

FELONIES AND FAVORS: A FRIEND OF THE ATTORNEY GENERAL GATHERS INFORMATION FROM THE JUSTICE DEPARTMENT

HEARING
BEFORE THE
COMMITTEE ON
GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES
ONE HUNDRED SIXTH CONGRESS
SECOND SESSION

JULY 27, 2000

Serial No. 106-242

Printed for the use of the Committee on Government Reform



Available via the World Wide Web: <http://www.gpo.gov/congress/house>
<http://www.house.gov/reform>

U.S. GOVERNMENT PRINTING OFFICE

73-168 DTP

WASHINGTON : 2001

For sale by the Superintendent of Documents, U.S. Government Printing Office
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FELONIES AND FAVORS: A FRIEND OF THE ATTORNEY GENERAL GATHERS INFORMATION FROM THE JUSTICE DEPARTMENT

THURSDAY, JULY 27, 2000

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The committee met, pursuant to notice, at 11:35 a.m., in room 2154, Rayburn House Office Building, Hon. Dan Burton (chairman of the committee) presiding.

Present: Representatives Burton, Morella, Horn, LaTourette, Chenoweth-Hage, Waxman, Owens, Norton, Cummings, and Kucinich.

Staff present: Kevin Binger, staff director; James C. Wilson, chief counsel; David A. Kass, deputy counsel and parliamentarian; Nicole Petrosino, professional staff member; Kimberly A. Reed, investigative counsel; Kristi Remington, senior counsel; James J. Schumann, counsel; Robin Butler, office manager; Michael Canty, legislative aide; Maria Tamburri, assistant to chief counsel; John Sare, staff assistant; Phil Schiliro, minority staff director; Phil Barnett, minority chief counsel; Kenneth Ballen, minority chief investigative counsel; Kristin Amerling, minority deputy chief counsel; Michael Yeager, minority senior oversight counsel; Ellen Rayner, minority chief clerk; and Jean Gosa and Earley Green, minority assistant clerks.

Mr. BURTON. Good morning. A quorum being present, the Committee on Government Reform will come to order.

I ask unanimous consent that all Members' and witnesses' statements—written opening statements be included in the record; and, without objection, so ordered.

I ask unanimous consent that all articles, exhibits and extraneous or tabular material referred to be included in the record. Without objection, so ordered.

I ask unanimous consent that the majority staff report about this hearing be included in the record; and, without objection, so ordered.

I ask unanimous consent that a set of exhibits which was shared with the minority prior to the hearing be included in the record; and, without objection, so ordered.

I also ask unanimous consent that questioning in this matter proceed under clause 2(g)(2) of House rule XI and the committee rule 14 in which the chairman and ranking minority member allocate time to members of the committee as they deem appropriate

for extended questioning, not to exceed 60 minutes equally divided between majority and minority; and, without objection, so ordered.

First of all, I want to apologize for the delay. This was not anticipated. We had, I don't know, six or seven votes on the floor; and, for that, I apologize. It was something that was unavoidable.

Sometimes when you are involved in a congressional investigation you come across things that you don't expect. You start investigating one subject, you stumble onto something else, and it is important.

In 1996, during our investigation of the White House Travel Office firings, Filegate was uncovered. We discovered that the White House had ordered FBI files on hundreds of Republicans. So we looked into that.

In 1999, when we immunized Johnny Chung, we discovered that an official at the United States Embassy in Beijing was selling visas. So we looked into that.

This is a healthy process. Problems are exposed to the light of day, they get the attention they deserve, and hopefully they are corrected.

Today, we have a similar situation. We were investigating illegal fundraising activities in Florida. They involved the Castro family of Venezuela and a lawyer named Charles Intrigo. In the process, we uncovered another matter that deserved our attention.

This is a very unusual story. It starts with an obscure dispute between two Buddhist groups in Japan. The story then shifts to Miami, where an influential friend of the Attorney General is hired. Then we have private investigators getting confidential criminal records from the Justice Department or Justice Department sources. Then we have a furious lobbying campaign aimed at the Attorney General's office. And at the end of the story we have the Associate Attorney General overturning decades of Justice Department precedent to reveal whether the Justice Department knew if a Japanese citizen was arrested in Seattle in 1963.

Laws were broken. Favors were done. Policies were ignored.

Now, political favors are nothing new. It happens in Congress. It happens at the White House. It's an unfortunate fact of life in this town. But if there's one place where political favors should not happen, it's at the Justice Department. And if there is one thing that shouldn't be handed out to political friends, it's criminal records of other people. That's why this story is important.

We've interviewed a number of people. We received a lot of documents. I'm going to briefly summarize the story as I understand it.

There are two Buddhist organizations in Japan. They had a falling out. The leader of one group was accused of soliciting a prostitute in Seattle in 1963. He filed a defamation lawsuit. It is now a bitter, bitter feud with a lot of money at stake.

One key to this whole case was whether any documentation could be found that this man, Nobuo Abe, solicited a prostitute over 30 years ago. One side hired an American lawyer. Not just any lawyer, a friend of the Attorney General, Rebekah Poston, from the Attorney General's old law firm in Miami.

Ms. Poston hired two private investigators. Their job was to get someone in the Justice Department to look up this information in the National Criminal Information Center, the NCIC, data base

and leak it to them. According to their memos, which we have reviewed, they were successful. According to their own memos, they got sources at the FBI to give them the information. One of the investigators, Richard Lucas, sent Ms. Poston a memo that said the following: "a source was contacted and provided the following information: The source relayed that under the data provided there was a reference to solicitation of prostitution, Seattle Police Department, March 1963."

Ms. Poston then sent a letter to the other client that said this: "PMRG, the private investigators, reported to us on November 17th, 1994, that a source within the U.S. Government in Washington, D.C., was contacted and the source confirmed that there is a record for Nobuo Abe."

The problem is that that's against the law.

So Ms. Poston decided she'd try to get the information legally so she could use it in court. She filed a Freedom of information Act request. She was denied. It's against the Department's policy to give out criminal information from the data base or to even confirm or deny whether these records exist. She appealed it. Again it was denied.

At this point, she decided to take matters right to the Attorney General's office. According to her billing records, she contacted high-level Justice Department officials 22 times in the first half of 1995. Most of those contacts were with the Attorney General's chief of staff, Mr. John Hogan. As a result, she got a meeting with Associate Attorney General John Schmidt.

Mr. Schmidt was advised that there is a long-standing policy not to confirm or deny the existence of any information in the National Criminal Information Center data base. Mr. Schmidt overrode that policy and ordered his staff to give the information to Ms. Poston.

Interestingly enough, it appears that by this time the information had been deleted from the data base; and that issue remains a mystery to this very day.

In my view, there are three problems here.

First, the third highest official at the Justice Department made a decision to disregard an important policy, one that protects the confidentiality of law enforcement records, for no better reason than that a well-connected lawyer wanted it.

Two, Justice Department employees were leaking criminal records—not once, not twice, but three times—in violation of the law.

Three, the FBI was informed of this fact, and they refused to investigate. One of the two private investigators, Mr. Richard Lucas, went to the FBI and offered them all of the information, information that was incriminating to himself. I have copies of three letters from the FBI refusing to even look into it. For some reason, Mr. Lucas wasn't even interviewed.

I will say this about Mr. Lucas. I don't condone what he did. I think he made mistakes. But at least he came forward and admitted what he did. He has cooperated with this committee, and it isn't every day that we get that kind of cooperation.

Now, one might look at this and say, what's the big deal? On the surface, this may seem like a fairly insignificant event. After all, this committee has published Justice Department documents on its

Web site. Well, the reason for that is that this committee has oversight responsibilities. We have an obligation to oversee the executive branch on behalf of the American people. If we believe that laws aren't being faithfully executed, it is our job to look into it. When we find wrongdoing, it's our job to inform the American people.

That's not what Rebekah Poston was doing. She was paid to dig up dirt on a foreign national.

Even with all of our responsibilities, getting information out of the Justice Department is like pulling teeth. I wish I had a dollar for every time a Justice Department official told me they couldn't confirm or deny anything or something. I have sat through briefings where it seems like that's all they said—because of this same policy.

Here's why this is important: The Justice Department is the guardian of sensitive criminal records. Those records are in the data base to assist law enforcement agencies all over the country. It's for law enforcement purposes and law enforcement purposes only. It's not there for influential lawyers who have contacts and want to dig up dirt on people for lawsuits.

The public has a right to expect the Department to protect sensitive law enforcement information. But when Justice Department employees give out information to private investigators for nefarious purposes, that trust is eroded. When senior officials set aside long-standing policies for the privileged few, that trust is eroded.

The Justice Department is one of the most powerful institutions in this country. They have the power to prosecute people and put them in jail. They can force people to run up hundreds of thousands or millions of dollars in legal bills. The one thing that the Justice Department must have, beyond all others, is the public's trust. The actions of the Department must be above reproach.

So while this may not seem like the most significant event in the world, its ramifications are very real. In this instance, the target was a religious leader from Japan. The next time, it could be any one of us.

Ms. Poston is here today. She has met with committee staff. She has answered some questions. She has refused to answer many others. We've been informed that she may exercise her fifth amendment right not to testify today. I hope that won't be the case. We have questions that we want to ask, and I hope we can get some of these answers.

The two private investigators employed by Ms. Poston are also here, Mr. Manuel and Mr. Lucas. They will also testify along with Ms. Poston.

On the second panel, we have Mr. Schmidt, Mr. Hogan and the Director of Department's Office of Information, Mr. Huff. Mr. Huff interrupted a family vacation to be here today, which I'm sure he didn't want to do, but we do appreciate his attendance.

We look forward to receiving testimony from all of you.

I now yield to Mr. Waxman for his opening statement.

Mr. WAXMAN. Thank you, Mr. Chairman.

What a difference a week makes. Last week, this committee had a hearing criticizing the Justice Department for not giving out information, not giving out a deposition of the Vice President, which

it could not give out by law because it was an ongoing investigation. This week, we're criticizing the Justice Department for giving out some information, presumably.

I won't make a long opening statement. I just want to point out that this committee is in a perpetual search for a scandal, any scandal that might attract attention. But I do want to point out that the Attorney General, Janet Reno, recused herself from the dispute that we'll focus on today. The Attorney General had no involvement in this dispute. The Justice Department official who handled the request, John Schmidt, made his decision without any pressure or instructions from others and based his decision on the merits and, in fact, no incriminating or damaging information was released by Mr. Schmidt.

With that, I look forward to letting the witnesses say whatever they have to say. But if you accept those facts—I know we have an oversight responsibility to look at all sorts of things, but if I were making up a list of priorities, this would be pretty far down the list.

But I yield back the balance of my time—I don't want to take up any more time of the committee—and look forward to letting the chairman conduct the hearing.

Mr. BURTON. Thank you, Mr. Waxman.

We'll now welcome our first panel to the witness table. Rebekah Poston, Philip Manuel and Mr. Richard Lucas, would you please stand and raise your right hands.

[Witnesses sworn.]

Mr. BURTON. Have a seat. Before we allow our witnesses to make an open statement, Mrs. Chenoweth, would you like to make a brief opening statement?

Mrs. CHENOWETH-HAGE. Thank you, Chairman Burton.

I do want to thank you very much for holding this hearing today on this issue, and I am very glad that this committee is willing to investigate this important issue of the leakage of confidential law enforcement documents and possible favoritism.

Now the responsibility for oversight into these issues is critical to the health and well-being of our very Republic. Centuries ago, Juvenal, a Roman philosopher, asked an interesting question that still rings true today. He asked, who will guard the guards themselves? The only answer to that question now seems to be that it is Congress itself that must conduct oversight into criminal matters, because the Justice Department completely ignores its duty.

Mr. Chairman, this problem of confidential documents being leaked is not a new one with this administration. I am sure that all of us remember what happened when a Bush administration aid just looked at confidential documents of President Clinton during the 1992 campaign. She was summarily fired because of that. However, since that time, a disturbing trend has developed in this administration; and we saw it during the impeachment, when Kenneth Bacon illegally leaked materials covered by the Privacy Act regarding Linda Tripp. Now what happened to Mr. Bacon? Precisely nothing. And now are hearing disturbing charges that confidential law enforcement documents were obtained about a private citizen.

So the most surprising thing is that it seems these illegally obtained documents were then used as the basis for a Freedom of Information Act request to attempt to obtain the very same documents legally. Now, I am not sure what to be most surprised about, the fact that it was possible to obtain confidential National Criminal Information Center documents or that someone would let it be known that they were using these illegal documents for a duplicative FOIA request. The facts of this case simply stun logic.

Mr. Chairman, what is more troubling is that a personal friend of our Attorney General seems to have been involved in this effort to obtain confidential law enforcement documents through a FOIA request. After reviewing the facts of the case, it does seem that special consideration that was given to this FOIA request. And, amazingly, the Justice Department violated its very own internal policy to not comment on the existence or nonexistence of criminal records about foreign nationals. And then, when the Justice Department knew the security and confidentiality of the NCIC had been violated, it did nothing.

Mr. Chairman, I am stunned. Because for the past few years the Justice Department would not seriously investigate the President, the Vice President, the former Commerce Secretary, campaign contribution violations, the misuse of religious tax-exempt facilities, the misuse of Federal resources for campaign fundraising and the clear and completely blatant violation of the Privacy Act by Kenneth Bacon. Now the Justice Department won't even investigate a clear violation of the confidentiality of the NCIC when a witness involved in the felony made himself available to law enforcement.

Mr. Chairman, the Attorney General should have resigned her position in disgrace long ago. She didn't have the decency to do it then, and I don't believe she'll do it now. It's hard to say it, but General Reno is representative of an administration that has operated outside of the law for virtually 8 years straight. The consistent and constant public trashing of anyone and everyone who opposes this administration is unbelievable. Releasing confidential information is nothing new in this administration either. Linda Tripp, Kathleen Willey, and Paula Jones are simply just the most high profile examples. However, we now see that this same pattern also descends to the level of releasing confidential information on a non-citizen.

Mr. Chairman, if this pattern of conduct is allowed to continue with impunity, we are only a step away from becoming the type of nation where its citizens genuinely should fear their government. I am not one to compare this great Republic to the Soviet States, but I would note that the lack of respect for privacy and the use of confidential information to destroy people was very common there. An administration or government that starts down the path of using information like this against individuals is only a step away from tyranny.

Thankfully, I know that our Republic has suffered worse crises. However, I fear that this may have a longer term effect than just this administration. When scandal and corruption is so blatant and common, people become used to it and acquiesce. I pray that we will not let this happen.

Again, Mr. Chairman, I would like to personally thank the committee for taking the time to examine and provide oversight for these important issues today.

Mr. BURTON. Thank you Mrs. Chenoweth.

Mr. LaTourette, do you have a statement you would like to make?

Mr. LATOURETTE. I will just take a couple of minutes, Mr. Chairman.

Before my service here in the House, I had the pleasure of being the elected prosecutor in the county where I am from in Ohio, Lake County, OH. And at my desk was a terminal that was known as a LEADS machine but also tied into the NCIC, which is the National Criminal Information Center. And the purpose behind that computer was when you have a scofflaw brought to your attention you wanted to be able to punch in that person's identifying information to determine whether or not they had been involved in other criminal activity.

But there were specific rules and regulations. We were licensed to use that terminal, and the reason is that information is designed to be used only for law enforcement purposes. It is not to be used for private purposes or civil lawsuit purposes. And, quite frankly, it was to help us know whether or not we were dealing with a real bad person or someone who had not run afoul of the law before.

And what troubles me about this hearing—I mean, I really don't have—if the allegations that have been made in the chairman's opening statements are correct, Ms. Poston was hired by somebody to get information. I guess that's what private investigators and lawyers do.

The thing that troubled me as I studied the materials for this hearing was, whoever it was at the Federal Bureau of Prisons that delivered information against Federal law and then dissemination of that information—and the reason it's particularly offensive here, because I indicated to you what we used the machine for, is that a lot of people don't understand the difference between someone being arrested for something, indicted for something, convicted of something, and the power to destroy a person's career, reputation and standing in the community just by dissemination of information that they may have run afoul of the law. And apparently in this case the information was erroneous, is a mess, and that's why we have rules and regulations.

This is a very disturbing thing to me. And I guess what disturbs me—I am not quite as vocal as Mrs. Chenoweth-Hage is about this subject. But the thing that disturbs me is I received a phone call one time from the sheriff in our county, and he said I have got a buddy who wants to check on whether or not this neighbor who is playing loud music has ever been arrested for anything, and what do you think I should do?

I said, well, you know, Dan—not Dan Burton; Dan Dunlap was the sheriff's name—Dan, if you use the computer for that, I am going to put you in jail. And we did, in fact, put corrections officers in jail who accessed the NCIC material to get dirt on ex-wives or neighbors or people down at the boat club that, you know, were acting in a rowdy way.

So I'm troubled by two things that this hearing is about today. One is the release of this information; and, two, what I see—if, again, information has been brought to the attention of the Justice Department, that this has been done and nobody's done anything about it. So I will begin the hearing troubled, and I hope I leave the hearing not so troubled.

I thank you and yield back my time.

Mr. BURTON. Why don't we just go right down the line there? Mr. Manuel, would you like to make an opening statement?

STATEMENTS OF PHILIP R. MANUEL, PRESIDENT, PHILIP MANUEL RESOURCE GROUP; REBEKAH POSTON, PARTNER, STEEL HECTOR & DAVIS, MIAMI; AND RICHARD LUCAS, FORMER CONSULTANT TO THE PHILIP MANUEL RESOURCE GROUP

Mr. MANUEL. Yes, sir, if I may.

Good morning—I should say now good afternoon.

Mr. BURTON. Well, I apologize for that, as I said.

Mr. MANUEL. Good morning, Mr. Chairman, Mr. Waxman, members of the committee. My name is Philip R. Manuel, and I am founder and president of the Philip Manuel Resource Group Limited. I would like to thank the committee for this opportunity to present my views on the information the committee has been fed over the past 3 years and on the source of that information.

I have been an investigator in the public and private sector for more than 35 years. I have served as a counter-intelligence agent for the Army's 902nd Intelligence Corps Group, as an investigator for the House Internal Security Committee and as Chief Investigator for the U.S. Senate Permanent Subcommittee on Investigations; and for the past 20 years I have run my own international financial investigative firm. Additional details regarding my background can be found on a resume which I sent to the committee at your request.

Over the course of these 35 years, Mr. Chairman, I believe that I have acquired a reputation as an individual who is straightforward, honest and trustworthy. While the investigative industry is not for the faint of heart, I value my reputation for integrity and take great offense when that reputation is challenged.

As we begin this hearing this morning, I would like this committee to understand several points.

First, since I left the government and began private practice in 1979, I have never, under any circumstance, asked any employee of the Federal Bureau of Investigation or any other government agency to conduct a search of the National Criminal Information Center data base. I did not do so in the case of Mr. Abe, which is before this committee, or in any other case.

Second, I believe that my denial in this regard can easily be established by this committee. It is my understanding that every time a name is checked in the NCIC data base there is an audit trail that's established and created which records the identity of the person whose records were sought, the date and time of such inquiry, and the identity of the person who made the inquiry. I am confident that during the period in question there is no record of

any NCIC inquiry on this individual that can be traced to my participation in this case.

Third, I believe this committee is relying on the representations of one of the most unscrupulous and deceitful individuals I have ever met in my entire life. I once trusted this person to run my Miami office. That was a mistake for which I have paid a dear price.

During the time that this individual was running my Miami office, he stole and copied confidential client documents and tried to sell those documents to the highest bidder. And, in fact, in one case we received evidence that he did receive about \$35,000 from one of our client's adversaries for confidential documents.

He shopped his services as a paid informant to those government agencies that would let him in the door. He surreptitiously solicited business from my clients, breaching his contract with me.

After 3 years of litigation with this individual, I won a judgment against him for his treachery. But, sadly, the story does not end there.

I have now learned that this individual brought his bag of tricks to this committee and sold it a bill of goods. The stolen confidential documents and his spin serve as the basis for this hearing. In fact, he stole entire case files. I have not seen the case files he purloined, but I do know that the source of the documents is untruthful and a manipulator of facts, and whatever spin he puts on the file can only serve one purpose and that's furthering his own interests at the expense of everyone else.

I thank the chairman for allowing me to read this statement, and I am prepared to answer whatever questions you may have.

Mr. BURTON. Thank you, Mr. Manuel.

Ms. Poston.

Ms. POSTON. Yes. Good morning, members of the panel.

Mr. BURTON. Excuse me, Ms. Poston. It might be easier if you just pull the mic closer. They don't pick up sound as well as they should.

Ms. POSTON. Can you hear me sufficiently? Thank you.

Good afternoon, members of the committee and to Chairman Burton.

As you all know, I am a member in the law firm of Steel Hector and Davis in Miami; and since about March 1999 I have been cooperating with this committee. My lawyer, Mr. Eduardo Palmer, has met with your investigative staff. We have provided documents at your request. To the extent we claimed privileges, we provided you privileged logs. We traveled voluntarily about 3 weeks ago up here to Washington, DC, to meet with your chief counsel, Mr. Wilson and deputy counsel, Mr. Kass; and we spent several hours answering their questions within the confines of the privileges which my clients have required that I continue to assert on their behalf.

I believe that this staff of this committee found my open cooperation and my testimony to be forthright with respect to the manner in which I answered the questions. I am hopeful that today I will be able, within the confines of the law, to do so for you, Mr. Chairman.

Mr. BURTON. Thank you very much.

Mr. Lucas.

Mr. LUCAS. I have no statement Mr. Burton.

Mr. BURTON. You have no opening statement.

Mr. LUCAS. No.

Mr. BURTON. OK, we'll now proceed under the rules that were accepted by the committee and have counsel, Mr. Wilson, start the questioning.

Mr. WILSON. Good afternoon, all, again. Sorry for the long delay.

I want to go over some documents. We have provided you with exhibit books that are in front of you, and at certain times I will refer to certain exhibits. We can put them up on the screen, and I will ask you to take a look at them as we get to them.

Ms. POSTON, when we did meet with you—and we do appreciate your having come up—you informed us that you were a friend of the Attorney General, is that correct?

Ms. POSTON. That's correct.

Mr. WILSON. And you also told us that your sister is a close friend of the Attorney General, is that right?

Ms. POSTON. Yes, that's correct. I would describe my relationship with General Reno as more of one of a professional basis but certainly a friend; and my sister's would be more of a personal and professional relationship.

Mr. WILSON. And, in fact, your sister worked with the Attorney General when Attorney General Reno was the State Attorney in Miami, is that correct?

Ms. POSTON. Yes, that's correct.

Mr. WILSON. Did she also run the Attorney General's campaigns for elective office in Miami?

Ms. POSTON. Yes, she did. She participated with other staff members in her campaign.

Mr. WILSON. Mr. Lucas, just so we can set the stage here, can you give us a sense to the extent you know why the law firm of Steel Hector and Davis was hired in this particular case?

Mr. BURTON. Could you pull the mic closer, too?

Mr. LUCAS. I don't know the reason why the religious organization went to Steel Hector and Davis, other than Ms. Poston explained that for two reasons, one is that they were a good client—the religious organization was a very good client—she explained was a very client to the firm, and also that they needed someone who knew how to—how to access information that may be available to them through the Justice Department.

Mr. WILSON. Ms. Poston, I don't want to belabor the obvious, but you hired the Philip Manuel Resource Group to obtain information about Mr. Abe.

Ms. POSTON. I did hire the Philip Manuel Resource Group. I think the purpose for which I hired them I would be precluded from answering, based upon the attorney-client work product privilege.

Mr. WILSON. OK. Well, I think we can get around that in a few places where certainly privilege is waived—now we'll get to this in a moment—in that Congress doesn't recognize privileges that you're asserting, but we'll get to that in just a moment. Mr. Manuel, did you ever contact any government sources to obtain information from the NCIC data base?

Mr. MANUEL. No, sir.

Mr. WILSON. Did you contact anyone at the Justice Department to obtain information about Mr. Abe?

Mr. MANUEL. I contacted some people in the Justice Department for the purpose of finding out the facts and procedures surrounding how the NCIC operated.

Mr. WILSON. And were your contacts limited exclusively to the procedural aspects of the NCIC data base.

Mr. MANUEL. I believe they were, yes.

Mr. WILSON. Fair enough. Now——

Mr. MANUEL. And related subjects, but not seeking criminal data from them.

Mr. WILSON. OK. Ms. Poston, did you ever prepare affidavits for Mr. Lucas and Mr. Manuel to sign in the Abe case?

Ms. POSTON. Just a moment, please. I will respectfully decline to answer that based on the attorney-client work product privilege.

Mr. WILSON. Now, as we are aware, I believe that these affidavits have been publicly filed, affidavits signed by Mr. Lucas and signed by Mr. Manuel, is that correct?

Ms. POSTON. I have no knowledge as to whether they are public or not.

Mr. WILSON. Do you have any knowledge of the disposition of any affidavits prepared by Mr. Manuel or Mr. Lucas?

Ms. POSTON. I don't know what you mean by disposition.

Mr. WILSON. Well, I asked you whether you participated in the preparation of affidavits by Mr. Manuel or Mr. Lucas; and you declined to answer that question. But are you aware of the fact or the existence of affidavits in the Abe case signed by Mr. Lucas or Mr. Manuel?

Ms. POSTON. I am aware of the fact of the existence of affidavits.

Mr. WILSON. OK. And are you aware that affidavits signed by Mr. Lucas and Mr. Abe were filed in a law case in Japan?

Ms. POSTON. Of that I do not know of my own personal knowledge.

Mr. WILSON. Mr. Manuel, if you could—actually, we'll just back up 1 second.

Ms. Poston, if you could take a look at exhibit 41, please, in the book that's in front of you.

[Exhibit 41 follows:]

Steel Hector & Davis
Miami, Florida

Rebekah J. Poston
Of Counsel
(305) 577-7022

September 8, 1995

Via Federal Express

Mr. Philip Manuel
The Philip Manuel Resource Group Ltd.
1730 K Street, N.W., Suite 1301
Washington, D.C. 20006

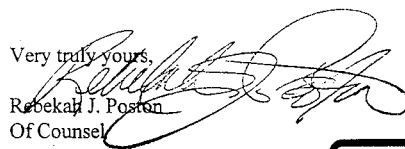
Mr. Richard M. Lucas
Lucas & Associates
7200 Griffin Road, Suite 2A
Davie, Florida 33314

Re: Hiroe Clow

Dear Phil and Rich:

Please look over your respective affidavits and be certain that they are consistent with your recollection of the facts and are true and correct. If so, execute them before a notary public and return them to me as quickly as possible. If you have changes, please advise Mark Reeves of them immediately. You can reach Mark at (305) 577-2923. Obviously, I cannot stress enough the importance of maintaining the confidentiality of these affidavits. They are protected by the attorney work product doctrine and privileged and confidential under the attorney-client privilege. Consequently, until the client waives the privilege by presenting them officially, we must not violate that privilege.

Very truly yours,


Rebekah J. Poston
Of Counsel

Enclosure

RJP/da/MIAMI/185851-1



Miami Office
41st Floor
200 South Biscayne Boulevard
Miami, FL 33131-2398
(305) 577-7000
Fax: (305) 577-7001

West Palm Beach Office
1900 Phillips Point West
777 South Flagler Drive
West Palm Beach, FL 33401-6198
(407) 655-7200
Fax: (407) 655-1509

Tallahassee Office
Suite 601
215 South Monroe
Tallahassee, FL 32301-1604
(904) 222-2300
Fax: (904) 222-8410

Ms. POSTON. Yes.

Mr. WILSON. This is a letter dated September 8, 1995. It's to Mr. Manuel and Mr. Lucas in this case. It's signed by yourself. It's on letterhead of Steel Hector and Davis.

And in this letter, in the second half, you state, "Obviously, I cannot stress enough the importance of maintaining the confidentiality of these affidavits. They are protected by the attorney work product doctrine and privileged and confidential under the attorney-client privilege. Consequently, until the client waives the privilege by presenting them officially, we must not violate that privilege."

Do you recall drafting this letter?

Ms. POSTON. There's no question that's my signature.

I must make it very clear to this committee that this is a confidential communication. Because when the investigative firm was hired, they were retained under the attorney-client and work product privilege.

Shortly before, Mr. Wilson, you indicated that you were taking the position you don't recognize the privilege here; the committee does not. I must assert what I have been ordered to do by my client, which is to assert that privilege. So other than identifying my signature on this document, this is a confidential communication with the investigators that I retained under the privilege. My client has never waived that privilege, and so I must enforce it and not answer further than that.

Mr. WILSON. We'll return to that question in a moment.

Mr. Manuel, if you could please take a look at exhibit 42, which is in the exhibit book in front of you; and if you could take just a second to look over the three pages.

