

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

ROBERT G. WRIGHT, JR.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 02-0915 (GK)
)	
FEDERAL BUREAU OF)	
INVESTIGATION,)	
)	
Defendant.)	
_____)	
JOHN VINCENT,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 03-0226 (GK)
)	
FEDERAL BUREAU OF)	
INVESTIGATION, et al.)	
)	
Defendants.)	
_____)	

**PLAINTIFFS’ OPPOSITION TO DEFENDANTS’ RENEWED MOTION FOR
SUMMARY JUDGMENT OR, IN THE ALTERNATIVE,
FOR A STAY OF ALL PROCEEDINGS AND
PLAINTIFFS’ MEMORANDUM IN SUPPORT OF THEIR
RENEWED CROSS MOTIONS FOR SUMMARY JUDGMENT**

Plaintiffs, Special Agent Robert G. Wright, Jr. (“SA Wright”) and former Special Agent John Vincent, by counsel, respectfully submit this Opposition to Defendants’ Motion for Renewed Summary Judgment Or, In the Alternative, For a Stay of All Proceedings, and hereby renew their cross-motions for summary judgment. As grounds therefore, Plaintiffs state as follows:

MEMORANDUM OF LAW

I. Introduction.

These cases are about the denial of Plaintiffs' First Amendment rights by the Federal Bureau of Investigation ("FBI"). Plaintiffs were denied permission by the FBI to publish various writings that are highly critical of the FBI and its failure to investigate known terrorist threats. Under an agreement they signed upon joining the FBI, Plaintiffs were required to seek FBI approval prior to disclosing "any information from the investigatory files of the FBI or any information relating to material contained in the files, or disclose any information or produce any material acquired as a part of the performance of [their] official duties or because of [their] official status." Defs.' Vincent Mot. Summ J., Ex. 3. The agreement, however, specifically excludes any "information which has been placed in the public domain" *Id.*

Pursuant to the prepublication review policy established by the FBI, SA Wright sought permission to publish: (1) his answers to interview questions posed by *New York Times* reporter Judith Miller ("Miller interview answers"); (2) his 500 page manuscript entitled *Fatal Betrayals* ("manuscript") regarding a closed FBI investigation entitled "Vulgar Betrayal"; (3) a 38 page complaint filed with the DOJ Office of Inspector General ("OIG"); and (4) a 113 page complaint to be filed with the OIG (collectively "OIG complaints"). SA Vincent sought permission to publish his answers to similar interview questions submitted to him by Ms. Miller.

Plaintiffs submitted their writings to the FBI for review more than five years ago, beginning with the *Fatal Betrayals* manuscript in October 2001. After an inexplicable series of reversals and delays, now, years later, the FBI still has not followed through on its obligation to provide specific objections to the publication of Plaintiffs' writings.

Following cross motions for summary judgment, the Court issued a Memorandum Opinion and Order on July 31, 2006 (“Memorandum Opinion and Order”) denying Plaintiffs’ motions and denying and granting in part Defendants’ motion. The Court adopted the standard of review set forth in *McGehee v. Casey*, 718 F.2d 1137 1148-49 (D.C. Cir. 1983). The Court then determined that it would conduct a “narrow, fact based inquiry” by applying the balancing test set forth by the Supreme Court in *Pickering v. Board of Education*, 391 U.S. 563, 568 (1968) (requiring balancing of First Amendment interest in expression on public issues against the government’s interest in promoting efficiency of the public services it performs). *See* Mem. Op. at 13-15.

The Court’s analysis began by finding on one side of the *Pickering* balancing test Plaintiffs’ well-established First Amendment right to speak freely about matters of “extraordinary public concern.” *Id.* at 17. The Court also noted that Plaintiffs, both of whom had long careers at the FBI, are “the kind of people who are likely to contribute the most illuminating insights to the public discourse about the Bureau and its performance in the counter-terrorism area.” *Id.* Moreover, the Court specifically noted the particular importance of guaranteeing First Amendment freedoms when, as in this case, FBI officials were airing their own views in public while censoring Plaintiffs. *Id.* at 18. As recounted by the Court, “[t]he FBI does not deny that during the time frame that Judith Miller interviewed Plaintiffs, she was permitted to interview Agency officials regarding the facts of the Vulgar Betrayal investigation.” *Id.* Hence, Plaintiffs’ interests in publishing their submissions “carry great weight.” *Id.*

On the other side of the scale, the Court found the FBI had a “strong interest” in protecting secrecy and the confidentiality necessary for effective intelligence operations. Mem.

