiff's April 20, 2009 letter and discussions at the April 6, 2009 CMC. **(See Exhibit FF.)** The records located during the February 26, 2009 search and produced on April 30, 2009 were re-examined and reprocessed. In addition, copies of all search slips were produced as well as new, legible copies of index cards that were previously illegible.

(39) By letter dated July 2, 2009, the FBI provided plaintiff with a list of file numbers located during the November 19, 2009 search that had been destroyed under the Federal Records Act, accessioned to NARA, or determined to be unable to locate. **(See Exhibit GG.)** For any records accessioned to NARA, the address for that agency was provided.

(40) By letter dated January 29, 2010, the FBI released 44 pages of cross references in response to an agreement made between the FBI and plaintiff during a meeting prior to the November 2, 2009 CMC. **(See Exhibit HH.)** The FBI agreed to re-review all cross references located during the February 26, 2009 search and found to be responsive to plaintiff's request. In addition, the FBI agreed to re-process all cross references not previously processed within the guidelines of the Court's August 22, 2008 Order. This re-examination resulted in one cross-reference being re-processed.

**ADDITIONAL REQUESTS (APRIL 20, 2009, SEPTEMBER 8, 2009, OCTOBER 9, 2009 AND DECEMBER 17, 2009 LETTERS)**

(41) By letter dated April 20, 2009, plaintiff raised various points regarding inadequate or inadvertent processing by the FBI regarding Ronald Wilson Reagan, Neil Reagan and Alexander Sherriffs. Plaintiff questioned the information withheld in specific documents of the reprocessed material. **(See Exhibit II.)** The FBI reviewed the material indicated and reprocessed documents to rectify these issues. In addition, plaintiff indicated that no abstracts for Alexander C. Sherriffs had been released, and that the FBI had yet to process the SFFO "80" file pertaining to Mr. Sherriffs. The FBI, as will be explained in further detail below, conducted an extensive search of the "author set" of abstracts and located no responsive abstracts regarding Alexander C. Sherriffs. Plaintiff was informed during the April 6, 2009 CMC that SF 80-928, located during the November 19, 2008 search, was determined to be "unable to locate." Plaintiff filed an additional FOIA request on August 17, 2009 to FBIHQ and SFFO requesting file number SF 80-928. After an extensive search of the ARC and SFFO, it was determined that the file was still unable to be located and this was conveyed to plaintiff in letter dated September 8, 2009.

(42) As a result of the re-review of all the material determined to be responsive from the November 19, 2008 and February 26, 2009 searches as well as a re-review of the issues stated in plaintiff's April 20, 2009 letter, approximately 5,275 pages were released by letters dated November 28, 2008 and July 24, 2009 respectively regarding Ronald Wilson Reagan. The documents produced in the November 28, 2008 release were identified in the April 20, 2009 letter, but after re-reviewing those documents it was determined that they were previously processed within the guidelines of the Court's August 22, 2008 Order. Approximately 163 pages

were released by letter dated June 30, 2009 regarding Neil Reagan; approximately 165 pages were released by letter dated June 30, 2009 regarding Alexander C. Sherriffs and; approximately 808 pages were released by letter dated June 30, 2009 regarding reference of Ronald Wilson Reagan in SAG files.

(43) By letter dated September 8, 2009, plaintiff brought issue regarding the adequacy of the FBI's search for the reprocessed Ronald Reagan records, cross references, referrals to other agencies, information regarding FBI's records systems and abstracts. In addition, plaintiff questioned the information withheld in specific documents of the reprocessed Ronald Reagan material. (**See Exhibit JJ.**) After a conference call on September 16, 2009, the FBI agreed to re-review the specific issues brought forth by plaintiff.

(44) Plaintiff brought forth the following issues that were raised in plaintiff's September 8, 2009 letter: A) adequacy of search of newly processed Ronald Reagan records; B) processing of cross references; C) referrals to other agencies; D) specific information regarding FBI's records systems; E) abstracts and; F) issues regarding withheld information for specific file numbers. Each assertion is addressed below:

A) Adequacy of Search - Plaintiff contends that the FBI indicated that "many more records would be released than were previously" through the new, more thorough searches. At the February 9, 2009 CMC, the FBI made the statement that "we have done an entirely new search for Reagan records, and we've located quite a mass of records that either weren't originally located or weren't processed because they were determined to be non-responsive." (See Transcript of CMC, February 9, 2009, page 25, lines 10-15.) Although not meant to be an inaccurate statement at the time, the FBI subsequently determined that the new search did not



result in “a mass” of new records but rather only a small portion of new pages that had not previously been located, approximately 130 pages. The FBI provided to plaintiff, at the November 2, 2009 CMC, spreadsheets for each subject indicating the disposition of each file located on the November 19, 2008 search.

B) Processing of Cross-References - The Court’s August 22, 2008 Order indicates that a particular formula be utilized in processing cross references. (See page 20, lines 21-26.) The FBI found that the formula was potentially confusing due to the fact that the subject’s name appeared in overlapping pages, causing nearly the entire cross reference to be processed. The FBI made the decision to process all cross references in their entirety despite the number of pages contained within them. Through further discussions, it was determined that several cross references were not processed in their entirety or by the Court’s formula. These cross references were identified and produced on January 29, 2010.

C) Referrals to Other Agencies - The FBI submitted referral letters to the Internal Revenue Service (“IRS”), Office of Information Policy (“OIP”) and Department of the Army on August 26, 2009 and a consult letter to the Central Intelligence Agency (“CIA”) on August 26, 2009. Following the September 16, 2009 conference call, the FBI submitted to plaintiff as an attachment to its letter dated September 22, 2009 a “Chart of Referrals” indicating the file number, serial, Bates page number, disposition of each referral made and a public liaison contact for each agency. (**See Exhibit KK.**) On September 17, 2009, the IRS submitted a referral response letter to plaintiff and on October 23, 2009, the FBI processed and released one page of consult information from the IRS. In regard to the referral to the Department of the Army, the FBI has recently been advised that the referral will be processed shortly. Following contact with

OIP and subsequent transfer of the referred documents to the National Security Division (“NSD”), the FBI has been advised that a determination on the material will be made by NSD shortly. The Central Intelligence Agency (“CIA”) recently indicated that a direct response would be sent to plaintiff on April 20, 2010 regarding the documents that originated with their agency. A determination regarding the documents that originated with the FBI, but containing CIA information will be made shortly and a supplemental release will be made by the FBI. The CIA has determined that one document (Ronald Reagan-5453 through Ronald Reagan-5512) that was originally thought to be a CIA document is actually an FBI document. The FBI has processed this document and included it within this Vaughn. The FBI continues to work closely with these agencies to mitigate the processing and the release of documents as soon as possible.

D) Specific Information Regarding FBI’s Records Systems - The FBI indicated to plaintiff during the September 16, 2009 conference call that specific details regarding the FBI’s searches, search slip explanations, databases and search procedures would be discussed in the instant declaration.

E) Abstracts - As discussed in the Correspondence section of this declaration above, the plaintiff indicated only two file numbers of the six file numbers requested that were eligible for searching in the “file numbering set” of abstracts. One file number corresponding to subject Ronald Wilson Reagan produced 296 abstract cards and one file number corresponding to Neil Reagan was not responsive to that subject. The remaining four file numbers were regarding Field Office files. Abstracts were not maintained by the Field Offices and, therefore, these file numbers were not searchable in the “file numbering” set of abstracts. Plaintiff indicated a search of the “author set” of abstracts should be completed for documents authored by Ronald Wilson

Reagan, Neil Reagan and Alexander Sherriffs. This search produced eight abstracts for Ronald Wilson Reagan only. The seven documents corresponding to those abstracts were processed and released to plaintiff on June 10, 2009. One document was identified as having been accessioned to NARA. No other requests for abstracts has been made by plaintiff.

F) Exempt Information - Plaintiff brought issue with the withholdings on nine pages within file number LA 80-579, eight pages within file number HQ 100-382196, four pages within file number HQ 116-460320 and 40 pages listed as Other Reagan Records (located in file numbers 62-9-38; 100-138754 Serial 188p1Y, 156, 157; 100-138754 Serial 695; 100-138754 Serial 367p22, 40; 80-LA-579 and; 166-7728.) The FBI discussed each one of the withholdings with plaintiff during the September 16, 2009 conference call and found that information on four pages was inadvertently withheld and could be released. This material was re-reviewed, reprocessed and released to plaintiff on November 24, 2009. One page involved referred material and, as stated above, the FBI is continuously checking on the processing and release of this material. Five pages involved further research of the documents, the re-ordering of the files and additional searches for information. The discussion of these issues continued into the October 9, 2009 and December 17, 2009 letters from plaintiff.

(45) By letter dated October 9, 2009, plaintiff clarified items discussed in the September 16, 2009 conference call. **(See Exhibit LL.)** The items discussed during the conference call detailed A) the adequacy of the search declaration; B) the processing of cross references; C) the referrals to other agencies and; D) the balancing of privacy interests with public interest that detailed specific pages at issue and the Alex Sherriffs, Neil Reagan and Screen Actors Guild records. Each assertion is addressed below:

A) Search Declaration - In light of the Court's August 22, 2008 Order and in order to rectify the issues raised in plaintiff's October 9, 2009 letter, the FBI agreed to submit to the Court, as part of its renewed motion for summary judgment, a detailed search declaration responding to all the deficient areas of the FBI's previous search declarations. The FBI agreed to submit a copy of the instant search declaration to plaintiff by March 8, 2010 for review in order to possibly mitigate the adequacy of search issues.

B) Cross-References - Additionally, the FBI agreed to re-review the 187 cross-references determined to be responsive to plaintiff's requests for information regarding Ronald Wilson Reagan, Neil Reagan, Alexander C. Sherriffs, Richard Hubler, the book title, the position title, and the reference to Ronald Reagan in specifically dated SAG files. The FBI located, processed in their entirety and released to plaintiff on January 29, 2010, approximately 774 pages consisting of seven cross-references regarding Ronald Wilson Reagan and one cross-reference regarding reference to Ronald Reagan in specifically dated SAG files.

C) Referrals - With regard to referrals, as stated previously, the FBI continues to monitor and follow-up with the other government agency processing referrals. Plaintiff indicates that the referrals were initially submitted in August 2009; however, these referrals were originally submitted to the necessary agencies in 1996. As was done in the reprocessing of records, it was necessary for the referrals to be re-submitted due to the passage of time, and the possibility of additional information being released by those agencies.

D) Exempt Material - The remaining issues involve the FBI's withholding of information based on Exemptions (b)(6) and (b)(7)(C) as plaintiff contends that the FBI did not properly balance privacy interests with the public interest. Following the September 16, 2009

conference call, plaintiff maintained the stance that the FBI improperly withheld information on approximately 28 pages of the 61 pages previously identified in the September 8, 2009 letter. Plaintiff reiterated those issues in the October 9, 2009 letter. The following chart describes the FBI's actions with regard to the approximately 28 pages still at issue. Of those 28 pages, plaintiff has selected 27 pages as part of the sample to be Vaughned. The FBI will defend the withholdings for those pages in its Vaughn declaration, infra.

FILE NUMBER	BATES PAGE NUMBER	DISPOSITION
80-LA-579	Ronald Reagan-5162	FBI released additional information on November 24, 2009; plaintiff included this page in the sample for the FBI's <u>Vaughn</u>
	Ronald Reagan-5166	FBI released additional information on November 24, 2009; plaintiff included this page in the sample for the FBI's <u>Vaughn</u>
	Ronald Reagan-5196	Plaintiff included this page in the sample for the FBI's <u>Vaughn</u>
	Ronald Reagan-5209	Plaintiff included this page in the sample for th FBI's <u>Vaughn</u>
	Ronald Reagan-5211	Plaintiff included this page in the sample for the FBI's <u>Vaughn</u>
100-382196	Ronald Reagan-328	Plaintiff included this page in the sample for the FBI's <u>Vaughn</u>
	Ronald Reagan-370	FBI re-reviewed the document and determined the information could not be disclosed. Plaintiff included this page in the sample for the FBI's <u>Vaughn</u>
	Ronald Reagan-449	FBI re-reviewed the document and determined the information could not be disclosed. Plaintiff included this page in the sample for the FBI's <u>Vaughn</u>
	Ronald Reagan-463	The FBI conducted an additional search for the brief and memorandum mentioned in the serial, but located no corresponding documents.

100-382196	Ronald Reagan-471	No additional material was indicated to exist for this page - see explanation for Ronald Reagan-721
	Ronald Reagan-721	FBI released additional information on November 24, 2009
	Ronald Reagan-785	FBI released most legible copies to plaintiff at November 2, 2009 CMC
116-460320	Ronald Reagan-1380	FBI released additional information on November 13, 2009
100-138754 Serial 188	Ronald Reagan-5779 through Ronald Reagan-5786	FBI re-reviewed the document and determined the information could not be disclosed.
100-138754 Serial695	Ronald Reagan-3444	FBI released additional information on November 13, 2009. Plaintiff included this page in the second sample for the FBI's <u>Vaughn</u> .
100-138754 Serials 329, 367, 667	Ronald Reagan-4205 through Ronald Reagan-4206	Administrative pages were unable to be located for this particular serial.
	Ronald Reagan-4165	The FBI conducted an additional search for the last page of the serial, but located no corresponding documents.
80-LA-579	Ronald Reagan-5206	The FBI conducted an additional search for file number 60-LA-258 and found it to be destroyed.
166-7728-30	Ronald Reagan-2068	The FBI re-reviewed the document and determined the information could not be disclosed.
	Ronald Reagan-2069	The FBI re-reviewed the document and determined the information could not be disclosed.
80-LA-579	Ronald Reagan-5207	The FBI conducted an additional search for file numbers LA 62-3086 and LA 62-6071. The information did mention subject Ronald Wilson Reagan, but the documents were not indexed to him ( <u>See ¶ 55, infra</u> ); FBI released additional information on November 24, 2009.

(46) By letter dated December 17, 2009, plaintiff responded to the FBI's December 15, 2009 letter, which was submitted in response to plaintiff's request for discovery. (See Exhibits MM and NN.) The FBI's December 15, 2009 letter explained to plaintiff that the



disclosure of the “institutional knowledge”<sup>5</sup> and FOIA training manual constituted new FOIA requests. Plaintiff argued that these requests fell within the purview of Rule 26(a). The FBI agreed to produce the “institutional knowledge” document and has done so by letter dated February 19, 2010.<sup>6</sup> (**See Exhibit OO.**) Further, the FBI is attaching relevant pages of the Work Processing Unit (“WPU”) training manual to this declaration, see *infra*, footnote 10.

(47) In addition, plaintiff’s December 17, 2009 letter contends that the FBI “determined that LA file 60-258, which [plaintiff] knows to be the file of the MCA antitrust investigation, was not released because Ronald Reagan was not indexed to that file.” However, the FBI did not release LA file 60-258 because it was determined to be destroyed. The FBI submitted retention schedules for all file classifications that were indexed to Ronald Wilson Reagan in Exhibit SS. Since no files bearing the “60” file classification were indexed to Ronald Wilson Reagan this file classification was not included within the exhibit. For verification purposes regarding the destruction of LA file 60-258, the FBI has inserted in Exhibit SS the “60” file classification retention schedule. The FBI explained to plaintiff during several conference calls as well as during the February 9, 2009 CMC (See February 9, 2009 transcript page 20 lines 4-18) the reason for the file not being indexed to Ronald Reagan and thus not appearing during the search for responsive material. See, infra, page 23, ¶ 50 and page 26, ¶ 55.

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<sup>5</sup> See footnote 51 on page 82 regarding full explanation of “institutional knowledge.”

<sup>6</sup> This is the only “institutional knowledge” document utilized in processing FOIA requests. The version of the list changes when confirmation is obtained regarding additional deceased individuals.

**EXPLANATION OF FBI'S SEARCH METHODS FOR RECORDS AT FBIHQ AND  
FIELD OFFICES**

**AUTOMATED SEARCHES**

(48) This declaration provides information regarding the FBI's Central Records System (CRS) and the ELSUR Index. These are the two systems where responsive records were likely to be found in regard to plaintiff's FOIA requests.

**CENTRAL RECORDS SYSTEM**

(49) This declaration provides information regarding the Central Records System ("CRS")<sup>7</sup>, which will reference information provided previously to the Court by declaration dated September 22, 2008 of William L. Hooton, Records Officer and Assistant Director managing RMD ("Hooton Declaration").<sup>8</sup> The Hooton declaration listed and described 80 indices contained within CRS. The Hooton declaration also expressly stated that in addition to the 80 indices listed, the CRS contains a number of separate indices which are classified in accordance with existing regulations. These indices cannot be listed because their public release would cause harm to the national security interests of the United States. See Hooton Declaration ¶ 6. Further, as stated in the Hooton declaration, files at FBIHQ and files at Field Offices can be assessed by conducting a search of the CRS. As reported in the Hooton declaration, Field Offices may, for operational and administrative purposes, take information that is maintained in

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<sup>7</sup> For the Privacy Act System of Records Notices for CRS and ELSUR, See 63 Fed. Reg. 8,548, 8,671 (1998), and 70 Fed. Reg. 7,513, 7,514, respectively.