The first question I have, which I think doesn't require too much time, is there's a signature on page three of this affidavit and is this signature yours?

[Exhibit 42 follows:]

AFFIDAVIT OF PHILIP R. MANUEL

DISTRICT OF COLUMBIA) SS:

BEFORE ME, the undersigned authority personally appeared PHILIP R. MANUEL, who, being placed under oath, said, as follows:

1. My name is Philip R. Manuel and the statements contained in this affidavit are true, correct and based upon my personal knowledge.

2. I am a native of Washington, D.C., and a graduate of Georgetown University, School of Foreign Service, with a degree in International Economics and Business Management. I am a Certified Fraud Examiner.

3. I am the founder and president of the Philip Manuel Resource Group, Ltd. (PMRG), an international management consulting firm based in Washington, D.C. with branch offices in Miami, Florida, and Las Vegas, Nevada. The company began operations in November 1979.

4. Principal activities of the firm include the detection and prevention of economic crime, trademark infringement, product diversion, industrial espionage and international fraud. In addition, the firm has specialized in advising corporate management and legal counsel on matters relating to risk assessment, loss prevention and the coordination of complex investigations. PMRG also provides Washington representation and liaison with appropriate government agencies on many issues.

5. I am a nationally recognized expert in economic crime and multi-national fraud investigations. In July 1983, I was appointed by President Ronald Reagan to be a member of the President's Commission on Organized Crime.

6. From 1968 to 1979, I served as Chief Investigator of the Permanent Subcommittee on Investigations, United States Senate. In this capacity, I directed nationwide and international inquiries relating to organized crime, fraud, terrorism, and waste and corruption in government programs. As a result of these investigations, I assisted in drafting federal legislation, including the Securities Protection Act of 1975 and the Federal Computer Systems Protection Act of 1977.



7. From 1964 to 1968, I served as investigator for the Internal Security Committee, U.S. House of Representatives, where I was responsible for conducting inquiries into the activities of subversive and terrorist organizations as well as hostile foreign intelligence activities against the United States.

8. From 1960 to 1964, I was a counter-intelligence agent assigned to the 902nd Intelligence Corps Group, Washington, D.C. In this capacity, I was involved in counter-espionage and security investigations in the United States and abroad.

9. I have also served as chairman of the White Collar Crime Committee of the American Society for Industrial Security, and served on the Editorial Board of Money Laundering Alert, a publication with wide circulation in the banking, insurance and law professions.

10. Steel Hector & Davis, a law firm in Miami, Florida, engaged PMRG to investigate the likelihood of the existence of any documentary evidence that would corroborate eyewitness accounts of an incident that occurred in Seattle, Washington, on or about March 19 and 20, 1963, involving an individual by the name of Nobuo Abe.

11. As a part of PMRG's investigation, I contacted a confidential and highly reliable source who I believed would be able to determine whether the federal government had the documentary evidence.

12. My source told me that there was a federal government record for Nobuo Abe which referred to "Suspicion of Solicitation of Prostitution, Seattle Police Department, March 1963."

13. My source further told me that the record concerning Mr. Abe reflected that the Seattle Police Department had made an inquiry for information.

14. My source also told me that if Mr. Abe made an official request for the information under his name to be removed from the record, it could be removed.

15. Sometime later, my source informed me that the record concerning Mr. Abe apparently had been purged.

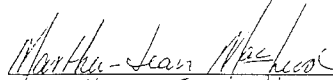
16. I am confident that the information provided to me by the source is accurate and reliable.

FURTHER AFFIANT SAYETH NAUGHT.


PHILIP R. MANUEL

I HEREBY CERTIFY that on this ____ day of September, 1995, before me, an officer fully authorized in the District of Columbia aforesaid to take acknowledgments and to administer oaths, personally appeared PHILIP R. MANUEL, who produced his FCA Driver's License (No. 14540676364090) as identification, who acknowledged before me that he executed the foregoing affidavit as his free act and deed and who did take an oath.

IN WITNESS WHEREOF, I have hereunto set my hand and seal in the District of Columbia aforesaid as of this 24 day of September, 1995.


Name: MARTHA JEAN McLEOD
Notary Public, State of District of Columbia
Commission No.: _____
My Commission Expires My Commission Expires On March 31, 1997

(Notary Seal)

Mr. MANUEL. Looks like my signature. Looks like a copy of my signature.

Mr. WILSON. Do you recall signing this affidavit?

Mr. MANUEL. I do.

Mr. WILSON. You do. Could you tell us the circumstances of your signing this affidavit? Was it provided to you by Ms. Poston?

Mr. MANUEL. Well, Mr. Wilson, I am advised by counsel that, being that Ms. Poston has asserted a privilege here, that I should not answer questions about this on the same grounds.

Mr. WILSON. OK. If you would—this is not a question about the document, but could you please read sections 11 through 16 inclusive of this document.

Now you've had an opportunity to read it yourself, would you please read it out loud to the committee?

Mr. MANUEL. Starting with?

Mr. WILSON. With paragraph 11.

Mr. MANUEL. As part of PMRG's investigation, I contacted a confidential and highly reliable source who I believe would be able to determine whether the Federal Government had documentary evidence.

My source told me there was Federal Government record for Nobuo Abe which referred to "Suspicion of Solicitation of Prostitution, Seattle Police Department, March 1963."

My source further told me that the record concerning Mr. Abe reflected that the Seattle Police Department had made an inquiry for information.

My source also told me that if Mr. Abe made an official request for the information under his name to be removed from the record, it could be removed.

Sometime later, my source informed me that the record concerning Mr. Abe apparently had been purged.

I am confident that the information provided to me by the source is accurate and reliable.

Mr. WILSON. Now, the first question, is this, your affidavit, your signed affidavit accurate?

Mr. MANUEL. It is not accurate. And if I had—if I had it to do over, I would not have written it that way or signed it. I don't remember reading—writing it, but I did sign it. Had I wrote it, I would not have written it that way.

And what the committee needs to understand is that I did not have any confidential source in the Department of Justice who provided me this information. Rather, what happened was there was a series of contacts. I gathered a number of composite type information about the NCIC, and a lot of these conclusions were made by me. I never received any documentary evidence or any information directly from the NCIC. If the committee wants me to explain exactly how I arrived at these conclusions, I will be glad to do—

Mr. WILSON. No, we understand that. But the puzzlement that we have over this is that you state—and I will read it more slowly than you did—unambiguously: My source told me that there was a Federal Government record for Nobuo Abe which referred to "Suspicion of Solicitation of Prostitution, Seattle Police Department, March 1963."

It continues. It says, my source further told me that the record concerning Mr. Abe reflected that the Seattle Police Department had made an inquiry for information.

The following paragraph says, and it's again unambiguous: My source also told me that if Mr. Abe made an official request for the information under his name to be removed from the record, it could be removed.

And it continues: Sometime later, my source informed me that the record concerning Mr. Abe apparently had been purged.

Now our concern here is that you provided us a statement yesterday and you very unambiguously told us this morning that your contact was exclusively limited to procedural aspects of the functioning of the NCIC data base. Now, we're faced with a difficulty here because, apparently—and we don't know this—we have a document, but it appears to be signed, appears to be dated, I believe it was notarized, and I believe it was submitted in a legal proceeding in Japan.

Mr. MANUEL. I don't have any knowledge of that. I don't know how it was used.

Mr. WILSON. And I won't ask you that, because perhaps that's not fair. Why did you sign this—what was the purpose of this affidavit?

Mr. MANUEL. Well, first of all, this affidavit is dated about 5 months—I would say or 4 or 5 months after I ceased having any participation in this case. I believe the affidavit was caused—or it was requested because a lawyer on the West Coast had made some disclosure having to do with this case, and I am not more clear about that. Keep in mind, Mr. Wilson, you're asking me about things that happened almost 6 years ago; and I have nothing to refer to except what you have given me in the last couple minutes.

There was—there was some pressure to sign this affidavit. They came mostly from Mr. Lucas.

Mr. WILSON. If I could stop you there, it's my understanding that you are the head of the Philip Manuel Resource Group and that Mr. Lucas was your employee. Is that a fair understanding of your relationship? You were his boss man, than he was a contract employee who ran the Miami office?

But let me just try and rephrase the question so it's a little clearer. Were you Mr. Lucas' boss?

Mr. MANUEL. Yes.

Mr. WILSON. He was your employee.

Mr. MANUEL. He was my contract employee. He was not an employee of my firm. He was working under a contract between my firm and his firm to manage my Miami office and to market services out of that Miami office.

Mr. WILSON. Well, I mean, from our perspective, somewhat artful a response, but could you have fired him?

Mr. MANUEL. I could not have fired him, because he wasn't an employee. I could have ceased doing business with him by canceling his contract.

Mr. WILSON. And that's merely what I was getting at. So it's a little difficult for us to understand that you just mentioned you were feeling pressure from Mr. Lucas. Were you feeling any pres-

sure at the time to be honest and forthright and accurate in your answers in a signed, sworn affidavit?

Mr. MANUEL. I felt a number of countervailing pressures. The No. 1 pressure was that I wanted to—and this is the ironic part of it—I was almost acting to protect the man who was in the process of stabbing me in the back. If you're talking about NCIC, the first—the first knowledge I ever had about the mention of NCIC came from Mr. Lucas. It was Mr. Lucas himself who told me, after he had accepted this case, that he was the one who had contacted NCIC and had received information from NCIC.

Mr. WILSON. Well, no—I mean, we appreciate you told us that in the interview, but what we have here—we have now what you're telling us, but we have—from a time when your memory was fresher and a contemporaneous time, we have an expression of theoretically what the truth is. I mean, when one signs an affidavit, one has it notarized, dated, there's no ambiguity in terms of whether one should tell the truth or not. And so what we're faced now with is a difficulty of reconciling what you're telling us now with what you stated in an official document.

Mr. MANUEL. I understand your confusion. Like I say, if I had my life to live over, I wouldn't have written this affidavit this way. You may interpret it as being awkwardly written and maybe inaccurate. If that's the case, I am not going to dispute that.

Mr. WILSON. Ms. Poston, based on all of the contacts and communications you have been involved in, did you have any reason to doubt the accuracy of this affidavit?

Ms. POSTON. I'm going to have to respectfully refuse to answer that question, again based on attorney-client privilege.

Mr. LATOURETTE. Mr. Chairman, will the counsel yield to me for just a second? I don't know, that reminds me of pussyfooting around. I would like to ask a parliamentary inquiry, I guess, of the Chair on yielded time.

Mr. Wilson made the observation that the attorney-client privilege isn't recognized by the U.S. Congress. If that's, in fact, the status of the law for witnesses brought before the committee, I guess I'm puzzled why these witnesses are repeatedly invoking the attorney-client privilege if it doesn't apply.

If the witnesses are afraid that they are going to incriminate themselves, they certainly have the availability of the fifth amendment. But I think I would request, rather than going through a hearing and listening to people say they can't answer questions they are supposed to be answering, that they be directed to answer those questions unless they invoke a privilege that's recognized under the law by the Congress.

And, if not, I'll have a further parliamentary inquiry to ask the Chair how do we hold somebody in contempt of Congress for not answering the questions that are put to them legitimately by the counsel of this committee?

Mr. BURTON. Well, you are correct. The privilege that she is asserting is not recognized by the Congress of the United States, No. 1; and, No. 2, we can move a contempt of Congress citation and press for prosecution if the witness chooses not to answer. And you're absolutely correct. If she feels like there might be self-incrimination, she does have the right of exercising her fifth amend-

ment rights. So you've been duly informed of the rules of the Congress.

Mr. LATOURETTE. I thank the chair and thank you, Mr. Wilson.

Mr. WILSON. I'm going to move to the privileges that you're asserting in a moment, but what we want to establish here very, very clearly is, if this affidavit were used in any public fashion whatsoever, then the privilege—any privilege you might assert, even though we wouldn't accept them here, is waived. So it's important for us to understand, and I think you have answered this question, but my question wasn't precise. Do you have any knowledge of this affidavit being used in a public forum?

Ms. POSTON. I have no personal knowledge of this affidavit being used in a public forum.

Mr. WILSON. Public forum is open to interpretation. In a judicial setting in Japan, do you have any knowledge of this affidavit being used in a judicial setting in Japan?

Ms. POSTON. I do not know if they were used or presented in evidence in Japan.

Mr. WILSON. OK. Why did you obtain signed affidavits from Mr. Lucas and Mr. Manuel?

Ms. POSTON. Again, I am going to assert the attorney-client privilege.

Ms. Clow, my client—I retained investigators on behalf of Ms. Clow. As you know, Mr. Wilson, she has—she died of cancer several years ago. So we all know the Supreme Court in the Vince Foster case stated that the privilege survives the privilege holder; and, to my knowledge, Ms. Clow never waived her privilege with respect to these affidavits.

Mr. WILSON. OK. So just if I can try and characterize where we are on this subject, you will not tell us anything about the affidavits other than you're aware of their existence.

Ms. POSTON. I believe that that's correct, that I cannot do that.

Mr. BURTON. Let me just inform Ms. Poston, first of all, that you are directed by the committee to answer the question and you do run the risk of being held in contempt of Congress if you do not.

The second thing is, I'd like to ask the question, when you appeared before Mr. Wilson and his colleague and were discussing these issues, did you indicate that you would take the fifth amendment before this committee?

Ms. POSTON. I did not, nor do I intend to do so.

Mr. BURTON. You did not say to our committee—to our counsel that you would take the fifth amendment?

Ms. POSTON. I did not, absolutely not.

Mr. BURTON. Did your legal counsel, your lawyers, indicate that you might take the fifth amendment?

Ms. POSTON. I'd have to defer to him. Because I believe when your staff had conversations with my counsel, I was excused.

Mr. BURTON. I ask unanimous consent that we allow the counsel to answer that question. Without objection, so ordered.

Mr. Palmer.

Mr. PALMER. Yes, sir.

Mr. BURTON. Did you indicate that Ms. Poston might be forced to take the fifth amendment if these questions were asked?

Mr. PALMER. I had discussions with a member of your committee who spoke with me about these matters over the course of the last year and a half.

Mr. BURTON. I'm talking about when you were here, what, a few weeks ago.

Mr. PALMER. Three weeks ago.

Mr. BURTON. Yes.

Mr. PALMER. No, sir.

Mr. BURTON. When you discussed with them on the phone the issues in the last week, did you indicate that she might take the fifth amendment?

Mr. PALMER. Members of your committee indicated to me that, in their view, the conduct at issue here could constitute a criminal violation; and we discussed all the privileges that would be applicable in that situation. I advised them that if that were the situation that, first and foremost, the information the committee sought would be protected by the attorney-client privilege and the work product doctrine.

I also told them that if they believed that a witness had committed a criminal offense and they knew that from the outset, that it would be improper for—to force the witness to come before this committee merely to assert a fifth amendment privilege.

Mr. BURTON. So you did indicate that Ms. Poston might under these circumstances assert her fifth amendment privilege.

Mr. PALMER. I indicated exactly what I just expressed to you.

Mr. BURTON. Thank you.

Mr. WILSON. Now, I think we're going to find ourselves in the same dilemma here, but let us try and move through this as much as possible.

Ms. Poston, if you could take a look at exhibit 9, please, in the book in front of you. And what we have here is a fax cover sheet from yourself—or at least the originator is Poston, a short message and an attached letter from a Mr. George Odano to yourself.

And while you're looking at that I'll read the message on the fax cover sheet: Please get answers to as many of these as you can and be specific. This is a matter of serious importance. I hope because it is a Federal holiday that we can access the necessary research.

The first question that comes to mind, the fact of a Federal holiday falling at a certain time, what did that have to do with attempting to find information?

[Exhibit 9 follows:]

NOV 11 1994 10:11 AM STEEL HECTOR & DAVIS

F.A.

STEEL HECTOR & DAVIS

200 S. Biscayne Boulevard
Miami, Florida 33131-2398
(305) 577-7000

Telecopier Cover Sheet

Confirmation # (305) 577-2887

Date: 11-11-94
 Send To: Philip Manuel Resources
 Firm: Attn: R. Lucas
 Telecopier No. 358-4425
 Confirmation No. _____

Total Pages Including Cover Sheet 4

Originator: Poston X Letter Size _____ Legal Size _____
 Ext. 305-577- 7022

Special Messages

R- Please get answers to
 as many of these as you can
 and be specific. This is a
 matter of serious importance.
 I hope b/c it is a federal holiday
 that we can access the necessary
 research.

No information contained in this transmission is attorney privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone collect and return the original message to us at the above address via the U.S. Postal Service. We will reimburse you for postage. Thank You.

Client Code 83591
 Order Code 4501

MIAMI: FAX (305) 577-7001
 WEST PALM BEACH: FAX (407) 653-1509
 TALLAHASSEE: FAX (904) 222-8410

ORIGINAL: _____ Mailed _____ Overnight Courier _____ Held in File _____



NOV 10 1994 10:42PM

NOV 10 '94 10:42PM

Via Facsimile

November 10, 1994

Rebecca Poston, Esq.
 Steel, Hector & Davis
 100 South Biscayne Blvd.
 Miami, Florida 33131-2398

Dear Ms. Rebecca Poston:

I am very grateful for your dedicated efforts concerning my request for the records on Abe.

I have reported the information you have given me to my colleagues in Japan. My colleagues are Japanese attorneys who are presently working for SGI in Japan. Due to the critical importance of your information, they are now flying to Los Angeles from Japan and arriving tomorrow morning. They are requesting for further detailed information regarding Abe's records.

If it is possible, please provide us with the following information when you call us tomorrow:

1. Is the name on the NCIC file Nobuo Abe?
2. According to a witness, the incident in question took place at around midnight on March 19, 1963. How much information about the date of the incident does the data carry? Does it say that it took place on March of 1963, or does it state the exact date.
3. Is the date of birth on the NCIC file December 19, 1922?
4. What does "SOL PROS" mean?
5. Did your source have access to the NCIC file that the FBI kept or was it some other data base.
6. As I have already informed you, the information that our source at the Federal Bureau of Prisons gave us was much more detailed than the one you gave us today. Do you have any idea as to the reason for this difference? Is it possible that the NCIC file that the Federal

NOV 11 1994 10:17AM DIRECTOR & DEVS

NOV 12 '94 10:42PM

Bureau of Prisons keeps is different from the one that the FBI keeps? Please note that according to our source, the data base that he accessed was called NCIC-NATF. We believe that NATF is a data base of Department of Treasury, Bureau of Alcohol, Tobacco and Firearms.

7. What is the basis of your contention that the information we are seeking will not be accessible through the FOIA? What keeps us from getting the information? Any statutory basis for this?

8. If we try to obtain the information under FOIA, what would be the best way to identify the document/information that we are seeking? Would there be any problem in specifying the data source as NCIC or NCIC-NATF, vis-a-vis keeping our source confidential?

9. Why did you think that the original records were kept at King's county? What was the exact basis of your idea?

Thank you for your continuous efforts and assistance in this regard.

Very truly yours,


George Odano

Ms. POSTON. This is a communication between me and the investigators that I hired under the privilege. And I am very sorry I can't answer your question, Mr. Wilson, but I have to assert this privilege on behalf of my client.

Mr. WILSON. Now, the one thing that you attached to this document, to the fax cover sheet, is a letter to yourself; and the very first question is, is the name on the NCIC file Nobuo Abe?

And consequently, if you look at the instructions, and this was provided to Mr. Lucas, the fax cover sheet, what you have said is, please get answers to as many of these as you can and be specific; and the first question is, is the name on the NCIC file Nobuo Abe? Now, from our perspective, you are asking your private investigator to obtain very specific information about what is on the NCIC file. Now, I guess I can ask you this question, why should we not be concerned that you are asking somebody to obtain information from an NCIC data base?

Ms. POSTON. The question is why—

Mr. WILSON. Why should I not be concerned, reading this document—I understand you don't want us to have this document, you don't want to talk about this document, but the fact is this document is before us right now. Why should I not be concerned or the committee be concerned with an attorney, an officer of the court, asking a subordinate employee—in this case, contract employee, private investigator—to obtain information about specific questions under the first—and the first specific question is the name on the NCIC file Nobuo Abe. Why should the committee not be concerned by that request?

Ms. POSTON. I don't think I'm in a position to answer why you should or should not be concerned.

Mr. WILSON. Well, I will ask you for speculation. It will be perfectly acceptable to speculate what our concern is.

You heard opening statements here that there may have been attempts to improperly access information from the NCIC data base, and what we are confronted with here is a document where you ask a very, very specific, targeted question and you say you want information, is the name on the NCIC file Nobuo Abe?

But let me just move away from that. I will ask about question 3. This is another thing you've asked your contract investigator to determine. Question 3: Is the date of birth on the NCIC file December 19, 1922?

From my perspective, this looks like you're asking—it doesn't look, it is that you're asking for your subordinate to obtain information from the NCIC data base. Why should I not—is there something other than the plain words of this document that makes my conclusion erroneous?

Ms. POSTON. Mr. Wilson, all I can tell you is that this is a communication from a client to me. This is a communication I have sent to my investigator. I don't believe that I'm at liberty, based on the privilege that—as I have stated, to answer any of your questions in this regard. And as far as speculation goes or why you should not be concerned, I can't answer that.

Mr. BURTON. Well, for the record, let me interrupt, counsel. It's obvious to me and will be for the record and anyone's who is paying attention that, rather than use your fifth amendment privilege,

you're hiding behind the attorney-client privilege. It's very obvious. And so, for the record, as chairman of the committee, I want to put that in there, that every question we ask, even though it isn't relevant to the attorney-client privilege, you're using the attorney-client privilege to defer or deflect that question; and it's not acceptable to the committee and will be recorded in the record that way.

Mr. LATOURETTE. Will counsel yield to me? Are you still on your time, Mr. Wilson?

Mr. WILSON. Yes.

Mr. LATOURETTE. I stepped out of the room to talk to the House Parliamentarian for just a minute. And going back to my lawyering days—I mean, the implication of this privilege isn't appropriate, first of all, because it deals with crime fraud. It doesn't deal with communications between the client and the lawyer; and it's also been published, I mean, in newspapers. We know that. So—but superseding all of that is the fact that it's not recognized by the Congress, was the answer to my previous parliamentary inquiry.

Now if the witness has refused to invoke the fifth or some other privilege that's recognized by this committee, Mr. Chairman, I respectfully ask that this matter be referred to the next business meeting of the full Government Reform Committee to determine whether or not the witness is invoking a privilege that they have been warned at least twice is not appropriate to legitimate questions before this committee, whether or not contempt of Congress citations are appropriate for a referral to the full body. We can't do it at this hearing because it isn't noticed, but it's my understanding we can do it at the next full business meeting of this committee, and I would respectfully ask the Chair to schedule it as an agenda item.

Mr. BURTON. It will be taken under consideration, and we'll probably do that.

Mr. WILSON. I just have about 20 seconds, so I'm not going to ask much of a question in 20 seconds. But, Mr. Lucas, let me ask you the question that's sort of the other side of this issue. Did Ms. Poston ask you to obtain in the form of these questions information from the NCIC file?

Mr. LUCAS. Respectfully, Mr. Chairman, I have listened carefully to instructions to Ms. Poston to answer questions despite claims of attorney-client privilege and the work product doctrine. As I understand the situation, the committee has considered these privilege claims and under its subpoena power it is nevertheless instructing the witnesses to answer its questions. It is my understanding that refusal to answer the committee's questions could result in criminal prosecution. If I am similarly instructed to answer questions, in recognition of the committee's subpoena power, I will do so.

Mr. BURTON. You are so instructed.

Mr. LUCAS. Could you repeat your question then, sir?

Mr. WILSON. Mr. Lucas, I was asking you, based on the documents we have here, the fax transmission sheet, the letter from Mr. Odano which is directed to you, the question was, did Ms. Poston ask you to obtain information from the NCIC data base?

Mr. LUCAS. I think the document speaks for itself. I mean, it's faxed to me. The letter—the document just speaks for itself. I mean, she faxed me the letter. She didn't recite the letter to me,

and the document states what it states. It came from Ms. Poston. It was directed from Mr. Odano to Ms. Poston, and she forwarded it to me.

Mr. WILSON. Thank you very much, Mr. Lucas. My time is out.

Mr. BURTON. The counsel for the minority is recognized for 30 minutes.

Mr. BARNETT. I'm Phil Barnett, the chief minority counsel.

The minority staff and the members of the minority received the majority staff report for the first time this morning, so we haven't had a time to examine it in any detail. What I hoped to do in my questions was to ask the panel of witnesses questions about the report and its major allegations so that we can have your responses as part of the record.

And there seem to be two major allegations. One is the allegation that Mr. Manuel, Mr. Lucas, and Ms. Poston broke the law somehow by obtaining information from the National Criminal Information Center about arrest records; and the second is that there was improper lobbying and influence connected with the Freedom of Information request.

I'd like to ask about both of those, beginning first with the allegations of the potential illegality and obtaining arrest information. Mr. Lucas, I'd like to begin my questions with you.

We have had a chance to interview all the other witnesses that are appearing here today, either in joint interviews with the majority, which the minority was asked to participate in, or in separate interviews, but we've had no opportunity to ask you your perspective on things. And we also haven't had much time to look at the documents you've provided the committee.

Let me begin with the staff report. On page 7 of the staff report that the majority released and put in the record today, it says Mr. Lucas contacted a friend, Tony Gonzalez, a retired IRS investigator, to ask for help in obtaining NCIC information on Abe. Gonzalez in turn contacted a confidential source who provided him with the NCIC information on Abe. Is that accurate?

Mr. LUCAS. In very general terms, yes. A lot of facts are missing, but in very general terms—

Mr. BARNETT. And on page 9 of the report it says, "Lucas told the committee that it was clear that"—and I guess this is a quote from you—"essentially you were breaking the law," by doing what Poston had asked. Is that accurate?

Mr. LUCAS. I had—due to this investigation and with another related one that's not here that was going on at the same time, after she published—after a letter was published in a magazine—I don't know how to phrase it—where a letter from Ms. Poston saying there was an inquiry made and certain records were found, I thought it was getting—that there was a possibility that there may have been a violation.

Mr. BURTON. Mr. Lucas, would you pull the mic closer so we can hear your answers?

Mr. LUCAS. Yes, sir.

Mr. BARNETT. On page 7 it says you asked a friend to obtain the NCIC information and you said that was an accurate statement and that the friend Tony Gonzalez contacted a confidential source who provided the NCIC information. You said in general terms

that was accurate, if I recollect. Is that accurate, what the majority report is saying on page 7 of the report?

Mr. LUCAS. Well, first, you're reading from a report that I am at a little bit of a disadvantage of. If I could get a copy, I would be appreciative.

Mr. BURTON. Could we get a copy of that report down to the witness so Mr. Lucas can take a look at that real quick? Stop the clock so we won't use the minority's time.

Mr. Lucas, at the end there. Do we have any more copies of that? We probably ought to have copies of that for the entire panel. Can you get that down there to them so they can follow along?

Mr. PALMER. Thank you. Appreciate that.

Mr. BARNETT. This is at the top of page 7, and it's citing to footnote 21, which is the interview that I guess the majority staff had with you. The minority was not present for the interview.

Mr. LUCAS. Yes, I'm sorry.

Mr. BARNETT. I wanted to ask you if that's accurate, the statement in the minority report, if it's accurate.

Mr. LUCAS. Not the way that it's stated, it is not accurate.

Mr. BARNETT. Could you describe what would be accurate?

Mr. LUCAS. Yes, I would. I was contacted by Ms. Poston who instructed me that she wanted to determine if I could—if myself or the firm could obtain information of an arrest record of an alleged incident—either an arrest or an incident that occurred back in 1963 in Seattle, WA. Obviously, a very, very unusual request because it was not a—not a U.S. citizen. I don't think she was absolutely sure about the date of birth, but she was pretty sure, not being a U.S. citizen, there was no social security number. And, frankly, NCIC did not exist in 1963. That's something I knew.

I contacted a friend, Tony Gonzalez, and said, this is a request I have. He was retired. He wasn't working. I said, if you—I'm trying to find out if there is an incident—how would I go about trying to find an incident—if an incident occurred in 1963 in Seattle with the Seattle Police Department? It was way before my time. In 1963, I was 10 years old. I didn't know how the reporting systems worked.

He said, let me see what I could find out. He then called me back the next day and told me there was a record from the Bureau that there was such an incident in 1963.

Mr. BARNETT. Did Ms. Poston direct you to gain access to restricted information from the NCIC?

Mr. LUCAS. At this request, she did not. At this request—her request was trying to determine if there was any type of report—any type of document or report that could—that was specific as to—on this first contact as to whether there was a report or an incident, something she could have tangible in her hand that something occurred, which was, obviously, an unusual situation.

Mr. BARNETT. But is that unusual and improper for a lawyer to hire a private investigative firm to ask if someone has an arrest record, has a criminal history?