Op. at 19 (citing *Snepp*). The Court recognized, however, that there is “no case, from the Supreme Court or our Circuit, nor has the Government cited any, holding that information in the public domain may be censored.” *Id.* The Court noted that SA Wright had attested to “providing copious documentation” which “provide a publicly available source of information for each fact contained in SA Wright’s submissions relating to terrorism.” *Id.* at 20. In contrast, the Court noted that the FBI “provides little support for its argument” that the censored information was not in the public domain. *Id.* at 21.

The Court then concluded:

In short, there are genuine issues of material fact in dispute. The record is by no means clear enough for the Court to establish whether the censored portions of Plaintiffs’ submissions were in the public domain. Moreover, since the Government did not follow its own internal policy pursuant to the MAOP, Section 1-24(4)(a)(3)(d), requiring that it identify by line and page number the reasons for its objections, there is no basis for determining whether the censored submissions were in the public domain. Defs.’ Vincent Mot. Ex. 18. Without such information, the Court cannot weigh the Government’s interest in maintaining the secrecy of the information it censored. **Therefore, Defendants will be required to submit detailed affidavits explaining which portions of the censored submissions were not in the public domain, and Plaintiffs will be given an opportunity to respond.**

Id. at 22 (emphasis added).

The FBI submitted its response to the Court’s instruction, along with its renewed motion for summary judgment, on September 29, 2006. Rather than submitting “detailed affidavits” that explained which “portions of the censored submissions” were not in the public domain as the Court had ordered, the FBI merely conducted a review of the endnotes of the manuscript and the public source information that SA Wright had submitted. The FBI concluded that at least 663 of 743 endnotes in the manuscript (approximately 90 percent) identify public sources for the

propositions cited in the manuscript. Defs.' Renewed Mot. at 9. Far from concluding that the remaining materials were confidential, the FBI merely stated that it could not determine whether the remaining 80 endnotes were based on public domain information. *Id.* The FBI did not review the other censored submissions at issue, *i.e.*, the Miller interview answers of either Plaintiff or the two OIG complaints authored by SA Wright.

In an attempt to resolve the factual question of whether the 80 remaining endnotes were in the public domain, SA Wright proposed to the FBI that it conduct a further review of the manuscript. Specifically, SA Wright offered to sit down with the FBI to demonstrate that the remaining 80 items were based on public sources. *See* Exhibit 1 (Letter of December 14, 2006 to Peter D. Blumberg). SA Wright first made this offer to the FBI in early November 2006. Relying on the FBI's representations that it was seriously considering SA Wright's proposal, Plaintiffs asked for and received no fewer than seven extensions of time from the Court to file this pleading while awaiting the FBI's response to his offer. *See* Docket Nos. 79, 81, 83, 84, 85, 86, 87. As each subsequent extension was about to expire, counsel for the FBI assured Plaintiffs' counsel that an answer would be forthcoming if the FBI had just another week or two weeks or three weeks to consider SA Wright's offer. Plaintiffs' counsel accepted in good faith the FBI's representations on more than one occasion that the FBI was "very close" to agreeing to the proposal. As of the date of this filing, however, well over three months after the proposal was made, the FBI has still not informed Plaintiffs whether it would agree or not to sit down with SA Wright so that he could establish the "nexus" between the endnotes and 80 items that the FBI claims it could not identify.

II. Standard of Review.

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories and admissions on file, together with any affidavits or declarations, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). A fact is “material” if it might affect the outcome of the action under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

The party seeking summary judgment bears the initial burden of demonstrating the absence of a genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The nonmoving party then must “go beyond the pleadings and by [its] own affidavits, or by ‘depositions, answers to interrogatories, and admissions on file,’ designate ‘specific facts showing that there is a genuine issue for trial.’” *Id.* at 324. “The nonmoving party must do more than simply show that there is some metaphysical doubt as to the material facts.” *Bias v. Advantage Intern., Inc.*, 905 F.2d 1558, 1561 (D.C. Cir. 1990). It must provide “evidence that would permit a reasonable [fact-finder] to find” in its favor. *Laningham v. U.S. Navy*, 813 F.2d 1236, 1242 (D.C. Cir. 1987). In addition, “The burden on the moving party may be discharged by ‘showing’ – that is pointing out to the [Court] – that there is an absence of evidence to support the non-moving party’s case.” *Sweats Fashions, Inc. v. Pannill Knitting Co., Inc.*, 833 F.2d 1560, 1563 (Fed. Cir. 1987) (quoting *Celotex Corp.*, 477 U.S. 317 (emphasis in original)).