<sup>8</sup> The declaration submitted in this case, the Declaration of William L. Hooton, which was executed on September 22, 2008, was filed in compliance with the August 22, 2008 Court Order and to provide further information in support of the Declaration of David M. Hardy ("First Hardy"), which was executed on June 2, 2008 in compliance with the May 6, 2006 Court Order.

the CRS and recombine it using available computer programs into smaller databases that are more user-friendly. These smaller databases, though, contain duplicates of information that is in the CRS and so a search of these case files in the CRS should uncover the same information.

See Hooton Declaration ¶ 7. As with FBIHQ files, older files prior to 1958 are not a part of the CRS. These files are located through a manual search of the indices, which will be discussed infra.

(50) The CRS enables the FBI to maintain information which it has acquired in the course of fulfilling its mandated law enforcement responsibilities. The records maintained in the CRS consist of administrative, applicant, criminal, personnel, and other files compiled for law enforcement purposes. This system consists of a numerical sequence of files, called FBI “classifications,” which are broken down according to subject matter. The subject matter of a file may relate to an individual, organization, company, publication, activity, or foreign intelligence matter (or program) See Hooton Declaration ¶ 5 subparagraphs 1-80. Certain records in the CRS are maintained at FBIHQ, whereas records that are pertinent to specific Field Offices of the FBI are maintained in those Field Offices. The decision to index a name, organization, etc., into the CRS is made by the investigative agent at FBIHQ; however, the names of subject(s), suspects(s), or victim(s), whose names are carried in the case title, are automatically included in the CRS. The FBI does not routinely index all persons contacted in the course of the investigation. The retrieval process for FBI files is designed to be responsive to FBI needs and is not structured like a library to serve as a research function. Although the CRS is primarily designed to serve as an investigative tool, the FBI searches the CRS for documents that are potentially responsive to FOIA/Privacy Act requests. The mechanism that the FBI uses

to search the CRS is the Automated Case Support System (“ACS”).

(51) On or about October 16, 1995, the ACS system was implemented for all Field Offices, Legal Attaches (“Legats”), and FBIHQ in order to consolidate portions of the CRS that were previously automated. ACS can be described as an internal computerized subsystem of the CRS. Because the CRS cannot electronically query the case files for data, such as an individual’s name or social security number, the required information is duplicated and moved to the ACS so that it can be searched. More than 105 million records from the CRS were converted from automated systems previously utilized by the FBI. Automation did not change the CRS; instead, automation has facilitated more economic and expeditious access to records maintained in the CRS.

(52) The retrieval of data from the CRS is made possible through the ACS using the General Indices, which are arranged in alphabetical order.<sup>9</sup> Entries in the General Indices fall into two categories:

- (a) A “main” entry — A “main” entry, or “main” file, carries the name corresponding with a subject of a file contained in the CRS.
- (b) A “reference” entry — “Reference” entries, sometimes called “cross-references” are generally only a mere mention or reference to an individual, organization, or other subject matter contained in a document located in another “main” file on a different subject matter.

(53) Searches made in the General Indices to locate records concerning a particular

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<sup>9</sup> The General Indices, which became fully automated on September 24, 1987, also include index cards that allow a manual search for records prior to that date. However, because of the size of the existing card indices, it was impossible to enter all the information contained in the manual indices into the automated indices. Therefore, a search for records pursuant to the FOIA request will require a search of both the manual card indices and the automated indices, as was done in instant matter, unless the time period specified in the request falls after September 24, 1987 which would then require only a search of the automated indices.

subject, such as Ronald Wilson Reagan, are made by searching the subject requested in the index.

(54) The ACS consists of three integrated, yet separately functional, automated applications that support case management functions for all FBI investigative and administrative cases:<sup>10</sup>

(a) Investigative Case Management (“ICM”) – ICM provides the ability to open, assign, and close investigative and administrative cases as well as set, assign, and track leads. The Office of Origin (“OO”), which sets leads for itself and other Field Offices, as needed, opens a case. The Field Offices that receive leads from the OO are referred to as Lead Offices (“LOs”). When a case is opened, it is assigned a Universal Case File Number (“UCFN”), which is used by FBIHQ, as well as all FBI Field Offices and Legats that are conducting or assisting in the investigation. Using fictitious file number “111-HQ-12345” as an example, an explanation of the UCFN is as follows: “111” indicates the classification for the specific type of investigation; “HQ” is the abbreviated form used for the Office of Origin of the investigation, which in this case is FBI Headquarters; and “12345” indicates the individual case file number for the particular investigation.

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<sup>10</sup> ICM, ECF and UNI are all features of the ACS which draws or imports information from the same data source, the CRS. Although the purpose of each function differs, the stored data source is from one central location, the CRS, which the FBI uses to store its investigatory, administrative and personnel files. When a request is made to the FBI, it is reasonable to assume that the information sought would be pertaining to either the FBI’s mission to investigate criminal or national security matters or is related to functions that allow it to perform its mission. Therefore, the CRS is where the FBI logically looks for information pertaining to the majority of requests. If additional files exist, it is very likely that the record from the CRS will educate the RIDS personnel handling the request of its existence resulting in further search or notification to the requester that additional information might be available.

(b) Electronic Case File (“ECF”) – ECF serves as the central electronic repository for the FBI’s official text-based documents. ECF supports the universal serial concept in that only the creator of a document serializes it into a file. This provides a single-source entry of serials into the computerized ECF system. All original serials are maintained in the OO case file.

(c) Universal Index (“UNI”) – UNI continues the universal concept of ACS by providing a complete subject/case index to all investigative and administrative cases. Only the OO is required to index; however, the LOs may index additional information as needed. UNI, an index of approximately 109.5 million records, functions to index names to cases, and to search names and cases for use in FBI investigations. Names of individuals or organizations are recorded with identifying applicable information such as date or place of birth, race, sex, locality, Social Security number, address, and/or date of event.

(55) The decision to index names other than subjects, suspects, and victims is a discretionary decision made by the FBI Special Agent (“SA”) – and on occasion, support employees – assigned to work on the investigation, the Supervisory SA (“SSA”) in the Field Office conducting the investigation, and the SSA at FBIHQ. The FBI does not index every name in its files; rather, it indexes only that information considered to be pertinent, relevant, or essential for future retrieval. Without a “key” (index) to this enormous amount of data, information essential to ongoing investigations could not be readily retrieved. The FBI files would thus be merely archival in nature and could not be effectively used to serve the mandated mission of the FBI, which is to investigate violations of federal criminal and national security statutes. Therefore, the General Indices to the CRS files are the means by which the FBI can determine what retrievable information, if any, the FBI may have in its CRS files on a particular



subject matter or individual, *i.e.*, Ronald Wilson Reagan.

### **ELECTRONIC SURVEILLANCE**

(56) The ELSUR indices are used to maintain information on subjects whose electronic and/or voice communications have been intercepted as the result of a consensual electronic surveillance or a court-ordered (and/or sought) electronic surveillance conducted by the FBI. The ELSUR indices date back to January 1, 1960. On or about October 9, 1991, the ELSUR indices were automated. Since that time, FBIHQ and all FBI Field Offices have electronically generated, maintained, modified and accessed all ELSUR records.

(57) The ELSUR indices are a separate system of records from the CRS. Prior to automation, the ELSUR indices consisted of index cards on individuals who had been the subject of a microphone or telephone surveillance by the FBI from prior to 1960. As stated above, the previous manual index card system was converted to an automated system on or about October 9, 1991. These indices include individuals who were the (a) targets of direct surveillance, (b) participants in monitored conversations, and (c) owners, lessors, or licensors of the premises where the FBI conducted electronic surveillance. In addition to the names of individuals in the above categories, the cards in the ELSUR index contain the date the voice was monitored, a source number to identify the individual on whom the surveillance was installed, and the location of the FBI Field Office that conducted the monitoring.

(58) ELSUR indices are published as a separate records system in the Federal Register because not all names contained in the ELSUR index can be retrieved through the General Index and CRS. See 52 Fed. Reg. 8482 (1992).

(59) The FBI Field Offices that have conducted electronic surveillance at any time

from 1960 to the present also maintain ELSUR indices. Since January 1, 1960, the Field Offices have been including in their ELSUR indices - and reporting to FBIHQ for inclusion in its index - the names of all persons whose voices have been monitored through an FBI microphone installation or a telephone surveillance. The names of monitored subjects are retrieved through a search of the FBIHQ or local Field Office ELSUR indices.

(60) Until 1969, FBI Field Offices were also required to forward the names of all persons mentioned during conversations to FBIHQ for inclusion in the FBIHQ ELSUR index. Although FBIHQ discontinued this requirement in 1969, some Field Offices still include the names of individuals mentioned in monitored conversations in the Field Office's ELSUR index. However, the names of such persons cannot be retrieved through the FBIHQ ELSUR index.

#### **MANUAL SEARCH**

(61) When a request is received at FBIHQ, a determination is made regarding whether a manual search is required. This determination is based on date of birth of the subject of the request, event date, or organization creation date. A manual search is not required if the date of birth is after 1958 or if the event date or organization creation was after 1979. For a request made to FBIHQ, a search of the manual indices cards located at the ARC is conducted. These cards are organized in alphabetical order by subject and contain the file number, whether it is a main file or cross reference and identifying information of the subject. When a potentially responsive file number is located, this file is ordered via the FBI's File Access Control Systems ("FACS")<sup>11</sup> and reviewed for responsiveness. Plaintiff requested copies of the index cards located

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<sup>11</sup> The FACS is discussed in the Fourth Hardy Declaration and will be discussed further in this declaration.

for all potentially responsive files. These index cards were provided to plaintiff in the May 8, 2009 and July 24, 2009 releases regarding Ronald Wilson Reagan; the June 10, 2009 release regarding Richard Hubler, the book title and position title; the March 30, 2009 and June 30, 2009 releases regarding Neil Reagan; the November 18, 2008, March 30, 2009 and June 30, 2009 releases regarding Alexander C. Sherriffs and; the March 6, 2009 and June 30, 2009 releases regarding the reference to Ronald Reagan in specifically dated SAG files.

(62) Each Field Office organizes its manual indices index cards alphabetically and conducts searches based on the specific information within the request letter; however, each Field Office independently maintains these indices and some storage methods may differ from Field Office to Field Office. For those Field Offices that have not transferred their records to enable an electronic search, a hand search of the manual indices cards is required. The FBI has broken out the storage methods of each responsive Field Office below:

A. SCFO - Maintains their manual indices index cards in seven grey file cabinets consisting of nine drawers. Each drawer measures 51 inches and is divided in half. Manual indices index cards are also stored in nine wooden boxes measuring 10 inches in length. All cabinets and boxes consist of 267 linear feet and are labeled alphabetically on the outside.

B. LAFO - Maintains their approximately 1,500 manual indices index cards in several grey file cabinets labeled alphabetically on the outside.

C. SDFO - Maintains their manual indices index cards in 5x2 cabinets consisting of ten rows on each side of the cabinet. There are approximately 95 rows containing 5,000 index cards in each row and labeled alphabetically on the outside of each drawer.

D. WFO - As of the November 19, 2008 search, all manual indices index cards for

WFO were scanned and uploaded to the Field Office Manual Index Card Collection and can be searched electronically by FBIHQ. *See, infra.*

E. SFFO - As of the November 19, 2008 search, all manual indices index cards for SFFO were scanned and uploaded to the Field Office Manual Index Card Collection and can be searched electronically by FBIHQ. *See, infra.*

**FIELD OFFICE MANUAL INDEX CARD COLLECTION**

(63) The Field Office Manual Index Card Collection, previously referred to as SharePoint, is a data repository housed in the Microsoft application, SharePoint. This repository is a centralized collection of digitized manual indices cards from the Field Offices. Beginning in April 2008, ten Field Offices provided RMD, Records Automation Section with their manual indices cards for scanning and uploading to the SharePoint site. This included the SFFO and the WFO, which are responsive to the plaintiff's requests. It is anticipated all Field Office manual indices cards will be scanned and uploaded to the SharePoint site by Spring 2011. The Field Office Manual Index Card Collection is arranged alphabetically in the order the cards are received from the Field Offices. Upon completion of the project, all data will have been scanned, uploaded and indexed. This will enable the search capability by entering the appropriate criteria (i.e., subject's name or organization). At the current time, only the data from the SFFO and the WFO is indexed and can be readily searched. This process will continue until all Field Offices' manual indices are located in this centralized system and indexed for responsive searching as part of the Centralized Records Center ("CRC") expansion project.

**DESCRIPTION OF SEARCH FOR RECORDS RESPONSIVE TO PLAINTIFF'S  
REQUESTS**

**SEARCH TERMS**<sup>12</sup>

**ALEXANDER C. SHERRIFFS**

(64) The FBI searched the Central Records System (“CRS”), manual indices, the responsive Field Office indices and ELSUR for main files and cross references in regard to subject Alexander C. Sherriffs utilizing a six-way breakdown (“six-way breakdown search”) of the name including any variations of the first and last name that sounds like or is spelled differently than the name. The author search of the abstract cards also utilized the six-way breakdown search. For example, Alexander C. Sherriffs; Alexander Sherriffs; Alex C. Sherriffs; Alex Sherriffs; A.C. Sherriffs; Alex E. Sherriffs; Alexander C. Sherrif and all variations; Alexander C. Sherriff and all variations; Alexander C. Sherif and all variations; Alexander C. Sheriff and all variations; Alexander C. Sheriffs and all variations and; Alexander C. Sherifs and all variations. The FBI also used the subject’s date of birth, Social Security Number, localities and other identifying information to facilitate the identification of responsive records. The six-way breakdown search using the subject’s name identified approximately 21 potentially responsive files. The FBI discusses below the disposition of these files.

**NEIL REAGAN**

(65) The FBI searched the Central Records System (“CRS”), manual indices, the two responsive Field Office indices and ELSUR for main files and cross references in regard to

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<sup>12</sup> The FBI utilized the searching methods instituted in the Work Processing Unit (“WPU”) training manual for each search discussed, *infra*. The FBI has attached Section 2: Basic Searching, Section 9: Searching 101 and Section 10: Searching 102 as **Exhibit PP**.

subject Neil Reagan utilizing a six-way breakdown (“six-way breakdown search”) of the name including any variations of the first and last name that sounds like or is spelled differently than the name. The author search of the abstract cards also utilized the six-way breakdown search. For example, John Neil Reagan; John N. Reagan; J. N. Reagan; J. Neil Reagan; John Reagan; Neil Reagan; J. Reagan; N. Reagan; Moon Reagan; John Neal Reagan; J. Neal Reagan; Neal Reagan; Johnny Reagan; Johny Reagan; Johnie Reagan; John Neil Reagen and all variations of the name; John Neil Regan and all variations of the name; John Neil Reagin and all variations of the name; John Neil Reagon and all variations of the name; John Neil Raegen and all variations of the name and; John Neil Raegan and all variations of the name. The FBI also used the subject’s date of birth, localities and other identifying information to facilitate the identification of responsive records. The six-way breakdown search using the subject’s name identified **approximately 129** potentially responsive files. The FBI discusses below the disposition of these files.

### **RONALD REAGAN**

(66) The FBI searched the Central Records System (“CRS”), manual indices, the five responsive Field Office indices and ELSUR for main files and cross references in regard to subject Ronald Wilson Reagan utilizing a six-way breakdown (“six-way breakdown search”) of the name including any variations of the first and last name that sounds like or is spelled differently than the name. The author search of the abstract cards also utilized the six-way breakdown search. For example, Ronald Wilson Reagan; Ronald Wilson Reagon; Ronald W. Reagan; Ronald W. Raegan; Ronald W. Reagen; Ronald Ragan; Ronald Raegan; Ronald Reagan; Ronald Reagan; Ronald Reagin; Ronald Reagon; R. Wilson Reagan; R.W. Reagan; Wilson



Reagan; Ronald William Reagan; Reagan and; Ragon. The FBI also used the subject's date of birth, Social Security Number, localities, scope of the request and other identifying information to facilitate the identification of responsive records. The six-way breakdown search using the subject's name identified **approximately 686** potentially responsive files. The FBI discusses below the disposition of these files.