Mr. LUCAS. Yes. Yes, it is.

Mr. BARNETT. Mr. Manuel, in your experience, is that an unusual request to hire a private investigative firm to determine if someone has a background that involves an arrest or criminal history?

Mr. MANUEL. It's very common in the investigative business to conduct due diligence on individuals, which would include the gathering of background information and whether the individual had a criminal background. This is done almost exclusively from private source records such as court records, reports of conviction, that sort of thing. But to—to request criminal background information is very common for very legitimate purposes.

Mr. BARNETT. Mr. Lucas, going back to page 9 on the report, at the bottom of that first paragraph. It says, quote, Lucas told the committee that it was clear that essentially you were breaking the law by doing what Poston had asked. Did you believe you had broken the law when you had your conversation with Mr. Gonzalez?

Mr. LUCAS. Not when I had my conversation with Mr. Gonzalez. No, I did not believe I was breaking the law.

Mr. BARNETT. The report says, on page 25, quote, there is no doubt that Richard Lucas' conduct was unlawful. Do you agree with that?

Mr. LUCAS. Bear with me, page 25, in conclusion—section, sir?

Mr. BARNETT. It's in footnote 141, in the small print. It says, although there is no doubt that Richard Lucas' conduct was unlawful—and the part I'm asking you about is the statement that there's no doubt that Richard Lucas' conduct was unlawful.

Mr. LUCAS. That's a legal conclusion. I performed as I stated I performed in this testimony.

Mr. BARNETT. Well, on page 9, it says you told the committee that essentially you were breaking the law—

Mr. LUCAS. I didn't say—

Mr. BARNETT. The conclusion in the report that you were breaking the law. A lot of the report seems to be based on your statements to the committee, and I'm trying to understand the committee's conclusions. They have drawn conclusions that there were illegal actions. And they seem to say that your actions were illegal. And I'm trying to understand if they were illegal, if you believe they were illegal, were doing anything wrong or illegal.

Mr. LUCAS. I do not believe my contact with Mr. Gonzalez was breaking the law.

Mr. BARNETT. And your other efforts to obtain information about Mr. Abe, did they cross the line into illegal actions?

Mr. LUCAS. I performed no other request on Mr. Abe other than that first inquiry with Mr. Gonzalez.

Mr. BARNETT. So, to summarize, you believe your actions when you asked someone to obtain information about the arrest record was legal to do?

Mr. LUCAS. Well, first of all—I don't mean to be quarrelsome, Mr. Counsel. My request was not to—I mean, as the answer came back in the memo, it was not an arrest record. He was not arrested, according to the information that was provided to me. So the—but the—so it just is—there wasn't an arrest record.

Mr. BARNETT. What I'm asking is, on page 7, it said that you had asked Mr. Gonzalez for the NCIC information.

We went over it. It sounded like you didn't actually ask him for the NCIC information but instead you explained the situation, said what was wanted was information, was this person actually arrested. You asked, could he find something out about that? And he

came back and found something out about that. Was that illegal, to ask that question?

Mr. LUCAS. But that's not what I phrased to Mr. Gonzalez. My phrase to Mr. Gonzalez was, we have an incident that occurred in 1963. My question to him was could he determine if that—if there was an incident involving a Mr. Abe in Seattle, WA, in 1963 on—I think the date was—it was in March 1963.

Mr. BARNETT. Did you know that Mr. Gonzalez would look at NCIC records?

Mr. LUCAS. Not at the time I did not.

Mr. BARNETT. Did you have any personal knowledge—do you have any personal knowledge that anyone searched NCIC records?

Mr. LUCAS. Mr. Gonzalez, I can't answer that with a yes-or-no question—with a yes-or-no answer. But, in response, Mr. Gonzalez reported back to me that he made a contact at the Bureau. He didn't say anything beyond at the Bureau. And there was a record of it, as is spelled out in my report to Ms. Poston.

Mr. BARNETT. Did you ever see the record?

Mr. LUCAS. No.

Mr. BARNETT. From your perspective then, when the majority report concludes that your actions were illegal, that's not accurate?

Mr. LUCAS. I mean, I don't know how they—I mean, I'm sure they didn't do that in bad faith. But, in my opinion, I'm not a lawyer to say that my actions were illegal.

Mr. BARNETT. Let me ask you about a request you received. Your actions of asking Mr. Gonzalez for this information were not illegal. Would a lawyer who's hiring you and asked you an even more general question about seeking information, background information on somebody who had an arrest, would that be illegal?

Mr. LUCAS. I'm not trying to be confrontational again. You're saying if a lawyer is asking me to obtain background information on Mr. Abe—again, I'm not a lawyer. I'm a CPA by education, and I don't—I mean—as Mr. Manuel stated and I stated, it is common in the investigative business for people to try to find out if there is criminal history.

Mr. BARNETT. I guess the question I'm asking is, as I read the majority report, the majority report is premised on, clearly, you engaged in illegal conduct.

You're not the focus; in fact, in footnote 141, they said you cooperated with the committee, with majority side—not the minority side, because we've had no contact with you until today. But the illegality was premised on your action. And because you are, in a sense, working at the direction of Ms. Poston, who is a subject of a lot of the allegations here, because you did something illegal there's an implication she did something illegal by asking you to do what was illegal. Your testimony here is that what you did was not illegal. In your mind, it was appropriate to ask Mr. Gonzalez to obtain the information; and you didn't, in fact, ask him to go and get information from NCIC.

Mr. LUCAS. That's correct. I did not ask him to go to NCIC to get that information.

Mr. BARNETT. When a client asks you to find information, you could do that in other ways, in addition—by contacting the Justice

Department, you could review press clips, talk to people, do basic research. Isn't that part of what private investigators do?

Mr. LUCAS. Yes, it is.

Mr. BARNETT. In his opening statement, Mr. Manuel made a series of accusations about your conduct; and I think it is only fair to give you a chance to respond to those. And I believe Mr. Manuel said you had stolen files. Is that true? Have you ever stolen files?

Mr. LUCAS. No.

Mr. BARNETT. He said that you had taken without authority files from the Manuel group when you left the firm; is that true?

Mr. LUCAS. That's not true.

Mr. BARNETT. And he said that you tried to sell those files to individuals; is that true?

Mr. LUCAS. Again, that's—that's not true.

Mr. BARNETT. Mr. Manuel said he obtained a court judgment against you for these actions; is that true?

Mr. LUCAS. I would—I'll answer that with an explanation at the end. He obtained a judgment against a company that I had contacted him with, but it was under extremely unusual circumstances, and I would like to briefly explain those circumstances.

When I left his employment, he owed me about—he owed the company about \$35,000 or \$40,000. I filed a lawsuit to recover it. The case was removed to arbitration. It was made very clear right away I would settle for about half that amount just to collect my moneys due.

Mr. Manuel, because of a situation involving an individual named Orlando Castro, was out to find out as much information about me as possible. He dragged this legal case on for over 3 years; and, remember, this is a \$30,000 to \$40,000 case that's disputing.

It got so bad he drained me of money. My lawyers quit—the case was removed to arbitration. My lawyers quit because I couldn't afford to pay them any more 2 days before depositions occurred. There was a three-person arbitration panel. I could not afford to pay my arbitrator. He quit. I could not afford to pay the so-called independent arbitrator, so he was only getting half of his fee in this case.

At the closing, Mr. Manuel spent \$120,000 in legal fees to defend a \$35,000 case that I would have settled—my lawyers told their lawyers immediately—for \$15,000 \$20,000. This was a case that Mr. Manuel used to punish me for revealing to—to government sources of what I believe were criminal acts in a totally unrelated incident other than the Castro case.

Mr. BARNETT. I don't want to become sidetracked on this, but, Mr. Manuel, I see—do you have a comment—would you like to have any comment on this?

Mr. MANUEL. I'm just—I'm just shocked at Mr. Lucas' explanation. We have documentary testimony in our case that Mr. Lucas sold documents for \$35,000, documents that he took from my office. The committee should ask Mr. Lucas where did these documents come from if he didn't take them from the office.

The person that we got the testimony from concerning his sale of documents for \$35,000 was none other than the man who paid

him and put the money up, Mr. Thor Halverson, who happened to be an adversary of Mr. Orlando Castro whose documents Mr. Lucas stole, copied and turned over to them. He sold them. He wants to wrap himself in the flag and say he's a whistle-blower, but the fact of the matter is what he's used all this for is to gain money for himself.

Now I wasn't about to—in our litigation with him, I was not about to accede to his extortionate demands for a settlement on money that I didn't owe him. That's his pattern.

Mr. BARNETT. Mr. Manuel—

Mr. MANUEL. I'm reading it for the first time here, all kinds of things in this report such as, on page 8, Mr. Lucas informed committee staff that Manuel told him he obtained this information from Ben Brewer, his confidential source in the FBI. I don't even know a Ben Brewer. I have never met a Ben Brewer. I've never talked to a Ben Brewer. Where he get this information, I don't know, but it's typical of what he makes up. I don't know whether it's in his mind or what. But I see a lot of things in this report that's attributed to Mr. Lucas that I would take issue with.

Mr. BARNETT. Mr. Lucas, can I ask you just to followup on that piece? Did you tell the committee that Mr. Brewer was Mr. Manuel's confidential source?

Mr. LUCAS. I told the committee that Mr. Manuel told me that he contacted a Mr. Brewer at the FBI.

Mr. BARNETT. And Mr. Manuel is saying now he doesn't even know Mr. Brewer. And I notice that the committee staff interviewed Mr. Brewer, and he said he wasn't the source of any information.

Mr. LUCAS. Then those are their statements.

Mr. BARNETT. Mr. Manuel, you said in your opening statement that you thought Mr. Lucas, I think your words were, had sold the committee a bill of goods. Could you elaborate on what you—what you thought may be inaccurate information that's being committed to the committee?

Mr. MANUEL. One example is right here. He attributes a statement to me that was never made. I'm at a disadvantage, too, because I have just gotten this thing and, in reading it over, I see a lot of things that I would take issue with, a lot of things that I would say that Mr. Lucas has sold the committee a bill of goods on and has spun this thing to his advantage.

Why he's doing it, I don't know. I can't answer for his motivation except that I know that everything he does is in his self-interest and ultimately for money. I would not be surprised—as a matter of fact, I've just learned that in this very case he's probably worked for and given documents to the other side in this case. He can speak to that if he wants, but it looks like that in what we're talking about here. So I don't see how you can say in any way, shape or form that Mr. Lucas is a reliable informant to this committee.

Mr. BARNETT. Let me just ask you, and I understand you have just gotten the report, about a few of the allegations that are in the report in the same way I asked Mr. Lucas whether he agreed with them.

The majority report says that you illegally obtained arrest records from the Department of Justice. Do you agree?

Mr. MANUEL. I did not receive any arrest records from the Department of Justice.

Mr. BARNETT. On page 7 of the report it says, quote, Manuel's source accessed the NCIC data base and told Manuel the information on Abe contained in the data base. Is that accurate?

Mr. MANUEL. It is not accurate. It's not true. I never asked anybody to access NCIC records.

Mr. BARNETT. One of the allegations in this report is that the Department of Justice was leaking this information improperly. And I think in the chairman's statement, if I have it here, it says, Justice Department employees were leaking criminal records, not once not twice but three times, in violation of the law.

The Justice Department is a pretty big entity. I think in this committee when we say Justice Department we're often talking about the Attorney General or her advisers or her attorneys, but they also have the INS, the Bureau of Prisons, the FBI. Mr. Lucas, were any of your contacts with Justice Department lawyers in Main Justice?

Mr. LUCAS. Not at all.

Mr. BARNETT. The information that was provided to you, did it come through the FBI or through another part of the Justice Department?

Mr. LUCAS. The information that was provided me—to me by Mr. Gonzalez said—as I have testified to, he said he obtained it from the Bureau. I did not ask for an explanation. I did not ask him to go to the Bureau.

Mr. BARNETT. The Bureau, that refers to the Bureau of Prisons, the Bureau of the FBI?

Mr. LUCAS. I assume he meant the FBI.

Mr. BARNETT. And, Mr. Manuel, you said you received no information here so—

Mr. MANUEL. I didn't say that. I said I never asked anybody to access any NCIC information, nor did I ever get any information from the NCIC, which I will stress again should be very easy for this committee to prove because NCIC records leave an audit trail. And if somebody went into NCIC records under the name Mr. Abe, that record should be there. If it is not there, then nobody accessed NCIC records.

Mr. BARNETT. Ms. Poston, let me ask, if I can, a few questions just about the allegations of the majority report insofar as they relate to you, and let me know if I get into an area that you believe is covered by the attorney-client privilege.

But the majority report on its heading on page 5 says, Poston Requests Her Private Investigators to Break the Law. Did you ask anyone to break the law? It's heading B, Poston Requests Her Private Investigators to Break the Law.

Ms. POSTON. I was just looking for it in the document. I absolutely never asked these investigators to break the law. I hired this investigative firm because I knew of Phil Manuel's reputation, and I think Phil Manuel has known me long enough to know not only would I never ask it, I would not acquiesce in it either.

Mr. BURTON. Would the gentleman yield just a moment?

Mr. BARNETT. Certainly, Mr. Chairman.

Mr. BURTON. It seems unusual to me, Ms. Poston, that when we ask other questions of a similar nature that you say that you can't comment because of the attorney-client privilege, and yet this question just posed by the minority attorney you are answering. You know, I don't understand how you can be selective like that. Either you are asserting the attorney-client privilege or you are not.

Ms. POSTON. With all due respect, Mr. Chairman, I see a distinction between the questions that are asked. Every question that was asked by your chief counsel dealt with a document or piece of correspondence between someone that I hired under the privilege.

Mr. BURTON. Just remember what your answer was, because I'm going to come back to this in just a moment, and I expect you to answer.

Mr. BARNETT. Let me also ask about another heading in this report, on page 3, Rebekah Poston Illegally Obtains information from the Justice Department. I'm not seeking attorney-client information, but I am asking if you're able to—whether you believe you illegally obtained information from the Justice Department.

Ms. POSTON. No, I absolutely do not believe that. My FOIA requests were consistent with the Attorney General's policy that was announced before I was even retained in this case. On October 4, 1993, the Attorney General issued a memorandum to all the Department agencies wherein she stated that, and I quote, the principle of openness in government must apply at each and every disclosure and nondisclosure decision.

And when I was making an application on FOIA, I received various responses back from the Department of Justice. The Bureau of Prisons stated that they had searched certain types of records. They indicated their computer index was searched. They indicated that their data base was searched, and they found nothing.

We received also from the Department of Justice a response from Immigration, which is part of the Department of Justice, as I said; and Immigration said they had searched their microfilm and their reels, and they found a record. They didn't ask me for a privacy waiver. They didn't ask me for a signed statement. They said the record is illegible, and we need to enhance it. They engaged the service of the FBI that helped Immigration enhance that document.

I sent a letter saying I would be coming by—not myself but my investigator, Mr. Kelly—to pick up the record from Immigration. They searched the records, identified where they searched, said they had a record. Then, when they enhanced it through the assistance of the Bureau, they were able to see it was Nobuo Abe, but it was a different date of birth; and so therefore I, of course, could not get the record.

So—and then when I finally, you know, argued my appeal and set forth my law, when I received the decision back from Associate Attorney General Schmidt, in his letter he said that—and I'd like to just quote it because I think it's consistent with the policy and what my arguments were—after considering your Freedom of Information Act request under Attorney General Reno's policy of undertaking discretionary disclosure of information whenever no foreseeable harm would result, the Associate Attorney General, John R. Schmidt, has determined that it is appropriate to disclose the fact that neither the Federal Bureau of Investigation nor the Executive

Office of the U.S. Attorneys maintains or has any evidence of ever maintaining this factual conclusion—excuse me, any record within the scope of your request.

And so I guess what is hard for me to understand from the chairman's position—and I haven't read your summary paper here, but I know what you think I have done—and I just don't know how it could be considered improper to acquire government property which the government says I'm entitled to and then, when they grant my request, they say there is no property to get.

Mr. BARNETT. Ms. Poston, I see my time is going to expire pretty soon. I think probably on the second panel will be an opportunity to get more into this about the Freedom of Information Act issues.

Let me just summarize, if I could, the issues.

Mr. Lucas, if you'd pay attention, because if I say something wrong you should correct me. But my understanding is you never directly contacted the NCIC. You asked Mr. Gonzalez to find information, but you never directly asked him to contact NCIC. You never saw any records personally from NCIC and have no personal knowledge of any records from NCIC. Ms. Poston never directly asked you to get these confidential records from NCIC. Ms. Poston never saw a record, a physical record that came from NCIC. And your only contract to obtain information was from Mr. Gonzalez, who may have made other contacts in trying to respond to your request.

Is all that accurate?

Mr. LUCAS. There was a lot to summarize there. As to—I'd say most of it was accurate, yes.

Mr. BARNETT. If that's accurate, it seems to contradict many of the major conclusions in the report that was released by the majority staff today.

Mr. BURTON. Gentleman's time has expired.

We'll start my 30 minutes now, and I'll yield some to my colleagues if they so wish.

Did you receive, Mr. Lucas, a fax from Ms. Poston which said, please give answers to as many of these as you can and be specific. This is a matter of serious importance. I hope because this is a Federal holiday that we can access the necessary research.

This memo was dated November 11, 1994.

Do you recall receiving that?

Mr. LUCAS. Yes, I do.

Mr. BURTON. Along with that did you receive a letter addressed to Ms. Poston that was from a George Odano?

Mr. LUCAS. Yes, I did.

Mr. BURTON. Ms. Poston, did you read this letter from Mr. Odano? It is dated November 10, 1994.

Ms. POSTON. May I have a moment, please?

Mr. BURTON. Sure.

Ms. POSTON. I have no independent recollection of having read it. I imagine that I probably did, but I don't recall reading it.

Mr. BURTON. You sent this memo, and it says, "Please get answers to as many of these as you can and be specific." You wanted specificity. "This is a matter of serious importance." And then you allude to a Federal holiday, and that would indicate that certain

records could not be accessed because you couldn't get them from Federal agencies.

Let me read from this letter that was sent to you from Mr. Odano.

"Is the name on the NCIC file Nobuo Abe?"

"According to a witness, the incident took place at or around March 19, 1963. How much information about the date of the incident does the data carry"—again referring to the NCIC file. "Does it say that it took place on March 1963, or does it state the exact date?"

"Is the date of birth on the NCIC file December 19?"

"What does SOL PROS mean?"

"Did your source have access to the NCIC file that the FBI kept, or was it some other data base?"

And it goes on and on all talking about the NCIC file.

You sent this letter to Mr. Lucas with a memo, and you faxed it to him, which was pretty urgent: Please get answers to as many of these as you can. It is a Federal holiday. I hope that we can access—even though it is a Federal holiday, we can access the necessary research. There was a signal of urgency. You knew that there it was a Federal holiday, and the memo which you say that you don't remember reading is all about getting information from the NCIC. Don't you find that a little strange? This was your client. You got the letter and sent it to them. You don't remember it; is that correct?

Ms. POSTON. I am telling you that I do not independently recall reading this. This is my handwriting. I told you that. It is obvious that I sent it. Whether I sent it on for answer and whether I read, I can't recollect. I said I probably did.

Mr. BURTON. Do you remember the memo you sent?

Ms. POSTON. I don't remember any of this, but it is obviously my handwriting, and I obviously sent it.

Mr. BURTON. I can't tell you how much selective memory loss I have had to endure over the past 3 years, but it is a bunch. Here is something from the same memo I just read to you excerpts from. Here is something that really troubles me. I will read you two sentences that you received and passed along to your private investigator.

As I have already informed you, the information that the source of our Federal Bureau of Prisons gave us is much more detailed than you gave us today. Do you have any idea for the difference?

Who had the source at the Bureau of Prisons?

Ms. POSTON. I don't know that.

Mr. BURTON. Do you know the name of the Bureau of Prisons source?

Ms. POSTON. I don't know if there is a Bureau of Prisons source or the name.

Mr. BURTON. You never talked to any person at the Bureau of Prisons?

Ms. POSTON. Never.

Mr. BURTON. Do you know where the source of the Bureau of Prisons got the information about Mr. Abe?

Ms. POSTON. I don't know anything about a source from the Bureau of Prisons, Mr. Chairman.

Mr. BURTON. Item 6 in this letter that was sent to you which you sent on with the urgent memo which I perceive is an urgent memo to Mr. Lucas, item No. 6: "As I have already informed you, the information—he is saying this to you in the letter. As I have already informed, you, Ms. Poston, the information that the Bureau of Prisons gave us is much more detailed than the one you gave us today. Do you have any reason for this difference? Is it possible that the NCIC file that the Federal Bureau of Prisons keeps is different from the one that the FBI keeps"—indicating that there was FBI access as well. "Please note according to our source, the data base that he accessed was called NCIC-NATF. We believe that the NATF is the data base of the Department of Treasury, Bureau of Alcohol, Tobacco and Firearms."

You don't recall that either?

Ms. POSTON. The date of the letter is November 1994. You are asking me what is said here. Other than looking at it today, I have no independent recollection of that, sir.

Mr. BURTON. Was this a pretty lengthy case? How long did you have this case? How long was this going on?

Ms. POSTON. The case was in existence 2 years before I was retained. I was retained in 1993—1994, excuse me. 1994.

Mr. BURTON. How long did you have the case?

Ms. POSTON. Probably a couple of years.

Mr. BURTON. So it was a pretty important case?

Ms. POSTON. I think every one of my clients is important.

Mr. BURTON. But it was not something that was a snap case.

Ms. POSTON. If you are trying to ask me, Mr. Chairman, whether I remember this letter, this is my handwriting on the cover page. This is dated November 1994. I obviously forwarded it because it is my handwriting.

Mr. BURTON. Well, I think the letter and the memo pretty much speak for themselves. You are asking that this information that was in the letter be looked into very, very quickly by Mr. Lucas, and you—there definitely is a sense of urgency in the letter. The letter that was sent to you alludes over and over and over again to the NCIC file, and it also alludes to information that you gave them regarding the sources that you had. It mystifies me that you don't remember any of that.

Here is a memo, Mr. Lucas, dated December 28, 1994, from—it is exhibit No. 19 if you want to look it up. It is from you to Mr. Manuel. Excuse me, it is from Lucas to Manuel. It is regarding the Poston inquiry. It says, "New Assignment." And in paragraph 3 it says—let's go back to paragraph 2. Let's just start at the top.

"On Tuesday I had a conversation with Rebekah Poston and she provided the following information and request that we undertake a new assignment on the case."

"She stated—this is Ms. Poston, Mr. Lucas—she stated a handwritten record was kept by their source—their source—at the Federal Bureau of Prisons as to the incident involving Abe. The notes were as follows:"

"March 1963, NCIC-NATF, complaint by four females of possible pandering and solicitation by a bald Oriental male, no English, at 12:40 a.m., taken in for questioning at 1:30 a.m., no English. Detained and released at 3:30 a.m., forwarded by teletype."

"The source noted numerous notations on the NCIC inquiry, including but not limited to NCIC-NATF, NLETS-CJIS, WITSC, SENTRY."

"Poston requested that we undertake the following assignments:"

"Confirm the notations from the source are legitimate and determine their meaning."

"Do these notations reflect data bases that are accessible through the Bureau of Prisons?"

"Can a local law enforcement agency such as the Seattle Police Department access the same information through the Bureau of Prisons?"

"If the previous information on NCIC was deleted and transferred to the FBI foreign counterintelligence file, is this information retrievable by Abe through FOIA and Privacy Act requests?"

"Is it possible to determine if the information is recorded in the FBI foreign counterintelligence file?"

Six, "a response was received on a FOIA request. A section of the response was stated on January 17, 1983, the combined NCIC-CCH file was abolished. What is the NCIC-CCH file, and does it have any bearing on our inquiry?"

Do you recall that memo, Mr. Lucas?

[Exhibit 19 follows:]



THE PHILIP MANUEL RESOURCE GROUP LTD.
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SUITE 350
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LAS VEGAS, NEVADA 89103
TEL: (702) 361-8949
FAX: (702) 876-2003

Date: December 28, 1994
To: Phil Manuel
From: Rich Lucas
Subject: Poston Inquiry
Re: New Assignment

On Tuesday I had a conversation with Rebekah Poston and she provided the following information and request that we undertake a new assignment on the case:

She stated a hand written record was kept by their source at the Federal Bureau of Prisons as to the incident involving ABE. The notes were as follows:

3/63, NCIC-NATF, Complaint by four females of possible pandering and solicitation by a bald Oriental, male, no English at 12:40AM, taken in for questioning, at 1:30AM, no English. detained and released at 3:30AM, forwarded by teletype.

The source noted numerous notations on the NCIC inquiry, including but not limited to, NCIC-NATF, NLETS-CJIS, WITSC, SENTRY.

POSTON requested we undertake the following assignments:

1. Confirm the notations from the source are legitimate and determine their meaning.



2. Do these notations reflect data bases that are accessible through the Bureau of Prisons?
3. Can a local law enforcement agency, such as the Seattle Police Department, access the same information through the Bureau of Prisons?
4. If the previous information on N.C.I.C. was deleted and transferred to the FBI foreign counter intelligence file is this information retrievable by ABE through FOIA and Privacy Act requests?
5. Is it possible to determine if the information is recorded in the FBI foreign counter intelligence file?
6. A response was received on an FOIA request. A section of the response stated that "on January 17, 1983 the combined NCIC-CCH file was abolished". What is the NCIC-CCH file and does it have any bearing on our inquiry?

Mr. LUCAS. I could recall preparing the memo, yes.

Mr. BURTON. And you sent it to Mr. Manuel?

Mr. LUCAS. Yes.

Mr. BURTON. Did you receive that, Mr. Manuel?

Mr. MANUEL. I don't recall seeing this before. I may have, but I don't recall it.

Mr. BURTON. You don't recall it.

Mr. MANUEL. Not right now. This is the first time that I have seen it. We are talking about something 6 years ago, and I have not had anything to refresh my recollection.

Mr. BURTON. But the memo states clearly that Ms. Poston provided the following information, that she had a handwritten record that was kept by their source at the Federal Bureau of Prisons as to the incident involving Abe.

Mr. MANUEL. The memo to me says that this is what Mr. Lucas is saying that this is what Ms. Poston said. I have to tell you I am very skeptical about anything that Mr. Lucas says. I think I have made that clear during this hearing.

Mr. BURTON. Why would he make that up?

Mr. MANUEL. That is a good question. Over here in mid-December—in your exhibit 51, page 2, in mid December 1994, counsel for some gentleman was approached by an anonymous informant Mr. Lucas. Mr. Lucas was able to relate to us that over a period of time—what I am saying, Mr. Chairman, at the same time he is writing these memos, he is contacting the other side to go to work for them. Now, I find it very difficult to believe anybody who is engaged in that type of activity.

[Exhibit 51 follows:]



July 30, 1997

PRIVILEGED ATTORNEY/CLIENT
WORK PRODUCT PREPARED AT
THE DIRECTION AND UNDER
THE SUPERVISION OF COUNSEL

Special Agent Athena Varounis
Headquarters Supervisor
Office of Professional Responsibility
Federal Bureau of Investigation
935 Pennsylvania Ave., NW
Washington, D.C. 20535

Re: Nichiren Shoshu/Soka Gakkai

Dear Agent Varounis:

Pursuant to our conversation, I am providing this overview with the hope that it will serve as some assistance to you and your review of the previously submitted information. This submission is made for the purpose of assisting the government in any investigation that might arise from the facts described below, and is submitted with the understanding that confidentiality will be protected to the fullest extent possible under the applicable federal laws and regulations, including without limitation, 28 CFR 0.39b.

I think it appropriate to try to start at the beginning of this saga. The Nichiren Shoshu was involved in litigation brought against its High Priest, the Reverend Nikken Abe, and related organizations by a Soka Gakkai member, Ms. Hiroe Clow, in the Los Angeles County Superior Court. The litigation had been filed in September 1992. You have previously been provided with a copy of that complaint. By way of explanation, the Nichiren Shoshu is a 700 year old Japanese Buddhist religious group and is the largest Buddhist sect in Japan. In addition, the Nichiren Shoshu maintains temples in a number of countries throughout the world, including six in the United States, operating as Nichiren Shoshu Temple, a California religious corporation ("NST"). It is headquartered in Japan. In a previous submission, we have provided you with a description of the Nichiren Shoshu denomination

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Special Agent Athena Varounis
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Beginning in about 1933, the Soka Gakkai, a lay organization, has been associated with the Nichiren Shoshu. Over the last 65 years, the Soka Gakkai has spread into a worldwide organization which has become very rich and powerful in various countries. It claims over 10 million members and has extensive property holdings throughout the world. In addition, the Soka Gakkai owns, operates and controls tens of publishing entities which publish in many languages and has distribution in the millions. The Soka Gakkai also has been very much involved in politics in Japan. Until very recently, the political party in which they were involved was referred to as the Komeito Party. Various press reports estimate that they are the third or fourth most powerful political party in Japan.