In deciding a motion for summary judgment, a “court must draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence.” *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000); *see also Washington Post Co. v. U.S. Dep’t of Health and Human Servs.*, 865 F.2d 320, 325 (D.C. Cir.

1989). Ultimately, a court must determine “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Anderson*, 477 U.S. at 251-52.

III. Summary Judgment Should Be Entered In SA Wright’s Favor.

A. The Vast Majority Of the Fatal Betrayals Manuscript Is In the Public Domain.

In ruling on the previous round of summary judgment motions, the Court found that the “record is by no means clear enough for the Court to establish whether the censored portions of Plaintiffs’ submissions were in the public domain.” Mem. Op. at 22. Accordingly, the Court then ordered the FBI to provide “detailed affidavits” which specified “portions of the censored submissions” were not in the public domain. Based on the FBI’s review of the public source documents provided by SA Wright, the record is now clear that the vast majority of the *Fatal Betrayals* manuscript is based on facts in the public domain.

The FBI has failed to present the Court with any evidence demonstrating that any portion of Plaintiffs’ submissions are not in the public domain. The FBI has presented no affidavits asserting that any particular fact contained in any one of Plaintiffs’ submissions is secret or does not, to their knowledge, appear anywhere in the public domain. Instead, the FBI claims only to have compared the endnotes of SA Wright’s manuscript to corresponding portions of his text. The FBI now confirms that at least 663 of the 743 endnotes in the manuscript (approximately 90 percent) identify public sources for the information at issue. Defs.’ Renewed Mot. at 9.

Confronted with its own finding as to public domain material, the FBI now asserts a new argument and asks the Court to create new law, specifically that government employees cannot

publish without permission even public domain information. Defs.' Renewed Mot. at 10; Mem. Op. at 19 n. 14 (FBI has not made "any argument" that secrecy agreements apply to public domain material). This argument plainly is without merit because, as this Court correctly stated, "[t]here is no case, from the Supreme Court or our Circuit, nor has the Government cited any, holding that information in the public domain may be censored." Mem. Op. at 19. On the contrary, and as the Court further noted, the D.C. Circuit has held that "when the information at issue derives from public sources, the agent's special relationship of trust with the government is greatly diminished if not wholly vitiated." *Id.* (citing 718 F.2d at 1141 ("The government has no legitimate interest in censoring unclassified materials")); *Snepp*, 444 U.S. at 513 n. 8 (dictum) ("if in fact the information is unclassified or in the public domain, neither the CIA nor foreign agencies would be concerned"); *United States v. Marchetti*, 466 F.2d 1309, 1313 (4th Cir. 1972) (government may not censor information obtained from public sources, "contractually or otherwise."). Moreover, the secrecy agreements entered into by Plaintiffs specifically exempt public domain information from information which may be censored by the FBI. Defs.' Vincent Mot. Summ J., Ex. 3; Mem. Op. at 3. Finally, neither of the cases cited by the FBI, *Weaver v. United States Info. Agency*, 87 F.3d 1429 (D.C. Cir. 1996) and *United States v. National Treasury Employees Union*, 513 U.S. 454, 465 (1995), support the proposition that public domain material may be censored when a government employee seeks to exercise his First Amendment rights on a matter of critical public concern. Defs.' Renewed Mot. at 10.

In a footnote, the FBI offers a hypothetical situation in which the First Amendment rights of a government employee with first-hand knowledge of public information should be curtailed simply because the person is a government employee with first-hand knowledge. Defs.'

Renewed Mot. at 10 n.6. The FBI failed, however, to offer any evidence identifying “with specificity” any “portions” of the manuscript to which this hypothetical scenario would potentially apply. As a result, the FBI has failed to establish any factual basis for why this hypothetical situation should prevent SA Wright from publishing this material. Mem. Op. at 16 (citing *McGehee* at 1148-49 (court “should not rely on a ‘presumption of regularity’ if such rational explanations are missing.)).

Finally, the FBI asserts that its reviewers were unable to establish a “nexus” between the endnotes and the public source document for 80 endnotes of the Fatal Betrayals manuscript. Defs. Renewed Mot. at 9. In his declaration, however, SA Wright testified that public sources are available for each of these items.¹ See Declaration of Robert G. Wright, Jr. ¶¶ 10, 12. In contrast, the FBI makes only the bald assertion that it cannot establish a “nexus” between the endnotes and the public source documents. The FBI, therefore, has failed to demonstrate a genuine dispute of fact on this issue.