**RICHARD G. HUBLER**

(67) The FBI searched the Central Records System ("CRS"), manual indices, the five responsive Field Office indices and ELSUR for main files and cross references in regard to subject Richard G. Hubler utilizing a six-way breakdown ("six-way breakdown search") of the name including any variations of the first and last name that sounds like or is spelled differently than the name. For example, Richard Gibson Hubler; Richard G. Hubler; R. Gibson Hubler; R. G. Hubler; Richard Hubler and; Gibson Hubler. The FBI also used the subject's date of birth, Social Security Number, localities and other identifying information to facilitate the identification of responsive records. The six-way breakdown search using the subject's name identified **approximately 12** potentially responsive files. The FBI discusses below the disposition of these files.

**BOOK TITLE: "WHERE'S THE REST OF ME? THE RONALD REAGAN STORY"**

(68) The FBI searched the Central Records System ("CRS") for main files and cross references in regard to the book title, "Where's the Rest of Me? The Ronald Reagan Story" utilizing a six-way breakdown ("six-way breakdown search") of the name including any variations of the title that sounds like or is spelled differently than the title. The six-way breakdown search using the book title identified **no** potentially responsive files.

**RONALD WILSON REAGAN, GOVERNOR OF CALIFORNIA**

(69) The FBI searched the Central Records System (“CRS”) for main files and cross references in regard the official title of Ronald Wilson Reagan, Governor of California utilizing a six-way breakdown (“six-way breakdown search”) of the name including any variations of the name and/or title that sounds like or is spelled differently than the name and/or title. For example, Ronald Wilson Reagan, Governor of California and all variations of name and/or title; Reagan, Office for Governor; Reagan, California Governor; Reagan, Governor’s Office; Reagan in California; California State Governor, Reagan; Reagan - California Governor’s Office and all variations of name and/or title; Ronald Reagan, State of California and; Ronald Reagan, Office for Governor in California and all variations of name and/or title. The six-way breakdown search using the official title identified **approximately four** potentially responsive files. The FBI discusses below the disposition of these files.

**SCREEN ACTORS GUILD FILES (1946-1950)**

(70) The FBI searched the Central Records System (“CRS”), manual indices and the five responsive Field Office indices for main files and cross references in regard to subject Screen Actors Guild (“SAG”) utilizing a six-way breakdown (“six-way breakdown search”) of the name including any variations of the name that sounds like or is spelled differently than the name. For example, Screen Actors Guild; Screen Actors Guild Producers; Screen Actors Guild Accounting Department; Screen Actors Guild and SA GSCRN Actors Guild; Screen Actors Guild Awards; Screen Actors Guild Health and Pension Plans; Screen Actors Guild Los Angeles California; Screen Actors Guild Pension Plan; Screen Actors Guild Producers Health Plan; Screen Actors Guild Producers Administrative Corporation; Screen Actor and; SAG. The FBI

used the five-year time frame of 1946 through 1950 as requested by plaintiff to facilitate the identification of responsive records. The six-way breakdown search using the organizational name identified approximately 138 potentially responsive files. The FBI discusses below the disposition of these files.

**CRS SEARCH RESULTS FOR RECORDS RESPONSIVE TO PLAINTIFF'S  
FBIHQ REQUEST**

(71) In response to plaintiff's request for information concerning Ronald Wilson Reagan, Richard G. Hubler, the book title "Where's the Rest of Me? The Ronald Reagan Story," and Ronald Reagan as Governor of California and all reasonable variations, Neil Reagan, Alexander Sherriffs and Screen Actors Guild ("SAG") (i.e., reference of Ronald Wilson Reagan for the time frame of 1946 through 1950), FBIHQ utilized five employees over the course of 400 hours (80 hours per employee), who searched the CRS using subjects' names in order to locate any files maintained at FBIHQ. As a result of the FBI's search efforts, the following chart reflects the number of files identified in the CRS as potentially responsive to each subject, and the number of files processed and released to plaintiff pertaining to each subject:

Name of Subject	Date of Search	Number of files determined to be potentially responsive	Number of responsive files processed and released
Alexander Sherriffs	11/19/2008	9	0
Neil Reagan	11/19/2008	37	0
Ronald Wilson Reagan	11/19/2008	403	14
Richard G. Hubler	4/30/2009	1	1
"Where's the Rest of Me? The Ronald Reagan Story"	4/30/2009	0	0
Ronald Reagan as Governor of California (all reasonable variations)	4/30/2009	4	1

Reference of Ronald Wilson Reagan in SAG files (1946-1950)	2/26/2009	68	1
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**ELSUR SEARCH RESULTS FOR RECORDS RESPONSIVE TO PLAINTIFF'S  
FBIHQ REQUEST**

(72) A search of the FBIHQ ELSUR index located no records for Ronald Wilson Reagan, Neil Reagan, Alexander Sherriffs or Richard G. Hubler. No search of the ELSUR index was conducted for SAG records because the FBI was looking for references to Ronald Reagan in SAG files and the date of the search was prior to 1960. No search of the ELSUR index was conducted for the book title or the position title because electronic surveillance would only be initiated on humans, not objects or titles. Additionally, any ELSUR records regarding Ronald Wilson Reagan during his tenure as Governor of California would have appeared during a search of his name. The findings of the search of the ELSUR index conducted at each of the five Field Offices are located in the Field Office chart, supra.

**MANUAL SEARCH RESULTS FOR RECORDS RESPONSIVE TO PLAINTIFF'S  
FBIHQ REQUEST**

(73) In response to plaintiff's request for information concerning Ronald Wilson Reagan, Neil Reagan, Alexander Sherriffs, Screen Actors Guild ("SAG") (i.e., reference of Ronald Wilson Reagan for the time frame of 1946 through 1950) and Richard G. Hubler, FBIHQ utilized five employees over the course of **80 hours**, who searched the manual indices using subjects' names in order to locate any files maintained at FBIHQ. A search of the manual indices was not conducted for the book title or for Ronald Reagan as Governor of California as both of these occurred after the required search date of 1958. As a result of the FBI's search efforts, the following chart reflects the number of files identified in the FBIHQ manual indices as potentially

responsive to each subject and the number of files processed and released to plaintiff pertaining to each subject:

Name of Subject	Date of Search	Number of files determined to be potentially responsive	Number of responsive files processed and released
Alexander Sherriffs	11/19/2008	2	1
Neil Reagan	11/19/2008	84	1
Ronald Wilson Reagan	11/19/2008	64	38
Richard G. Hubler	4/30/2009	9	2
“Where’s the Rest of Me? The Ronald Reagan Story”	4/30/2009	subject did not meet criteria for manual search	—
Ronald Reagan as Governor of California (all reasonable variations)	4/30/2009	subject did not meet criteria for manual search	—
Reference of Ronald Wilson Reagan in SAG files (1946-1950)	2/26/2009	39	4

#### **SEARCH FOR RECORDS RESPONSIVE TO PLAINTIFF’S FIELD OFFICE REQUESTS**

(74) In addition to the FBIHQ requests received from plaintiff regarding information concerning Ronald Wilson Reagan, Neil Reagan and Alexander C. Sherriffs, FBIHQ received additional request letters from plaintiff pertaining to each of the subjects regarding information located at the SFFO, the SDFO, the SCFO, the LAFO and the WFO. **(See Exhibit A, Exhibit F and Exhibit L.)**

(75) The subsequent searches regarding Screen Actors Guild (“SAG”) (i.e., reference of Ronald Wilson Reagan for the time frame of 1946 through 1950), Richard G. Hubler, book title “Where’s the Rest of Me? The Ronald Reagan Story,” and Ronald Reagan as Governor of California and all reasonable variations followed the search criteria listed in the Ronald Wilson Reagan request letter to FBIHQ, SFFO, SCFO, SDFO, LAFO and WFO.

(76) Each of the five Field Offices that received a request from the plaintiff conducted

a manual search of their own files. Although each Field Office maintains independent procedures for how their searches are conducted, their methods are similar. The manual index cards are organized so that files can be located by name or file number. Once a potentially responsive file is identified and located, Field Office personnel review the file for responsiveness based on the information provided in the request letter. Information regarding the file and its responsiveness is sent to FBIHQ personnel in an e-mail or written notice. The FBIHQ then requests the file be forwarded for processing.

(77) Following the issuance of the Court's August 22, 2008 Order and the February 9, 2009 CMC, the FBI conducted new, more detailed searches of each subject. The requests that were sent to the five Field Offices were reviewed and FBIHQ sent to each Field Office detailed search instructions as well as instructions as to how to properly complete the search slips (**See Exhibit QQ.**) A search was conducted of the CRS<sup>13</sup>, the Confidential indices<sup>14</sup>, the Manual indices and ELSUR. The manual indices at SFFO and WFO are currently located on the SharePoint site. In the future, all other Field Offices will be scanning their manual indices cards and uploading them to this site, which will provide FBIHQ with the capability of conducting manual searches for each Field Office electronically. FBIHQ conducted the manual search of the Field Office Manual Index Card Collection located on the SharePoint site for SFFO

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<sup>13</sup> The Field Offices utilize the term "Global" in reference to the CRS and list this term on their search slips. The CRS was not searched by the SFFO as their FOIA unit is comprised of a very limited amount of personnel unable to support this function. The CRS search for the SFFO was conducted by FBIHQ personnel.

<sup>14</sup> Confidential indices, located only at the Field Offices, consists of the Confidential Human Source ("CHS") information. This type of information at FBIHQ is maintained within the Human Intelligence ("HUMINT") Division.



and WFO. Additional databases listed on the Field Office search slips were not searched because those databases contained information solely related to drug and gang-related activities. The FBI determined that none of the plaintiff's subjects would be indexed within those databases. The databases are:

a. DRUG X, which was established by the Department of Justice ("DOJ") in June 1994 as a query system to support federal drug law enforcement agencies. The system enables participating agencies (i.e., Drug Enforcement Agency) to identify those subjects of their investigations who are also under investigation by other participating agencies.

b. Telephone Application, which is an investigative tool that also serves as the central repository for all telephone data obtained throughout the course of an FBI investigation.

c. Criminal Law Enforcement Application ("CLEA"), which is a repository for data derived from criminal investigations. CLEA interfaces with the Bank Robbery Statistical Application ("BRSA").

d. Integrated Intelligence Information Application ("IIIA"), which supports the Counterintelligence and Counterterrorism Divisions' investigations. It allows for the collection, collation, analysis and dissemination of intelligence information.

e. Criminal Intelligence Support Program ("CISP") - Intelplus, which provides the Criminal Investigative Division ("CID") with the capability to capture and download specific documents from foreign entities from the CRS with a minimal amount of human intervention.

(78) As a result of the FBI's search efforts, the following chart reflects the number of files identified at each Field Office, in each indices, as potentially responsive to each subject and the number of files processed and released to plaintiff pertaining to each subject:



Name of Subject and Date of Search	Field Office	Indices Searched	Number of Potentially Responsive Files	Number of Responsive Files Processed and Released
Alexander Sherriffs 11/19/2008	SFFO	Global	Does not conduct Global searches	-
		Confidential	0	0
		SharePoint (Manual)	10	7
		ELSUR	0	0
Neil Reagan 11/19/2008	LAFO	Global	5	0
		Confidential	0	0
		Manual	0	0
		ELSUR	0	0
	WFO	Global	3	0
		Confidential	0	0
		SharePoint (Manual)	0	0
		ELSUR	0	0
Ronald Wilson Reagan 11/19/2008	SFFO	Global	Does not conduct UNI searches	-
		Confidential	0	0
		SharePoint (Manual)	33	6
		ELSUR	0	0
	SCFO	Global	0	0
		Confidential	0	0
		Manual	30	23
		ELSUR	0	0
	SDFO	Global	0	0
		Confidential	0	0
		Manual	15	3
		ELSUR	0	0
	LAFO	Global	0	0
		Confidential	0	0
		Manual	26	17
		ELSUR	1	0

Ronald Wilson Reagan 11/19/2008	WFO	Global	0	0
		Confidential	0	0
		SharePoint (Manual)	112	4
		ELSUR	2	2
Richard G. Hubler 4/30/2009	SFFO	Global	Does not conduct Global searches	–
		Confidential	0	0
		SharePoint (Manual)	0	0
		ELSUR	1	0
	SCFO	Global	0	0
		Confidential	0	0
		Manual	0	0
		ELSUR	0	0
	SDFO	Global	0	0
		Confidential	0	0
		Manual	0	0
		ELSUR	1	0
	LAFO	Global	0	0
		Confidential	0	0
		Manual	0	0
		ELSUR	0	0
	WFO	Global	0	0
		Confidential	0	0
		SharePoint (Manual)	0	0
		ELSUR	0	0
“Where’s the Rest of Me? The Ronald Reagan Story” 4/30/2009	–	<b>subject does not meet criteria for Field Office search<sup>15</sup></b>	–	–

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<sup>15</sup> Field Office searches for the book title and Ronald Reagan as Governor of California were not completed based on the search criteria of these two subjects. The search dates fall after 1958, therefore, a manual search is not required. An automated search of the CRS was completed and those records are discussed infra.

Ronald Reagan as Governor of California (all reasonable variations) 4/30/2009	—	subject does not meet criteria for Field Office search	—	—
Reference of Ronald Wilson Reagan in SAG files (1946-1950) 2/26/2009	SFFO	Global	Does not conduct Global searches	—
		Confidential	0	0
		SharePoint (Manual)	1	0
		ELSUR	0	0
	SCFO	Global	0	0
		Confidential	0	0
		Manual	0	0
		ELSUR	0	0
	SDFO	Global	1	0
		Confidential	0	0
		Manual	0	0
		ELSUR	0	0
	LAFO	Global	0	0
		Confidential	0	0
		Manual	28	0
		ELSUR	0	0
WFO	Global	0	0	
	Confidential	0	0	
	SharePoint (Manual)	1	0	
	ELSUR	0	0	

### **ABSTRACTS**<sup>16</sup>

(79) By way of background, it will be helpful to explain the nature of the FBI's abstract-card system, which was in effect from 1921 to 1979. The abstract card itself consists of

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<sup>16</sup> See Declaration of Debra Anne O'Clair ("O'Clair Declaration") executed September 22, 2008 as well as O'Clair Declaration executed on August 21, 2007 regarding the consolidated Rosenfeld v. United States Department of Justice, et. al., Case Nos. 90-3576, 85, 1709 and 85-2247 for details regarding abstract card system.

a 3x5 two-ply carbon form typed by an FBI clerical employee who was not involved with the investigative activities of a case. In order to prepare the abstract summary, the FBI clerical employee first conducted a cursory review of each document received or generated. The employee then typed an abstract card summary based on this cursory review, which consisted of a two to three-sentence summary of the document's contents, the date of the document, the file classification, case number and serial number of the document, the author of the document and the employee's identification code.

(80) The abstract cards were stored and maintained in sequential order by case number and serial. A duplicate set of abstract cards was stored and maintained in alphabetical order by author's name for documents received by the FBI, and by originating office for documents authored by the FBI. The "author set" is stored at the ARC. The "file numbering set" was placed in storage in 1983 at a Federal Records Center operated by NARA. The FBI pays an annual fee to NARA for the storage of these and other FBI records. Each time NARA removes records material from its storage location for review, copying, destruction, transfer, etc., a fee is charged.

(81) There is no master index for either set of cards. Although for the "file numbering set," a majority of the boxes indicate the case file and serial scope of the cards contained within each box, there are a number of boxes devoid of any markings whatsoever. A majority of the boxes for the "author set" consist of similar markings indicating the first author and the last author contained within each box, there are a number of boxes devoid of any markings. See O'Clair Declaration ¶¶ 18-19 for detailed information regarding manner in which abstracts are filed.

(82) By letter dated November 21, 2008, plaintiff requested the FBI locate and process

abstract cards from the file number set of abstracts for four file numbers pertaining to Ronald Wilson Reagan, one file number pertaining to Alexander Sherriffs and one file number pertaining to Neil Reagan. Accordingly, three of the four file numbers for Ronald Wilson Reagan were indicated as Field Office files. The Field Offices did not maintain an abstract index; therefore, those numbers would not be located in a search of the “file numbering set” of the abstracts. The FBI located and processed approximately 296 abstracts for file number 100-382196. The file number provided by plaintiff regarding Alexander Sherriffs was a Field Office file number; therefore, no abstracts were produced. The file number provided by plaintiff regarding Neil Reagan was an FBIHQ file number, but was found to not be responsive as the subject was not mentioned within the file and the file was determined to be a Ku Klux Klan main file.

(83) At the April 6, 2009 CMC, the FBI agreed to conduct a search of the “author set” of abstract cards for any documents authored by Ronald Wilson Reagan, Neil Reagan or Alexander Sherriffs. The FBI assigned five employees to conduct the search of approximately 8,571 boxes of paper abstract cards located at the ARC for responsive records. The search expended 345 hours (69 hours per employee) and located eight abstract cards relating to documents authored by Ronald Wilson Reagan. No abstract cards were located for Neil Reagan or Alexander Sherriffs. The documents regarding Ronald Wilson Reagan were released to plaintiff on June 10, 2009.