In recent years, beginning in the late 1980's friction developed between the Nichiren Shoshu Priests and the Soka Gakkai lay leaders. The background of the dispute is well developed in the attached *Chicago Tribune* and *New York Times* articles. As a result of the dynamics of this dispute, the High Priest, Reverend Nikken Abe, excommunicated the Soka Gakkai in November 1991. The excommunication resulted in a series of multiple lawsuits brought by Soka Gakkai members against the Nichiren Shoshu for various alleged wrongs. Every such lawsuit that has proceeded to judgment has ended in favor of the Nichiren Shoshu. In addition, the Soka Gakkai owned press/media has barraged its readers, viewer and listeners with a highly critical campaign against the Priests of the Nichiren Shoshu, especially the High Priest, Nikken Abe. A number of the allegations in the media included assertions of high living and immoral behavior by the Priests.

The most noteworthy and the subject of this and our other submissions was the allegation that in March 1963, before becoming the High Priest, Reverend Abe, while on a religious mission to the United States, engaged in immoral conduct with prostitutes in a rough and tumble area of Seattle, Washington; and that, indeed, the police had apprehended him. At first the Soka Gakkai media did not identify any witnesses to this alleged incident, but eventually a Soka Gakkai "eyewitness" to the event came forward. That person was later identified as Ms. Hiroe Clow, a Soka Gakkai member who had allegedly escorted Reverend Abe during his Seattle visit in 1963. You have been provided with a copy of the Soka Gakkai, U.S. publication, *The SGI-US Newsletter*, dated January 9, 1995. I have attached a copy for your convenience and I would direct your attention to page four of that document, which I have highlighted. This was the first time, in print, we were made aware that the Soka Gakkai through counsel had indeed tasked the Phillip Manuel Resource Group to conduct, what we believe was, an illegal and inappropriate penetration of FBI databases. As we have previously indicated, we believe information was actually entered into FBI databases as a result of a number of inquiries instigated by the Soka Gakkai prior to Phillip Manuel's inquiries reflected in his November 17, 1994, report and that when Manuel made his inquiry through Special Agent Brewer, he was able to report that, indeed, there was a record in FBI files. All the while, prior to these so-called revelations, up until the present day, the Reverend Abe has consistently denied that these events ever took place.

In mid December 1994, counsel for the Nichiren Shoshu was approached by an anonymous informant (Richard Lucas). Mr. Lucas was able to relate to us, over a period of time, that he was personally involved in making the initial inquiries through FBI sources in Chicago, while employed at

Special Agent Athena Varounis
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 Page 3

the Phillip Manuel Resource Group offices in Miami. This was done at the direction of Ms. Poston. He further indicated that Ms. Poston had related to him that the "West Coast lawyers" referring to Barry Langberg and his associates, through their investigator, a Mr. Jack Palladino, of Palladino & Sutherland, had developed a source who was at the time an employee of the U.S. Department of Justice, Bureau of Prisons, in Seattle, Washington. That person was about to retire and was a Soka Gakkai member. The Bureau of Prisons employee had given detailed information to Mr. Palladino. That information is evidenced by our Exhibit 1 in the submission of May 28 1997, which is a letter from George O'Dano to Ms. Poston. We were never able to identify the Bureau of Prisons employee but found the information provided to be highly suspect because of its form and content, which I think the FBI has also found highly suspect. This could very well be data made up out of whole cloth by an overzealous co-religionist in an attempt to substantiate Ms. Clow's allegations. Langberg and Palladino have never surfaced this so-called Bureau of Prisons source. Apparently, Poston was very suspect of the Bureau of Prisons information which caused her to seek independent verification via the Phillip Manuel Resource Group which, indeed, she did.

In addition to these activities, Ms. Poston initiated broad ranging meetings and inquiries within the Department of Justice at Attorney General Reno's offices and at the FBI Headquarters, Washington, D.C. Indeed, in January 1995, Ms. Poston met with representatives of the FBI in an attempt to accelerate a Freedom of Information Act request that she had caused to be made with the Bureau. It is our understanding that the FBI indicated to Ms. Poston that her request could not be accelerated and that disclosure of their findings to her and Ms. Clow might not be appropriate under the Act. Apparently, Ms. Poston redoubled her efforts and made a series of applications and requests through the Department of Justice and a former colleague of hers at Steel, Hector & Davis, who was then employed at the Department of Justice. After a denial of her Freedom of Information Act requests was handed down, she made an appeal in February 1995 and eventually was granted her request after a meeting with John R. Schmidt, Esq., the then Associate Attorney General. It is our opinion that Ms. Poston willingly or unwittingly was attempting to retrieve data that had been entered into an FBI database as a result of inquiries instigated by her client which appeared to be "real FBI records", which, of course, would then corroborate, to some extent, Ms. Clow's allegations. After Associate Attorney General Schmidt granted Ms. Poston's appeal, she then received Richard L. Huff's letter dated July 11, 1995, indicating that, indeed, there was no record with the FBI or the Department of Justice (attached for your convenience).

Curiously, when one reviews Ms. Poston's Freedom of Information Act appeal of February 3, 1995, at her attached Exhibit list, page four, she very gratuitously requests that if the FBI had determined that, indeed, there was no record or any record of deletion of a record, she disingenuously requests that the FBI communicate that result orally and not in writing.

Upon publication of Mr. Huff's, July 11, 1995, letter, which we obtained through our own Freedom of Information Act request, the "other side" was silenced.

Special Agent Athena Varounis
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Our client, however, still feels that these inappropriate inquiries and reports by Phillip Manuel and his firm have caused extraordinary litigation expenses and public humiliation, which was quite unnecessary and a violation of United States law. As you know, most recently Mr. Lucas has provided us and, in turn, you, the FBI, with internal documentation corroborating his statements concerning actions taken at Poston's direction. Most recently, a Mr. Emil P. Moschella was employed by the Soka Gakkai to further make inquiry with FBI personnel concerning this incident. We were informed about this by Mr. Lucas and we fully believe with a high degree of certainty that Mr. Moschella has more than likely contacted FBI employees so that he might elicit some sort of a statement that would be admissible in the Tokyo court that would corroborate to some extent Ms. Poston's letter published January 9, 1995.

You should be aware that one could practically file the kitchen sink as an exhibit in a Japanese court without any objection. Hearsay, double hearsay and triple hearsay is admissible via affidavit and our client is now again faced with another scenario where still another document will be published indicating that there were "FBI records".

As we have indicated previously, there were inappropriate contacts made with Bureau personnel. Apparently, inappropriate disclosures were made by Bureau personnel to unauthorized individuals. This was orchestrated by counsel which is evidenced by the documentation provided on May 28, 1997, the January 9, 1995, publication and Lucas's statements. At all times, we have attempted to be straight forward and above board in indicating what our position was and relating the extraordinary damage our clients have suffered as a result of these illegal activities.

In my former life, as an Assistant United States Attorney in various districts and as the Chief of the Criminal Division in two separate districts, this would not be a hard case to put together for violations of Title 18 U.S.C. §§371, 641, 134.

Mr. Lucas has indicated he will make himself available to you at Headquarters should you require his presence for interview at your convenience. If you have any questions, please do not hesitate to contact me.

Very truly yours,

John C. Gibbons

JCG:mjg
 Enclosures

Mr. BURTON. I don't think that is the same time, according to our counsel, but——

Mr. MANUEL. It is what it says in your document, and I am reading it for the first time.

Mr. BURTON. Ms. Poston, you just told us that you didn't know anything about a source at the Bureau of Prisons, and that is not what this document says, Ms. Poston?

Ms. POSTON. Yes.

Mr. BURTON. Did you know somebody at the Bureau of Prisons?

Ms. POSTON. I don't know anyone at the Bureau of Prisons, sir.

Mr. BURTON. Do you know anything about a source at the Bureau of Prisons? Let me read you this, and you just tell me if it is accurate. It says, on Tuesday——

Mr. PALMER. Excuse me, Mr. Chairman, what exhibit number are you reading from?

Mr. BURTON. Exhibit 19.

Mr. Lucas says to Mr. Manuel in this memo: "on Tuesday I had a conversation with Rebekah Poston, and she provided the following information and request that we undertake a new assignment in the case:

"She stated a handwritten record was kept by their source at the Federal Bureau of Prisons as to the incident involving Abe. The notes were as follows," and it goes on.

Ms. POSTON. With respect to that question, Mr. Chairman, that would involve an attorney/client communication, and I believe the document will speak for itself.

Mr. BURTON. You know, a while ago when I interrupted the counsel for the minority, it was on this subject, and I said I would come back to this in a moment, and you were very open and anxious to answer the question that he gave to you. How is it that you could answer that question, and you can't answer this one?

Ms. POSTON. Because I believed when I responded to him that there was a difference in the question that was being asked me. You are asking about a communication I had with a client——

Mr. BURTON. Can you pull the microphone closer?

Ms. POSTON. I believe there was a difference in the types of questions that were put to me. What you are asking me would require me to tell you something that a client told me. The client told me that I am to assert that privilege here. I can't do that under the privilege.

Mr. BURTON. This memo is not about a client. This is a source at the Bureau of Prisons. It says that you got the following information, and you stated that a handwritten record was kept by their source at the Federal Bureau of Prisons as to the incident involving Abe, and it goes into detail about the notes, and you can't comment on that.

Ms. POSTON. This memo was created as a result of communications with the client and then was passed on to investigators who were engaged by a client.

Mr. BURTON. You said earlier that you didn't know about a source at the Bureau of Prisons. Now you say that you can't answer about the source because of a privilege.

Ms. POSTON. No. My recollection—and my counsel refreshes my recollection also that your question was did I know the name of the source at the Bureau of Prisons, and I do not.

Mr. BURTON. You said, I don't know anything about a source at the Bureau of Prisons. You said, I don't know anything about a source at the Bureau of Prisons.

Ms. POSTON. And your question?

Mr. BURTON. And now you say—that statement evidently waived the privilege that you are taking right now. You were going into some detail about any source at the Bureau of Prisons, and now you are saying that you can't answer because of that privilege. And you said that you didn't know about a source at the Bureau of Prisons, and you are still taking that position?

Ms. POSTON. I am still taking that position.

Mr. BURTON. Mr. Horn, do you have any questions?

Mr. HORN. I thank the chairman.

Mr. Lucas, let me start with some basics here. Do you know if the Justice Department was provided with information indicating that Rebekah Poston and Phil Manuel and you were involved in illegally obtaining NCIC records on Nobuo Abe?

Mr. LUCAS. Do I know if the Justice Department knows this?

Mr. HORN. Do you know if the Justice Department was provided with the information indicating that Ms. Poston, Mr. Manuel and you were involved in illegally obtaining NCIC records?

Mr. LUCAS. The documents that we are reviewing now were turned over pursuant to a grand jury subpoena to a Federal agent in February 1998.

Mr. HORN. Did you ever offer to cooperate with the Justice Department?

Mr. LUCAS. Yes, they asked me to.

Mr. HORN. Did you ever provide information on this matter to agents from the Treasury Department inspector general?

Mr. LUCAS. Yes. I was interviewed by him on a number of occasions.

Mr. HORN. Was that at his initiation or at yours?

Mr. LUCAS. He contacted me.

Mr. HORN. And that was based on what? Why would he contact you?

Mr. LUCAS. He contacted me because I was at one time a registered informant for the U.S. Customs Service, and Mr. Manuel and his lawyers—I was a registered informant concerning drug money laundering, and Mr. Manuel and his attorneys made that information public, to my great detriment. Once they made that information public, I filed a complaint with the U.S. Customs Service, which stated—I didn't file the complaint. I went to the control agent, and she filed the complaint. They then had the inspector general come out and interview me.

Mr. HORN. After you provided the records to the Treasury inspector general, did they ever followup with you about the matter?

Mr. LUCAS. What I refer to as the Japanese situation?

Mr. HORN. That's right.

Mr. LUCAS. They asked questions about it, but followup is hard for me to define. They asked questions about it, yes. I don't know what the result of it is, what I should say.

Mr. HORN. So you were never told? Despite your helpfulness, the IG did not tell you to what extent your information helped?

Mr. LUCAS. No. In fact, in February 1998 I was told by the agent for the inspector general's office of the Treasury Department that he was no longer permitted to talk to me.

Mr. HORN. In other words, they just cut you off in terms of the contacts; is that right?

Mr. LUCAS. That's right.

Mr. HORN. We have various records, exhibits 48 and 50, and you might wish to take a look at exhibits 48 and 50. 48 is dated February 13, 1997, and that is a letter from John C. Gibbons of the Oso Group, Limited, to Mr. Michael A DeFeo. This indicates that on four separate occasions a lawyer named John Gibbons tried to provide this information to the Justice Department and FBI; is that correct?

[Exhibits 48 and 50 follow:]

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COPY

February 13, 1997

PRIVILEGED ATTORNEY/CLIENT
WORK PRODUCT PREPARED AT
THE DIRECTION AND UNDER THE
SUPERVISION OF COUNSEL

VIA FACSIMILE

Mr. Michael A. DeFeo
Unit Chief
Office of Professional Responsibility
Federal Bureau of Investigation
Washington, D.C.

Re: Nichiren Shoshu/Soka Gakkai

Dear Mr. DeFeo:

It was a pleasure speaking with you several weeks ago. I wanted to let you know that I will be in Washington, D.C., during the week of February 24. I know that the issues aired in my December 13, 1996, letter to Mr. Mislock are complicated and at times can be somewhat convoluted. If you would like, I will make myself available to you so that we might discuss with you our concerns regarding the allegations contained in our papers.

I expect to be traveling quite extensively over the next 10 days or so and you can have your secretary inform my secretary here in San Francisco what day and time would be convenient to you.

I look forward to getting together with you in Washington in the near future.

Very truly yours,

John C. Gibbons

JCG:mg

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May 28, 1997

PRIVILEGED ATTORNEY/CLIENT
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VIA FEDERAL EXPRESS

David V. Ries, Esq.
Deputy Chief, Office of
Professional Responsibility
Federal Bureau of Investigation
Washington, D. C. 20535

Re: Nichiren Shoshu/Soka Gakkai

Dear Mr. Ries:

This is in response to your letter of February 19, 1997, sent to our offices via facsimile, with regard to the above-referenced matter. This submission is made for the purpose of assisting the government in any investigation that might arise from the facts described below, and is submitted with the understanding that confidentiality will be protected to the fullest extent possible under the applicable federal laws and regulations, including without limitation, 28 CFR 0.39b.

I apologize for the delay in our response, however, your request necessitated communication and meetings with counsel and the client in this matter in Japan. Further, we were awaiting translation of various articles and legal documents which we wanted to include with this submission to you.

Subsequent to our discussions with counsel and client, we were authorized to proceed and, indeed, have fully debriefed our confidential source. He has authorized us to identify himself to you and has provided documentation from his files, which we are enclosing. The documents standing alone clearly expose the active participation of the Phillip Manuel Resource Group, Ltd. (PMRG), PMRG's employees, the law firm which retained and directed the PMRG firm, various lawyers for the SGI and members of the SGI in scheme and activities we have previously alleged.

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David V. Ries, Esq.
 May 27, 1997
 Page 2

Because of the nature of our relationship with the confidential source, he did not personally prepare a detailed written document in his own hand, however, he did provide me and Alan Garretson with details and documentation; and as we have previously mentioned, he will make himself available for interview at any time at any location at your request. The statements he has made to us are clearly against his penal interest which he personally acknowledges.

Based on our collective professional experience and opinion, we did not push the informant for a detailed written document because we thought it more appropriate in light of his volunteering the attached exhibits that you or other Special Agents would prefer to review and proceed with the initial debriefing of Mr. Lucas.

Our confidential source is Mr. Richard M. Lucas. His address is 6031, N.W. 68th Manor, Pompano Beach, Florida 33067; Pager: (954) 676-1416; Telephone: (954) 340-8578. We believe that his telephone number is a nonpublished residential listing.

Mr. Lucas was debriefed for a substantial period of time by me and Mr. Garretson at our offices in San Francisco. As you may recall from our previous submission, Mr. Lucas has acknowledged that he is well aware that the statements he has made were against his penal interest, indeed he reiterated that to Mr. Garretson and myself at our recent meetings, and that he chose to cooperate with the FBI and would be available for interview at the Bureau's convenience should the Bureau decide to pursue this matter. Mr. Lucas indicated that it was his opinion that these actions directed by counsel and SGI to the PMRG were more than likely criminal in nature and were not privileged because of ongoing violations of federal laws and statutes. Mr. Lucas brought with him to our offices in San Francisco, his personal files from PMRG. Several items are included as exhibits. In discussing these exhibits, Mr. Lucas indicated that they were obtained during the course of his employment/engagement at PMRG on behalf of Rebekah Poston, a partner in the firm of Steel Hector & Davis, Miami, Florida. These exhibits clearly suggest that at the very least, FBI Headquarters personnel may have abused their responsibilities and official office on behalf of PMRG, the counsel who engaged them and various parts of the Soka Gakkai. These acts were instigated and, indeed, committed with the ultimate goal in mind to advance a litigant's strategic position in ongoing litigation in Japan. Taken in its very worst light, there may very well be violations of Title 18, United States Code § 371, violation of 18 United States Code § 641 and violations of Title 18, United States Code § 207, et seq. Mr. Lucas indicated to us that in 1991 he was employed by PMRG to work on inquiries concerning part of the BCCI matter that was an investigation being pursued by PMRG on behalf of a law firm. Mr. Lucas informed us that he is a former Special Agent of the Internal Revenue Service and a licensed CPA. He indicated that in November 1994, Ms. Poston of Steel Hector & Davis retained PMRG to verify if an FBI record existed in FBI files with regard to a Nobou Abe. Ms. Poston apparently had been informed by her client, Soka Gakkai International (SGI), that they had identified information from the United States

David V. Ries, Esq.
May 27, 1997
Page 3

Department of Justice, Bureau of Prisons files that indicated that Mr. Abe had been detained in Seattle on suspicion of solicitation of prostitution in March 1963. Ms. Poston in turn retained PMRG to verify this data. Mr. Lucas indicated to us that in early November 1994, he personally, through a source in Chicago, Illinois, found that there was such a record of the detention of Abe. (His later conclusion is that this data was illegally placed in FBI files.) This information was transmitted to Ms. Poston and she in turn transmitted it to her client, Mr. George Odano of the SGI in Santa Monica, CA. Mr. Odano responded on November 10, 1994, indicating the SGI's great interest in this partial verification. Mr. Lucas further indicated that Mr. Odano requested an explanation from Ms. Poston as to why Mr. Lucas' source did not provide the level of detail of information that Mr. Odano had previously obtained from the United States Department of Justice, Bureau of Prisons source (Exhibit 1).

As a result of the November 1994 communication, Ms. Poston retasked and further requested PMRG to redouble their efforts to verify the FBI record. This was done and was reflected in a report dated November 17, 1994. Mr. Lucas indicated to us that the data contained in the 11/17/94 report was generated by inquiries made into the FBI headquarters by Phillip Manuel personally to a Special Agent Benny Brewer. Mr. Lucas indicated that this can not only be verified by him but also by the staff Secretary/Researcher, Lisa E. Legare, in the PMRG Washington, D.C. office (Exhibit 2). Mr. Lucas further indicated to us that as a result of the information obtained by the Soka Gakkai (Bureau of Prisons data) and the PMRG, independently of each other, a meeting was held at the offices of Steel Hector and Davis on November 30, 1994. In attendance were six individuals (Exhibit 3).

After the meeting of November 30, 1994, Mr. Lucas indicated that Ms. Poston requested an explanation of the FBI CJIS Service Division (Exhibit 4). Mr. Lucas related that this information was provided by Ms. Legare with personal input from Phillip Manuel. Mr. Lucas further indicated that in early December 1994, Ms. Poston began to exchange drafts of a letter for the SGI which did confirm the so called discovery of an official United States Government record (Exhibit 5). The substance of this December 9, 1994, letter was eventually published in the SGI publications beginning in January 1995 (in previous submissions was Exhibit 7, 11/28/94). Mr. Lucas provided us with a document authored by Mr. Manuel that related to Mr. Manuel's personal findings as a result of his direct contact with Special Agent Brewer (Exhibit 6).

Mr. Lucas further provided us with a memorandum dated December 28, 1994, which refers to content of the written record allegedly made by the Bureau of Prisons employee. Mr. Manuel was directed to make further inquiry concerning this information (Exhibit 7).

Mr. Lucas indicated that in direct conversations with Ms. Poston, she commented about her concern that the activities of the unknown Bureau of Prisons employee and the actions taken

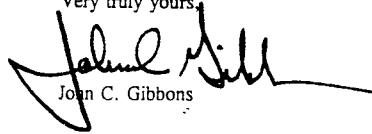
David V. Ries, Esq.
May 27, 1997
Page 4

by PMRG on her behalf could be illegal and as a prophylactic measure she had the Wilmer Cutler law firm prepare a legal memorandum with respect to the Privacy Act (Exhibit 8).

We have not enclosed copies of any of our previously submitted documentation but we believe when taken as a whole with the newly provided exhibits taken from Mr. Lucas' file an investigation should commence. At the very least, Mr. Lucas should be interviewed to get to the bottom of what happened here. Clearly, his admissions of wrongful acts and participating in those wrongful acts with others which allegedly involve personnel within the Department of Justice should be looked into. As we have indicated previously, it is our belief that somehow data was illicitly placed within U.S. Government databases and then an attempt was made to extract those entries via Freedom of Information Act requests, thereby legitimizing the illegitimate entries.

To give and your colleagues an idea of the impact upon the Nicherin Shoshu in Tokyo, we are including actual copies with translations of some of the original articles published by the Soka Gakkai (Exhibits 9 and 10). In addition, we are enclosing for your own edification, copies of selected media clippings that clearly illustrate the size and extraordinary financial resources behind the Soka Gakkai, their political influence and strength both here and in Japan. Should you have any questions for myself or Al Garretson, please don't hesitate to contact us at your convenience (Exhibit 11).

Very truly yours,


John C. Gibbons

JCG:mg
Enclosures

CONFIDENTIAL

PRIVILEGED ATTORNEY/CLIENT
WORK PRODUCT PREPARED AT
THE DIRECTION AND UNDER THE
SUPERVISION OF COUNSEL

SOKA GAKKAI SUBMISSION

TO: David V. Ries, Esq.
Federal Bureau of Investigation

FROM: John C. Gibbons
The OSO Group, Ltd.

DATE: May 28, 1997

CONFIDENTIAL

Mr. LUCAS. I'm sorry, I just asked my counsel a quick question. Can you repeat the question?

Mr. HORN. Sure. The first exhibit is No. 48, and it is the Oso Group, Limited, a firm in San Francisco, CA. It is noted, privileged attorney/client work product prepared under the supervision and direction of counsel. This is a letter from John C. Gibbons to a Michael DeFeo, Unit Chief, Office of Professional Responsibility, Federal Bureau of Investigation, and this is re the two Buddhist group. And here is the message.

It was a pleasure speaking with you several weeks ago. I wanted to let you know that I will be in Washington, DC, during the week of February 24. I know that the issues aired in my December 13, 1996, letter to Mr. Mislock are complicated and at times can be sometimes convoluted. If you would like, I will make myself available to you so that we might discuss with you our concerns regarding the allegations contained in our papers. I expect to be traveling quite extensively.

That is signed—it isn't signed, but it is typed, John C. Gibbons.

What you have here, looking at the other few—that is No. 50, I believe, and, again, 50 is Oso Group stationery, May 28, 1997, and then this is a very extensive letter here, and I wondered since your name appears quite a bit in it, in this letter of John C. Gibbons to David Ries, Esquire, Deputy Chief, Office of Professional Responsibility, Federal Bureau of Investigation, the question would essentially be do you recognize that as a factual statement in that—those letters that you have looked at or that we have discussed for just two of them?

Mr. LUCAS. The first one, Congressman Horn, was very brief. I have never seen that letter before, and I have never seen this letter before. It is four pages long. If you want me to read it, I will.

Mr. HORN. Well, I think—

Mr. LUCAS. Unless you want to direct me to a specific part, and I will respond to it.

Mr. HORN. The question will be to what did the FBI's professional responsibility group ever talk to you?

Mr. LUCAS. I don't know. I don't know titles of FBI agents. If an FBI agent says he is from a field office, if he is from a—you know what I am trying to get at. I don't know—I did talk to FBI agents and—but I really don't know—no disrespect, I don't know the question that you are trying to get at.

Mr. HORN. I am trying to get at the degree to which when you have given them information or others have given them information, did they ever get off the seat and say, we want to look into that?

Mr. LUCAS. I believe in this case they did, but I don't know what the result was.

Mr. HORN. What other government agencies did you talk to on these cases? We have talked about the Treasury. We have talked about the FBI. What else?

Mr. LUCAS. And the Drug Enforcement Administration and the—the Drug Enforcement Administration, the U.S. Customs Service, and FBI and the Office of Inspector General.

Mr. HORN. To what degree did they followup on information that you gave them?

Mr. LUCAS. I don't know, because obviously they don't tell me what they are doing. I turned over records. I don't know, sir.

Mr. HORN. Mr. Chairman, I pass the time back to you. We have some other things to followup.

Mr. BURTON. I apologize. There are a couple of questions that I wanted to direct at this panel before we get onto the next one.

Here is a memo from you, Mr. Manuel, to Rebekah Poston, and it says, this is to report that a highly confidential—this is exhibit No. 18, if you care to look at it. It says:

This is to report that a highly confidential and reliable source has advised as follows regarding the subject of your inquiry:

Whatever files or references either in data base form or hard copy form, which were available previously have apparently been purged. There are currently no derogatory references to the subject of your inquiry in any files maintained by or under the control of the Department of Justice or any of its investigative agencies. Specifically, there is no information in NCIC.

How did you know that?

[Exhibit 18 follows:]



PHILIP MANUEL RESOURCE GROUP LTD.
WASHINGTON, D.C. • MIAMI, FLORIDA • LAS VEGAS, NEVADA

PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT

Date: December 22, 1994
To: Rebekah Poston, Esq.
From: Philip R. Manuel, CFE
The Philip Manuel Resource Group, Ltd.
Washington, D.C.
Subject: NCIC and Related Files
RE: Results of Inquiry

SUITE 1201
1720 K STREET, NORTHWEST
WASHINGTON, D.C. 20006
TEL: (202) 861-0611
FAX: (202) 775-0827

SUITE 801
1200 BRICKELL AVENUE
MIAMI, FLORIDA 33131
TEL: (305) 358-6434
FAX: (305) 358-4415

SUITE 356
4001 SOUTH DECATUR BLVD.
LAS VEGAS, NEVADA 89103
TEL: (702) 362-8849
FAX: (702) 876-3008

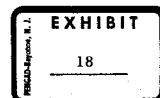
This is to report that a highly confidential and reliable source has advised as follows regarding the subject of your inquiry:

(1) Whatever files or references, either in data base form or hard copy form, which were available previously have apparently been purged. There are currently no derogatory references to the subject of your inquiry in any files maintained by or under the control of the Department of Justice or any of its investigative agencies. Specifically, there is no information in NCIC.

(2) Source opines that whatever information existed previously was not entered into NCIC as a possible criminal record. Given the period of time (1963) prior to the establishment of NCIC, any inquiry from an outside police agency would have been transmitted via the Law Enforcement Teletype System (LETS). Normally, if there was no derogatory information available and no fingerprint card was sent by the inquiring agency, the LETS file would not have been retained.

However, in the case of a foreign national of some notoriety the reference may have been preserved for a period of time. LETS information of this type was kept separate from

PMRG, Ltd.



PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT

NCIC information unless fingerprint match-ups occurred. In any event, source advises that at this juncture there is no way to reconstruct what happened in this case since no references currently exist.

(3) Source further opines that the only written reference to this 1963 incident, including data base information, would be on the police blotter of the Seattle Police Department on the day in question, or if the Seattle Police Department kept a separate log of their LETS request to the FBI.

Comment: Answers to questions about this 1963 incident are unclear and the trail of information is murky. What most likely happened in this case is that the Seattle Police Department made a written request for information through the then prominent communications system called the Law Enforcement Teletype System (LETS). It is not known at this juncture whether fingerprints were sent for comparison or not, and this may be an important point to determine from the Seattle Police Department, if possible.

It is likely, however, that whatever information was kept by the FBI was not put in the NCIC, but rather was kept in some LETS repository or more likely in a foreign counter intelligence file of some type. If that is the case, answers will be hard to come by at this point. The only thing that can be reported with relative certainty at this point is that no reference currently exists either in NCIC or LETS regarding this subject.