B. Summary Judgment Should Be Entered In Plaintiffs’ Favor In Regard To Plaintiffs’ Other Censored Submissions.

The FBI declined to review any of Plaintiffs’ other submissions – (1) the “non-footnoted propositions” in the Fatal Betrayals manuscript, (2) the Miller interview answers of either Plaintiff, or (3) the two OIG complaints. Defs.’ Mot. at 9-10. Hence, the FBI also has failed to establish a dispute of material fact regarding whether material in these submissions is in the

¹ SA Wright believes that the reviewers’ inability to match these endnotes with public source documents likely is due to the revisions SA Wright made to the manuscript in 2002 to address the FBI’s concerns following the first review. This is why, as discussed above, SA Wright proposed to the FBI in November 2006 that he sit down with the FBI to try to resolve its apparent confusion. Unfortunately, after more than three months, the FBI would not even state whether it would agree to SA Wright’s proposal to try to resolve these questions.

public domain. The declarations of both Plaintiffs clearly state that these other submissions also are based on public domain information. Because the FBI has failed to offer evidence otherwise – after having ample opportunities to do so – no dispute of fact exists, and summary judgment should be entered in Plaintiffs’ favor.

Despite the Court’s Order, the FBI failed to review these other censored submissions apparently because it believes an initial “burden” rests on Plaintiffs’ to provide public sources in advance of any agency review. *Id.* The FBI puts the cart before the horse by ignoring that it is the FBI’s initial burden to provide a *detailed* justification for its censoring of Plaintiffs’ submissions. As unequivocally stated in *McGehee v. Casey*, 718 F.2d 1137 (D.C. Cir. 1983), an agency must “justify censorship with reasonable specificity, demonstrating a logical connection between the deleted information and the reasons for classification.” *Id.* at 1148-49. The *McGehee* Court then stated that “at an appropriate time” an employee should demonstrate that information is in the public domain. *Id.* at 1141 n. 9. Clearly, *McGehee* anticipates that, if an agency has “justified censorship with reasonable specificity,” the burden then shifts to an employee to demonstrate that the censored material is already in the public domain.

After more than five years, the FBI has not provided Plaintiffs or this Court any “justification with reasonable specificity” for censoring any of Plaintiffs’ submissions. Mem. Op. at 22 (stating that FBI did not follow its own procedures). The FBI, therefore, has failed to satisfy the burden it must meet in order to censor Plaintiffs’ submissions.² This reason alone is

² The FBI submitted for *in camera* review two letters (Letter from Joan Bainbridge Safford to the OPCA and letter from AUSA Joe Ferguson to the FBI) that provide “some of reasoning” underlying the FBI censorship decision. Mem. Op. at 12 n.12. Whatever claims may be made in these letters, they are apparently unsworn and not evidence before the Court.

sufficient to enter summary judgment in Plaintiffs' favor regarding the remaining portions of the manuscript and the other submissions.

Summary judgment particularly is appropriate in regard to the Miller interview answers submitted by both Plaintiffs. More than a year and a half after its blanket denial, the FBI reversed itself without explanation and approved the release of some, but not all, of the Miller interview answers. Mem. Op. at 10. While the FBI disputes that the facts of the remaining censored answers are in the public domain, it has offered no evidence to support its claim, much less any explanation for its reversal.

In contrast, as noted by the Court, both Plaintiffs have offered evidence in the form of declarations testifying that the facts at issue in Miller's questions already were in the public domain. See Mem. Op. at 15, 21-22. As the Court summarized, Miller's questions essentially asked Plaintiffs to confirm or deny statements of fact that FBI officials had already given to her. Mem. Op. at 21. Moreover, the "FBI does not deny that during the time frame that Judith Miller interviewed Plaintiffs, she was permitted to interview Agency officials regarding the facts of the Vulgar Betrayal investigation." *Id.* at 18. The Court also stated that the FBI had "provide[d] little support" for its argument that the material upon which the Miller interview questions were not already in the public domain (noting that the information provided did not show it was in the public domain). Op. at 21. Given that the FBI has had ample opportunity to offer any evidence that might support its assertion, no further opportunities should be extended. In regard to the Miller interview answers, summary judgment in favor of both Plaintiffs should be granted.