(84) In the course of the search and due to movement of records between locations, approximately 1800 reels of microfilm abstract cards were located for records dated prior to 1958. A search was conducted of approximately 192 reels determined to be potentially responsive to plaintiff’s requests. The FBI utilized approximately 20 employees over the course

of 160 hours (8 hours per employee) to conduct a search of these “author set” reels. No responsive microfilm abstracts were located. It was noted that the dates for the paper and microfilm abstracts overlap, both contain the years 1957 and 1958. It was believed that all abstracts prior to 1958 had been destroyed. See O’Clair Declaration ¶ 13.

#### **ADDITIONAL SEARCHES**

(85) In response to plaintiff’s October 9, 2009 letter, the FBI prepared a detailed spreadsheet listing the file dispositions for each requested subject and each indices searched. **(See Exhibit RR.)** Accompanying the spreadsheets was a copy of the retention schedule for each file classification indicated as destroyed and a “legend” explaining each disposition referenced. **(See Exhibit SS and Exhibit TT.)** These spreadsheets were also provided to plaintiff in CD format, per his request. In addition, the FBI reprocessed two pages (Bates-stamped Ronald Reagan-1380 and Ronald Reagan-3444) of the Ronald Wilson Reagan material in order to release additional information. The FBI also provided a listing of referrals/consults and public liaison contacts that were made to the Department of Army, OIP, IRS and the CIA. **(See Exhibit KK.)** The consult material from the IRS was released to plaintiff on October 23, 2009. In regard to the referral to the Department of the Army, the FBI has recently been advised that the referral will be processed shortly. Following contact with OIP and subsequent transfer of the referred documents to the National Security Division (“NSD”), the FBI has been advised that a determination on the material will be made by NSD shortly. The CIA recently indicated that a direct response would be sent to plaintiff on April 20, 2010 regarding the documents that originated with their agency. A determination regarding the documents that originated with the FBI, but contained CIA information will be made shortly and a supplemental



release will be made by the FBI. The FBI continues to work closely with these agencies to mitigate the processing and the release of documents as soon as possible.

(86) Following discussions prior to the November 9, 2009 CMC, as well as in further response to plaintiff's October 9, 2009 letter, the FBI conducted research regarding several file numbers that were listed on summary pages within the Ronald Wilson Reagan releases. This was an extraordinary step and quite burdensome. In normal practice, if a requester located these file numbers following release of documents in response to a FOIA request, the requester would be required to submit a new FOIA request for the files.<sup>17</sup> However, to resolve this issues in this litigation, the FBI researched the indicated files numbers and found that two file numbers, 62-3086 Serial 1531 and 62-6071 Serial 1, mentioned Ronald Wilson Reagan. The FBI processed and released these documents to plaintiff on November 24, 2009 (**See Exhibit W.**)

Subsequently, plaintiff found a serial that appeared to be missing pages. File Number 100-382196 was ordered and reviewed to ensure that no additional pages were inadvertently missed during the scanning process. All pages located within the indicated serial of section 3 in file number 100-382196 appeared to be processed correctly. Upon further review of the serial, a file number was located indicating where the original documents were filed. The appropriate serial in file number 62-101077 was reviewed, processed in its entirety and released on November 24, 2009. Handwritten marginalia on the first page of the serial indicated that only specific pages were to be included in the subject's case file; hence, the explanation for the entire document not

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<sup>17</sup> Plaintiff questioned the adequacy of the FBI's search regarding these records since the file numbers appear in a responsive file, but not on any of the searches conducted. As stated in paragraph 55, not all names located within a document are indexed to the particular file. It is discretionary to the investigative agent.

being included in file number 100-382196.

(87) In further response to plaintiff's December 17, 2009 letter, the FBI conducted additional searches for material based on file numbers located on summary pages within already processed responsive files. Plaintiff indicated that file number LA 60-258, mentioned on a summary page from file number LA 80-579, is responsive to Ronald Wilson Reagan even though it did not appear on any search conducted. After further research, it was determined that the LA 60-258 file had been destroyed. It is the contention of plaintiff, that because files are listed on summary pages, and because the subject's name appears to be mentioned within the files, that the FBI has not conducted an adequate search and, therefore, needs to conduct a page-by-page, line-by-line hand search of all files related to the main subject of those listed on the summary pages (i.e., Music Corporation of America). The FBI maintains that a page-by-page, line-by-line hand search of all files related to the main subject is an unduly burdensome search. The mention of these files on these summary pages is consistent with a cross reference; however, it is at the discretion of the investigative agent as to whether or not the subject mentioned within this information is indexed. The criteria for indexing individuals is required to be sufficient for future investigative needs and responsive to the Bureau's needs under the name check program. To do otherwise would result in the creation of a store of data too large to maintain its systems of records to support its law enforcement mission, be efficiently managed or essentially useful. Thus, the retention of the data in such a manner cannot be justified under the basic mandate of the Bureau.

**SEARCH SLIPS**

**CRS SEARCH SLIP**

(88) Plaintiff asserts “that the search slips produced by the FBI do not provide a clear record of the FBI’s searches because they lack information about what kind of search was performed, what indices were searched, or which Field Office files were searched.” See Court’s Order dated August 22, 2008, page 22, lines 15-17. When conducting a search of the CRS, manual indices, ELSUR or any search of the Field Offices for plaintiff’s requests, the FBI utilized the most recent versions of search slips to record the potentially responsive files located. **(See Exhibit UU.)** A July 28, 2000 version of the search slip was utilized for the CRS and the FBIHQ manual indices search, an undated version of the ELSUR search slip and a July 22, 2002 version of the search slip for the Field Offices was utilized. The potentially responsive material located during a search is handwritten onto these search slips and they are subsequently uploaded into the FBI’s FOIA Document Processing System (“FDPS”), which is a request management system used to assist in processing documents electronically, track workload, and efficiently use subject matter expertise by streamlining the collaboration and review processes associated with complex FOIA requests. FDPS is not a system of records in which responsive material can be located.

(89) Not all areas of the search slip are completed as they do not apply to the particular search being requested, or they no longer apply to the manner in which the FBI conducts searches. Employees using the FBIHQ search slips for CRS and/or manual indices searches indicate the following information:

- a. the date the search was conducted;

b. whether or not the search is an automated search only or also includes a search of the manual indices;

c. whether or not the search is for cross references only or for both cross references and main files;

d. the subject's name, any aliases that may be known pertaining to the subject, the subject's date of birth and/or date of death, the subject's social security number and/or criminal identification number (i.e. FBI locator number, prisoner locator number), any localities that may be pertinent to locating material on the subject, the initials of the employee conducting the search;

e. the file number and serial, if the file is Ident<sup>18</sup>, if the file was located during an automated search or a manual indices search.

The areas of the search slip that are normally not completed in detail is the area located at the top of the search slip, directly below the date line regarding the Name Searching Unit and Special File Room ("SFR"). The Secure Data Information System ("SDIC")<sup>19</sup> block is not checked as this area resides in the SFR and is only searched following the identification of files from a CRS search or manual indices search. Once a file is identified during a search of the CRS and/or manual indices, the file is requested through the File Access Control System ("FACS") and the location of the file is determined. If the file is located in the SFR, then the SDIS is searched.<sup>20</sup>

#### **ELSUR SEARCH SLIP**

(90) The following describes how the ELSUR search slip is completed with regard to the ELSUR searches:

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<sup>18</sup> Ident is a term used to indicate if the information located in the CRS or on the manual indices index card is a direct match the to the subject.

<sup>19</sup> The acronym SDIC is misprinted on the search slip and should be SDIS.

<sup>20</sup> A search of the SFR is only triggered by the results of the CRS and/or manual indices search, which provides a file number necessary to conduct an SFR search.

- a. the unit requesting the search;
- b. the subject of the search;
- c. any due date that may apply to completion of the search;
- d. the type of search requested;
- e. the agency requesting the search;
- f. the FOIA requester;
- g. the employee requesting the search, their telephone extension and room number;
- h. all identifying information of the subject, including name, aliases, date of birth and/or date of death, social security number and/or criminal identification number and any localities that may apply and;
- i. the results of the search, the signature of the employee who conducted the search and the date the search was conducted.

**FIELD OFFICE SEARCH SLIP**

(91) Requesting Field Office searches have changed over time with the improvement of technology, but the foundation of the requests remains the same. In the past, the FOIA requester would typically send a request letter to the Field Office. The Field Office would forward that letter to FBIHQ, and FBIHQ in turn would make a formal request for a search back to the Field Office through email or electronic communication (“EC”). Some Field Offices do not require EC’s and therefore accept an email communication. Since March 17, 2009, the procedures regarding requesting Field Office searches has been simplified for the requester as only one letter needs to be sent to either the Field Office or FBIHQ. FBIHQ still communicates with the appropriate Field Office through email or EC and the information included in those communications comes directly from the request letter. The Field Office, at times, may complete

a search slip and either email or fax the results back to FBIHQ but the results of the request are normally received in the same format as the request was made.

(92) With respect to the new searches conducted on November 19, 2008, February 26, 2009 and April 30, 2009, the search requests made to the Field Offices were very specific and included instructions as to the areas to be searched and the specific areas of the search slip to be completed. As with the FBIHQ and ELSUR search slips utilized by the FBI, the Field Office search slips are not fully completed as they do not apply to the subject being searched or they are no longer utilized by the FBI. These areas include:

- a. Telephone Application (See ¶ 77 subpoint b);
- b. CLEA (See ¶ 77 subpoint c);
- c. IIIA (See ¶ 77 subpoint d);
- d. CISP (See ¶ 77 subpoint e);

The FBI has included as **Exhibit QQ** copies of the email instructions sent by the Litigation Support Unit (“LSU”) to the WPU employees responsible for requesting the Field Office searches, the email instructions sent to the Field Offices by the WPU employees requesting the searches, the original request letter for each subject, the search slip to be completed and a copy of the search slip with the areas highlighted for completion. These specific instructions were sent to the LAFO, SCFO, SDFO, SFFO and WFO for the Ronald Wilson Reagan and Richard Hubler searches, the SFFO for the Alexander C. Sherriffs search and the LAFO and WFO for the Neil Reagan search. Upon completion of the Field Office searches and receipt of the completed search slips, the FBI employees who initially requested the Field Office searches verified that all the necessary information was included on the search slip. The process of searching the Field



Offices consisted of five employees conducting searches over the course of 200 hours (40 hours per employee), and the verification by the FBI consisted of five employees over the course of 400 hours (80 hours per employee). If any question arose during the course of the search or verification process, email correspondence was sent for clarification purposes. This correspondence has also been included as **Exhibit QQ**.

**FILE ACCESS CONTROL SYSTEM (“FACS”)**<sup>21</sup>

(93) Established in the early 1970's the File Access Control System (“FACS”) contains approximately 12 million FBIHQ records and allows the FBI to make on-line requests for hard copy files that are located at the ARC or other locations. FACS is not a database utilized to conduct a search for potentially responsive records, rather, it is utilized to locate the files associated with those potentially responsive records already identified. If a file is associated with a Field Office file number, the FBI contacts the Field Office and requests the file be sent to FBIHQ. This also applies to any file located at a Legat office; however, currently Legats and Field Offices are coordinating to have all of their files sent for storage at the CRC once it is completed.

(94) FACS indicates the number of sections contained within the file and if a file is on microfilm, charged out to another employee, destroyed, permanently charged out (“PCO”), on locate, or contains enclosures or bulky enclosures. When a file has been transferred to microfilm, the requested documents are printed from the microfilm reel, which may, sometimes, cause the images to be grainy or fuzzy. If the file is charged out to another employee, the requesting employee will contact the employee utilizing the file for permission to view the file. When a file

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<sup>21</sup> RMD RACS User Manual, Release 2.1.

has been destroyed, the destruction date is usually indicated. The Records Disposition Unit (“RDU”) entered into FACS, all destruction information concerning headquarters records that had been reviewed prior to the establishment of FACS. FACS is the ultimate source for determining the location of a headquarters file. However, any system is only as good as the information entered into it. If a file is listed as PCO, then it is kept in a restricted location such as the SFR, which requires a specified clearance for entry; access is only granted to a small group of individuals.<sup>22</sup> When a file is determined to be “on locate” the file is unable to be located on the shelf in its appropriate location and FBIHQ staff are designated to search for it in all reasonable locations.

#### **DISPOSITION CHARTS FOR POTENTIALLY RESPONSIVE FILES**

(95) Plaintiff stated in the February 9, 2009 Case Management Statement that the FBI’s search slips “contained such little information that it was difficult to understand how Hardy drew the conclusion that an adequate search had been performed.” (See Page 9, lines 25-28.) In an effort to clarify the data compiled on the search slips, the FBI created Excel spreadsheets detailing the file numbers, serials, file disposition, indices searched and search terms used during the November 19, 2008, February 26, 2009 and April 30, 2009 searches. (See Exhibit RR.) This information was provided to plaintiff in paper format at the November 2, 2009 CMC as well as on CD on November 13, 2009. The FBI took the information on each search slip for each subject and explained the disposition of the file located, the indices searched and the search terms used. The FBI also provided plaintiff with a “legend” of terms and explanations of those terms used in the disposition charts. (See Exhibit TT.) For any files that were determined to be

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destroyed, the FBI provided the destruction schedule for the particular file classification that was destroyed. (**See Exhibit SS.**) More detailed explanations of the dispositions located on the charts provided to plaintiff are explained, *infra*. The FBI took the information from the search slips as it was initially recorded and did not organize the information in any particular file number order, Field Office order or numerical order. The manner in which files are located during a CRS and manual indices search is alphabetically by the subject's name and then alphabetically by the six-way breakdown of that name.

#### **“UNABLE TO LOCATE” OR MISSING FILES**

(96) The FBI uses the following procedures to locate missing files. Once a search is conducted on a subject and potentially responsive file is identified, the employee goes into FACS to order this file.<sup>23</sup> The disposition of a file is determined in two ways:

- (1) The file is listed in FACS as “In File” and the ARC personnel who pull files for shipment cannot locate the file on the shelf or in any of the appropriate and expected areas; or
- (2) The file is listed as “Charged Out” to another employee. The employee is contacted and asked about the status of the file. At times, the employee is no longer with the FBI or has retired. The Unit Chief of the appropriate unit is contacted regarding the file and requested to conduct a search of their area. If the employee is still on staff, then they are asked to search their area for the file.

A file is determined to be “Unable to Locate” when all searches of appropriate areas have been exhausted.

(97) The FBI determined that **approximately one file** was unable to be located regarding subject Alexander C. Sherriffs, approximately four files regarding Neil Reagan,

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<sup>23</sup> See Fourth Hardy Declaration ¶¶ 10-11 for detailed explanation for unable to locate/missing files.

approximately 32 files regarding Ronald Wilson Reagan, approximately one file regarding Richard G. Hubler, zero files regarding the book title “Where’s the Rest of Me? The Ronald Reagan Story,” zero files regarding the position Governor of the State of California and approximately three files regarding references of Ronald Wilson Reagan in SAG files.

**FILES ACCESSIONED TO NATIONAL ARCHIVES AND RECORDS  
ADMINISTRATION (“NARA”) AND DESTROYED FILES**

(98) To identify those records meeting the requirements for permanent retention, RMD’s RDU follows the criteria listed in the FBI’s Records Retention Plan. Pursuant to the Records Retention Plan, each of the FBI’s investigative file classifications has a different criteria for permanency, transfer to NARA, and destruction. For example, the handling of file classification 9 records, which are records concerning Extortion, is different from that of file classification 175, which are records concerning assassination, kidnaping, or assaulting the President or Vice-President. Criminal investigations are reviewed when the case has been closed for 20 years and security investigations are reviewed when a case has been closed 30 years. RDU selects an individual file classification for review, and within that classification systematically reviews each case individually to see if it meets any of the criteria for permanent retention. In some classifications, the number of serials in a case file will determine whether it is retained or destroyed. In general, all cases that relate to a prominent figure or a well-known event, or that consist of 20 or more sections at FBIHQ or 35 or more sections in the Field Offices, are retained and sent to NARA.<sup>24</sup>

(99) The FBI determined that **approximately one file** was transferred to NARA

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<sup>24</sup> See Fourth Hardy Declaration for detailed information regarding how files are determined for transfer to NARA.

regarding subject Alexander C. Sherriffs, approximately nine files regarding Neil Reagan, approximately eight files regarding Ronald Wilson Reagan, approximately three files for Richard G. Hubler, zero files regarding the book title “Where’s the Rest of Me? The Ronald Reagan Story,” zero files regarding the position Governor of the State of California and approximately four files regarding reference of Ronald Wilson Reagan in SAG files.