THE ABOVE INFORMATION IS HIGHLY SENSITIVE REGARDING BOTH SOURCE AND CONTENT. IT IS BEING SUBMITTED AS A CONFIDENTIAL AND PRIVILEGED COMMUNICATION, NOT TO BE DIVULGED TO ANY OUTSIDE PARTY OR USED IN COURT DOCUMENTS.

Mr. MANUEL. It was a conclusion I arrived at by talking to some people in the FBI who I contacted and asked about the NCIC and whether it would be possible for an arrest which was made in—purportedly made in 1963 to be in NCIC files. I posed my questions to the people I talked to in the FBI in hypothetical terms, and I got answers back that indicated if that was the scenario, no record could exist in the NCIC, and that is what I reported.

Mr. BURTON. If they said there was nothing in there—

Mr. MANUEL. They didn't say there is nothing in there. That is what is contained in here. I am not quoting them directly.

Mr. BURTON. It doesn't say that.

Mr. MANUEL. I know that it doesn't say that.

Mr. BURTON. It doesn't say your conclusion. It says, "Whatever files or references either in data base form or hard copy form, which were available previously have apparently been purged. There are currently no derogatory references to the subject of your inquiry in any files maintained by or under the control of the Department of Justice or any of its investigative agencies. Specifically, there is no information in NCIC."

I mean, this is—

Mr. MANUEL. Mr. Chairman, I know it is difficult for you to understand, but I made that conclusion based on what was told to me based upon how the NCIC operates, not that somebody went into NCIC to get the information. I never asked anybody to do that. And as I pointed out to you and the committee, it is very simple to determine whether anybody ever checked NCIC because there is an audit trail.

Mr. BURTON. Well, let's go back to your memo of September 8, 1995. That is exhibit No. 41. "As part of"—item 11 on page 2, "as part of PMRG's investigation, I contacted a confidential and highly reliable source who I believed would be able to determine whether the Federal Government had the documentary evidence."

"My source told me there was a Federal Government record for Mr. Abe which referred to suspicion of solicitation of prostitution, Seattle Police Department, March 1963."

"My source told me that there was a Federal record, Federal Government record."

"My source further told me that the record concerning Mr. Abe reflected that the Seattle Police Department had made an inquiry for information."

"My source also told me that if Mr. Abe made an official request for information under his name to be removed from the record, it could be removed."

"Sometime later my source informed me that the record concerning Mr. Abe apparently had been purged."

Mr. MANUEL. Nothing that you have read relates to NCIC—as far as I can determine—to NCIC information. The procedure would have been had there been an arrest in Seattle in 1963, as I understand it, that information would have been sent not to NCIC, because it didn't exist at that time, it would have been sent in like a teletype type of communication. Had that been done, the information would have been there.

Mr. BURTON. You are so specific. You are so specific in this letter. In both of these memos, there is no indication whatsoever that these are opinions.

"My source further told me that the record concerning Mr. Abe reflected that the Seattle department—Seattle Police Department made an inquiry."

"My source also told me that Mr. Abe made an official request for information, and his name would be removed."

"Sometime later my source told me that the record concerning Mr. Abe had been purged."

They had to look at the NCIC records.

Mr. MANUEL. I disagree with you. I don't think that anybody looked at NCIC records that I know of. I never asked anybody to do it.

Mr. BURTON. How did they know it had been purged?

Mr. MANUEL. Because it wouldn't have been there in the first place, Mr. Chairman.

Mr. BURTON. What does purged mean?

Mr. MANUEL. I interpret purged to mean to be taken out of something, or not have existed or——

Mr. BURTON. If it was purged, it was there in the first place?

Mr. MANUEL [continuing]. Redacted.

Quarrel with my choice of words, Mr. Chairman, but I am telling you, I didn't ask anybody to check NCIC, and it is very easy to determine that.

Mr. BURTON. Sometime later my source informed me that the record concerning Mr. Abe had been purged.

Mr. MANUEL. "Apparently had been purged."

Mr. BURTON. Apparently had been purged.

Mr. MANUEL. Apparently, Mr. Chairman.

Mr. BURTON. We will now go to the 5-minute rounds. Let me start with Mr. Horn, and then we will go to Mr. LaTourette.

Mr. HORN. Mr. Chairman, I pass to Mr. LaTourette.

Mr. LATOURETTE. Ms. Poston, if you would look in the exhibit book, it is exhibit 15 in that specific document. It is written on the letterhead of your law firm to your client, and it says, "PMRG"—Mr. Manuel's outfit—"reported to us on November 17, 1994, that a source within the U.S. Government, Washington, DC, was contacted, and the source confirmed that there is a record for" the gentleman in question.

First of all, who is the source within the U.S. Government that you are referring to in that document?

[Exhibit 15 follows:]

Steel Hector & Davis
Miami, Florida

December 9, 1994

Soka Gakkai
32 Shinanomachi
Shinjuku-ku, Tokyo
JAPAN

Gentlemen:

Your organization requested us to investigate whether the United States government has maintained any records of an investigation concerning an individual known as Nobuo Abe, a foreign national, born December 19, 1922.

Subsequent to this request, we engaged The Philip Manuel Resource Group, Ltd. ("PMRG"), a highly-prestigious private investigations firm based in Washington, D.C. Mr. Philip Manuel, as his firm brochure indicates, is the founder and current president of PMRG and has served as Chief Investigator of the Permanent Subcommittee on Investigations, United States Senate, and as a member of the President's Commission on Organized Crime.

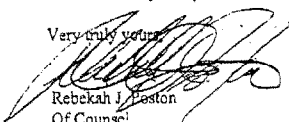
PMRG reported to us on November 17, 1994, that a source within the U.S. government in Washington, D.C. was contacted and the source confirmed to PMRG that there is a record for Nobuo Abe. According to PMRG's report to us, the record refers to:

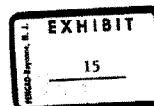
Suspicion of Solicitation of Prostitution
Seattle Police Department
March, 1963

From 1974 to 1979, I served as an Assistant United States Attorney and Special Attorney with the United States Department of Justice. Following my government service, I have been practicing law primarily in the area of criminal defense. Based on my experience, the contents of the record on Nobuo Abe, as revealed to us by PMRG, indicate to me that some type of inquiry or investigation regarding suspicion of solicitation of prostitution was conducted in March, 1963, by the Seattle Police Department on Nobuo Abe.

I am able to testify as to the truthfulness and accuracy of my statements in this letter.

Very truly yours,


Rebekah J. Weston
Of Counsel



MIAMI/72492_1

Miami Office
41st Floor
250 South Biscayne Boulevard
Miami, FL 33131-2258
(305) 577-7000
Fax: (305) 577-7001

West Palm Beach Office
1900 Phillips Point Way
777 South Flagler Drive
West Palm Beach, FL 33401-8138
(407) 860-7400
Fax: (407) 855-1608

Tallahassee Office
Suite 801
215 South Monroe
Tallahassee, FL 32301-1804
(904) 222-2900
Fax: (904) 822-8410

Ms. POSTON. First of all, Mr. LaTourette, this is a direct communication with my client, so I will assert the attorney/client communication privilege here.

Mr. LATOURETTE. Let me go to exhibit No. 21, if I could, and exhibit No. 21, I think, is a newsletter that is put out by your client or the organization to which your client belongs. Do you find that? [Exhibit 21 follows:]

The SGI-USA NEWSLETTER

Vol. 5 No. 1 (29)

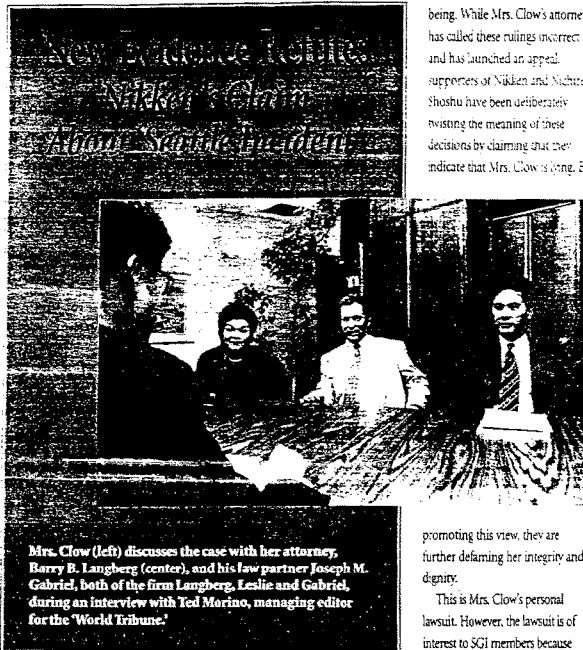
January 9, 1995

SINCE Hiroe Clow first revealed the facts of the so-called "Seattle Incident" in 1992, Nikken and his publications under his control have uttered allegations and called her a liar in both Japanese and English. To protect her reputation and create a forum in which the truth could be aired, Mrs. Clow recently filed a suit in Los Angeles Superior Court on Sept. 17, 1992, charging Nikken and several religious organizations with direct control with defamation. Evidence has recently been revealed which supports her case.

Mrs. B. Langberg, Mrs. Clow's attorney, has shared with the *World Tribune* the evidence his investigation has uncovered regarding Nikken Abe's activities during his 1963 visit to Seattle. Evidence consists of records of one who was being detained by the "Seattle Police Department" for "suspicion for violation of prostitution" in "March

1963." The "Seattle Incident" was first brought to light in 1992 by Mrs. Clow, a pioneer SGI member now residing in Los Angeles. The incident involved Nikken, now high priest of Nichiren Shoshu, and some prostitutes in Seattle in 1963. At that time, Nikken was in the United States as the Nichiren

study department chief to conduct the first overseas Gohonzon conferral ceremonies. Having kept silent for almost 30 years, Mrs. Clow publicly exposed the incident and related events when she became aware of Nikken's plots to defame the SGI, the organization for kosen-ruffu she had helped build for many years. Recently, that lawsuit reached an impasse due to technicalities. The Los Angeles Superior Court has made procedural rulings that it has no jurisdiction over the case. The trial concerning the merits of the case will not be taking place for the time



Mrs. Clow (left) discusses the case with her attorney, Barry B. Langberg (center), and his law partner Joseph M. Gabriel, both of the firm Langberg, Leslie and Gabriel, during an interview with Ted Morino, managing editor for the *World Tribune*.

being. While Mrs. Clow's attorney has called these rulings incorrect and has launched an appeal, supporters of Nikken and Nichiren Shoshu have been deliberately twisting the meaning of these decisions by claiming that they indicate that Mrs. Clow is lying, or

promoting this view, they are further defaming her integrity and dignity.

This is Mrs. Clow's personal lawsuit. However, the lawsuit is of interest to SGI members because Mrs. Clow is a fellow SGI member

and because the outcome of the trial will bear directly on Nikken Abe's qualifications as a high priest of Nichiren Shoshu.

At this point, therefore, we would like to present the facts of the case via an interview with Mr. Langberg, Mrs. Clow's attorney, in which he answers questions posed by Ted Morino, managing editor of the *World Tribune*. Mr. Langberg is a prominent defamation attorney in Los Angeles who has handled such noteworthy cases as the defamation suits of comedienne Carol Burnett and actress Shirley Jones.

Inside This Issue: Barry Langberg, Mrs. Clow's attorney, speaks with the *World Tribune*.

SGI-USA NEWSLETTER is published by the World Tribune Press, 525 Wilshire Boulevard, Santa Monica, California 90401, tel. (310) 451-8811.



APR 9 1995

THE SAN FRANCISCO NEWS

Tribune: Mr. Langberg, thank you for the time to talk with us today. To begin, you recap for us what is meant by the "Seattle incident?"

B. Langberg: Yes. The "Seattle incident" refers to an event that occurred in Seattle in 1963, which Mrs. Clow chose to reveal many years of keeping knowledge of it to the United States for religious purposes — to conduct a religious ceremony. He was not the priest of Nichiren Shoshu at the time, but a priest within the order.

On the occasion of that visit, he was joined by Mrs. Clow, who essentially was to see to his well-being. As Mrs. Clow has said the incident, she was eventually joined by the police to come to a street in downtown Seattle where Nikken had become involved in a dispute with some prostitutes some time between the late hours of March 19 and the morning hours of March 20. The particular incident which she was summoned in those days was well known for prostitution and being sort of a rough neighborhood. At that time, Mrs. Clow had to extricate Nikken from a predicament that ultimately ended with him being detained by the police. In brief, it is what is referred to as the Seattle incident.

After, on an airplane while en route to Chicago, Mrs. Clow told Nikken to make an advance toward an airline stewardess. And, in addition, he told Mrs. Clow to tell him if she could find pornographic material.

They have heard that, while the trial is still under way, the most serious decisions by the court have been in Mrs. Clow's favor. You explain these decisions to them?

Langberg: First, to say that there are serious decisions made against Mrs. Clow is not entirely true, because this is a case where the court has made a decision on the merits or the merits of the case. However, the court has never ruled upon the merits of this case. On the contrary, the court has ruled in favor of the defendants, who include Nikken, and has made everything possible to avoid a decision on the merits or the substance of the case. There are two cases, really, involving defamatory material about Mrs. Clow in two separate Shoshu-related publications — in the *Daisho*, a Japanese publication, and in a special language edition of the *Dai-Nichiren*. The only decision the court has made in either of these cases is a request by those defendants to reside in California — primarily Nikken, and the Nichiren Shoshu overseas bureau chief (Shoshu in Japan). These defendants asked not to proceed with the case against them on the grounds that they do not have sufficient contact with the court to have jurisdiction over

them.

Being a question of jurisdiction, this, of course, clearly has nothing to do with the merits or facts of the case. In particular, it has absolutely nothing to do with whether Mrs. Clow is telling the truth and nothing at all to do with whether these incidents really happened. The defendants have done everything possible to avoid having the court hear the merits of the case.

All we wish to do is to come in to court, present our evidence before a jury, and have the jury decide who's telling the truth about what really happened in Seattle and what really happened on the airplane. On the other hand, the defendants have avoided this by attempting to convince the court that it doesn't have jurisdiction over them — that the court should not hear this case on the merits.

WT: What kind of approach are you taking to have the court examine the merits of the case?

Langberg: As a matter of fact, Mrs. Clow is so intent on having a chance to present the evidence and clarify the truth that we have recently offered

Of course, the jurisdictional decisions are now on appeal to a higher court, and we believe there's a very good chance that higher court will rule in our favor.

WT: Nikken himself has said that if what Mrs. Clow says is true, he could not remain in his position as high priest and would quit immediately. He has thus confirmed that his status hinges upon the outcome of this lawsuit. It seems that he should therefore definitely accept your proposal. By the way, upon what does the court base its decision that it lacks jurisdiction over the case?

Langberg: To understand this point, let's look at what we and the defendants have been advocating. What they've done so far is to convince the trial court that the State of California lacks sufficient contact with Nikken to exercise jurisdiction over him. They have asserted to the trial court that Nikken really doesn't control the California corporations known as NST (Nichiren Shoshu Temple) and NSH (Nichiren Shoshu Hokkeko), that he has power over them in name only, and that he exercises no practical control over these corporations and no control over the individual Nichiren Shoshu temples here in the United States.

We have, however, presented substantial evidence to the contrary. Nikken, for instance, appoints the chief priest of each temple, makes financial decisions, and makes decisions about acquiring property. We think that we've presented very compelling evidence that he actually personally controls these entities.

In addition, they have made unfounded statements, presenting, for example, a so-called expert on Japanese customs and religions who testified that Nikken not only doesn't have the power to control these entities but that the process by which a person becomes the high priest is one in which he is adopted into the family of the previous high priest. I'm not an expert on Nichiren Shoshu Buddhism, but I have asked some people who are, including people in the family of the previous high priest, and they certainly disagree with this statement — they think it ludicrous that anything like that could be said.

We took the deposition of Jiho Takahashi, the chief priest of the San Francisco temple. On the first day of that deposition, the Rev. Takahashi indicated that he really knows very little about the workings of the California corporation NST and its relationship with the Japanese corporation Nichiren Shoshu. He also indicated that he doesn't know much about the financial aspects of NST — that although he was at the board meetings, he didn't hear much. On the second day of questioning, however, we showed him a two-inch stack of documents, most of which were minutes from board meetings in which he himself had functioned as secretary, taking down minutes containing comments on Nikken's involvement in financial aspects of NST and signing off on them. This was totally contradictory to what he had told us the first day.

'Another point worth noting is that these defendants have hindered us from getting at the truth in every possible way.... It's extremely clear that they don't want to have this case heard on the merits in front of a jury. And, in particular, it seems that they don't want it heard in California, where we have reasonable access to the evidence, and where the process can be accomplished in a relatively short period.'

Barry B. Langberg

April 9, 1995

THE SGI-USA NEWSLETTER

is just a small portion of a tremendous evidence showing that California really has jurisdiction over Nikken and Obayashi in Japan.

Why, then, did the court decide that it has no jurisdiction over this case despite such evidence to the contrary?

Langberg: The reason, I think, is that the trial court is basically misunderstood and Mrs. Clow's motives in bringing it. This misunderstanding is evident in the court's position. The trial court has taken the position that this case is really part of a religious conflict between the Nichiren Buddhist priesthood and the Nichiren Buddhist community. As part of that religious conflict, the court held that the case should be heard in Japan, which it views as the most appropriate venue because that is where the major portion of this conflict is occurring. I believe that the trial court reached this view to override the evidence that has been presented — and much of that evidence is very compelling and contradicted. In taking this position, I have to say that the trial court very much misperceived the nature of the case.

Could you elaborate further on why you think the court has come to this mistaken conclusion by viewing the case as part of a larger religious conflict?

Langberg: First of all, the act of libel is of a very different nature. In this case, Nikken and others defamed Mrs. Clow a liar, thus deeply defaming her. No one else but Mrs. Clow can bring the case to the court. The second point I want to make involves my impression of Mrs. Clow's motivation. Of course, Mrs. Clow can speak for herself, but my understanding is that she certainly was motivated by religious conflict. In other words, the religious conflict was heavily on her mind when she decided to make this information public. The defamation suit that Mrs. Clow brought is a matter entirely different from the conflict between Nichiren Shoshu and the Japanese Buddhist community. The defamation suit is a response to vile statements that were made about her, that hurt her here in California, not in Japan. She lives in California, and her reputation is here in the United States where she lives. Mrs. Clow's personal life and the damage it has suffered through these statements is in no way related to any religious conflict.

It is important that the fact that these statements were published first in Japanese in the Japanese media, and then, because Nikken and others were satisfied with these statements being published only in Japanese — because they wanted that people here in California could hear

these lies about Mrs. Clow — they published them in English. Why, may I ask, would they publish these statements in English if the whole import of the matter lies solely in Japan, as the defendants claim? It doesn't make any sense, does it? An English publication would not have been necessary to defame Mrs. Clow in Japan; they could have done it there.

'This lawsuit is Mrs. Clow's lawsuit, brought by her to try to redeem her reputation. Anyone who thinks that the lawsuit is being controlled or manufactured by anyone else has been utterly misled. I, as Mrs. Clow's attorney, am the only person making any of the legal decisions in this lawsuit, and I make those decisions based only on Mrs. Clow's interests.'
Barry B. Langberg

entirely in Japanese. They needed an English publication because they intended to direct it here, to California, where Mrs. Clow lives and where it would hurt her the most.

To sum up, then, this lawsuit is Mrs. Clow's lawsuit, brought by her to try to redeem her reputation. Anyone who thinks that the lawsuit is being controlled or manufactured by anyone else has been utterly misled. I, as Mrs. Clow's attorney, am the only person making any of the legal decisions in this lawsuit, and I make those decisions based only on Mrs. Clow's interests.

Another point worth noting is that these defendants have hindered us from getting at the truth in every possible way. The jurisdictional objections are one major hindrance. But even when we were conducting discovery (the process of obtaining data or documents that a party to a legal action is compelled to disclose to another party either before or during a proceeding), the other side refused to answer questions and produce documents properly. They refused to the extent that the court had to order them to produce documents and answer certain questions, imposing on them a fine exceeding \$6,000 because of their improper refusals. It's extremely clear that they don't want to have this case heard on the merits in front of a jury. And, in particular, it seems that they don't want it heard in California, where we have reasonable access to the evidence, and where the process can be accomplished in a relatively short period.

WT: Nikken Abe flatly denies Mrs. Clow's allegations. Can you share with us your view on the truth of this matter?

Langberg: Certainly. We think that there is very strong evidence to establish that Mrs. Clow, and not Nikken, is telling the truth. First of all, the only evidence that anyone who knows Mrs. Clow's character would need is her word, because she's clearly not the kind of person who would advocate a story like this unless it was true. Also, if you think about it, it's an amazing story for anybody to think up out of the blue. It would take a truly strange imagination for anyone to simply manufacture something like this — something that happened in Seattle in 1963, in which a Buddhist priest solicited prostitutes and was detained by police in the red-light district. Again, knowing Mrs. Clow, you would easily realize that fabricating a story like this would be the last thing she would do.

In case anyone needs additional proof beyond this, however, we have, quite amazingly, been able to locate it. I say amazingly because the length of time that has passed since the incident would normally make it very difficult to come up with any solid evidence. I believe this is what prompted the defendant to deny the charges — his assumption that we would never be able to prove something that happened so long ago. I believe, however, that we will be able to prove it in court. I can say this because we have employed investigators and conducted a tremendous amount of research in order to confirm what Mrs. Clow has said.

WT: Nikken and others claim that the place which Mrs. Clow points out as the site of the incident was not an unsavory area at the time, as she describes. Do you have any evidence to contradict this?

Langberg: It is not difficult at all to refute this claim. The neighborhood of 7th Avenue where the incident took place is within a certain area in Seattle known as the Pike Street area. There is no question that this area was fraught with prostitution and related activities during those years. We have many number of people who lived in the area at the time, who worked in the area at the time, including former Seattle police officers, who can all testify unequivocally that it was an area that hosted a high level of prostitution activities.

WT: Have you obtained any tangible evidence that supports Mrs. Clow's description of the incident?

Langberg: Yes, we have. We retained the assistance of another law firm, a large firm in Miami by the name of Steel, Hector & Davis, and through their contacts and sources they were able to determine that a record exists in government files under the name "Nobuo Abe" reflecting the 1963 event. The detention — the police involvement — is reflected in the file based on a written record that

January 2, 1995

THE OLYMPIC HOTEL

ist have been made at the time by the police officers reflecting Nobuo Abe's involvement with prostitutes. We have received from the above law firm a letter that confirms this fact.

1. Could you share with us any of the contents of the document?

Ingberg: Of course. The letter from Steel, Steel & Davis reads:

Dear Ms. Clow:

You requested us to investigate whether the United States government has maintained any records of an investigation concerning an individual known as Nobuo Abe, a foreign national, born Dec. 19, 1922. Subsequent to this request, we engaged... a highly-reputable private investigation firm.

The letter goes on to cite the reputation and qualifications of the firm and its director, but I will go into specifics here. The document continues:

The investigation firm... reported to us on Nov. 17, 1994, that a source within the U.S. Government in Washington, D.C., was contacted and the source confirmed to the firm that there is a record for Nobuo Abe. According to the firm's report to us, the record refers to:

Subsection of Solicitation of Prostitution
Seattle Police Department
March, 1963

From 1974 to 1979, I served as an Assistant United States Attorney and Special Attorney with the United States Department of Justice. Following my government service, I have been practicing law primarily in the area of criminal defense. Based on my experience, the contents of the record on Nobuo Abe, as revealed to us by the firm... indicate to me that some type of inquiry or investigation regarding suspicion of solicitation or prostitution was conducted in March, 1963, by the Seattle Police Department on Nobuo Abe.

I am able to testify as to the truthfulness and accuracy of my statements in this letter.

Very truly yours,
Signed by: Rebekah J. Poston
Of Counsel

1. This is an impressive piece of evidence that tends to prove the truth of Mrs. Clow's statements. However, while the evidence you refer to is recollections and records pertaining to a Nobuo Abe, I understand that the priesthood has testified that Nikken's name at the time was pronounced Shinno Abe (though the Japanese actors used in the name Shinno could also be pronounced Nobuo). Would this claim present a dilemma in a trial?

Ingberg: This is quite a simple matter. At the time, Mrs. Clow thought Nikken's name was pronounced Nobuo Abe, and this was the name she reported to the police. From the beginning, Mrs. Clow has been consistent about this point. The truthfulness of Mrs. Clow's memory is proven by the evidence I have just now shared with you. In addition, it is my understanding that the Japanese characters for "Shinno," which Nikken

claims was his given name at the time, would most naturally be pronounced "Nobuo" by any Japanese person reading them. "Shinno" would be a rather rare and unusual pronunciation of those characters, while "Nobuo" would be usual. Mrs. Clow's only access to Nikken's first name at the time would have been through the written documents provided her, since I understand by Japanese etiquette she would never have addressed him by or inquired about his first name and, therefore, would never have been informed of the way he pronounced it. It is quite obvious that Mrs. Clow's impression at the time, through seeing the name only in written form, was that his name was Nobuo Abe, and this was the name she reported to the police when asked.

I would like to pose the following question: How many Nobuo Abes — or Japanese men whose written name could



The Olympic Hotel in Seattle, where Nikken stayed in 1963 during the first overseas trip conducted for the purpose of conferring Gohonzon.

easily be pronounced Nobuo Abe — were around the Pike Street area of Seattle in March of 1963 and were detained for solicitation of prostitution — a fact also verified by the government file! The truth is obvious. They can say whatever they want about the name, but I think if they do, it will be very superfluous to the fact that the legal evidence clearly indicates that Mrs. Clow is telling the absolute truth.

Lastly, I would like to say that the moment I first heard Mrs. Clow say what she had to say, I was convinced that she was telling the truth. As we continued our investigation, my conviction of her truthfulness steadily deepened. The evidence I have shared with you this time is also proof of her truthfulness. Of course, we do possess further evidence that also supports Mrs. Clow. ☐

Ms. POSTON. Yes.

Mr. LATOURETTE. Do you know who Mr. Langberg is?

Ms. POSTON. Mr. Langberg is an attorney who represents Mrs. Clow and I believe may have represented Soka Gakkai International as well.

Mr. LATOURETTE. In the same matter or litigation by which you were retained by these folks or a different matter?

Ms. POSTON. A different matter.

Mr. LATOURETTE. If you can flip to the last page, and let me see how many pages this is. It looks to me like the fourth page of exhibit No. 21, Mr. Langberg in this newsletter is being interviewed by someone interested in this matter, and on page 4 next to the picture of the Olympic Hotel in Seattle, which is now the Four Seasons Olympic Hotel in Seattle, that looks to me in the first column on the left, Mr. Langberg has basically reprinted the letter that I was alluding to. Do you see where I am talking about?

Ms. POSTON. Yes.

Mr. LATOURETTE. Again, going back to my previous observations when I was here before about the attorney/client privilege, I assume you know, aside from the fact that the Congress doesn't recognize the privilege, you also are aware based upon your many, many years of service as an attorney that the publication of a communication waives the attorney/client privilege; does it not? You are aware of that exception, aren't you?

Ms. POSTON. Could I speak to two things that you have raised here?

Mr. LATOURETTE. I would like you to answer that first question, and then you can tell me whatever you would like to tell me.

Isn't it true that the publication of a communication in this case by your client is a waiver; is it not?

Ms. POSTON. I believe there is a waiver in certain circumstances, but I also have two clients. I have Mrs. Clow, and I have Soka Gakkai as a client.

Mr. LATOURETTE. Right, but this is their newsletter?

Ms. POSTON. The World Tribune?

Mr. LATOURETTE. The SGI-USA newsletter. Isn't that published by the organization that you represented?

Ms. POSTON. I don't know. It may be, but I don't know.

Mr. LATOURETTE. The fact of the matter is—is there something else that you wanted to say?

Ms. POSTON. Just the point about the privilege that you have commented about. When I looked at the Florida bar rules that govern my conduct, it stated that while a tribunal may not observe or recognize the attorney/client privilege or attorney work product privilege, it also said that the attorney had a right to exhaust all appellate remedies before breaching that privilege. And so the committee is clear, that is the rule which I am going under, especially in light of the instructions that I have received from my client.

Mr. LATOURETTE. The one client is dead?

Ms. POSTON. The privilege still applies to the extent that she did not waive the privilege.

Mr. LATOURETTE. So you don't accept my observation on exhibit 21?

Ms. POSTON. What I said is whether or not that would be deemed a waiver of the privilege might be something that we disagree on.

Mr. LATOURETTE. And you have reached a conclusion that it does not?

Ms. POSTON. We believe that we have a legal argument that it does not.

Mr. LATOURETTE. I am asking what you think. You think that it is not waived even though this showed up in a newsletter and was used to influence this public relations war between Buddhist sects? Even though here it is, and your letter has been published for public consumption, you still think your opinion or your lawyer's opinion is that you haven't waived the privilege? It has not been waived; is that right?