In summary, faced with (1) Plaintiffs' sworn declarations attesting to the fact that their submissions are based on public facts; (2) the FBI's confirmation that the large majority of SA

Wright's manuscript is, indeed, based on materials in the public domain; and (3) a complete lack of any controverting evidence with respect to the public sourcing of the remainder of Plaintiffs' submissions, the Court can only conclude that all of Plaintiffs' submissions are based on materials in the public domain.

IV. Defendants' Motion for a Stay Should Be Denied.

Confronted with the reality that at least the vast majority of the manuscript was censored improperly, the FBI proposes a face-saving alternative. The FBI asks the Court to stay resolution of these cases until the conclusion of the "trial and post-trial proceedings" in *United States v. Marzook*, Crim. A. No. 03-0978 (N.D. Ill.), Defs. Mot. at 15. The FBI defiantly states, however, that it is not conceding that publication would be proper even following the conclusion of those proceedings. *Id.*

The FBI's request to stay these cases is now moot and should be denied. The trial on which the FBI relied as the source of most of its concern regarding publication of the manuscript, *United States v. Marzook*, Crim. A. No. 03-0978 (N.D. Ill.), is now over. *See* N.D. Ill. PACER Dkt. No. 908. While sentencing in the case is not scheduled until June 15, 2007, the evidence-related portion of the proceeding is complete. *Id.* The FBI's concern that publication of the manuscript "could potentially impact the fairness of a significant anti-terrorism criminal trial" (Def. Mot. at 15) is now a moot issue.

V. Plaintiffs Are Entitled To Judgments Regarding Portions of Their Submissions Approved For Release.

Plaintiffs have endured an inexcusable series of reversals and delays by the FBI – granting permission to publish in part, denying permission entirely, and then granting permission in part again, albeit without explanation. By effectively delaying their ability to publish *any* part of their submissions for more than two years, Plaintiffs’ First Amendment rights were violated. *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion) (denial of First Amendment rights for even brief periods constitutes irreparable injury) (citing *New York Times Co. v. United States*, 403 U.S. 713 (1971)); *see also Lakewood v. Plain Dealer Publ’g Co.*, 486 U.S. 750, 758 (1988) (noting that “opportunities for speech,” if suppressed, “are irretrievably lost”). *Accord, National Treasury Employees Union v. United States*, 927 F.2d 1253, 1254 (D.C. Cir. 1991), *Wagner v. Taylor*, 836 F.2d 566, 576 n.76 (D.C. Cir. 1987); *Whitaker v. Thompson*, 248 F. Supp. 2d 1, 15 (D.D.C. 2002) (Kessler, J.) (“The case law makes it very clear that Plaintiffs are harmed by [Defendant’s censorship] because the ‘loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.’”).³

In regard to the manuscript, no material facts are in dispute that:

³ In the section the Memorandum Opinion relating to Plaintiffs’ APA claims, the Court cites *Weaver* in support of the proposition that a “time lag” does not amount to a violation of law. Mem. Op. at 27. In fact, *Weaver* only holds that an agency may not be constitutionally required to adopt and follow a specific “pre-set time limit” for pre-publication review (*Weaver*, 87 F.3d at 1443). This is different from whether excessive delay constitutes a violation of First Amendment right. In fact, *Weaver* affirms that excessive delay by an agency constitutes a violation of First Amendment rights. *Id.* (citing *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 228 (agency must issue “license for a First Amendment-protected business . . . within a reasonable period of time, because undue delay results in the unconstitutional suppression of protected speech.”)); *see also Weaver*, 87 F.3d at 1441 (“If the prior review were extensive, of course, it might delay constitutionally protected speech to a time when its only relevance was to historians . . .”).

- SA Wright properly submitted his manuscript for review in October 2001 and received permission in January 2002 to publish the vast majority (82 percent) of the manuscript;
- SA Wright resubmitted his manuscript for review in February 2002 after making edits and deletions to address the FBI's concerns about the remaining 18 percent, but on May 10, 2002 – one day after this lawsuit was filed – the FBI reversed its position, ordering that no part manuscript could be published;
- The FBI reversed its position yet again in October 2003, concluding, without explanation, that significant sections of the manuscript did not, after all, contain any unpublishable material;
- The FBI admits that 90 percent of the manuscript's endnotes have sources in the public domain and only that it cannot establish a "nexus" for the remaining 10 percent.