(100) Any temporary records that do not meet the criteria for permanent retention are reviewed to determine their eligibility for destruction. RDU employees review the files individually to ensure that they are within the date range eligible for disposal; do not contain any material that would render them permanently valuable; are not part of a NARA identified sampling list; and are not the subject of any ongoing litigation, discovery, FOIA/Privacy Act, National Name Check Program (“NNCP”) request, or other inquiry. If the records meet none of these criteria, they are destroyed by placing the paper documents into the confidential trash. FACS is updated to indicate the date of destruction.<sup>25</sup> If any record of the file exists in ACS, this record is also deleted.

(101) At the pre-meeting between the FBI and plaintiff at the November 2, 2009 CMC, the FBI provided plaintiff with the retention plan for each destroyed file classification located during the November 19, 2008, February 26, 2009 and April 30, 2009 searches. The retention plan provided is used regarding all files opened prior to 1995. Any file opened after 1995 will be reviewed according to the Universal Case File retention plan. None of the files located were opened after 1995.

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<sup>25</sup> Although the date of destruction should appear in FACS, on occasion the date may not be listed.



(102) During a December 3, 2009 conference call with plaintiff, the topic of destruction logs was introduced. Destruction logs are, at times, utilized by the Field Offices as a way to track destruction of files at the Field Offices. Due to changes and advancements in technology, these logs are seldom utilized now. Each Field Office tracks destruction of files independently. While one Field Office may still utilize handwritten destruction logs, another Field Office may have created a spreadsheet to capture that information. When a Field Office file is located during a search of the CRS or a Field Office conducted search, the information regarding the disposition of that file comes from the information maintained by that Field Office.

(103) The FBI determined that **approximately one file** was destroyed regarding subject Alexander C. Sherriffs, approximately 24 files regarding Neil Reagan, approximately 40 files regarding Ronald Wilson Reagan, approximately three files regarding Richard G. Hubler, zero files regarding the book title "Where's the Rest of Me? The Ronald Reagan Story," zero files regarding the position Governor of the State of California and approximately 23 files regarding reference of Ronald Wilson Reagan in SAG files.

#### **RECORDS OUTSIDE THE SCOPE OF THE REQUEST**

(104) Pertaining to subjects Ronald Wilson Reagan and the reference of Ronald Wilson Reagan within SAG files, there was a limitation to the search criteria. Plaintiff indicated in his request letter dated August 6, 2007, that the search for Ronald Wilson Reagan was to encompass "from the earliest records through January 1, 1979." Also, determined during the April 6, 2009 CMC, the search criteria for references to Ronald Wilson Reagan within SAG files was to encompass files dated 1946 through 1950. All searches were completed accordingly and any file located was reviewed; the file was determined to be outside of the scope of the request if it did



not fall within the stated date criteria.

(105) The FBI determined that **approximately 427 files** were outside the scope of the request regarding subject Ronald Wilson Reagan and approximately 24 files for SAG records.

**NON-RESPONSIVE FILES**

(106) Upon the review of a potentially responsive file, the FBI took into account the subject matter of the request, the scope of the request, and all pertinent identifying information regarding the subject, such as:

- a. Date and place of birth;
- b. Date and place of death;
- c. Locality of residence;
- d. Title, profession and occupation;
- e. Locality of place of business/employment;
- f. Spouse or relatives;
- g. Associations and/or memberships;
- h. Unique numbers (Social Security, Immigration and Naturalization or ARN, military, FBI and/or United States Marshals);
- i. Sex/race;
- j. Fourteen year age rule<sup>26</sup>

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<sup>26</sup> The “Fourteen Year Age Rule” is used to eliminate investigative files pertaining to crimes that the FBI could reasonably expect a child 14 years-old and younger to not be the subject/title of the file. The following file classifications would be exempt from this rule: file classification 7 (Kidnaping/Child Abduction), file classification 26 (Crimes of Violence/Car jacking), file classification 79 (Missing Persons), file classification 87 (Interstate Transportation of Stolen Property) and file classification 95 (Crimes Against Persons, Property, or Society and Civil Cases).

k. Anything that matches the subject of the request.<sup>27</sup>

If the subject matter is not mentioned anywhere in the located serial or the file in its entirety then the serial/file is determined to be “not responsive” to the request. If use of the above utilized criteria does not clearly reveal if the subject mentioned within the file is the subject of the request, then the serial/file is determined to be “not responsive” to the request.

(107) The FBI determined that approximately four files were not responsive regarding subject Alexander C. Sherriffs, approximately 86 files were not responsive regarding Neil Reagan, approximately 31 files were not responsive regarding Ronald Wilson Reagan, approximately three files were not responsive regarding Richard G. Hubler, zero files were not responsive regarding the book title “Where’s the Rest of Me? The Ronald Reagan Story,” zero files were not responsive regarding the position Governor of the State of California and approximately 79 files were not responsive regarding reference of Ronald Wilson Reagan in SAG files.

#### **PREVIOUSLY PROCESSED FILES**

(108) Regarding subjects Alexander C. Sherriffs and Neil Reagan, it was determined at the February 9, 2009 CMC that all potentially responsive files would be recorded on the search slips, but only newly located files would be processed due to the fact that the responsive records for those subjects had been recently processed. The FBI determined approximately six previously processed files were located regarding subject Alexander C. Sherriffs and zero previously processed files were located regarding Neil Reagan.

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<sup>27</sup> For example, there are other individuals with the name Ronald Wilson Reagan, in which the FBI maintains files, but did not match the subject of plaintiff’s request.

**INFORMATION REGARDING SPECIFIC FILE CLASSIFICATIONS**

**190/197 FILES**

(109) The 190 file classification was established on October 7, 1976, for citizen requests for information under the Freedom of Information Act ("FOIA) of 1966, as amended, and the Privacy Act ("PA") of 1974; and for requester record expungement under the latter act. The 197 file classification was established on June 14, 1977, to document the FBI's response to litigations arising from civil suits and administrative claims filed **under the Federal Tort Claims Act**. These claims include suits against present or former employees of the FBI, the FBI itself, or the U.S. Government. Many categories of actions and claims are filed under this classification, with Freedom of Information and Privacy Act suits by persons seeking access to FBI records being among one of the largest.

(110) The FBI determined that zero 190 and/or 197 files were located regarding subject Alexander C. Sherriffs, approximately five files were located regarding Neil Reagan, approximately 41 files were located regarding Ronald Wilson Reagan, zero files were located regarding Richard G. Hubler, zero files were located regarding the book title "Where's the Rest of Me? The Ronald Reagan Story," zero files were located regarding the position Governor of the State of California and zero files were located regarding reference of Ronald Wilson Reagan in SAG files.

**ZERO FILES (GENERAL FILES)**

(111) Zero files ("0") and double zero files ("00"), also known as general files, are used to file documents relating to the individual classification, but which did not warrant an individual file. Most "0" files are used for citizen complaints, routine requests for information, general

reference material and newspaper clippings. Most "00" files include material relating to the administrative history of the classification and document why the classification was initiated, changes in legislation modifying the FBI's investigative responsibilities, investigative policy, unique investigation procedures, and jurisdictional disputes between the FBI and other federal agencies.<sup>28</sup> During the November 19, 2008, February 26, 2009 and April 30, 2009 searches, the FBI located approximately 97 potentially responsive general files. Of the approximately 97 files reviewed, approximately four files were determined to be responsive and were processed and released to plaintiff. A breakdown per subject of the approximately 97 files located is referenced in the chart below:

Name of Subject	Date of Search	Number of files determined to be potentially responsive	Number of responsive files processed and released
Alexander Sherriffs	11/19/2008	2	0
Neil Reagan	11/19/2008	7	0
Ronald Wilson Reagan	11/19/2008	73	4
Richard G. Hubler	4/30/2009	0	0
"Where's the Rest of Me? The Ronald Reagan Story"	4/30/2009	0	0
Ronald Reagan as Governor of California (all reasonable variations)	4/30/2009	0	0
Reference of Ronald Wilson Reagan in SAG files	2/26/2009	15	0

### CONTROL FILES

(112) Control files are maintained for the purpose of having all information regarding a specific matter immediately available without the necessity of reviewing numerous case files. For example, "Threats Against the President" would involve individual case files being opened

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<sup>28</sup> Reference FBI's Records Retention Plan, Part 2 (November 9, 1981).

for each threat on which the FBI conducts an investigation. However, a copy of the case file is placed into the control file so that all such threats are recorded in one place. During the November 19, 2008, February 26, 2009 and April 30, 2009 searches, the FBI located approximately 50 potentially responsive control files in addition to the general files listed above. Of the approximately 50 files reviewed, approximately four files were determined to be responsive and were processed and released to plaintiff. A breakdown per subject of the approximately 50 files located is referenced in the chart below:

Name of Subject	Date of Search	Number of files determined to be potentially responsive	Number of responsive files processed and released
Alexander Sherriffs	11/19/2008	0	0
Neil Reagan	11/19/2008	6	0
Ronald Wilson Reagan	11/19/2008	34	4
Richard G. Hubler	4/30/2009	0	0
"Where's the Rest of Me? The Ronald Reagan Story"	4/30/2009	0	0
Ronald Reagan as Governor of California (all reasonable variations)	4/30/2009	0	0
Reference of Ronald Wilson Reagan in SAG files	2/26/2009	10	0

#### CROSS-REFERENCES

(113) The FBI released seven cross-references on November 28, 2008 that were re-processed pursuant to the Court's August 22, 2008 Order. Six of the seven cross-references were released on March 10, 2009. The Court ordered that cross-references of less than ten pages be processed in their entirety, and, cross-references greater than ten pages have the entire introduction to the serial, all pages on which the subject is mentioned, and all administrative pages processed. Plaintiff requested the following formula regarding pages totaling more than

ten pages: that the introduction to the serial, all administrative pages, five pages before the mention of the subject and five pages following the mention of subject be included in the processing. Following the November 19, 2008 search for records responsive to Ronald Wilson Reagan, the FBI determined that the use of the formula in processing cross-references was too difficult to accomplish due to the fact that the mention of the subject appeared additionally within the five pages prior to, or following, the initial mention of the subject. In some instances, this resulted in the processing of nearly the entire serial. At this point, the FBI determined that all responsive cross-references, despite their size, would be processed in their entirety.

(114) The FBI processed approximately 154 cross-references for subject Ronald Wilson Reagan, one cross-reference for Neil Reagan, 11 cross-references for Alexander C. Sherriffs, 15 cross-references for SAG files, and six cross-references for Richard Hubler. Plaintiff indicated in his October 9, 2009 letter five cross-references that were not processed pursuant to the formula or in their entirety as previously indicated. During the November 2, 2009 CMC, the FBI agreed to re-review the 187 cross-references previously released to plaintiff and to re-process any cross-references that were not processed in their entirety. The FBI found seven cross-references pertaining to Ronald Wilson Reagan and one cross-reference pertaining to the SAG files that had not been processed in their entirety. Five of these cross-references were mentioned in plaintiff's October 9, 2009 letter and three were located additionally. The eight cross-references were released in their entirety to plaintiff by letter dated January 29, 2010. **(See Exhibits X and II.)**

#### **JUSTIFICATIONS FOR SPECIFIC DELETIONS OF INFORMATION**

(115) All documents have been thoroughly reviewed to achieve maximum disclosure consistent with the access provisions of the Privacy Act and the FOIA. Every effort was made to



provide plaintiff with all material in the public domain and with all reasonably segregable portions of releaseable material. All material which the FBI has withheld is exempt from disclosure pursuant to a FOIA exemption, or is outside the scope of the requests and therefore non-responsive. Plaintiff submitted by letter dated December 16, 2009, information concerning the 26 pages selected as part of the first sample to be Vaughned and, by letter dated March 5, 2010, information concerning the 153 pages selected as part of the second sample to be Vaughned. (See Exhibit VV and XX.)

(116) Each page selected as part of the first sample contains a Bates stamp number with the label Ronald Reagan and the number of the page released in the lower right-hand corner.<sup>29</sup> Of the 153 pages selected as part of the second sample, 89 pages contain a Bates stamp number with the label Ronald Reagan, 15 pages contain a Bates stamp number with the label SAG and two pages contain a Bates stamp number with the label Sherriffs and all contain the number of the page released in the lower right-hand corner.<sup>30</sup> In addition, 47 pages selected as part of the

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<sup>29</sup> Plaintiff chose the following Bates stamped pages as part of the first sample to be Vaughned: Ronald Reagan-5162, Ronald Reagan-5166, Ronald Reagan-5178, Ronald Reagan-5188, Ronald Reagan-5196, Ronald Reagan-5201, Ronald Reagan-5209 through Ronald Reagan-5211, Ronald Reagan-5213 and Ronald Reagan-5253 from file number 80-LA-579; Ronald Reagan-4326 from file number LA 116-70463; Ronald Reagan-141 from the 100-382196 abstracts and; Ronald Reagan-303, Ronald Reagan-322, Ronald Reagan-328, Ronald Reagan-370, Ronald Reagan-371, Ronald Reagan-449, Ronald Reagan-450, Ronald Reagan-494, Ronald Reagan-748, Ronald Reagan-759, Ronald Reagan-786, Ronald Reagan-792 and Ronald Reagan-794 from file number 100-382196.

<sup>30</sup> Plaintiff chose the following Bates stamped pages as part of the second sample to be Vaughned: Ronald Reagan-4162, Ronald Reagan-3336, Ronald Reagan-3337, Ronald Reagan-5444, Ronald Reagan-5445, Ronald Reagan-5448, Ronald Reagan-3444, Ronald Reagan-3446, Ronald Reagan-4008, Ronald Reagan-4049, Ronald Reagan-3632, Ronald Reagan-3633, Ronald Reagan-3635 through Ronald Reagan-3637, Ronald Reagan-3677, Ronald Reagan-4167, Ronald Reagan-4168, Ronald Reagan-4170, Ronald Reagan-4173, Ronald Reagan-4174, Ronald Reagan-1407, Ronald Reagan-1552, Ronald Reagan-1570, Ronald Reagan-2176, Ronald

second sample did not contain Bates stamp numbers. In providing an accurate accounting of the documents, those pages that did not previously contain Bates stamp numbers have been labeled with Bates stamp numbers and are identified in the chart below:

Subject	File Number and Serial	Bates Stamp Number
Sacramento 80 Files	80-136-5	SC 80 Files-1
	80-136-6	SC 80 Files-2
	80-136-8 (two pages)	SC 80 Files-3 and SC 80 Files -4
	80-136-9	SC 80 Files-4
	80-136-11	SC 80 Files-5
	80-138-12 (three pages)	SC 80 Files-6, SC 80 Files-7 and SC 80 Files-9
	80-138-18	SC 80 Files-10
Roy Brewer	100-360657-3 (three pages)	Brewer-1, Brewer-2 and Brewer-3
	156B-LA-103436-9	Brewer-4
	After 100-139754-122	Brewer-5
Herbert Ellingwood	161B-R-93-3	Ellingwood-1
Motion Picture Industry Council (MPIC)	100-138754-1143 (two pages)	MPIC-1 and MPIC-2
	100-138754-1146 (two pages)	MPIC-3 and MPIC-4
	100-138754-1166 (two pages)	MPIC-5 and MPIC-6
	100-138754-1239 (15 pages)	MPIC-7 thru MPIC-21
	100-138754-1259 (seven pages)	MPIC-22 thru MPIC-28
	100-138754 (dated 8/23/1968) (two pages)	MPIC-29 and MPIC-30
	100-138754-1286	MPIC-31

(117) The two-part sample selected by plaintiff consisted of a total of approximately

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Reagan-2662 through Ronald Reagan-2664, Ronald Reagan-4254, Ronald Reagan-5453 through Ronald Reagan-5512, SAG-763, SAG-768, SAG-769, SAG-779, SAG-782, SAG-784, SAG-794, SAG-798, SAG-1087, SAG-1088, SAG-1092, SAG-1093, SAG-1117, SAG-1126, SAG-1127, Sherriffs-25 and Sherriffs-26.

179 pages, and following a re-review of those pages, the FBI has additionally released approximately 73 pages in part, 105 pages in their entirety, and withheld one page in full. The one page withheld in full was withheld pursuant to (b)(3) on behalf of the IRS.

(118) The following paragraphs explain the FBI's rationale for withholding specific information in these documents pursuant to FOIA Exemptions (b)(1), (b)(2), (b)(3), (b)(6), (b)(7)(C), and (b)(7)(D).

### **JUSTIFICATION FOR REDACTIONS**

(119) The FBI's rationale for withholding each particular category of information under the applicable exemption is explained immediately below; following these rationales are individual descriptions of each of the documents at issue.<sup>31</sup>

#### **APPLICATION OF FOIA EXEMPTION (b)(1) AND E.O. 12958, AS AMENDED**

(120) 5 U.S.C. § 552 (b)(1) exempts from disclosure those records that are: "(A) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy; and (B) are in fact properly classified pursuant to such Executive Order..."