Ms. POSTON. May I have a moment, please?

Mr. LATOURETTE. Sure. You can have all of the time that you want.

Mr. BURTON. Does the gentleman yield back his time?

Mr. LATOURETTE. I am waiting for an answer.

Mr. BURTON. I would be happy to yield my 5 minutes to you if you would like to continue your questioning.

Mr. LATOURETTE. Thank you very much.

Ms. POSTON. Mr. Congressman, I am not prepared to say that this would be a waiver. If the committee would like to submit to me your basis in the law why you believe it is, I would be happy to respond to why we think that it is not.

Mr. LATOURETTE. Have you had conversations with Mr. Langberg during the course of this representation of clients? Have you talked to him?

Ms. POSTON. Yes.

Mr. LATOURETTE. Specifically did you talk to him about this letter that he has published in this newsletter?

Ms. POSTON. I wouldn't be able to disclose that because of an attorney/client communication and a joint confidentiality agreement.

Mr. LATOURETTE. Did you provide a copy of that letter to Mr. Langberg?

Ms. POSTON. Yes.

Mr. LATOURETTE. Had you ever seen exhibit 21 before?

Ms. POSTON. Yes, I have.

Mr. LATOURETTE. So you are aware that Mr. Langberg published—did you ever talk to him about that? What is his first name?

Ms. POSTON. Barry.

Mr. LATOURETTE. Did you ever call him, Barry, why did you put my letter in your newsletter?

Ms. POSTON. I wouldn't be able to disclose that based upon attorney/client communication.

Mr. LATOURETTE. Have you had conversations with Mr. Langberg about the letter since you became aware that it was in this newsletter?

Ms. POSTON. Yes.

Mr. LATOURETTE. OK. Well, let me go to another exhibit. That is a fax, exhibit No. 38, for those following along in their programs. Exhibit No. 38 is a fax that you sent to Mr. Lucas on the 12th of

July, 1995, and although we can—I wish the quality of the fax was a little bit better, and let me just flip there myself.

You had just been told by the Justice Department the previous day—or you had just been told the previous day that the Justice Department didn't have a record of any information pertaining to Mr. Abe. You had also been told there was no evidence that a record had ever been retained at the Justice Department. You asked Mr. Lucas and Mr. Manuel to verify “to the extent of your abilities what the phrase: ‘. . . or has any evidence of ever maintaining,’ means with respect to the various records that were searched.”

What did you expect your investigators to do, Mr. Manuel and Mr. Lucas, to comply with this request that you made on July 12, 1995?

[Exhibit 38 follows:]

STEEL HECTOR & DAVIS

200 South Biscayne Blvd
Miami, Florida 33131-2398
(305) 577-7000

Telecopier Cover Sheet
Confirmation # (305) 577-2387

Date July 12, 1995
Send To Richard Lucas
Firm _____
Telecopier No. 305 340-8578
Confirmation No. _____

Total Pages Including Cover Sheet: 3

_____/ Letter Size _____ Legal Size

Originator Rebekah J. Poston, Esq. Ext. 305-577-7000

Special Message

Please maintain the utmost confidentiality with respect to this document. We do not want this document to be the discoverable piece of evidence in any of the litigation within the United States therefore, you should not permit anyone to copy this document nor permit anyone to keep or maintain this document. Also, you are not disclose the identity of the client to anyone. What I would like each of you to do is simply verify to the extent of your abilities what the phrase: "... or has any evidence of ever maintaining," means with respect to the various records that were searched. I also think there needs to be clarification as to whether the headquarters office "HO" refers to an FBI office in the state of Washington or in D.C. I would ask all of you to give this matter your immediate attention. If you have any questions, please contact me.

The information contained in this transmission is attorney privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone collect and return the original message to us at the above address via the U.S. Postal Service. We will reimburse you for postage. Thank you.

MIAMI: FAX (305) 577-7001

Client Code: 83591

Matter Code: 4501



Ms. POSTON. With respect to the communication here with an investigator, I would not be able to answer that based upon the attorney/client work product privilege; but I can assure you that at no time did I advise them to do something which would constitute a violation of the law.

Mr. LATOURETTE. Maybe we can talk more in the abstract rather than specifically on exhibit No. 38. When you wrote this, it wasn't your expectation that they were going to be—I mean, the answer to this question was going to come from a search of the Federal law enforcement records contained in the NCIC? Where else would a person get information like this?

Ms. POSTON. The answer is no.

Mr. LATOURETTE. That wasn't your expectation, OK.

Do you remember why you made this request?

Ms. POSTON. I can't answer that. It would call for my communication and thought process.

Mr. LATOURETTE. On July 19, 1995, which is exhibit 39, you sent a letter to Mr. Manuel and Mr. Lucas. If you can locate that for me. I want to draw your attention to the point of the letter that quotes, I can only conclude that since a record existed, which your two independent sources verified, the places searched and enumerated in Mr. Huff's letter must not have been proper locations.

Who was Mr. Manuel's source?

[Exhibit 39 follows:]

Steel Hector & Davis
Miami, Florida

Rebekah J. Poston
Of Counsel
(305) 577-7022

July 19, 1995

Mr. Philip Manuel
Philip Manuel Resource Group Ltd.
Suite 1301
1730 K Street, N.W.
Washington, D.C. 20006

Mr. Richard M. Lucas
7200 Griffin Road
Suite 2A
Davie, Florida 33314



Dear Phil and Rich:

I need your assistance in helping me explain to my clients the apparent inconsistencies between the letter we received from Richard L. Huff, dated July 11, 1995 (a copy of which was previously faxed to you) and your investigative reports of November 11 and 17, 1994. (Copies attached). I direct your attention to Huff's letter which states "... it is appropriate to disclose the fact that neither the Federal Bureau of Investigation nor the Executive Office for United States Attorneys maintains, or has any evidence of ever maintaining, any record within the scope of your request."

Our personal meeting with Deputy Associate Attorney General, John Schmidt, resulted in a policy decision by the Attorney General to reverse the original position of the Department of Justice by authorizing release of the requested record or a statement as to whether it existed in the past. That is a major accomplishment and victory. The result, however, is quite perplexing.

I can only conclude that since a record existed, which your two independent sources verified, the places searched enumerated in Huff's letter must not have been the proper locations. Any other conclusion means that the sources are either not telling the truth or that the record was deleted (a real possibility according to the source in the November 17, 1994 report) without a trace, an impossibility according to former, FBI, S/A Lawler, if the record was ever in NCIC. Of course, no one has ever indicated where the record is or was. That is part of the problem.

Our client views this letter as an absolute defeat for them in Japan. Moreover, we must assume the opposition may have such a letter of their own, or at least similar results, from their own investigation. This seems possible considering they made strong

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(305) 577-7000
Fax: (305) 577-7001

West Palm Beach Office
1900 Phillips Point West
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West Palm Beach, FL 33401-6198
(407) 650-7200
Fax: (407) 655-1509

Tallahassee Office
Suite 601
215 South Monroe
Tallahassee, FL 32301-1804
(904) 222-2300
Fax: (904) 222-8410

Steel Hector & Davis

Mr. Phil Manuel
 Mr. Richard M. Lucas
 July 19, 1995
 Page 2

public statements in Japan one week prior to our receiving Huff's letter that our client does not have the record and has not produced a record.

I am advised that a judge in Japan will ask me to explain my letter and why I believe my investigator's report. I need all of your support helping me to prepare how to answer such a question. Considering the record was from 1963, before the computerization of FBI files, could it be that the record your sources located was off-line? Do the areas searched in Huff's letter exclude off-line records? These are a few of the questions that come to mind.

Our client is requesting that each of you ask your sources for an explanation or where they found the record. The Attorney General's position is clear - its existence and/or its deletion is authorized to be disclosed.

I have the utmost confidence in your reports. We must try our very best to resolve this critical issue for our client. Please give this matter your immediate attention. Leave no stone unturned.

One last point, in reviewing Mrs. Clow's California attorney's FOIA requests, I note four were filed before November 11, and six, inclusive of the four, were filed before November 17, 1994. However, the responses from these agencies indicate only one (U.S. Attorney's Office in the Western District of Washington) actually searched their records. Thus, any reflection in the November 17, 1994 report of inquiries from more than six different government entities in various cities must be from other sources. This is the FOIA information. Review it and give me your thoughts relative to the November 17, 1994 report.

1. October 31, 1994 FOIA to FBI-DC
 November 7, 1994 FBI Response - need Privacy Waiver to proceed
2. November 7, 1994 FOIA to DOJ - U.S. Attorney W.D. Washington
 November 9, 1994 Response referring it to their office in D.C.

Steel Hector & Davis

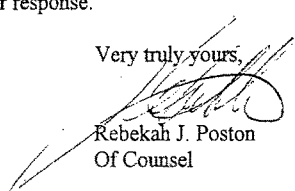
Mr. Phil Manuel
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3. November 9, 1994 FOIA to Bureau of Prisons
November 16, 1994 Response that Bureau of Prisons needs Prisoner ID
4. November 16, 1994 FOIA to DOJ - D.C.
December 1, 1994 Response referring it back to local authorities in the State of Washington.
5. December 15, 1994 FOIA to DOJ - D.C.
January 30, 1995 Response-searched records of U.S. Attorney in W.D. Washington and found nothing.

Obviously, this matter must be treated with the utmost confidentiality. You are authorized to share the content of Huff's letter with your sources. It is important for them to know that the Attorney General has sanctioned disclosure. You must not permit the letter to be copied, reveal the appeal numbers or identify the client. Good luck.

I anxiously await your response.

Very truly yours,


Rebekah J. Poston
Of Counsel

Enclosures

MLAM/LJP/hd/72273-1

Ms. POSTON. I will not be able to divulge that because it would be attorney/client privilege.

Mr. LATOURETTE. We respectfully disagree.

Did Mr. Manuel ever advise you that he had a source within the Justice Department concerning this record that is referred to in the letter that you can't talk to me about?

Ms. POSTON. I have to assert the same privilege.

Mr. LATOURETTE. Mr. Manuel, did you receive this letter of July 19, 1995, from Ms. Poston?

Mr. MANUEL. I don't have a specific recollection of receiving it, Mr. Congressman, but I won't dispute that I may have received it.

What I would like to say, though, that to the best of my memory, my participation in this case had ended some time before that. And so if I did get this letter, I don't think I took any action on it.

Mr. LATOURETTE. But again—

Mr. MANUEL. I am just trying to answer your question.

Mr. LATOURETTE. Going again to that section, which your two independent sources verified, did you have two independent sources which verified this information?

Mr. MANUEL. No. The letter went to Lucas. I think that refers to sources that Lucas had and a source that I may have had.

Mr. LATOURETTE. So you had one, and Mr. Lucas had one?

Mr. MANUEL. I didn't have one single solitary source. I talked to several people during the course of this from November-December 1994. I don't recall having any conversations with anyone past that date.

Mr. LATOURETTE. OK. And who was your source?

Mr. MANUEL. There was not a single source, Mr. Congressman. If you want, I can explain my memory as to what I did in this case.

When I received notification of this case all from Mr. Lucas, I never talked to Ms. Poston about it directly. My information about this case came from Mr. Lucas. When I got this information, I called the office of a man, and this is going to be coincident, but his name was Manuel Gonzalez, who was the Assistant Director of the FBI in charge of administration.

When I called his office, I found out that I couldn't speak directly to him, and the reason I couldn't speak directly to him, and I am not clear on this, either he had passed away, or he was getting some treatment for cancer or something.

I might explain to you that I knew Mr. Gonzalez from our mutual service on the President's Commission on Organized Crime. Mr. Gonzalez was the chief investigator on that Commission, and I was a member of that Commission.

So I was told that Mr. Gonzalez was not available. I then asked for someone in his office who could assist me in answering some questions about the NCIC, and I posed those questions to an individual, who passed me on to another individual, who passed me on to another individual.

During the course of my inquiries on this matter, I may have talked to four or five different people. Other than Mr. Gonzalez's name, I truthfully do not recall the names of the people that I spoke to who were mostly administrative people and who answered hypothetical questions for me as to the circumstances surrounding

this address and what would have happened or what may have happened and in that vein.

So all that activity took place within maybe a 2-month period. After that, I don't recall any participation that I have had in answering any or making any inquiries in this case or anything else. I hope that is helpful.

Mr. LATOURETTE. That is helpful, and I appreciate it.

Mr. HORN [presiding]. I thank the gentleman.

Mr. Manuel, let me ask you, has anyone from law enforcement ever interviewed you about this Soka Gakkai group? Had anybody from law enforcement, FBI, anyone, ever interviewed you?

Mr. MANUEL. I have only been interviewed on several occasions by members of the majority staff of this committee. I am a little bit distressed to see that in your report you say that Mr. Lucas is the only one who has cooperated. I have never refused to cooperate with any member of this subcommittee staff or this subcommittee.

To directly answer you, I have never been approached or interviewed by any person from the FBI concerning this particular matter.

Mr. HORN. Ms. Poston, has anyone from the law enforcement ever interviewed you about the Soka Gakkai case?

Ms. POSTON. No, sir.

Mr. HORN. Let me just go back a minute to get the relationship of Mr. Gibbons here. He has a letter. This is exhibit 51. He has a very extensive letter on this whole case, and the part that would be relevant to Ms. Poston is on page 3.

And he says, in addition to these activities—and that was a number of things on the first few pages—Ms. Poston initiated broad-ranging meetings and inquiries within the Department of Justice at Attorney General Reno's offices and at the FBI headquarters, Washington, DC. Indeed, in January 1995, Ms. Poston met with representatives of the FBI in an attempt to accelerate a Freedom of Information Act request that she had caused to be made with the Bureau. This is in relation to the disclosure of their findings to her and Ms. Clow might not be appropriate under the act. Apparently Ms. Poston redoubled her efforts and made a series of applications and requests through the Department of Justice and a former colleague of hers at Steel, Hector & Davis, who was then employed at the Department of Justice. And after a denial of her Freedom of Information Act requests was handed down, she made an appeal in February 1995 and eventually was granted her request after a meeting with John R. Schmidt, Esquire, the then Associate Attorney General. It is our opinion, and this is Mr. Gibbons, that Ms. Poston willingly or unwittingly was trying to retrieve data which had been entered into an FIB data base as a result of inquiries instigated by her client which appeared to be, "real FBI records," which, of course, would then corroborate to some extent Ms. Clow's allegations. After Associate Attorney General Schmidt granted Ms. Poston an appeal, she then received Richard L. Huff's letter indicating that indeed there was no record with the FBI or the Department of Justice, and so forth.

And so where did you get your information? Was it—after Mr. Schmidt permitted you to have that file or what? How did that work?

Ms. POSTON. I am not clear what information you mean.

Mr. HORN. This is in relation to all of the background on the two Buddhist sects, if you will, organizations. As you can see there, they have a pretty good idea either through agents that he, Mr. Ogden, has contacted—or not—what you were doing at that time. I wondered if you ever have met Mr. Gibbons, or is it strictly that he is using his contacts to make this report?

Ms. POSTON. This is the first time that I have ever seen this report, and I have never heard of a Mr. Gibbons.

Mr. HORN. Well, I can understand that, and he is writing to Special Agent Athena Varounis, Headquarters Supervisor, Office of Professional Responsibility. So here is a rather extensive paper, and the question would be how accurate is it in terms of your clients?

Would that have made the FBI knowledgeable, or would it have just said that they didn't do anything? What do you think? Because you said no one from law enforcement ever interviewed you about the case.

Ms. POSTON. I am very sorry, sir. First of all, I have not read this report, so I don't know that I can pass on its accuracy. I am not sure that I am clear on your question.

Mr. HORN. Well, the question is to what degree you were after the file, and you got the file based upon your contacts with Associate Attorney General Schmidt, and then the question is when did you learn some of these things before that file and after that file? This is dated July 30, 1997. Now, you had already received that file through your contacts with Mr. Schmidt.

Ms. POSTON. Yes. I mean—

Mr. HORN. July 30, 1997.

Ms. POSTON. July 11, 1995, was the letter that I received from Mr. Huff stating that based upon the Attorney General's openness and FOIA, that they were going to look for the record. And then they said that there was no record. That was the first time that I received any knowledge.

Mr. HORN. You are part of a very prestigious law firm. Have you ever been disciplined by your law firm for your activities in this case?

Ms. POSTON. No, sir.

Mr. HORN. You have not?

Ms. POSTON. I have not.

Mr. HORN. Have lawyers in your firm reviewed your records pertaining to this case?

Ms. POSTON. They have.

Mr. HORN. Would you say that they cleared you, or was there a reprimand at all?

Ms. POSTON. There was no reprimand.

Mr. HORN. No reprimand.

Have lawyers in your firm ever advised you not to answer questions about this matter because of your potential legal jeopardy?

Ms. POSTON. The advice that I have received from counsel, sir, has been to maintain—excuse me. Excuse me.

Excuse me, please. I misunderstood my counsel. I would not be able to divulge to the committee the advice that I have received from my counsel.

Mr. HORN. It is not from your counsel, it is from the lawyers in your firm. Did they ever advise you not to answer questions about this matter because of your potential legal jeopardy?

Mr. PALMER. To clarify, the lawyers in her firm are myself, and I am her counsel.

Mr. HORN. Ms. Poston, isn't it true during your interview with the committee staff, one of the reasons that you refused to answer questions was because of your potential criminal exposure?

Ms. POSTON. No, it is not.

Mr. HORN. This is an interview with the committee staff?

Ms. POSTON. Yes.

Mr. HORN. Do you know of any of the partners of Steel, Hector & Davis that have brought your activities to the attention of law enforcement?

Ms. POSTON. I have no personal knowledge of that.

Mr. HORN. Have you ever been disciplined by the Florida bar for your activities in this case?

Ms. POSTON. No, sir.

Mr. HORN. Do you know if Steel, Hector & Davis has brought any of your activities in this case to the attention of the Florida bar? In other words, has your own firm ever brought any of your activities in the case to the attention of the Florida bar?

Ms. POSTON. I don't know.

Mr. HORN. I am going to yield 5 minutes to Mrs. Chenoweth-Hage.

Mrs. CHENOWETH-HAGE. Thank you, Mr. Chairman, and I would like to yield my time to Mr. LaTourette.

Mr. LATOURETTE. I thank you very much. I thank my colleague.

Ms. Poston, if we could go to exhibit No. 9, I think you answered some questions about that before. I want to go back to this notion—because you may remember when I was here before, I asked the chairman to schedule a full committee meeting to talk about the possibility of contempt of Congress, and so I want to be clear. We went over a little bit before about how we have a difference of opinion about your communications have been published in a newsletter. You reached the conclusion there have been no waivers.

I want to ask about the multipage document which is exhibit No. 9. The reason that I ask you that, I assume again based upon your vast experience in the law and expertise as a member of the bar, you are aware that whoever conceals—receives, conceals or retains the same, that is being NCIC records, with the intent to convert it to his use or gain, knowing it to have been stolen, embezzled, purloined or converted has committed a crime. Are you aware of that statute?

Ms. POSTON. Yes.

Mr. LATOURETTE. Now, exhibit No. 9, which is the multipage document, you have forwarded to your investigators an attachment that has two pages from a fellow by the name of George Odano. Who is George Odano?

Ms. POSTON. Mr. Odano is a representative of the client Soka Gakkai.

Mr. LATOURETTE. OK. In the attachment to the fax—and, again, is this a document that you sent to your investigators?

Ms. POSTON. Yes, I believe it is.

Mr. LATOURETTE. And all three pages?

Ms. POSTON. Yes. The fax cover sheet indicates so.

Mr. LATOURETTE. And it says, "Please get the answers to as many of these as you can and be specific." I assume that what that refers to are the questions that are contained in the two-page attachment from Mr. Odano; is that right?

Ms. POSTON. Yes.

Mr. LATOURETTE. And specifically No. 1, the first question that you want them to get the answer to, "Is the name on the NCIC file Nobuo Abe?"

Ms. POSTON. Yes, I see that question.

Mr. LATOURETTE. So your instructions to your investigators in exhibit 9 was to determine whether or not the name on the NCIC file belonged to the fellow who is the subject of some litigation with your client; is that right?

Ms. POSTON. All I can say, Mr. Congressman, is that the document speaks for itself.

Mr. LATOURETTE. Yes, it does. Let me tell you what I think the document says, and that is that you were asking for information from the NCIC data base, and I will tell you if you are aware of the statute, that section of the U.S. Code that we were talking about earlier, it is a felony to give out such information and to convert it to your own use. And so the question I would have is how then—well, I guess I am soliciting your opinion as an attorney or that of your counsel next to you. Why haven't we waived the attorney/client privilege yet?

This document is talking about—which does speak for itself—is talking about the distribution of confidential law enforcement information in violation of the U.S. Code. Isn't that the way that you read it as a lawyer?

Mr. HORN. We have two votes on the floor. Since Mr. Burton has gone over to get his votes in and will be back soon, and we need to take a recess so the rest of us can vote—has there been an answer to your question?

Mr. LATOURETTE. Not yet.

Ms. POSTON. Can you repeat it, please?

Mr. LATOURETTE. I can't, but let me—do you want to stop, Mr. Chairman? I can come back and finish.

Mr. HORN. If you would like to finish the question, go ahead. I just wanted to note that we are going to recess.

Mr. LATOURETTE. I appreciate the courtesy.

I would like to ask it this way: I read you the part of the statute, 18 USC 641, which makes it a crime for people to conceal or retain this information. Isn't it an accurate reading of the facsimile that you sent in exhibit 9 to your investigators that you were asking to receive NCIC information which included to know whether the name on the file belonged to Mr. Abe; whether or not the events took place on March 19, 1963; whether or not the date of birth was December 19, 1922? That is NCIC information that you are asking your investigators to get, isn't it?

Ms. POSTON. Specifically I cannot comment on this letter that the client wrote which I forwarded on as to what the client was asking, but I can tell you that at no time did I ever ask any of my inves-

tigators to go and access NCIC or get any record or believe that they ever had access to NCIC.

Mr. LATOURETTE. My time has expired. I would like to come back to that during another round, with the courtesy of the Chair.

Mr. HORN. I thank the gentleman, and we will try to accommodate that. Right now we are going to be in recess until 2:30.

Ms. POSTON, if you would stay because of the second panel, we would appreciate it. Thank you.

Mr. BURTON. The committee will be reconvened, and as I understand it, Mr. LaTourette, the honorable former prosecutor from the great State of Ohio, is continuing his questioning.

Mr. LATOURETTE. Thank you very much, Mr. Chairman, and Ms. Poston, I apologize for having to leave for a minute for votes on the floor, but I was talking to you about exhibit 9, I think, and there was a previous exhibit. Can you just run through with us, you were a former Assistant U.S. Attorney. What else have you done in your practice of law?

Ms. POSTON. I believe I provided my resume to the committee, but when I graduated law school—

Mr. BURTON. I'm sorry, could you pull that mic closer, please.

Ms. POSTON. After a very short period of time at the Dade County State Attorney's Office, I did go to the Department of Justice as an Assistant U.S. Attorney in Miami.

Mr. LATOURETTE. OK. And then how long did you serve there?

Ms. POSTON. About 2½ years, and then I transferred to the strike force in Cleveland, but it was not quite 5 years total with Justice.

Mr. LATOURETTE. When were you in Cleveland?

Ms. POSTON. I'm sorry?

Mr. LATOURETTE. When were you in Cleveland?

Ms. POSTON. 1979 to about, I'm sorry, about 1977 to 1979.

Mr. LATOURETTE. OK. Going back to exhibit No. 9 again, you've acknowledged in response to my previous questions that this was a fax that you sent to Mr. Manuel and Mr. Lucas and you also acknowledged that you asked them to get answers to questions, that's what the document speaks for itself, we went through that. Clearly anybody that understands the English language indicates that you were asking them to get answers to as many of the questions as you can. And the questions to which the cover sheet refers to are contained on the letter that's attached from Mr. Odano, who you've identified as a representative of your client, and again, going through the questions, the first one is the name on the NCIC, and we are not confused about what NCIC stands for. You acknowledged that that's the national data base that we've been talking about, the subject of the hearing, that's what that refers to?

Ms. POSTON. Yes.

Mr. LATOURETTE. No confusion about that. The question about whether or not the name on the file relates to Mr. Abe, and then next there's a reference about whether or not the date of birth on the NCIC file is December 19, 1922, which I assume is the gentleman's birth date, and it asks you to—well, you're asking your investigators to figure that out. Now, I was asking you before about the fact that we have a criminal statute that makes it unlawful for people to come into possession of this information. Is there any rea-

son that you have, any reason to believe that your investigators would have lawfully come in possession of the NCIC file on this gentleman?

Ms. POSTON. Well, first of all, I think I want to be certain that my answer before we took the break, Mr. LaTourette, is clear because the—I know the Department of Justice searched the NCIC because I made a request for that in my FOIA request for them, and I know also that I never asked my investigators ever to obtain any information illegally, and that would also include the NCIC.

Mr. LATOURETTE. No. I understood your answer before the break, and that is you never asked them to illegally obtain NCIC information. What I'm asking you is do you have any reason to believe that your investigators at this time on November 10, 1994, I guess as Mr. Odano's letter, had had lawful possession of the NCIC information?

Ms. POSTON. First of all, I believe, Mr. LaTourette, I don't have any knowledge as to whether my investigators ever at any time had possession of any information from NCIC. Now, I do not know what all the rules and restrictions may be with respect to when you can or cannot release information from there. I know I did get information from some agencies in the Department of Justice that searched their records. Whether they searched their records in NCIC and gave me stuff, I don't know.

Mr. LATOURETTE. Well, again, would you acknowledge with me based upon your experience as a former U.S. Assistant Attorney General that 18 U.S.C. 641 does make it a crime in this country to receive, conceal or retain NCIC material that has been embezzled, stolen, purloined or converted; we are not in confusion about that?

Ms. POSTON. Well—are you reading from the statute?

Mr. LATOURETTE. I am.

Ms. POSTON. And it mentions NCIC in the statute?

Mr. LATOURETTE. Uh-huh. It specifically is talking about NCIC documents.

Ms. POSTON. But does it—

Mr. LATOURETTE. Well, let me, let me indicate to you that it is—

Mr. BURTON. I yield the gentleman my time.

Mr. LATOURETTE. Thank you, Mr. Chairman.

OK. I think the statute covers it, but it doesn't specifically mention NCIC. Let me ask you this. Based upon your experience, do you believe it to be a crime to be in unlawful possession of NCIC information or distribute it, publish it?

Ms. POSTON. Well, if you're assuming that it's unlawful possession, the answer would have to be yes.

Mr. LATOURETTE. I'm asking what your understanding is. I know what my understanding is. Is that your understanding? Do you think it is against the law to have NCIC, the information and distribute it if you haven't come into that—if you're not using it, even for law enforcement purposes, which is the whole theory behind the NCIC data base?

Ms. POSTON. I'm looking at the statute now that's been provided to me, and if the information was obtained, where this statute reads, unlawfully it would be a crime in my opinion, but I also

want to say, one thing is that I don't understand how this committee thinks that I did something wrong or could consider it improper that the acquisition of government property, in this case we are speaking about information, when in the first place it didn't exist and in the second place if it did the government ruled that I was entitled to it. I don't understand what the committee thinks that I did wrong.

Mr. LATOURETTE. Well, let me back up for just a minute because at the time that the information—I mean, let's sort of walk through this step by step. The first indication is that someone from the Federal Bureau of Prisons, again your representative of your client's letter in paragraph six says that the information that they received from the Federal Bureau of Prisons was much more thorough than what was provided. So in the first instance before the Justice Department ruled on anything somebody at the Federal Bureau of Prisons, either with your help or without your help or with your investigator's help or without your investigator's help, secured arrest records and provided them to your client. I mean isn't that the plain—going back to the document speaks for itself, isn't that the plain meaning of that paragraph?

Ms. POSTON. Just a moment, please. What you're asking me to answer I cannot answer because of conversations with clients or with my investigators, sir. I wish that I could answer you, but I cannot.

Mr. LATOURETTE. And when we started, this entire line of questioning was on that claim you continue to make, and that is the attorney-client privilege, and so maybe the best way to get about it is a hypothetical and I would ask you this. If, if documents were obtained from the NCIC by an employee of the Federal Bureau of Prisons unlawfully, if that information was then put in the possession of your client and/or your investigators, if then further Mr. Lucas or somebody else acting on your behalf conducted an NCIC search outside the scope at which that data base is permitted to be used and came into possession of it, and if then your client is asking you to go double back because there's a problem here, the stuff that they stole from the Federal Bureau of Prisons is different from the stuff that your investigators took from the NCIC, and that's the import and the meaning of this letter of November 10, 1994, I put to you that that is the commission of a crime, and if that is in fact the commission of a crime, the attorney-client privilege doesn't cover that instance, does it?