Mem. Op. at 7-9; Wright Decl. at 3-11; Defs. Renewed Mot. at 9-10. The reversals and excessive delays by the FBI had the effect of denying SA Wright the opportunity to exercise his First Amendment rights, causing him irreparable harm. Similarly, SA Wright and former SA Vincent were denied permission to publish any portion of their Miller interview answers, only to receive permission to publish certain answers more than a year and half later, without explanation.

Critically, no material facts are in dispute as to these inexplicable reversals and delays, as the FBI admits that it erred in the handling of both Plaintiffs' requests. *See Vincent v. FBI*, Defs.' Opp. to Pl.'s Cross-Mot. for S.J., at 10 (Docket No. 42); *Wright v. FBI*, Defs. Consolidated Reply in Support of Its Mot. For S.J. and Opp. to Pls. Cross-Mot. for S.J., at 5 (Docket No. 61). For these reasons, the Court can and should enter judgment declaring that Plaintiffs' First Amendment rights were violated as to the portions of their submissions for which

they were refused permission to publish initially, but inexplicably granted permission to publish as much as two years later.

WHEREFORE, Plaintiffs respectfully request that the Court: (1) declare Defendants' prior refusal to grant them permission to publish the portions of their submissions now approved for release as unlawful; (2) declare the Defendants' continuing refusal to grant them permission to publish the remaining portions of their documents as unlawful; (3) enjoin Defendants from continuing to refuse to grant Plaintiffs permission to publish their submissions; (4) award them reasonable attorney's fees and costs; and (5) grant such other relief as the Court may deem just and proper.

Respectfully submitted,

JUDICIAL WATCH, INC.

/s/ _____
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February 14, 2006

Attorneys for Plaintiffs



Judicial Watch

Because no one is above the law!

December 14, 2006

VIA E-MAIL AND U.S. MAIL

Peter D. Blumberg
Assistant United States Attorney
United States Attorneys Office
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530

**RE: Robert G. Wright, Jr. v. FBI,
No. 02-915 (GK) (D.D.C.)**

Dear Peter:

Per our conversation last week, this letter is intended to formalize our client's proposal regarding further review by the FBI of SA Wright's "Fatal Betrayals" manuscript. As you know, we have sought and received several extensions of time to file the opposition to the FBI's renewed summary judgment motion while your client has been considering this proposal. It is our hope that this proposal, if agreed to, will narrow the factual issues remaining before the Court and, ultimately, speed resolution of this matter.

As you know, per the Court's Order of July 31, 2006, the FBI conducted a review of the manuscript for identifiable public domain information. Specifically, the FBI reviewed the 743 citations in the manuscript and the accompanying public source materials. According to the FBI's renewed motion for summary judgment, the reviewers were unable to locate public source information for 80 of the citations in the manuscript.

SA Wright believes that public sources exist for these 80 citations. He attributes the inability to match the citations with public source documents to revisions he made to the manuscript after the FBI initially identified portions which were not publishable. Hence, SA Wright believes that he can demonstrate that the 80 remaining citations also are based on public source information.

Toward that end, SA Wright proposes that he provide the FBI with another full copy of the manuscript with easier to locate citations. SA Wright believes that the FBI will then be able

Peter Blumberg
December 14, 2006
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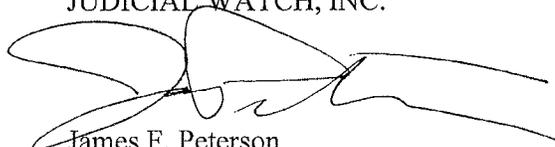
to confirm, with a minimum of effort, that the 80 remaining citations also are based on public source documents.

If the FBI agrees to conduct this review, SA Wright will agree to stay this litigation until the end of the current trial in *United States v. Marzook*, 03-cr-00978 (N.D. Ill.). The FBI, of course, proposed just such a stay as an alternative remedy in its renewed motion for summary judgment. In the interim, the FBI would begin a good faith effort to review the re-submitted manuscript for the public source information not located in its previous review. The FBI would agree to complete its review by the end of the *Marzook* trial or January 31, 2007, whichever comes later.

If this proposal is acceptable to your client, I will draft a stipulation for the Court setting forth our plan. Please let me know if you have any questions.

Sincerely,

JUDICIAL WATCH, INC.

A handwritten signature in black ink, appearing to read 'James F. Peterson', written over the typed name below.

James F. Peterson
(202) 646-5175

cc: Robert G. Wright, Jr.