(121) The FBI's analysis of whether Exemption (b)(1) permits the withholding of agency records consists of two significant steps. First, the FBI must determine whether the information contained in the records is information that satisfies the procedural criteria of the applicable Executive Order governing the classification and protection of national security

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<sup>31</sup> It is noted that, although the records in this case are not subject to the terms of the settlement agreement in plaintiff's prior case, Rosenfeld v. USDOJ, Case no. 90-3576 (NDCa), the FBI processed records in this case regarding Ronald Reagan pursuant to the terms of the prior settlement agreement to maintain consistency.

information<sup>32</sup>; and second, complies with the various substantive criteria of the Executive Order. E.O. 12958, as amended<sup>33</sup> on March 25, 2003, is the Executive Order that currently applies to the protection of national security information.<sup>34</sup> I am bound by the requirements of E.O. 12958, as amended, when making classification determinations.

(122) In order for information to be properly classified, and thus properly withheld from disclosure pursuant to Exemption (b)(1), it must first satisfy the requirements set forth in Section 1.1 (a) of E.O. 12958, as amended:

- (1) an original classification authority is classifying the information;
- (2) the information is owned by, produced by or for, or is under the control of the United States Government;
- (3) the information falls within one or more of the categories of information listed in §§ 1.4 and 3.3 of this order;<sup>35</sup> and
- (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in

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<sup>32</sup> Section 6.1 (y) of E.O. 12958, as amended, defines “National Security” as “the national defense or foreign relations of the United States.”

<sup>33</sup> I am aware that Executive Order (“E.O.”) 13526 which replaced E.O. 12958 as amended, was issued on December 29, 2009; its provisions, except for §§ 1.7, 3.3 and 3.7 which were effective immediately, are not effective until 180 days from the date of the order. As the Original Classification Authority, I have determined that even under the new E.O. 13526, automatic declassification under § 3.3 would not be warranted. The records at issue were processed and re-processed under the prior E.O., but E.O. 13526 was considered when re-reviewing the withheld information during the course of the Vaughning process.

<sup>34</sup> The implementation of § 1.6 of E.O. 12958, as amended, was initially delayed by 180 days to allow agencies to update their marking procedures and training manuals. The remaining sections of the amended E.O. became effective as of March 25, 2003.

<sup>35</sup> In this case, all of the information is more than 25 years old and has been determined to have permanent historical value. It has been evaluated under the standards articulated in § 3.3(b).

damage to the national security, which includes defense against transnational terrorism, and the original classification authority is able to identify or describe the damage.

(123) Moreover, Section 3.3(b) of E.O. 12958, as amended<sup>36</sup>, provides that an agency may exempt from automatic declassification records which are over 25 years old and have been determined to have permanent historical value, if the release of such information could be expected to:

- (1) reveal the identity of a confidential human source, or a human intelligence source, or reveal information about the application of an intelligence source or method;
- (2) reveal information that would assist in the development or use of weapons of mass destruction;
- (3) reveal information that would impair U.S. cryptologic systems or activities;
- (4) reveal information that would impair the application of state of the art technology within a U.S. weapon system;
- (5) reveal actual U.S. military war plans that remain in effect;
- (6) reveal information, including foreign government information, that would seriously and demonstrably impair relations between the United States and a foreign government, or seriously and demonstrably undermine ongoing diplomatic activities in the United States;
- (7) reveal information that would clearly and demonstrably impair the current ability of the United States Government officials to protect the President, Vice President, and other protectees for whom protection services, in the interest of the national security, are authorized;
- (8) reveal information that would seriously and demonstrably impair current national security emergency preparedness plans and reveal current

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<sup>36</sup> See footnote 33 noting the FBI's review of (b)(1) material under the automatic declassification provisions of § 3.3 of both E.O. 12958, as amended as well as under E.O. 13526 as issued on December 29, 2009.

vulnerabilities of systems, installations, infrastructures, or projects relating to the national security; or

- (9) violate a statute, treaty, or international agreement.

(124) As I will explain in further detail below, I have determined, in my role as an original classification authority, as well as in consultation with the original classification authority at the CIA, that the indicated pages require a classification marking at the “Secret” level, since the unauthorized disclosure of this information reasonably could be expected to cause serious damage (“Secret”) to the national security. See E.O. 12958, as amended, § 1.2(a)(2). In addition to these substantive requirements, certain procedural and administrative requirements of E.O. 12958, as amended, must be followed before information can be considered to be properly classified, including the proper identification and marking of the documents. In order to ensure that the information in the documents is properly classified, I made certain that all procedural requirements of E.O. 12958, as amended, were followed:

- (1) each document was marked as required and stamped with the proper classification designation;<sup>37</sup>
- (2) each document was marked to indicate clearly which portions are classified, which portions are exempt from declassification as set forth in E.O. 12958, as amended, § 1.5 (b), and which portions are unclassified;<sup>38</sup>
- (3) the prohibitions and limitations on classification specified in E.O. 12958, as amended, § 1.7, were adhered to;
- (4) the declassification policies set forth in E.O. 12958, as amended, §§ 3.1 and 3.3 were followed; and
- (5) any reasonably segregable portion of these classified documents that did not meet the standards for classification under E.O. 12958, as amended, was declassified and marked for release, unless withholding was otherwise

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<sup>37</sup> E.O. 12958, as amended, §§ 1.6 (a) (1) – (5).

<sup>38</sup> E.O. 12958, as amended, § 1.6 (a) (5) (c).



warranted under applicable law.<sup>39</sup>

### **FINDINGS OF DECLARANT**

(125) With the above requirements in mind, I personally and independently examined the FBI information contained in the approximate 179 page sample. Approximately six pages of the approximate 179 page sample included CIA information. The FBI forwarded a referral consultation package to the CIA dated November 30, 2007 consisting of 85 pages<sup>40</sup>. A release, including the results of the CIA review, was made to plaintiff by letter dated February 28, 2008 citing Exemptions (b)(1) and (b)(3). As a result of this examination, it has been determined that the classified information continues to warrant classification at the “Secret” level and is exempt from disclosure pursuant to E.O. 12958, as amended, §§ 3.3(b), as the release of this information could reasonably be expected to reveal: (1) the identity of a confidential human source, or a human intelligence source, or reveal information about the application of an intelligence method (including special activities).

***The CIA provided the following as their justification for their withholdings regarding the six pages contained in this sample:***

### **CONFIDENTIAL HUMAN INTELLIGENCE SOURCES**

(126) The CIA withheld concerning CIA sources from MPIC Bates pages MPIC-7 through MPIC-9 and MPIC-18 through MPIC-20. The disclosure of this “Secret” information would damage the national security by damaging the CIA’s relationships with both individuals

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<sup>39</sup> 5 U.S.C. § 552 (b) provides, in part, that “[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.” In this case, the information at issue has been carefully re-examined. Based on our re-review, we have determined that no reasonably segregable portions may be declassified and released.

<sup>40</sup> Of the 85 pages which the FBI referred to the CIA for consultation only six were included in the sample chosen by plaintiff on March 5, 2010.

and foreign liaison partners who serve as CIA sources. Notwithstanding the passage of time since these documents were created, the disclosure of this information would have the damaging effect of suggesting to the CIA's sources that the CIA is unable or unwilling to observe an agreement of absolute secrecy over time. This perception could discourage the sources from entering into any kind of relationship with the CIA, thus preventing altogether the collection of information from these sources. The loss of such intelligence sources, and the accompanying loss of the critical intelligence they provide, would seriously and adversely affect the national security of the United States.

(127) This concern is present even if the information at issue does not specifically identify the CIA source by name. In many cases, the very nature of the information that the source communicates necessarily tends to reveal the identity of the source because of the limited number of individuals with access to the information. Therefore, special precautions must be taken to protect a source's identity even if that source is not identified by name in a given document. Information withheld on the following MPIC Bates pages pertains to confidential human intelligence sources:

MPIC-7, bracketed portion in paragraph one under heading "Administrative;"

MPIC-8, bracketed portion under heading "Informants" LA T-2;

MPIC-9, bracketed portion in paragraph one, lines 23-29;

MPIC-18, bracketed portion in paragraph four under heading LA T-2;

MPIC-19, in its entirety and;

MPIC-20, in its entirety.

#### **INTELLIGENCE ACTIVITIES AND METHODS**

(128) Generally speaking intelligence methods are the means by which the CIA accomplishes its mission. In this case, the CIA redacted information from MPIC Bates pages

MPIC-7, MPIC-9 and MPIC-18 through MPIC-20 that would reveal intelligence methods the CIA uses to assess and evaluate intelligence and to inform policy makers. The disclosure of this “Secret” information would provide the United States’ adversaries with insight into how the CIA collects, analyzes, evaluates, and compiles intelligence, and how it disseminates that intelligence to other government entities such as the FBI (an issue illustrated by the documents at issue in this case). Such a disclosure could allow hostile governments, intelligence agencies, and other adversaries to influence and potentially manipulate the CIA’s intelligence collection and analysis. Similarly, the disclosure of these CIA methods could further our adversaries’ attempts to disrupt the CIA’s dissemination of key intelligence to policy makers and other government officials.

(129) It should be emphasized that in order to protect a particular intelligence method from disclosure, the CIA must also protect the information produced by that method. Still further, the CIA must protect from public disclosure not only the information it has collected using a given method, but also the lack of information it has collected, as this may indicate a potential weakness or vulnerability in the CIA’s operations. Information withheld on the following MPIC Bates pages pertains to intelligence activities and methods utilized by the CIA:

MPIC-7, bracketed portion in paragraph one under heading “Administrative;”

MPIC-9, bracketed portion in paragraph one, lines 23-29;

MPIC-18, bracketed portion in paragraph four under heading LA T-2;

MPIC-19, in its entirety and;

MPIC-20, in its entirety.

(130) The harm to national security and the justifications for withholding this information are the same as ¶ 124, supra. This information remains sensitive despite the passage of time and is properly classified at the “Secret” level and is exempt from automatic

declassification pursuant to E.O. 12958, as amended<sup>41</sup>, § 3.3 (b)(1) and (6), and exempt from disclosure pursuant to FOIA Exemption (b)(1).

**DEFENDANT'S BURDEN OF ESTABLISHING  
EXEMPTION (b)(1) CLAIMS**

(131) The information withheld pursuant to Exemption (b)(1) was examined in light of the body of information available to me concerning the national defense and foreign relations of the United States. This information was not examined in isolation. Instead, each individual piece of information was evaluated with careful consideration given to the impact that disclosure would have on other sensitive information contained elsewhere in the United States intelligence community's files. Equal consideration was given to the impact that other information, either in the public domain or likely known or suspected by present or potential adversaries of the United States, would have upon the information examined.

(132) In those instances where, in my judgment as well as the judgment of the OCA at the CIA, the disclosure of this information would clearly and demonstrably cause serious damage to the national security, and its withholding outweighed the benefit of disclosure, I exercised my prerogative as an original classification authority and designated that information as classified in the interest of national security, and invoked Exemption (b)(1) of the FOIA to prevent disclosure on behalf of the CIA. Likewise, the justifications for the withheld classified information were prepared with the intent that they be read with consideration given to the context in which the classified information is found. This context includes not only the surrounding unclassified information but also other information already in the public domain, as well as information likely known or suspected by other hostile intelligence entities. It is my judgment that any greater

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<sup>41</sup> See footnote 33 noting the FBI's review of (b)(1) material under the automatic declassification provisions of § 3.3 of both E.O. 12958, as amended as well as under E.O. 13526 as issued on December 29, 2009.

specificity in the descriptions and justifications set forth with respect to intelligence sources and/or activities and methods in this public declaration, could reasonably be expected to seriously jeopardize the national security of the United States.<sup>42</sup>

**EXEMPTION (b)(2)**

**INTERNAL AGENCY RULES AND PRACTICES**

(133) 5 U.S.C. § 552 (b)(2) exempts from disclosure information “related solely to the internal personnel rules and practices of an agency.” This exemption protects routine internal administrative matters and functions of the FBI which have no effect on the public at large. Disclosure of this information could impede the effectiveness of the FBI’s internal law enforcement procedures.

(134) Moreover, Exemption (b)(2) also protects internal personnel rules and practices where disclosure may risk circumvention of the law. This exemption encompasses two distinct categories of records that are internal in nature: those involving trivial administrative matters of no genuine public interest (“Low 2”), and those the disclosure of which would risk circumvention of a statute or regulation (“High 2”). In this case, disclosure of “High 2” information would impede the effectiveness of internal law enforcement procedures as well as impede the effectiveness of the FBI’s internal operational and law enforcement support procedures.

**(b)(2) Confidential Source Symbol Numbers**

(135) Exemption (b)(2) (“High 2”) has been asserted in conjunction with Exemption (b)(7)(D) to withhold the permanent confidential source symbol numbers in the records

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<sup>42</sup> The majority of information in this case which is over 25 years old, has been determined to be of permanent historical value.

responsive to plaintiff's request.<sup>43</sup> Confidential Source symbol numbers are used to administratively conceal an individual's identity by inserting this number in written documents in lieu of his/her true name. A confidential source symbol number is comprised of a two or three-letter abbreviation which identifies the particular FBI Field Office where the symbol numbered source is operating or has operated, followed by a sequentially assigned number. Using a fictitious symbol number, "SF 123," the two-letter abbreviation "SF" reveals that this is a source of the FBI's SFFO and the source is the 123th symbol numbered source of that office.

Confidential source symbol numbers are assigned to confidential informants who report information to the FBI on a regular basis pursuant to an "express" grant of confidentiality. Once this number is assigned to an individual, it will always be synonymous with him/her. Disclosure of this material would reveal information as to the strength, breadth and scope of the informant program. Release of the confidential source symbol number in the documents at issue does not shed light upon the FBI's performance of its statutory duties; therefore, there exists no public interest in the release of that number. In FOIA practice, this is known as a "High 2."

(136) If the FBI were to disclose the confidential source symbol numbers of these informants, their identities could be ascertained by persons knowledgeable of this FBI investigation concerning the activities of the Communist Party and other extremist activities. Furthermore, if the FBI disclosed their identities, these informants, as well as their families, could be subjected to embarrassment, humiliation, and/or physical or mental harm. Disclosure of confidential source symbol numbers at various times and in various documents could identify these confidential FBI sources because such disclosures would reveal the connections of these

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<sup>43</sup> The FBI relies upon information contained in other documents found during a search to determine if an informant's name, symbol number or file number has been publicly released. These other documents can include public testimony or some other form of public acknowledgment.



confidential informants to the subject matters of these documents. Repeated release of these confidential source symbol numbers along with the information provided by these confidential sources would narrow the possibilities of their true identities. This is especially true inasmuch as each confidential source symbol number is assigned to only one confidential informant.

(137) Moreover, the disclosure of these confidential informants' identities would have a chilling effect on the activities and cooperation of other FBI confidential informants. The FBI has found that it is only with the understanding of complete confidentiality that the aid of such informants can be enlisted, and only through this confidence that these informants can be persuaded to continue providing valuable assistance in the future. Accordingly, because these confidential source symbol numbers are related solely to the FBI's internal practices, because the disclosure of these confidential source symbol numbers would not serve any public interest, and because the disclosure of these confidential source symbol numbers would impede the effectiveness of the FBI, the FBI properly withheld this information pursuant to FOIA Exemption (b)(2).<sup>44</sup>

**(b)(2) Confidential Source File Numbers**

(138) Exemption (b)(2) ("High 2") has been asserted in conjunction with Exemption (b)(7)(D) to exempt from disclosure the confidential source file numbers of permanent confidential symbol number sources of the FBI. Similar in usage to the confidential source symbol numbers, these file numbers are also assigned in sequential order to confidential informants who report information to the FBI on a regular basis pursuant to express assurances of

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<sup>44</sup> Exemption (b)(2) asserted in conjunction with (b)(7)(D) involving Confidential Symbol Source Numbers is cited on the following Bates Pages: Ronald Reagan-5178, Ronald Reagan-5188, Brewer-2, SAG-798, SAG-1087, SAG-1126, SAG-1127, Ronald Reagan-5444, Ronald Reagan-3446, Ronald Reagan-4008, Ronald Reagan-4049, Ronald Reagan-3635, Ronald Reagan-3636, Ronald Reagan-3677, Ronald Reagan-4167, Ronald Reagan-4168, Ronald Reagan-4173, Ronald Reagan-4174, Sherriffs-25, Sherriffs-26 and MPIC-8.

confidentiality. The confidential source file number is unique to the particular confidential informant and is only used in documentation relating to that particular informant. In this instance, the confidential source file numbers were used to document information provided by these confidential sources concerning the activities of the Communist Party and other extremist activities.