Ms. POSTON. With the greatest of respect, Mr. LaTourette, I am not going to answer on a hypothetical. I'm here to try to answer based on the facts as I know them, and second, I have no knowledge that there has been any crime committed here either by myself or by my investigators, and therefore, I see no need to have to assert the fifth amendment.

Mr. LATOURETTE. You can assert it any time you want to. I'm not asking you to assert it. Again, and this will be the last question because I guess I'm getting nowhere in a hurry, going back to subparagraph one of this letter of November 10, 1994, that do you not specifically—I mean you're the conduit here. You've asked your investigators to answer questions put to you by a representative of your client, and specifically, question No. 1 is, is the name on the

NCIC file Nobuo Abe. That is the question, and are you not by transmitting this to your investigator asking for information from the NCIC data base? Isn't that what that asks?

Ms. POSTON. I cannot answer the question, sir.

Mr. LATOURETTE. Because of the attorney-client privilege?

Ms. POSTON. Because of the attorney-client privilege, yes.

Mr. LATOURETTE. OK. Mr. Chairman, I really don't have any more questions.

Mr. BURTON. I think that concludes any questioning we have of this panel, and so we thank you for being with us. The next panel will be Ms. Poston again.

Ms. POSTON. Excuse me, sir, Mr. Chairman. There is an answer that I gave to you with respect to exhibit 19, and I would like to have the opportunity to clarify my response.

Mr. BURTON. Let me get exhibit 19 before me real quickly here so we can see what we're talking about. OK. I have it. Go ahead.

Ms. POSTON. Yes, sir. After having an opportunity, Mr. Chairman, to refresh my recollection regarding the event that happened over 6 years ago and using the document that the committee provided me this morning, I believe that I inadvertently misinterpreted your question, Chairman Burton, and overstated my answer. I believe that I said words to the effect that I did not know anything about a source at the Bureau of Prisons when in fact the answer should be and I correct at this time, Chairman Burton, my answer would be that I do not know any source at the Bureau of Prisons.

Mr. LATOURETTE. Mr. Chairman, could I ask a question on that clarification?

Mr. BURTON. Yes, you can.

Mr. LATOURETTE. I appreciate it, and this actually goes to Mr. Manuel and Ms. Poston, and that is, Mr. Manuel, if you go to exhibit No. 6 for just a second, and that is, that's a fax that's to the attention of Rich and I assume Rich is Mr. Lucas; is that right?

[Exhibit 6 follows:]


THE PHILIP MANUEL RESOURCE GROUP

1730 K Street, Northwest, Washington, D.C. 20006

Tel: (202) 861-0651 FAX: (202) 775-0827

FAX Cover Sheet

DOB 12/19/22

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE ADDRESSEE AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED AND CONFIDENTIAL.

If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone. Thank you.

If problems are encountered with this communication, please call the number above immediately.

To the attention of:	<i>Rich</i>
Fax Number:	<i>Miami</i>
Remarks:	<p><i>Rebecca Boston left a message on machine last night. She said</i></p> <p><i>"The date is 12/19/22. There was never any federal time served. I have no idea why that info. is there"</i></p> <p><i>Home phone to call [redacted]</i></p> <p><i>Do you still want me to call Bureau of Prisons?</i></p>
Number of Pages Including Cover:	<i>1</i>
Date:	<i>11/4/94</i>
Sender:	<i>14587</i>

Offices in Washington, D.C., Miami, FL, Las Vegas, NV



Mr. MANUEL. Yes, Rich would be Rich.

Mr. LATOURETTE. That would be a message to Mr. Lucas. The message part says, Rebekah Poston left a message on the machine last night. She said the date is December 19, 1922, which we know from my previous discussion with Ms. Poston was the birth date of the gentleman that we are talking about. There was never any time served. I have no idea why that info is there. Home phone, blah, blah, blah. Do you still want me to call the Bureau of Prisons. Did you send that document?

Mr. MANUEL. No, I didn't. It was sent by a person who worked in my office at the time.

Mr. LATOURETTE. Do you have any knowledge—

Mr. MANUEL. If you see the sender down there, the name is Lisa.

Mr. LATOURETTE. Do you have any knowledge of this document?

Mr. MANUEL. I don't recall seeing it.

Mr. LATOURETTE. Do you have any idea why there would be a reference to the Bureau of Prisons?

Mr. MANUEL. No, not really, not in this document.

Mr. LATOURETTE. And specifically to the question or the clarification that Ms. Poston was just giving on exhibit 19, there's a statement in a memo from Mr. Lucas on the letterhead of your company about a source at the Bureau of Prisons. Do you have any knowledge about any source at the Bureau of Prisons?

Mr. MANUEL. What are you referring to?

Mr. LATOURETTE. Exhibit 19. That's the clarification Ms. Poston was just giving to the chairman.

Mr. MANUEL. The only knowledge I have of a source, so-called source at the Federal Bureau of Prisons, is what I was told by Mr. Lucas. Mr. Lucas had advised me that there had been some information obtained from a source at the Federal Bureau of Prisons. Now that came from Lucas. Did not come from Ms. Poston to me.

Mr. LATOURETTE. But he represented to you that that information came from Ms. Poston, did he not?

Mr. MANUEL. I don't think, I don't think that he made a representation one way or another. He may have but I don't recall that.

Mr. LATOURETTE. Well, that exhibit 19 specifically, did you receive this memo? I mean it's addressed to you from Mr. Lucas.

Mr. MANUEL. I probably did, but I don't have any specific recollection of receiving it right now. I'm not denying that I didn't.

Mr. LATOURETTE. But again we have learned the lesson from Ms. Poston the document speaks for itself, and at least he appears to be in the second paragraph, she stated a handwritten record was being kept by their source at the Federal Bureau of Prisons, and that's what it said. Not that you can vouch for the truthfulness, but at least that's what Mr. Lucas was writing to you; is that correct?

Mr. MANUEL. He's writing this to me at the same time that he's dealing with the other side in this to sell information to them and go to work for them. So at this stage I have to tell you I'm very skeptical of whatever Mr. Lucas says or what he wrote even at the time.

Mr. LATOURETTE. But again, and I appreciate the chairman's indulgence, going back to the exhibit that I was just talking to you about, Ms. Poston, and that appears to—gotten a letter from Mr.,

what was his name George Odano, Mr. Odano, that also makes reference to a source at the Federal Bureau of Prisons in subparagraph six, doesn't it, Ms. Poston? Was it six? I'm sorry.

Ms. POSTON. Yes, yes, I think it's clear.

Mr. LATOURETTE. So—and so you—in your clarification to the chairman are you saying that you are not aware of any source at the Federal Bureau of Prisons providing information to you, your investigators or your client when your client in a document that you have been willing to discuss with me specifically indicates to you that I've already informed you the information that our source at the Federal Bureau of Prisons gave us was much more detailed. Are you still saying you're not aware of any source at the Federal Bureau of Prisons?

Ms. POSTON. No, that's not what I was saying.

Mr. LATOURETTE. You said you didn't have a source.

Ms. POSTON. No, that's not what I said.

Mr. LATOURETTE. I'm sorry, what did you tell the chairman?

Ms. POSTON. Mr. Chairman, I had said earlier to you that I did not know anything about a source at—the source at the Bureau of Prisons and then I corrected that to say that I did not know a source at the Bureau of Prisons.

Mr. BURTON. Let's delve into that just a little bit. Did you know anything about a source at the Federal Bureau of Prisons?

Ms. POSTON. I can't answer because of the privilege. I'm sorry, I wish I could answer you, sir. I have been directed by my client and I believe I have a legal basis for that in good faith.

Mr. BURTON. Do you have any more questions, Mr. LaTourette?

Mr. LATOURETTE. No.

Mr. BURTON. I thank this panel for being with us and I once again apologize for all the time it took. Mr. Lucas, do you have a final comment?

Mr. LUCAS. Mr. Chairman, in your subpoena to be here today, you requested additional documents be produced today. With the understanding that the instruction the chairman gave witnesses to answer questions applies to documents, I have a set of documents that are responsive.

Mr. BURTON. Well, thank you very much. Would somebody go down and get those documents? We'll take a look at those. Thank you very much. Thank you very much, and now the next panel is Ms. Poston, we appreciate you remaining at the table, John Schmidt, John Hogan and Richard Huff. Mr. Schmidt, Mr. Hogan and Mr. Huff, would you please stand and raise your right hands.

[Witnesses sworn.]

Mr. BURTON. Do any of you have an opening statement you would like to make?

STATEMENTS OF JOHN R. SCHMIDT, FORMER ASSOCIATE ATTORNEY GENERAL; REBEKAH POSTON, PARTNER, STEEL HECTOR & DAVIS, MIAMI; JOHN HOGAN, FORMER CHIEF OF STAFF TO ATTORNEY GENERAL RENO; AND RICHARD L. HUFF, CO-DIRECTOR, OFFICE OF INFORMATION AND PRIVACY, JUSTICE DEPARTMENT

Mr. SCHMIDT. Mr. Chairman, I'd like to make just a very brief statement and describe the circumstances of this matter as I recall

them, because they're not entirely consistent with the statement that you read earlier, and I will be very brief.

My recollection of this matter is that I met with Ms. Poston, who complained about a decision that had been made denying a freedom of information request that she had submitted on behalf of her clients. She told me she thought it was wrong and contrary to law and she intended to pursue her client's interests by litigation if necessary.

I then met with Dick Huff, who was then, still is now, the Co-Director of the Office of Information and Inquiry, which was a part of the Justice Department that reported to me, and I asked him about it and he described the case. He described the decision that he had made and why he had made it, and at some point in the course of that discussion, I think I asked him or somehow the issue came up, did we know whether we even had any records of a kind that were being requested, and he indicated that we did not, and I said why don't we find out and if we find out we don't have any records, then we could disclose that and that would be harmless and we would put this entire matter to rest without the need for any further argument or litigation.

He indicated a concern that we not change our general policy of not confirming or denying the existence of records of this kind because we didn't want to get into a situation where our failure to deny could be construed as a confirmation, and I said I thought that was the right policy but it didn't seem to me it was going to undermine that if we made an exception in a case like this one, disclose that we didn't have any records and avoided the need to continue and argue and litigate over something that didn't exist.

He then went off and went through the process of finding out whether in fact we had any records and at some point came back to me, I don't remember whether we met again or he called me, indicated that we had no records and I said I think we ought to go forward and disclose that. He then wrote the letter that you've seen. I don't remember whether he showed me the draft of the letter or not, but he then sent it. As far as I was concerned that was the end of it and frankly was the last time I ever thought about it until I got a call from your counsel about 2 weeks ago.

Mr. BURTON. I want to get opening statements from everybody but I'd like to just give you a question that you can answer after they make their opening statements, and that is, was there ever any of this information, because it has been stated in documents that we have here, that it was purged, which means removed? So you could just wait and think about that and we'll get back to you.

Mr. SCHMIDT. I'll answer right now. I have no knowledge of whether there was any information. All I know is that when Mr. Huff went through the process and came back, he said we have found we had no records or information of the kind that was being requested and that was therefore—it seemed to me a totally harmless disclosure that we could make and put this whole matter to rest.

Mr. BURTON. That was a little different than normal policy, though, was it not, to disclose that?

Mr. SCHMIDT. As I say, we had a general policy of neither confirming nor denying and I think that is important, but making an

exception in a case like this doesn't undermine that general policy. We still have that as a general policy. It's just like the policy we have of not confirming or denying the existence of investigations. That's our general policy, but there are a lot of exceptions where we make an exception for some reason and it doesn't allow anybody to therefore assume that because we haven't denied we are conducting an investigation.

Mr. BURTON. We'll get back to you in just a minute. Would you like to make an opening comment?

Mr. HOGAN. Briefly, sir, if I could. Mr. Chairman, my name is John Hogan. I served as the Attorney General's Chief of Staff, and I also worked for her when she was the State Attorney in Miami. I was a prosecutor there for about 15 years, serving most of that time as her chief assistant in Miami as well.

I met Ms. Poston through her sister, who was a secretary in the office, and when Ms. Poston eventually called me when I was here in Washington and started talking about a FOIA request, my response was very simple. I explained to her that I did not get involved in FOIA requests, that the Attorney General's Office does not get involved in FOIA requests. I simply referred her to the career people within the Department who handle those matters.

I think she naively thought that because of where I was sitting I would have the ability to influence those decisions. I didn't. I simply sent her to Mr. Huff's office to handle those matters. Periodically she would continue to call me and at first I simply told my secretary take a message and I did not return the calls. After a while, I told my secretary not to even bother me when Ms. Poston called because I had done what I was going to do and that was refer her to the career people who handle these decisions.

Eventually I became aware that she was going to take an appeal of Mr. Huff's decision. I had never spoken to Mr. Huff about the decision and no way participated in the decision, in no way attempted to influence his decision. I simply let—I did not speak to Mr. Schmidt either about it. I simply let Mr. Schmidt's people know there was a decision coming their way. I wanted to make them absolutely clear that I had not taken any position on the merits, that I did not think it was appropriate for me to be involved in the matter and I simply passed these matters off to the people who were the actual decisionmakers, who were appropriate decisionmakers. I played no role in the decision, the Attorney General played no role in the decision and no one else in the Attorney General's Office played any role in the decision.

I just wanted to make that clear.

Mr. BURTON. Mr. Huff.

Mr. HUFF. I have no statement.

Mr. BURTON. Very good. We will start off I think, Mr. LaTourette, I know you have time constraints. Did you have any questions you would like to ask at the beginning of this panel?

Mr. LATOURETTE. No.

Mr. BURTON. OK. We'll start with the chief counsel then and you have 30 minutes.

Mr. WILSON. Good afternoon, all, and hopefully we'll get through this fairly quickly.

Mr. Schmidt, yesterday you made a statement to a newspaper and you said, I made exceptions in particular cases that did not undermine the policy. At least that's what you were quoted to have said, and you have just explained to us what the policy was, and until this statement was made to the Associated Press yesterday, we weren't aware that there were other cases. What were the other cases?

Mr. SCHMIDT. I don't recall saying to the reporter I made exceptions. I told him what I think I just told you. He called me, I didn't make a statement. But I did tell him what I just told you that in this case it seemed to me it wasn't going to undermine our general policy and it would serve the purpose of putting to rest a controversy and saving everybody, including the taxpayers, the expense of having to litigate over it, but there was no other case that I remember where I made an exception to that policy.

Mr. WILSON. So this was indeed the only case that went to the policy you described earlier?

Mr. SCHMIDT. The only case where this issue was ever raised with me, but it was also the only case where I ever made that exception.

Mr. WILSON. Did you have any involvement in any other FOIA cases while you were Associate Attorney General?

Mr. SCHMIDT. Yes, occasionally if someone called and complained, although it was rare, it was a part of the Justice Department that ran itself, but there were occasional cases where people would call and complain. You're asking for examples?

Mr. WILSON. I'm actually asking very specifically. Were there any other cases involving the policy to neither to confirm nor deny the existence of—

Mr. SCHMIDT. No, I don't recall any other case where that issue was raised with me.

Mr. WILSON. Mr. Hogan, just before I get into this, you mentioned that you did at one point let staff know in the Associate Attorney General's office about this issue. Who did you contact?

Mr. HOGAN. I now know, I didn't know this when we spoke a few weeks ago when my memory was so faded because at that point I had not had a chance to look at documents, what I did was called when I learned that there was a potential appeal—Nancy McFadden was Mr. Schmidt's top aid, and I let her know that there was an issue coming. I wanted to look into whether or not they actually handled appeals. The question you just asked Mr. Schmidt, at the time I did not know the answer to and whether or not they would take an appeal from Mr. Huff's office and simply let her know that—to make sure there's no misunderstanding, that I had no position on the issue and had simply played the traffic cop sending her—sending Ms. Poston in her direction because I didn't want there to be any misunderstanding as to what my role was.

Mr. WILSON. Did you ask anybody in the Associate Attorney General's office to meet with Ms. Poston?

Mr. HOGAN. No. I simply said that Ms. Poston wanted to appeal. I didn't know how—what Mr. Huff's power was vis-a-vis Mr. Schmidt, to be completely honest, and I said look into the issue of whether or not this is an appeal that you would want to take, I don't know what your procedures are. I simply knew I wasn't going

to be involved in it and I wanted to let her know that there was no misunderstanding that I had no position.

Mr. WILSON. Ms. Poston, prior to your actually lodging the FOIA request did you have an expectation that the Justice Department would grant your request?

Ms. POSTON. I thought at the beginning it would be difficult because I was making a request for a record for someone that I did not represent, and in all my past FOIA experiences I had represented the party whose record I was seeking, but then when I got the memorandum from Wilmer Cutler that the Privacy Act did not apply to foreign nationals then I felt that I had a good legal argument.

Mr. WILSON. Mr. Hogan, you mentioned earlier that there was the prospect and—or Mr. Schmidt, you also mentioned it, that there was the prospect of litigation in this case. Mr. Schmidt, would the litigation have been successful if Steel Hector & Davis had litigated to obtain this—

Mr. SCHMIDT. I don't think so based upon what Mr. Huff had told me. I think he thought we had a very defensible position. My view, as I indicated before, was there was no point in litigating over something that didn't exist so we could avoid the issue, but I think that I didn't really get into the issue beyond talking to Mr. Huff. But I think he was comfortable that we had a defensible basis for refusing to disclose any information here.

Mr. WILSON. Mr. Huff, would a plaintiff have been able to prevail asking for the record that Ms. Poston asked for in this case.

Mr. HUFF. I think it would be very unlikely.

Mr. WILSON. Very unlikely.

Mr. HUFF. Yes.

Mr. WILSON. If you could, Mr. Huff, just—we'll start at the beginning of this, if you could explain very briefly because you want to get out of here and we don't have much time, what is the Justice Department policy regarding the confirmation or denial of criminal records about a third person? We understand that if you go and ask for a record that pertains to yourself you have access to that, but if I were to go and ask for somebody else's criminal record, what is the Justice Department's policy?

Mr. HUFF. Generally, we would refuse to confirm or deny whether or not such records existed. There are a few exceptions to that, such as if the subject of the request is deceased or if the subject of the request has consented to it or if the Department of Justice has officially made it public. For instance, do you have any records on John Hinckley, Jr., yes, we do.

Mr. WILSON. Now, is this policy in place for noncitizens as well as U.S. citizens?

Mr. HUFF. That has been our general practice, yes. There are exceptions where we have not followed it for noncitizens.

Mr. WILSON. Now why is this policy in place?

Mr. HUFF. Generally, it is to protect the privacy of an individual who does have a law enforcement record about him or her, where that fact has not previously been officially confirmed by the Department or one of the other circumstances that I mentioned.

Mr. WILSON. Now, my understanding from having spoken with you before is that if there was a situation where people who came

and asked for records pertaining to third parties and there were no records and the Department confirmed that there was no record, if the policy was consistently applied, then when there was a record the Department would not be able to reply that there was no record so it would be tantamount to confirming there was a record. Is that the basic—

Mr. HUFF. If we did that in all cases, certainly that would be so.

Mr. WILSON. Now, I mean we've heard today, Ms. Poston, that, briefly, but is it true that your initial FOIA requests for Mr. Abe's records were rejected?

Ms. POSTON. No.

Mr. WILSON. At the Department of Justice with FOIA request at Main Justice?

Ms. POSTON. Well, when you say Main Justice, you don't include Immigration and you don't include Bureau of Prisons?

Mr. WILSON. I'm not including INS.

Ms. POSTON. Then the answer is yes.

Mr. WILSON. Now, having read some of the papers, Mr. Huff, Ms. Poston argued that her FOIA request should be granted because of the public interest in Mr. Abe's arrest record and because the Privacy Act did not apply to a foreign national. Why did you reject her appeal? Did those arguments carry any water with you?

Mr. HUFF. Well, she was certainly right with regard to the Privacy Act, but as a general proposition aliens have privacy interests as well that are protectable under the Freedom of Information Act. That information can be protected. And certainly under the FOIA we aren't required to assert exemptions. In fact, that's the whole idea behind discretionary disclosure.

Mr. WILSON. I'll yield for a moment to the chairman of the committee.

Mr. BURTON. Something's been kind of bothering me, Mr. Hogan. You're the Chief of Staff for the Attorney General.

Mr. HOGAN. Yes, I was.

Mr. BURTON. You were. Why would you even call Mr. Schmidt to tell him that you weren't taking any position, but that he might be contacted by Ms. Poston?

Mr. HOGAN. I did not contact Mr. Schmidt. I never spoke to Mr. Schmidt. I called his staff.

Mr. BURTON. Why would you do that?

Mr. HOGAN. Simply to let them know—I wanted to make sure they understood that if my name was used in any way that it wasn't—that I had taken no position on the case.

Mr. BURTON. Wouldn't they have, if they got a call from Ms. Poston or anybody and said you know, Hogan said that you ought to help us or something, wouldn't they have called you to confirm that?

Mr. HOGAN. I would assume so.

Mr. BURTON. Then why would you have to call in the first place?

Mr. HOGAN. Out of an abundance of caution, sir, so there'd be absolutely no misunderstanding.

Mr. BURTON. When the Chief of Staff of the Attorney General of the United States calls somebody who's a subordinate in the Justice Department or one of their staff people, the tone of voice, voice inflection, no matter what it is, can convey all kinds of things and

just by virtue of the fact that you called it could have meant you know she's going to call and, you know, do what she can for her.

Mr. HOGAN. Just the opposite, sir.

Mr. BURTON. Did you make calls like that in the past?

Mr. HOGAN. Yes, sir.

Mr. BURTON. For other people where they called you and said we'd like something and you called and said you may be getting a call?

Mr. HOGAN. If there's ever any misunderstanding as to what I have done I would attempt to clarify it. Ms. McFadden, who was Mr. Schmidt's main assistant, was a very seasoned lawyer, a very competent woman. All I wanted to make sure that she understood was that even as to whether or not they heard this I had no opinion.

Mr. BURTON. But this has happened before, you've called like that before on other issues?

Mr. HOGAN. If I was concerned that someone would misunderstand what the role—what my role had been in something, yes, I would clarify it. Just for the reasons you said, sir.

Mr. BURTON. But you would do it without them initiating a call to you?

Mr. HOGAN. In some cases yes.

Mr. BURTON. OK thank, you.

Mr. WILSON. Just following up on that, Mr. Hogan, have you ever made a call on a Freedom of Information Act request before, a call to anybody else in the Department of Justice about somebody else's Freedom of Information Act request.

Mr. HOGAN. The only other calls I had made, Mr. Huff's staff would routinely consult me on FOIA issues. There were certain things that statutorily if some document was a former Attorney General Office document and there was a FOIA issue with it, they would have to go to our office just like they would go to a component and occasionally Mr. Huff's deputy would call me and I would call her back and it dealt with FOIA issues. So yes, I have made phone calls on a FOIA issue before. I relied very heavily on Mr. Huff and his staff as to the law because I don't perceive myself as an expert in that area, but yes, I have made phone calls on FOIA issues.

Mr. WILSON. What I'm trying to get at here, not FOIA requests for information from the Office of the Attorney General or pertaining to yourself or your records, the Attorney General's records, but on a matter that goes to a Freedom of Information Act request about a third party that's not in the Department of Justice.

Mr. HOGAN. To be completely honest, until I sat here this morning I was never really clear that was even a third party issue. I knew it was a FOIA request. I sent it to the FOIA people. I never focused on what the issue was. So any time I would get a phone call on FOIA, I simply sent it to the career lawyers who handled the FOIA issues. I never got involved in the substance of them.

I guess what I'm saying is, I don't know the answer to your question because I never really focused on what the issues were and your question just had a specific issue contained in it and I don't know. If I had a FOIA question from someone outside the Department, I sent it to Mr. Huff's staff. That was whether it was a situa-

tion where like Ms. Poston called me, it was whether I picked up the phone and some citizen from somewhere in the United States had a question about FOIA and what went wrong, I sent them all to Mr. Huff's office, and I simply—they were the career people who handled those matters. That's where I would send anyone who had a FOIA issue.

Mr. WILSON. Right. And I understand your answer as far as a basic FOIA request, but I'm trying to pare away and determine whether you, and I'll go to sort of the bottom line of the concern here, is that you're the Chief of Staff to the Attorney General of the United States, which is not the first place a FOIA request is lodged. It requires getting through certain traps to get to you, and whereas I can understand questions coming to you that pertain to FOIA requests that go to documents that are important to the Department of Justice, your documents, the Attorney General's documents, it does seem a little unusual for you to take any phone calls at all about a Freedom of Information Act request, about something else that's outside the Department, and I didn't get a firm sense of the answer on that.

Mr. HOGAN. The reason I took the call—when I get a message Rebekah Poston is on the phone, I knew who she was. She was an acquaintance, definition of friend is a nebulous one, but I knew who she was. I took the call. She began explaining she had a problem with FOIA. I said, oh, FOIA, needs to go to a certain office within the Department. I didn't—I told her—she asked me questions like, as I recall, do you know Tom Kelly, who's a lawyer in the FBI. I said, yeah, I know him, but if you have a question with Main Justice and there's a FOIA issue, it goes to Mr. Huff's office. I simply did not get involved in it. I did not go into the substance. She tried to make her case about the administration policy of openness and the Attorney General's policy of openness, and my response was I don't get involved in FOIA issues, you need to talk to the career people who handle those issues, and I just sent her on her way.

Now, when it later came to an appeal that was the first time that I know of an appeal coming from Mr. Huff's office. So to some extent there is a uniqueness here. I don't remember ever getting a call about that before, but again I would simply pass on the information.

Mr. WILSON. OK. Just to clarify one thing, you mentioned that, not precisely in these words, but the definition of friend is a nebulous term, and when we called you we didn't get a very good sense of any connection or past relationship between yourself and Ms. Poston. Is it true that when Hurricane Andrew came through Miami you invited Ms. Poston and her friend to come—and her sister to come live in your house?

Mr. HOGAN. Let me explain. Thank you very much for that opportunity. There's so many things that are just not clear.

Her sister was a secretary in the State Attorney's Office, and she was in charge of all homicide victims and just did a wonderful job. She was a single mother who just really was a very, very impressive person. Although she was never my secretary, she was someone who I've always admired.

I knew that she lived on Miami Beach. When Hurricane Andrew was approaching Miami, I called her and said, look, they're saying Miami Beach needs to be evacuated, Bobby. If you need a place to stay, I live inland. You're more than welcome to come to my house.

And she said, well, my sister also lives on the shore. Could she come, too?

And I did not say, no, she has to stay out in the storm. I said, yes, she can come, too.

My contact with Ms. Poston had always been through her sister. Her sister's office desk was near my office. I would come out occasionally, they'd be going to lunch together. She would introduce me. I'd say, hi, Rebekah, how are you? That was really the sum total of my contact with Ms. Poston before this happened.

So I did say to her sister that Ms. Poston could come to my house in the hurricane. The great irony was they didn't come, and my house was destroyed, and her house was fine.

Mr. WILSON. When this FOIA matter was at the Department of Justice, it is our understanding that it had been resolved to the point where there was no possibility of appeal or at least the final appellate step had been taken within the Department of Justice. Was that your—do you recall whether you had an understanding of that at the time?

Mr. HOGAN. I'm sorry, could you repeat that, sir?

Mr. WILSON. That when this FOIA request was in the Department of Justice, it had gone to Mr. Huff and he had rejected—there was appeal to him, and he had rejected the appeal, and the matter was effectively closed within the FOIA office. Is that your understanding of what had happened?

Mr. HOGAN. I knew that—I had a sense that—and, again, mainly from messages, and I'm not even sure of the information—that eventually he ruled against Ms. Poston's position. I did not know whether that was final or not, and that was one of the questions that I posed to Ms. McFadden, that she should look into whether or not there was a right of appeal for Mr. Huff.

Mr. WILSON. If I could just put up exhibit 30 for a moment on the screen. This is a letter dated April 25, 1995. It's a letter to Ms. Poston from Mr. Huff, and there are four things that I wanted to pull out of this letter.

In the first paragraph, it says that I note that you have not furnished a notarized authorization for Mr. Abe.

Second point, in the second paragraph, I find the Supreme Court's hold to be controlling in this case.

And then further in that paragraph, it says, lacking an individual's consent, proof of death, official acknowledgment of an investigation or an overriding public interest, even to acknowledge the existence of law enforcement records pertaining to an individual could reasonably be expected to constitute an unwarranted invasion of personal privacy.

And then at the end of the first page and going on to the second page, it says, accordingly, this office is unable to assist you in this matter at this time, and I am closing these administrative appeals in this office.