(139) Disclosure of these confidential source file numbers at various times and in various documents could ultimately identify these confidential sources since it would reveal the connections of these confidential informants to the subject matters of these documents. Repeated release of these confidential source file numbers along with the information provided by these confidential sources would narrow the possibilities of their true identities. This is especially true inasmuch as each confidential source file number is assigned to only one confidential informant.

(140) The disclosure of the identities of these confidential sources would have a chilling effect on the activities and cooperation of other FBI confidential informants. The FBI has found that it is only with the understanding of complete confidentiality that the assistance of such informants can be enlisted, and only through this assurance of confidentiality that these informants can be persuaded to continue their assistance in providing information to the FBI in the future. Accordingly, the disclosure of these confidential source file numbers in conjunction with the information provided by them to the FBI could reasonably be expected to lead to the identification of these permanent confidential informants of the FBI. Accordingly, because these confidential source file numbers are related solely to the FBI's internal practices, because the disclosure of these source file numbers would not serve any public interest, and because the disclosure of these source file numbers would impede the effectiveness of the FBI, the FBI

properly withheld this information pursuant to FOIA Exemption (b)(2).<sup>45</sup>

**EXEMPTION (b)(3)**

**PROTECTED BY STATUTE**

(141) 5 U.S.C. § 552 (b)(3) exempts from disclosure the following types of records:

specifically exempted from disclosure by statute ... provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

**INTERNAL REVENUE CODE 26 U.S.C. § 6103**  
**CONFIDENTIALITY AND DISCLOSURE OF TAX RETURNS AND TAX RETURN**  
**INFORMATION**

(142) Exemption (b)(3) was cited in conjunction with Internal Revenue Code section 6103, (26 U.S.C. § 6103), to withhold tax return information of a third party and tax investigation information of a third party.<sup>46</sup> The information being withheld under (b)(3) consists of third-party tax information, the disclosure of which is specifically prohibited by Internal Revenue Code section 6103. 26 U.S.C. § 6103 cites that tax returns and tax return information shall be confidential, and except as authorized by this title no officer or employee of the United States shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section. For purposes of this subsection, the term “officer or employee” includes a former officer or employee. Thus, disclosure of this information would violate

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<sup>45</sup> Exemption (b)(2) asserted in conjunction with (b)(7)(D) involving Confidential Source File Numbers is cited on the following Bates Pages: Ronald Reagan-5201, Ronald Reagan-4254 and MPIC-8.

<sup>46</sup> Exemption (b)(3) asserted pursuant to 26 U.S.C. § 6103 is cited on the following Bates Pages: Ronald Reagan-370, Ronald Reagan-371, Ronald Reagan-1407, Ronald Reagan-1552 and Ronald Reagan-1570.

Section 6103 and must be withheld pursuant to Exemption (b)(3).

**CENTRAL INTELLIGENCE ACT OF 1949**

(143) Exemption (b)(3) was asserted to withhold information pursuant to Section 6 of the Central Intelligence Act of 1949, as amended, Title 50, of the United States Code, §403g on behalf of the Central Intelligence Agency (“CIA”), which provides that:

In the interests of the security of the foreign intelligence activities of the United States and in order to further implement §403-1(i) of this title that the Director of National Intelligence (“DNI”) shall be responsible for the protection of intelligence sources and methods from unauthorized disclosure, the CIA shall be exempt from the provisions of any law that require the publication of disclosure from the organization, functions, names, official titles, salaries, or numbers of personnel employed by CIA

(144) As the CIA's primary function is to collect foreign intelligence through human sources and by other appropriate means, section 6 of the CIA Act authorizes the CIA to withhold "intelligence activities", "intelligence sources" and "intelligence methods" that are related to the CIA's core functions. In addition, CIA employees' names, titles, file numbers, and internal organizational data are specifically and absolutely protected from disclosure by the CIA Act.

(145) In contrast to Executive Order 12958, as amended, neither the National Security Act's statutory requirement to protect intelligence sources and methods, nor the CIA Act's statutory requirement to protect the CIA's organization and functions, requires the CIA to identify or describe the damage to national security that reasonably could be expected to result from their unauthorized disclosure. In any event, since the information redacted by the CIA involves intelligence sources, methods and activities, the disclosure of which would reveal the "identity of a human intelligence source, or reveal information about the application of an intelligence source or method," the damage that reasonably could be expected to result from the unauthorized

disclosure of this information is coextensive with the damage that reasonably could be expected to result from the disclosure of the classified information which the CIA has redacted. Where documents at issue contain information, that, if disclosed, would reveal intelligence sources and methods, that information is protected from disclosure by Exemption (b)(3).<sup>47</sup>

#### **NATIONAL SECURITY ACT OF 1947**

(146) Exemption (b)(3) was asserted to withhold information pursuant to Section 102A (i)(1) of the National Security Act, 50 U.S.C. § 403-1(i) (1), provides that the Director National Intelligence "shall protect intelligence sources and methods from unauthorized disclosure".<sup>48</sup> All of the information withheld by the CIA concerns "intelligence activities, sources and methods". Therefore, the CIA relies on the National Security Act of 1947 to withhold information that would reveal the CIA's intelligence sources and methods. Where documents at issue contain information, that, if disclosed, would reveal intelligence sources and methods, that information is protected from disclosure by Exemption (b)(3).<sup>49</sup>

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<sup>47</sup> Exemption (b)(3) asserted pursuant to 50 U.S.C. § 403g, as it relates to the organization and its functions is cited on the following Ronald Reagan Bates page: Ronald Reagan-5453.

<sup>48</sup> The Director of Central Intelligence was required to protect intelligence sources and methods from unauthorized disclosure under Section 103 (c)(7) of the National Security Act of 1947, 50 U.S.C. § 403-3(c)(7) prior to the Intelligence Reform and Terrorism Prevention Act taking effect, when plaintiff submitted his request.

<sup>49</sup> Exemption (b)(3) asserted pursuant to Section 103(c)(6) of the National Security Act of 1947 is cited on the following Ronald Reagan Bates pages: Ronald Reagan-5453.



**FOIA EXEMPTION (b)(6) AND (b)(7)(C)**

**CLEARLY UNWARRANTED AND UNWARRANTED  
INVASION OF PERSONAL PRIVACY**

(147) 5 U.S.C. § 552 (b)(6) exempts from disclosure

personnel and medical files and similar files when the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy.

Similarly, 5 U.S.C. § 552 (b)(7)(C) exempts from disclosure:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy.<sup>50</sup>

**EXEMPTION (b)(7) THRESHOLD**

(148) Exemption (b)(7) of the FOIA protects from mandatory disclosure records or information compiled for law enforcement purposes, but only to the extent that disclosure could reasonably be expected to cause one of the harms enumerated in the subpart of the exemption. See 5 U.S.C. § 552 (b)(7). In certain instances in this case, the harm that could reasonably be expected to result from disclosure concerns invasion of personal privacy (b)(7)(C) and revealing the identity of confidential sources (b)(7)(D).

(149) Before an agency can invoke any of the harms enumerated in Exemption (b)(7), it must first demonstrate that the records or information at issue were compiled for law enforcement purposes. Law enforcement agencies such as the FBI must demonstrate that the

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<sup>50</sup> The practice of the FBI is to assert Exemption (b)(6) in conjunction with (b)(7)(C). Although the balancing test for (b)(6) uses a “would constitute a clearly unwarranted invasion of personal privacy” and the test for (b)(7)(C) uses the lower standard of “could reasonably be expected to constitute an unwarranted invasion of personal privacy,” the analysis and balancing required by both exemptions is sufficiently similar to warrant a consolidated discussion. The privacy interests are balanced against the public’s interest in disclosure under the analysis of both exemptions.



records at issue are related to the enforcement of federal laws and that the enforcement activity is within the law enforcement duty of that agency. Documents responsive to plaintiff's requests relate to the FBI's investigation of subjects' activities in and involvement with -- the Communist Party, other extremist activities and threats to assassinate Governor Elect of California Ronald Reagan in San Jose, California on November 8, 1966. The FBI has jurisdiction over this type of law enforcement investigation pursuant to such criminal statutes as 18 U.S.C. § 1751. Thus, these investigations fall within the law enforcement duties of the FBI. Accordingly, the information readily meets the threshold requirement of Exemption (b)(7). The remaining inquiry is whether disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy" or "disclose the identity of confidential sources."

(150) When withholding information pursuant to this exemption, the FBI is required to balance the privacy interests of the individuals mentioned in these records against any public interest in disclosure. In asserting this exemption, each item of information has been scrutinized to determine the nature and strength of the privacy interest of every individual whose name and/or identifying information appears in the documents at issue. In conducting this analysis, the public interest in disclosure of this information is **determined by whether the information in question would shed light on the FBI's performance of its mission to protect and defend the United States against terrorist and foreign intelligence threats, to uphold and enforce the criminal laws of the United States, and to provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners.**<sup>51</sup> In this case, the FBI

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<sup>51</sup> The FBI has taken several steps to ascertain the current life/death status of the individuals whose names are withheld. The FBI uses the birth date and/or the date of the investigation to determine whether an individual is living or deceased, to the extent either or both of these pieces of information are discernable from the file. The date of birth is used to apply the judicially-recognized "100-year rule," *i.e.*, if the individual was born more than 100 years ago, the FBI presumes that he or she is dead and the name is released. The FBI also uses institutional

concluded that the information should be withheld under Exemptions (b)(6) and (b)(7)(C), and determined that the individuals' privacy interests were not outweighed by any public interest in disclosure.

**(b)(6) and (b)(7)(C) Names and/or Identifying Information of Third Parties Merely Mentioned**

(151) Exemptions (b)(6) and (b)(7)(C) have been asserted to protect the names and identifying information of third parties who were merely mentioned in the documents responsive to plaintiff's requests. These individuals are not of investigative interest to the FBI. Release of this type of information about private citizens, without notarized authorizations permitting such a release, violates these individuals legitimate privacy interests. If the FBI disclosed their names and/or other personal information, the disclosure would reveal that these third parties were at one time connected with an FBI investigation in some way. Disclosure of their identities could subject these individuals to possible harassment or criticism and focus derogatory inferences and suspicion on them.

(152) The FBI also examined the records at issue to determine whether there was any

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knowledge gained from prior FOIA requests or internal records, including those provided by plaintiff. This information has been compiled alphabetically in a document that is utilized by FOIA processors during the processing of a request to determine the life/death status of an individual. By using institutional knowledge, the FBI can identify with sufficient certainty the life/death status of certain individuals. This document is updated periodically with the new information being provided by FOIA processors and public source materials. If the FBI is unable to determine the life/death status of an individual through the use of these methods, the name of the individual is withheld pursuant to Exemptions 6 and 7C, as disclosure would constitute an unwarranted invasion of those individuals' privacy and no public interest would be served in releasing the names. It is also the FBI's policy to release all names of high-ranking FBI officials in policy-making positions, as well as individuals in public positions, as they do not have privacy rights while acting in their official capacity. This policy is applied to the individual's position at the time of the document, and not the present. Institutional knowledge also applies to the vintage information known by employees through life experience and processing experience from older requests.

public interest that outweighed the substantial privacy interests of the third parties merely mentioned in the responsive records. The FBI could not identify any discernible public interest. In particular, the FBI could not determine how the disclosure of the names, and/or identifying information of these individuals would shed any light on the operations and activities of the FBI. Thus, the FBI determined that these individuals' privacy interests outweighed any public interest in disclosure, and that disclosure of the names and/or identifying information of the third parties merely mentioned would constitute a "clearly unwarranted and unwarranted invasion of privacy."<sup>52</sup> The FBI properly withheld this information pursuant to FOIA Exemptions (b)(6) and (b)(7)(C).<sup>53</sup>

**(b)(6) and (b)(7)(C) Names and/or Identifying Information of Third Parties Who Provided Information to the FBI**

(153) Exemptions (b)(6) and (b)(7)(C) have been asserted, at times, in conjunction with Exemption (b)(7)(D) to protect the names and identifying information (such as addresses, phone numbers, and social security numbers) of third parties who provided information to the FBI. Disclosure of the identities of these third parties would have a detrimental effect on the current and future cooperation of other individuals willing to provide information to the FBI inasmuch as they would have little or no faith in the FBI's ability to maintain their information in confidence. Thus, their names and any specific information provided by these third parties which

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<sup>52</sup> For the convenience of the Court, rather than repeat this phrase "clearly unwarranted invasion of personal privacy under the standard of Exemption 6 and an unwarranted invasion of personal privacy under the standard of Exemption 7C" every time we assert these two Privacy Exemptions we will simply use the phrase "clearly unwarranted and unwarranted invasion of personal privacy" to refer to both standards.

<sup>53</sup> Exemptions (b)(6) and (b)(7)(C) involving Third Parties Merely Mentioned are cited on the following Bates Pages: Ronald Reagan-5166, Ronald Reagan-5209, Ronald Reagan-5210, Ronald Reagan-322, Ronald Reagan-328, Ronald Reagan-449, Ronald Reagan-450, SC 80 Files-2, SC 80 Files-10, Ronald Reagan-4162, Ronald Reagan-1407, MPIC-5, MPIC-6, MPIC-12, MPIC-14, MPIC-17 and MPIC-29.

could ultimately identify them has been protected.

(154) The FBI examined the records at issue to determine whether there is any public interest that outweighed the substantial privacy interests of the individuals who provided information to the FBI referenced in the responsive records. The FBI could not identify any discernible public interest. In particular, the FBI determined that disclosure of the names of these individuals would shed no light on the internal operations and activities of the FBI. Thus, the FBI determined that the privacy interest of those individuals who provided information to the FBI outweighed any public interest in disclosure, and that disclosure of the names and/or identifying information of these individuals would constitute a “clearly unwarranted and unwarranted invasion of privacy.” The FBI properly withheld this information pursuant to FOIA Exemptions (b)(6) and (b)(7)(C).<sup>54</sup>

**(b)(6) and (b)(7)(C) Names and Identifying Information of Third Parties Who Were of Investigative Interest**

(155) Exemptions (b)(6) and (b)(7)(C) have been asserted to protect the names and identifying information of third-party individuals who were of investigative interest to the FBI and/or other law enforcement agencies. Identifying information withheld concerning these third parties includes addresses, dates of birth, social security numbers, and other personal information. Any link to a law enforcement investigation carries a strong negative connotation and a stigma. Release of the identities of these individuals to the public could subject them to harassment or embarrassment, as well as undue public attention. Accordingly, the FBI has determined that these individuals maintain a substantial privacy interest in not having their

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<sup>54</sup> Exemptions (b)(6) and (b)(7)(C), at times, in conjunction with (b)(7)(D) involving Third Parties Who Provided Information are cited on the following Bates Pages: Ronald Reagan-5162, Ronald Reagan-5166, Ronald Reagan-5209, Ronald Reagan-5213, Ronald Reagan-141, SC 80 Files-3, SAG-798, Ronald Reagan-4049, Ronald Reagan-3635 through Ronald Reagan-3637, Ronald Reagan-3677, Sherriffs-25, Sherriffs-26, MPIC-5 and MPIC-6.

identities disclosed. In making a determination whether to release the names and personal information concerning these third parties, the public's interest in disclosure was balanced against the individual's right to privacy. The FBI determined that this information would not enlighten the public on how the FBI conducts its internal operations and investigations. Accordingly, the FBI concluded that the disclosure of this information would constitute a "clearly unwarranted and unwarranted invasion of their personal privacy." The FBI properly withheld this information pursuant to FOIA Exemptions (b)(6) and (b)(7)(C).<sup>55</sup>

**(b)(6) and (b)(7)(C) Names and/or identifying information of non-FBI Federal Government Personnel**

(156) Exemption (b)(6) and (b)(7)(C) have been asserted to protect the names of non-FBI federal government employees who are employed with the Internal Revenue Service ("IRS"). These employees are support employees who were responsible for conducting, supervising, and/or maintaining the tax information and tax investigation activities reported in the documents responsive to plaintiff's request. Publicity (adverse or otherwise) regarding any particular investigation to which they have been assigned may seriously prejudice their effectiveness in conducting other investigations. The privacy consideration is also to protect these federal employees, as individuals, from unnecessary, unofficial questioning as to the course of an investigation, whether or not they are currently employed by the IRS. These employees conduct official inquiries into violations of tax statutes and maintain information regarding tax filings for state and federal returns. They come into contact with all strata of society, conducting searches and making inquiries, both of which result in reasonable but nonetheless serious

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<sup>55</sup> Exemptions (b)(6) and (b)(7)(C) involving Third Parties of Investigative Interest are cited on the following Bates Pages: Ronald Reagan-5162, Ronald Reagan-5253, Ronald Reagan-4326, Ronald Reagan-449, Ronald Reagan-450, Ronald Reagan-786, Ronald Reagan-792, Ronald Reagan-794, Ronald Reagan-4162, MPIC-22, MPIC-23 and MPIC-26.



disturbances to people and their lives. It is possible for an individual targeted by the IRS to carry a grudge which may last for years, and to seek revenge on the investigators and other federal employees involved in a particular investigation. The publicity associated with the release of an IRS employee's identity in connection with a particular investigation could trigger hostility toward a particular employee. There is no public interest to be served by disclosing the identities of these employees to the public. Thus, disclosure of this information would constitute a "clearly unwarranted and unwarranted invasion of their personal privacy."

(157) The FBI examined the records at issue to determine whether there was any public interest that outweighed the substantial privacy interests of the IRS employees referenced in the responsive records. The FBI could not identify any discernible public interest. In particular, the FBI could not determine how the disclosure of the names, and/or identifying information of these individuals would shed any light on the operations and activities of the FBI. Thus, the FBI determined that the IRS employees' privacy interests outweighed any public interest in disclosure, and that disclosure of the names and identifying information of the IRS employees would constitute a clearly unwarranted and unwarranted invasion of privacy. There is no public interest to be served in releasing the identities of these individuals. Accordingly, the FBI has properly withheld this information pursuant to Exemptions (b)(6) and (b)(7)(C).<sup>56</sup>

**(b)(6) and (b)(7)(C) Names and/or Identifying Information of FBI Special Agents and Support Personnel**

(158) Exemptions (b)(6) and (b)(7)(C) have been asserted to protect the names and identifying information of FBI Special Agents ("SAs") who were responsible for conducting, supervising, and/or maintaining the investigative activities reported in these files. The SAs

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<sup>56</sup> Exemption (b)(6) and (b)(7)(C) involving Non-FBI Federal Government Personnel are cited on the following Bates pages: Ronald Reagan-370, Ronald Reagan-371 and Ronald Reagan-1407.



mentioned did not choose their assignments. Publicity, adverse or otherwise, regarding any particular investigation conducted by SAs may seriously impair the SAs' effectiveness in conducting future investigations. This privacy consideration also protects SAs from unnecessary, unofficial questioning as to the conduct of an investigation, whether or not they are currently employed by the FBI.

(159) FBI SAs conduct official inquiries into violations of various criminal statutes and national security laws. They come into contact with all strata of society, conducting searches and making arrests, many of which result in reasonable but nonetheless serious disturbances to individuals and their lives. It is possible for an individual targeted by such law enforcement actions to carry a grudge which may last for years, and to seek revenge on the agents and other federal employees involved in the investigation. The publicity associated with the release of the identity of an FBI SA in connection with a particular investigation could trigger hostility towards the SA by the persons being investigated. Accordingly, the FBI determined that the SAs whose names and information appear in these documents maintain a substantial privacy interest in not having their identities disclosed.

(160) The FBI next examined the records at issue to determine whether there was any public interest that outweighed the substantial privacy interests of the FBI SAs and Professional Support employees. The FBI could not identify any discernible public interest. The disclosure of the names of FBI SAs and Professional Support employees would not demonstrate how the FBI performs its mission to protect and defend the United States against terrorist and foreign intelligence threats, to uphold and enforce the criminal laws of the United States, and to provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners. Thus, disclosure of the names of these employees would constitute a clearly unwarranted and an unwarranted invasion of their personal privacy; therefore, the FBI has

properly asserted Exemption (b)(6) and (b)(7)(C).<sup>57</sup>

**(b)(6) and (b)(7)(C) Names and Identifying Information of Local Law Enforcement Personnel**

(161) Exemptions (b)(6) and (b)(7)(C) have been asserted to protect the name of a local law enforcement employee. This local law enforcement employee is an identification officer for the Scottsdale, Arizona Police Department. This employee was acting in his official capacity. The rationale for protecting the identity of Non-FBI Federal Government Personnel explained above also pertains to withholding the name and identifying information of this local law enforcement employee. Release of the identity of this law enforcement employee could subject him to unnecessary, unwarranted harassment which would constitute a clearly unwarranted and unwarranted invasion of privacy.

(162) The FBI examined the information at issue to determine whether there was any public interest that outweighed the substantial privacy interests of the local law enforcement employee referenced in the responsive record. The FBI could not identify any discernible public interest. In particular, the FBI determined that disclosure of the name of this local law enforcement employee would shed no light on the internal operations and activities of the FBI. Thus, the FBI determined that the privacy interests of the local law enforcement employee outweighed any public interest in disclosure, and that disclosure of the name and/or identifying information of this employees would constitute a “clearly unwarranted and unwarranted invasion of personal privacy.” The FBI properly withheld this information pursuant to FOIA Exemptions

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<sup>57</sup> Exemptions (b)(6) and (b)(7)(C) involving FBI Special Agents and Support Personnel are cited on the following Bates Pages: SC 80 Files-2, SC 80 Files-7, SC 80 Files-10, Brewer-1, Ellingwood-1, MPIC-1, MPIC-5, MPIC-7 through MPIC-9 and MPIC-22 through MPIC-31.

(b)(6) and (b)(7)(C).<sup>58</sup>

**EXEMPTION (b)(7)(D)**

**CONFIDENTIAL SOURCE MATERIAL**

(163) 5 U.S.C. § 552 (b)(7)(D) provides protection for:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source.

(164) Numerous confidential sources report to the FBI on a regular basis and are “informants” within the common meaning of the term in various criminal and national security intelligence investigations. During the course of an investigation, individuals are interviewed under circumstances from which an assurance of confidentiality can reasonably be inferred. These individuals are considered to be confidential sources since they furnish information only with the understanding that their identities and the information provided will not be divulged outside the FBI. Information provided by these individuals is singular in nature and if released, could reveal the informant's identity.

(165) Releasing the specific information provided by these sources may reveal a confidential source’s identity. The release of a source’s identity could forever remove that source as a future means of obtaining information. In addition, when the identity is revealed, that revelation has a chilling effect on the activities and cooperation of other sources. It is only with the understanding of complete confidentiality that the aid of such sources can be enlisted and

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<sup>58</sup> Exemptions (b)(6) and (b)(7)(C) involving Local Law Enforcement Personnel is cited on the following Bates Page: Ronald Reagan-4162.

only through this confidence that these sources can be persuaded to continue providing valuable assistance in the future. Those who provide information in these investigations should be secure in the knowledge that their assistance and their identities will be held in confidence. To the best of the FBI's knowledge, the identities of these confidential sources are not publicly known. Thus, the information provided by, as well as the identities of these sources, has been protected pursuant to Exemption (b)(7)(D).

**(b)(7)(D) Names and/or Identifying Information of Individuals Who Provided Information Under an "Implied" Assurance of Confidentiality**

(166) Exemption (b)(7)(D) has been asserted in conjunction with (b)(6) and (b)(7)(C) to protect the names and identifying information of individuals who provided information to the FBI or other law enforcement agencies during the course of investigations into titled subjects' activities. These individuals provided information under circumstances from which an assurance of confidentiality may be implied. One of the two third party sources provided specific detailed information that is singular in nature concerning the criminal activities of himself, his associates and/or other subjects of the titled investigation. The second third party source, although not believed to be a completely reliable source of information, provided specific detailed information that is singular in nature concerning an individual that was of investigative interest to the FBI. This particular piece of information proved to be reliable. If these individual's identities were released, it could subject them to embarrassment, humiliation and would have a chilling effect on the activities and cooperation of future FBI confidential sources. Th FBI has found that it is only with the understanding of complete confidentiality that the aid of such sources can be enlisted and only through this confidence that these sources can be persuaded to continue providing valuable assistance in the future. Protection extends beyond the name of the third party source, and includes all other possible identifying information about the source. The FBI has released as much segregable information as possible without disclosing the

source's identification. Thus, the FBI has properly withheld this information pursuant to FOIA Exemption (b)(7)(D).<sup>59</sup>

**(b)(7)(D) Names, Identifying Information, and/or Information Provided by Individuals Under an "Express" Assurance of Confidentiality**

(167) FOIA Exemption (b)(7)(D) has been asserted in conjunction with (b)(6) and (b)(7)(C) to exempt from disclosure the names and other identifying information of individuals who provided information and cooperated with the FBI in the investigation of the activities of the Communist Party, other extremist activities, and other individuals under express assurances of confidentiality. These individuals cooperated with the FBI and provided valuable information concerning the criminal activities of individuals with the express understanding that their identities and any information which would tend to identify them would only be used for law enforcement purposes and not released to the public.

(168) In this instance, the FBI has protected both the identities of these cooperating individuals and any specific information provided by them which could possibly reveal their identities to persons who are knowledgeable of this investigation. Such identifying information includes, but is not limited to, their telephone numbers, home addresses, and the nature and circumstances of their association with plaintiff. Given the criminal activities of the subjects of this FBI investigation, public disclosure of the identities of individuals who provided valuable assistance to the FBI would subject them to embarrassment, harassment, or other forms of reprisal. In addition, disclosure of the identities of persons interviewed under such express assurances of confidentiality would have a chilling effect on the activities and cooperation of other current and future sources of information. The FBI has found through experience that it is

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<sup>59</sup> Exemption (b)(7)(D) asserted in conjunction with Exemptions (b)(6) and (b)(7)(C) involving Implied Confidentiality is cited on the following Bates pages: Ronald Reagan-3635 and Ronald Reagan-5166.



only with the understanding of complete confidentiality that the assistance and cooperation of such persons can be enlisted and only through this assurance that these individuals can be persuaded to continue providing valuable assistance in the future. Accordingly, since release of this information could reasonably be expected to disclose the identities of these confidential sources, the FBI has properly asserted FOIA Exemption (b)(7)(D) to protect the names and other identifying information of these individuals who provided information to and cooperated with the FBI in this criminal investigation of plaintiff and other individuals under express assurances of confidentiality.<sup>60</sup>

**(b)(7)(D) Confidential Source Symbol Numbers**

(169) Exemption (b)(7)(D) has been asserted in conjunction with Exemption (b)(2) to protect the confidential source symbol numbers of permanent symbol number sources of the FBI. See ¶¶ 135-137, supra, describes the administrative aspect of using confidential source symbol numbers to protect the identity of FBI sources. The confidential source symbol numbers, similar to confidential source file numbers, are assigned in sequential order to confidential informants who report information to the FBI on a regular basis pursuant to an express assurance of confidentiality. The confidential source symbol number is unique to the particular confidential informant and is used only in documentation relating to that particular informant.

(170) Disclosure of confidential source symbol numbers could ultimately identify these sources since it would reveal the connections of confidential informants to the information provided by them. Repeated release of confidential source symbol numbers along with the

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<sup>60</sup> Exemptions (b)(7)(D) asserted in conjunction with (b)(6) and (b)(7)(C) involving Express Confidentiality is cited on the following Bates Pages: Ronald Reagan-786, Ronald Reagan-5162, Ronald Reagan-5166, Ronald Reagan-5209, Ronald Reagan-5213, SAG-798, Ronald Reagan-4049, Ronald Reagan-3635 through Ronald Reagan-3637, Ronald Reagan-3677, Sherriffs-25, Sherriffs-26 and MPIC-12.



information provided by these confidential informants would narrow the possibilities of their true identities. This is especially true since each confidential source symbol number is assigned to only one confidential informant.

(171) In turn, the disclosure of the identity of the confidential sources would have a chilling effect on the activities and cooperation of other FBI confidential informants. It is only with the understanding of complete confidentiality that the aid of such informants can be enlisted and only through this assurance of confidentiality that these informants can be persuaded to continue their assistance in providing information to the FBI in the future. Accordingly, the disclosure of these confidential source symbol numbers could reasonably be expected to identify permanent confidential sources of the FBI. Thus, the FBI has properly withheld this information pursuant to FOIA Exemption (b)(7)(D).<sup>61</sup>

**(b)(7)(D) Confidential Symbol Source File Numbers**

(172) Exemption (b)(7)(D) has been asserted in conjunction with (b)(2) to exempt from disclosure the confidential source file numbers of permanent confidential symbol number sources of the FBI. Similar in usage to the confidential source symbol numbers, these file numbers are also assigned in sequential order to confidential informants who report information to the FBI on a regular basis pursuant to express assurances of confidentiality. The confidential source file number is unique to the particular confidential informant and is only used in documentation relating to that particular informant. In this case, the confidential source file numbers were used

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<sup>61</sup> Exemptions (b)(7)(D) asserted in conjunction with (b)(2) involving Confidential Source Symbol Numbers is cited on the following Bates Pages: Ronald Reagan-5178, Ronald Reagan-5188, Brewer-2, SAG-798, SAG-1087, SAG-1126, SAG-1127, Ronald Reagan-5444, Ronald Reagan-3446, Ronald Reagan-4008, Ronald Reagan-4049, Ronald Reagan-3635, Ronald Reagan-3636, Ronald Reagan-3677, Ronald Reagan-4167, Ronald Reagan-4168, Ronald Reagan-4173, Ronald Reagan-4174, Sherriffs-25, Sherriffs-26 and MPIC-8.

to document information provided by these confidential sources concerning investigation of the activities of the Communist Party and other extremist activities.

(173) Disclosure of these confidential source file numbers at various times and in various documents could ultimately identify these confidential sources since it would reveal the connections of these confidential informants to the subject matters of these documents. Repeated release of these confidential source file numbers along with the information provided by these confidential sources would narrow the possibilities of their true identities. This is especially true inasmuch as each confidential source file number is assigned to only one confidential informant.

(174) The disclosure of the identities of these confidential sources would have a chilling effect on the activities and cooperation of other FBI confidential informants. The FBI has found that it is only with the understanding of complete confidentiality that the assistance of such informants can be enlisted and only through this assurance of confidentiality that these informants can be persuaded to continue their assistance in providing information to the FBI in the future. Accordingly, the disclosure of these confidential source file numbers in conjunction with the information provided by them to the FBI could reasonably be expected to lead to the identification of these permanent confidential informants of the FBI. Accordingly, the FBI properly withheld this information pursuant to FOIA Exemption (b)(7)(D).<sup>62</sup>

#### **NARRATIVE DESCRIPTIONS OF THE DOCUMENTS**

(175) The pages within **Exhibit WW** contain narrative descriptions of each document that was selected by plaintiff on December 16, 2009 as part of the sample to be Vaughned. These narrative descriptions provide justifications for specific deletions of information in each page

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<sup>62</sup> Exemptions (b)(7)(D) asserted in conjunction with (b)(2) involving Confidential Source File Numbers is cited on the following Bates Pages: Ronald Reagan-5201, Ronald Reagan-4254 and MPIC-8.

selected.

(176) The pages within **Exhibit YY** contain narrative descriptions of each document that was selected by plaintiff on March 5, 2010 as part of the second sample to be Vaughned. These narrative descriptions provide justifications for specific deletions of information in each page.

### CONCLUSION

(177) The FBI conducted a thorough search of the CRS, manual indices, ELSUR Index, abstracts and all responsive indices at FBIHQ and the responsive Field Offices for subject Ronald Wilson Reagan, Neil Reagan, Alexander Sherriffs, reference to Ronald Wilson Reagan in Screen Actors Guild files from 1946-1950, Richard G. Hubler, book title “Where’s the Rest of Me? The Ronald Reagan Story,” and all variations of Ronald Reagan as Governor of California. **These searches combined, produced a total of approximately 127 responsive files consisting of approximately 7,322 pages which have been released to plaintiff.** In addition, the FBI conducted additional searches based on specific requests from plaintiff, discussions prior to CMCs, and subsequent telephone conference calls.

(178) The FBI has processed and released all reasonably segregable information from the records responsive to plaintiff’s requests to the FBI. Information has been properly withheld pursuant to FOIA Exemptions 1, 2, 3, 6, 7C and 7D, 5 U.S.C. §§ 552 (b)(1), (b)(2), (b)(3), (b)(6), (b)(7)(C), and (b)(7)(D). The FBI carefully examined the responsive documents and determined that the information withheld from plaintiff, if disclosed, could reasonably be expected to seriously harm national security, disclose internal administrative information, violate a federal statute, cause a “clearly unwarranted and an unwarranted invasion of personal privacy” and disclose confidential source information. Accordingly, the FBI has released all reasonably segregable, nonexempt information to plaintiff in response to the FOIA requests to the FBI.

After extensive re-review of the documents at issue, I have determined that there is no further reasonably segregable information which can be released.

Pursuant to 28 U.S.C § 1746, I declare under penalty of perjury that the foregoing is true and correct. See attached Exhibits A through YY.

Executed this 19<sup>th</sup> day of April 2010.



**DAVID M. HARDY**  
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Record/Information Dissemination Section  
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