I mean, Mr. Huff, when we first read this it seems like a fairly unambiguous response to the FOIA request. In your opinion, was this decision a close call?
[Exhibit 30 follows:]



U.S. Department of Justice
Office of Information and Privacy

Telephone: (202) 514-3642

Washington, D.C. 20530

APR 25 1995

Rebekah J. Poston, Esq.
Steel, Hector & Davis
200 South Biscayne Boulevard
Miami, FL 33131-2398

Re: Appeal Nos. 95-0283
thru 95-0287
RLH:DAH

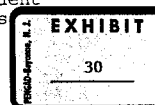
Dear Ms. Poston:

This responds to your letter of February 3, 1995, and to Patrick J. Carome's letter of March 31, 1995, regarding your request to the Executive Office for United States Attorneys, the Immigration and Naturalization Service, the Federal Bureau of Investigation, the Department of the Treasury, and the Department of State on behalf of your client, Soka Gakkai, for access to records pertaining to Nobuo Abe. I note that you have not furnished a notarized authorization from Mr. Abe as required by 28 C.F.R. § 16.41, or a sworn statement pursuant to 28 U.S.C. § 1746.

While I understand Ms. Clow's need for the requested records, I find the Supreme Court's holding in United States Department of Justice v. Reporter's Committee for Freedom of the Press, 489 U.S. 749 (1989) to be controlling in this case. Thus, in the absence of such authorization, and after careful consideration of your appeals from the actions of the EOUSA and the FBI, I have decided to affirm the initial action of these components in refusing to confirm or deny the existence of records responsive to your request. Lacking an individual's consent, proof of death, official acknowledgement of an investigation, or an overriding public interest, even to acknowledge the existence of law enforcement records pertaining to an individual could reasonably be expected to constitute an unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(7)(C).

I note that Mr. Carome's letter indicates that you were advised by the INS that no records pertaining to Mr. Abe could be located in its files. It has been determined that this response is correct.

With regard to your appeals from the actions of the Department of the Treasury and the Department of State, the Department of Justice has no jurisdiction over records maintained by other federal agencies, nor will it become involved in disputes over the withholding of documents until after the agency has completed its initial processing of documents and rendered its subsequent administrative appeal decision. Accordingly, this Office is



DOJ-03127

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unable to assist you in this matter at this time, and I am closing these administrative appeals in this Office.

Judicial review of my action on your appeals pertaining to the EOUSA, the INS and the FBI is available to your client in the United States District Court for the judicial district in which your client resides, or in the District of Columbia, or in the Western District of Washington, which is where the records sought, if they exist, would be located.

Sincerely,



Richard L. Huff
Co-Director

cc: Russell J. Bruemmer
Wilmer, Cutler & Pickering
2445 M Street NW.
Washington, D.C. 20037-1420

DOJ-03128

Mr. HUFF. No.

Mr. WILSON. If one were to argue that based on—well, let me ask this question this way. When the decision was made by Mr. Schmidt to provide Ms. Poston the information that she was requesting, did that constitute a change of policy at the Department of Justice?

Mr. HUFF. I don't think it was a change of policy. I think it was an exception in this case because of the circumstances in this case where Mr. Schmidt said he had looked at the policy, Attorney General Reno's disclosure policy.

Mr. WILSON. What were the circumstances that made this case worthy of a change of direction?

Mr. HUFF. He mentioned during our conversation the risk of litigation and the time that litigation would take, but that was—

Mr. WILSON. Is that—Mr. Schmidt, is that a fair characterization, that it was a concern about litigation that led you to make the decision you made?

Mr. SCHMIDT. Well, that was certainly a factor. Again, I wouldn't accept the characterization that it was a change in policy. I think Mr. Huff has it exactly right. There was an exception to the policy in a circumstance where we had discovered we didn't have any records. I mean, that is the key element here.

So we were not disclosing any records. There was no argument that we were depriving anybody of their privacy rights, and we had the ability to do something totally harmless that thereby put to rest the matter and avoided the need for any further controversy about it. And that seemed to me then, and it still seems to me, the sensible thing to do in those circumstances.

Mr. BURTON. Let me just interrupt here. It is an exception to the accepted policy. You don't tell people when they ask about criminal records for the FOIA request, whether you have them or don't have them, you don't tell them anything.

Mr. SCHMIDT. That's correct. You have the general policy of neither confirming nor denying.

Mr. BURTON. And so why the exception? I guess it's lost—

Mr. SCHMIDT. Because we had found ourselves here in a situation where we were confronted with not just the potential but I think the likelihood of having to litigate over this matter. We had discovered that we, in fact, had no records. By disclosing the fact we had no records we could completely put an end to the matter and avoid spending anybody's effort or time to litigate.

Mr. BURTON. But let's say that you have 100 cases like this where people threaten with litigation.

Mr. SCHMIDT. But we didn't. I would agree with you, if you had 100 or 1,000 cases like this, you might have to come to a different result. But we had one case we could completely put to rest by making a completely harmless and lawful disclosure of the fact that we had no records. So it seemed to me, for me, frankly, in terms of the overall interest of the Department, easy to conclude that it was a sensible conclusion not to unnecessarily litigate over something that didn't exist.

Mr. BURTON. How do you account for the fact—and maybe you just have to speculate on this. How do you account for the fact that the investigator—the private investigator was looking into this,

Mr.—what was the gentleman's name? Mr. Manuel said that the records had been purged.

Mr. SCHMIDT. All I know about that is what I learned from having listened to the hearing this morning. I know nothing about any of that. I don't know what it means. I don't know how it happened, if it happened, and—you know, I know nothing about any of that.

Mr. BURTON. I understand, but you can see why that raises a question with us.

Mr. SCHMIDT. I can see how your definition of purged sounded more like mine than the one you were getting from that particular witness. But where that leaves you in terms of—

Mr. BURTON. But the point is this. We see these documents, and they raise all kinds of questions, and it says it's been purged, and then we find that you have made an exception to a rule that's been around or a policy that's been around for a long, long time because you say that you're concerned about possible litigation. And it just—

Mr. SCHMIDT. It seems to me you're connecting apples to oranges in a way that doesn't, in fact, connect. My decision had nothing to do with whether anything had or hadn't been purged. Because none of us, I don't think Mr. Huff or anybody else, knew anything about any of that. All we were deciding was what to do in a situation where we had found out we didn't have any records and should we go on arguing or should we put the matter to rest by disclosing that fact.

Mr. BURTON. If you have a case like this in the future, would you do the same thing?

Mr. SCHMIDT. I'm no longer there, but if I had this case under these circumstances in the future, yes, I would. It seemed to me right then. It still seems to me right.

Mr. WILSON. Just one of the concerns that brings us to this matter and this panel here is to try and determine what the policy is to the extent it can be determined. And it sounds to me—and you can help me with this, Mr. Schmidt. It sounds to me like the clearest articulation of the status quo now is that if somebody wants criminal records about a third party and they threaten litigation and there aren't records, the Department of Justice will provide them an answer. Is that a fair articulation of the policy?

Mr. SCHMIDT. No. I think that the policy remains that, as a general policy, we don't confirm or deny the existence of records, and I would say that if you want to state as a general policy that there are occasional exceptions in circumstances where the disclosure of the nonexistence of record is harmless and allows us to avoid what otherwise appears to be an imminent threat of significant litigation.

Mr. WILSON. I understand what you say, but your answer is somewhat—it doesn't follow. If I go to the Department of Justice tomorrow and I work through the process and I get to the final decisionmaker and I'm rejected and I get a bigger—just a bigger law firm than Steel Hector and Davis or any other sort of large, well-thought-of law firm and I say, look, you know, the Privacy Act doesn't apply, I want this record, then how could you distinguish my request from Ms. Poston's request?

Mr. SCHMIDT. Well, I would distinguish it. I don't think this was a case where someone was coming in and simply litigating as part of a strategy to undermine the general Justice Department policy of neither confirming or denying the existence of records. This was litigation that was clearly substantial, although I think Mr. Huff, based on everything I know, is correct. We would have won it, but there were real issues here.

Mr. WILSON. They wanted the record.

Mr. SCHMIDT. No, no. But the extent to which the aliens under the circumstances had or hadn't a right to privacy and under what circumstances therefore someone asserting a FOIA request could override what at least Ms. Poston and her clients would say was a nonexistent right, and this was real litigation—I don't think that it is fair to suggest that we are somehow creating a scenario where everyone would be free to come in and by the mere threat of litigation undermine the long-standing policy, and if that began to happen, I would abandon the policy of making exceptions, but until it happened, I would see no reason to expend taxpayer money and the resources of the Justice Department to litigate unnecessarily over something that doesn't exist.

Mr. BURTON. Mr. Schmidt, if you didn't know all of the facts of this particular case, how would you know whether or not divulging that you had no information or some information in the file would affect the case?

Mr. SCHMIDT. I have no idea that it would affect the case. All I know is because we had no records, there was one whose privacy rights were going to be violated. We didn't make the decision until we found out that we had no records. I didn't know whether it was going to be positive or negative for this case. In terms of the interest the FOIA law and the privacy law was protecting, it was harmless because, in fact, there were no records being disclosed, and therefore we were not depriving anybody of their privacy rights.

Mr. WILSON. Just to change course for a minute, does anybody on this panel know why the Attorney General recused herself in this specific case?

Mr. HOGAN. I do. I have had a chance to look at records since we spoke.

I spoke—although I normally do not take Ms. Poston's calls, occasionally I would pick up the phone when my secretary was busy, and occasionally I would speak to her. I had a conversation with her at one point, and she clearly was frustrated with the fact that her position was not gaining momentum within the Department, and she mentioned to me that she was handling the matter with a man by the name of John Edward Smith. I knew him to be a friend of the Attorney General. Again, I have worked with the Attorney General since 1979 and knew her before that. He had been at Steel, Hector & Davis when the Attorney General was there, as opposed to Ms. Poston, who joined the firm after Ms. Reno left. He was someone—when she was nominated to be Attorney General, he took a leave of absence from the firm and actually came here to Washington to help her prepare for her confirmation hearings. He came up here and helped her prepare for those hearings.

So when Ms. Poston mentioned John Edward Smith's name to me, I became concerned. I went to the Attorney General and said,

there is this FOIA matter that Rebekah Poston had called me on, and I sent it off to the career people. And the Attorney General just said, I am recusing myself from the matter. Make sure that nothing else comes to me.

Although Ms. Poston I would not characterize as a friend or social acquaintance of the Attorney General, Mr. Smith was, and that was my notice that he was more involved, and so I brought it to her attention.

Mr. WILSON. This is information which has come to your attention?

Mr. HOGAN. Yes.

Mr. WILSON. Ms. Poston, we know that you came up and had a meeting first with the Attorney General, and you told us that you did not discuss the Abe matter with the Attorney General, and you ended up meeting after that with Mr. Schmidt, and Mr. John Edward Smith came with you. And one of the questions we put to you was we have billing records from your firm, and Mr. Smith did not charge any time to this matter. There are lots of lawyers here, and presumably, unfortunately, there are paying clients, and they bill somebody. It is very, very rare for a lawyer not to record his or her time, particularly when there is a client who will pay the bill. Have you been able to determine why Mr. Smith did not record any of his time in this matter?

Ms. POSTON. I have no personal knowledge as to why he did not. Mr. Smith was—I don't know how—John was in a retired status with the firm. He was a government relations lawyer. I asked him if he would come with me because I have never met anybody this high up in the Department before, and he participated in the meeting with us and Mr. Bremer and Mr. Schmidt. But why he did not charge his time, I don't know.

Mr. WILSON. There were associates in your law firm who worked on this matter, and they similarly did not bill any of their time. That is another peculiar—we have looked at the billing records, and your name is there, and theirs is not. It seems like Mr. Smith, you have explained him. Now, the associates, who certainly through benevolence don't write off their time in a matter like this, didn't bill their time. That is another thing that we are puzzled with. Is there an explanation for that?

Ms. POSTON. Mr. Wilson, do you have the subpoena in front of you? I want to be certain. I want to be certain what is called for. It called for all of the billing.

Mr. WILSON. I do not have the subpoena in front of me. We can talk about that later.

Ms. POSTON. I want to be sure that we pulled it up properly. I know that Mr. Jimenez and Mr. Teen worked on the case, Mr. Jimenez briefly in a meeting and Mr. Teen to do some legal research. My counsel wanted to be sure that we checked it correctly. I would agree with you.

Mr. BURTON. We will now recognize minority counsel.

Mr. BARNETT. Thank you, Mr. Chairman. I am Phil Barnett, the minority counsel.

I would like to begin by trying to clarify this policy on FOIA requests and disclosing that there are not records.

Mr. Huff, was it against the law, was it illegal, to disclose that the Justice Department had no records relating to Mr. Abe?

Mr. HUFF. No.

Mr. BARR. So if it was a policy, it was a discretionary policy that the Justice Department was following, in your view?

Mr. HUFF. It was a policy that was not required by law, but in order to provide privacy protection for those individuals who did have records, we would want to maintain a consistent—a fairly consistent policy so that we don't have the first three people say no records and the fourth one say—refuse to confirm or deny. Is that—

Mr. BARNETT. That is what is a little confusing about the record in this case, because that seems to be almost exactly what happened here. There wasn't in this case a consistent policy being applied.

I would like to make this part of the record. This is a letter, January 30, 1995, so it is before your decision rejecting the appeal, and it is from the Executive Office of the U.S. Attorney, signed by Bonnie L. Gay, Attorney in charge of the FOIA unit of that part of the Department of Justice. This is really before any of what was being discussed in the majority's questioning.

It says a search of records located in the U.S. Attorney's Office for the Western District of Washington has revealed no records. In other words, they filed something that was different from the policy; they just disclosed that they didn't have any records. There was nothing illegal about that.

And the Bureau of Prisons, in a letter dated March 2, 1995, did essentially the same thing. They said: We don't have any records as regards your request; the microfilm records do not contain any information. We have not located any records concerning your request.

So they also felt under no compunction or no reason not to say that they didn't have any records. They just took that position.

The INS, I think they said that they had records but they were hard to read.

So if I was in Ms. Poston's position, I would be confused. Part of the Justice Department is saying we can't tell you whether we have or don't have records. Other parts of the Justice Department would say, well, we don't have records.

So we have been talking about this policy as if it was a sacrosanct policy, but it doesn't appear that it was. It was kind of a sporadic, intermittent policy, at least as it applied in this case.

Mr. HUFF. In this case, the Bureau of Prisons is a little different than the rest of the components of the Department of Justice. The Bureau of Prisons always wants to be able to tell somebody. They don't want to have a secret prison. If somebody has been federally confined, they do want to make that public, as a general proposition there may be protected witnesses that may cause problems, but as a general rule they do want to give that information out.

With regard to the Executive Office for the U.S. Attorneys and INS, I think those were incorrect determinations that were made initially, and it would just be speculating on my part as to why that would be.

Mr. BARNETT. You would agree if you were Ms. Poston making the request, it would be confusing to get different answers from the Department of Justice and you might want to seek clarification of that?

Mr. HUFF. Yes.

Mr. BARNETT. Thank you.

Moving away from the policy to the question about whether the actions of the Department of Justice responding to the FOIA request involved any improper actions, particularly on the part of the Attorney General, I want to ask some questions about that. The chairman, testifying last year in front of the Rules Committee, said he had information to indicate that the Department of Justice had, "changed a policy related to the release of information so that the lawyer who was the sister of a good friend of the Attorney General could help her client." He further stated this policy change was made personally by the Attorney General, according to one memo. So the claim was the Attorney General was personally involved in this decision. I want to go through and ask each of the witnesses about that.

Ms. Poston, let me ask you first. Do you have any knowledge of the Attorney General having any involvement in this matter?

Ms. POSTON. No, sir, none.

Mr. BARNETT. Mr. Schmidt, did you have any knowledge of the Attorney General having any involvement?

Mr. SCHMIDT. No, she had none.

Mr. BARNETT. When you made your decision, Mr. Schmidt, you made it based on the merits?

Mr. SCHMIDT. Yes.

Mr. BARNETT. And the Attorney General did not directly or indirectly—

Mr. SCHMIDT. I never had any contact before or after with the Attorney General about the matter.

Mr. BARNETT. Mr. Hogan, the same?

Mr. HOGAN. She had no role in this decision whatsoever, initially or at any stage.

Mr. BURTON. Yielding briefly, the letter that is referred to is dated July 19. You may have a copy of it. It is exhibit No. 39. This is a letter to Ms. Poston—from Ms. Poston to Mr. Manuel.

In the second paragraph, "Our personal meeting with Deputy Associate Attorney General John Schmidt resulted in a policy decision by the Attorney General to reverse the original position of the Department of Justice by authorizing release of the requested record or a statement as to whether it existed in the past. That is a major accomplishment and victory. The result, however, is quite perplexing." And then it goes on.

Mr. SCHMIDT. It is obviously wrong. The Attorney General had no involvement in the matter. That is a lawyer's puffery, maybe, to try to claim somehow they had reached some higher level than they had in fact reached.

Mr. BARNETT. Do you agree with that, Ms. Poston?

Ms. POSTON. I believe it could have been more artfully written to say the "office of," but I don't believe that it is puffery.

Mr. HUFF. I believe the date of the letter that you are referring to came shortly after our July 11, 1995 letter; is that correct?

Mr. BURTON. It is exhibit No. 39, dated July 19.

Mr. HUFF. My letter to Ms. Poston stated that Associate Attorney General Schmidt—this is exhibit 37. My letter, which is just a couple of days before that, says that, “After considering your Freedom of Information Act request under Attorney General Reno’s policy of undertaking discretionary disclosure of information . . .” There may have been some confusion in that letter suggesting that there was a new policy. This was under the Attorney General’s policy of 2 years ago, as Mr. Schmidt mentioned.

[Exhibit 37 follows:]



U.S. Department of Justice
Office of Information and Privacy

Telephone: (202) 514-3642

Washington, D.C. 20530

July 11, 1995

Rebekah J. Poston, Esq.
Steel, Hector & Davis
200 South Biscayne Boulevard
Miami, FL 33131-2398

Re: Appeal Nos. 95-0283,
95-0285, 95-0286

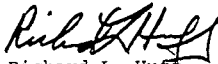
Dear Ms. Poston:

This is in further response to your administrative appeals on behalf of your client, Soka Gakkai, from the actions of the Federal Bureau of Investigation and the Executive Office for United States Attorneys pertaining to its request for access to any records concerning a detention by the Seattle Police Department of Mr. Nobuo Abe on or about March 19-20, 1963.

After considering your Freedom of Information Act request under Attorney General Reno's policy of undertaking discretionary disclosure of information whenever no foreseeable harm would result, Associate Attorney General John R. Schmidt has determined that it is appropriate to disclose the fact that neither the Federal Bureau of Investigation nor the Executive Office for United States Attorneys maintains, or has any evidence of ever maintaining, any record within the scope of your request. In coming to this factual conclusion, the Federal Bureau of Investigation searched the index to its Criminal Justice Information Services Division, which maintains criminal history records ("rap sheets"), and the indices to its central records system for its Seattle Field Office and Headquarters Office. The Executive Office for United States Attorneys searched the index to the files of the United States Attorney's Office for the Western District of Washington.

I am required to advise you that if your client considers this an adverse determination, it has the right to seek judicial review in the United States District Court for the judicial district in which it has its principal place of business (if within the United States), or in the District of Columbia or in the Western District of Washington.

Sincerely,


Richard L. Huff
Co-Director

cc: Russell J. Bruemmer, Esq.
Wilmer, Cutler & Pickering
2445 M Street NW
Washington, D.C. 20037-1420



DOJ-01569

Mr. BURTON. Well, if this is a misstatement by Ms. Poston in the letter, it is consistent with other misstatements that we have seen today. We have had Mr. Manuel and the other investigator, there were all kinds of communications, and we have had all kinds of miscommunications that follow the same pattern.

Mr. BARNETT. There is an April 10, 1995 transmittal slip from the Office of Attorney General, saying that the Attorney General is recusing herself, and I would like to make that part of the record here.

Just to wrap up this part of the questioning, Mr. Huff, you had no involvement directly with the Attorney General?

Mr. HUFF. I didn't.

Mr. BARNETT. Every witness who was involved had no involvement with the Attorney General. She had recused herself from this decision.

Just the final thing to ask about is whether there was what the majority's memo called a remarkable series of contacts that Ms. Poston made, trying to get the information from the Department of Justice through the FOIA request. The major support for that seems to be on page 15 of the report, talking about a remarkable volume of contacts between Ms. Poston and Mr. Hogan, where it said there were 18 contacts that were there. That is based on, I guess, some records that the committee has obtained.

Your testimony, I thought, Mr. Hogan, was that there were a lot of calls that you didn't respond to.

Mr. HOGAN. I spoke to Ms. Poston, my best recollection when Mr. Wilson called me 2 weeks ago, was two or three times. It could have been four, but two or three is my recollection. I have since had a chance to look at Ms. Poston. It talks about staff of the Attorney General. She spoke to my secretary an awful lot. And early on someone said, I am not sure if it was you, Mr. Chairman, she made all of these contacts, and it was with me. The person who she had contact with the most was my career secretary at the Department of Justice who took her messages, fielded her calls, fielded her frustrations on the fact that I had not returned the calls, but I spoke to her two or three times on this matter. And in each case, I simply referred her to the person who is the appropriate decision-maker.

Mr. BARNETT. Ms. Poston, is that your recollection?

Ms. POSTON. That is my recollection. I expressed to the staff of the committee a few weeks ago when I was here, I seemed to spend more time talking to his secretaries and trying to get him to call me back than speaking to him. I expressed that to the committee staff.

Mr. BARNETT. So it was one or two contacts between you and Mr. Hogan on this. Let me ask you about that.

You are a lawyer with a client who wants to get information, Ms. Poston. You have gotten no information from Mr. Huff, and other parts of the Department of Justice have actually answered your FOIA request and said they don't have records. Is that inappropriate or just being an advocate and trying to seek the information for your client?

Ms. POSTON. I think I was being an aggressive advocate because, as my time records reflect and as I told the staff, I tried to get a

meeting with the head of the FBI, which I got. I tried to move on multiple fronts at the same time, and I don't consider it an excessive number. I think it is just good lawyering.

Mr. BARNETT. Is there anyone on the panel that would think that it is inappropriate, other than just being an advocate and zealous representation?

Mr. HOGAN. I don't, and I don't want my comments about not taking her calls to influence and make it sound like I did. She was being aggressive. She never asked me to do anything that was improper. She was clearly advocating for her client. I just wasn't going to help her.

Mr. BARNETT. Mr. Chairman, I think those are all of my questions.

Mr. BURTON. Thank you. The gentleman from Ohio.

Mr. LATOURETTE. Thank you, Mr. Chairman.

Mr. Hogan, if you would flip to an exhibit which we have marked as exhibit No. 32, it is a cover sheet from Ms. Poston, and then there is a letter attached to it dated May 12, 1995. If you can find that, I have some questions that I want to ask you about that.

[Exhibit 32 follows:]

MAY 12 '95 11:06AM STEEL HECTOR & DAVIS

P.1

STEEL HECTOR & DAVIS200 South Biscayne Blvd.
Miami, Florida 33131-2398
(305) 577-7000**Telecopier Cover Sheet**
Confirmation # (305) 577-2887

Date: May 12, 1995 11:05 a.m.
Send To: John Hogan, Counselor to the Attorney General
Firm: Department of Justice
Telecopier No: (202) 616-5117
Confirmation No: (202) 514-3892

Total Pages Including Cover Sheet: 5☒ Letter Size ☐ Legal SizeOriginator: Rebekah J. Poston Ext 305-577- 7022

Special Messages:

Crystal: Please deliver to John as soon as possible. Thanks.

The information contained in this transmission is attorney privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone collect and return the original message to us at the above address via the U.S. Postal Service. We will reimburse you for postage. Thank you.

☒ Original Mailed

MIAMI: FAX (305) 577-7001

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WEST PALM BEACH: FAX (407) 655-1509

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TALLAHASSEE: FAX (904) 222-8410

Client Code: 27158Matter Code: 3358

DOJ-03120

MAY 12 '95 11:06AM STEEL HECTOR & DAVIS

P.2

Steel Hector & Davis
Miami, Florida

Rebeleigh J. Posson
Of Counsel
(305) 577-7032

PERSONAL AND CONFIDENTIAL

VIA TELECOPIER

May 12, 1995

John Hogan
Counselor to the Attorney General
Department of Justice
10th and Constitution Avenue, N.W.
Room 5119
Washington, D.C. 20530



Dear John:

I am enclosing a copy of Richard Huff's response to our FOIA appeal. I must say that I am rather disappointed. He failed to address many of the substantive issues that we raised, not the least of which is the Clinton administration's commitment to opening records to public scrutiny, particularly where no legitimate privacy rights exist.

Consequently, John Smith, Russell Bruemmer and I believe we must take one last step before deciding whether to initiate litigation on these issues. Believe me, we do not want to bring unnecessary or senseless litigation. Unfortunately, however, we are lacking an understanding, given our arguments and the failure of anyone in the Office of Information and Privacy to address them head on, as to why our appeal has been denied. If you could assist the three of us in scheduling a meeting with Mr. Schmidt, we would like to address our concerns with him. We have not yet attempted to contact Mr. Schmidt.

DOJ-03121

Miami Office
418 Floor
200 South Biscayne Boulevard
Miami, FL 33131-2398
(305) 577-7000
Fax: (305) 577-7001

West Palm Beach Office
1905 Phillips Point West
777 South Flagler Drive
West Palm Beach, FL 33401-6188
(407) 655-7200
Fax: (407) 655-1509

Tallahassee Office
Suite 601
215 South Monroe
Tallahassee, FL 32301-1804
(904) 222-2500
Fax: (904) 222-8410

MAY 12 '95 11:05AM STEEL HECTOR & DAVIS

P.3

Steel Hector & Davis

John Hogan
Counselor to the Attorney General
May 12, 1995
Page 2

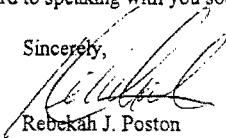
We trust that Mr. Schmidt will agree to one final conference on this matter; we will of course work with his schedule on a convenient date and time.

I harken back to the beginning of this matter when you and I first spoke. You commented that you didn't understand why they just could not tell whether they have a record or not. Frankly, we would be satisfied with such a response. As you know, Immigration and other agencies informed us that they have no records. Even information that the record once existed and was subsequently deleted, would suffice. These are the messages that we want to convey to Mr. Schmidt.

I wanted you to understand our approach and what we are trying to accomplish so that you have a comfort level in helping us secure a meeting with Mr. Schmidt. I know you said that you would assist us in trying to get a meeting, but that you could not make any promises. With that understanding, I am requesting your assistance at this time.

I will call you in a day or so after you have had an opportunity to read my letter and think about my proposal. I look forward to speaking with you soon.

Sincerely,



Rebekah J. Poston
Of Counsel

RJP:ch

Enclosure

cc: Russell J. Bruemmer, Esq.

MIAM/145682_1

DOJ-03122

MAY 12 '95 11:07AM STEEL HECTOR & DAVIS

P.4



U.S. Department of Justice
Office of Information and Privacy

Telephone: (202) 514-3642

Washington, D.C. 20530

APR 25 1995

Rebekah J. Poston, Esq.
Steel, Hector & Davis
200 South Biscayne Boulevard
Miami, FL 33131-2398

Re: Appeal Nos. 95-0283
thru 95-0287
RLH:DAH

Dear Ms. Poston:

This responds to your letter of February 3, 1995, and to Patrick J. Carome's letter of March 31, 1995, regarding your request to the Executive Office for United States Attorneys, the Immigration and Naturalization Service, the Federal Bureau of Investigation, the Department of the Treasury, and the Department of State on behalf of your client, Soka Gakkai, for access to records pertaining to Nobuo Abe. I note that you have not furnished a notarized authorization from Mr. Abe as required by 28 C.F.R. § 16.41, or a sworn statement pursuant to 28 U.S.C. § 1746.

While I understand Ms. Clow's need for the requested records, I find the Supreme Court's holding in United States Department of Justice v. Reporter's Committee for Freedom of the Press, 489 U.S. 749 (1989) to be controlling in this case. Thus, in the absence of such authorization, and after careful consideration of your appeals from the actions of the EOUSA and the FBI, I have decided to affirm the initial action of these components in refusing to confirm or deny the existence of records responsive to your request. Lacking an individual's consent, proof of death, official acknowledgement of an investigation, or an overriding public interest, even to acknowledge the existence of law enforcement records pertaining to an individual could reasonably be expected to constitute an unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(7)(C).

I note that Mr. Carome's letter indicates that you were advised by the INS that no records pertaining to Mr. Abe could be located in its files. It has been determined that this response is correct.

With regard to your appeals from the actions of the Department of the Treasury and the Department of State, the Department of Justice has no jurisdiction over records maintained by other federal agencies, nor will it become involved in disputes over the withholding of documents until after the agency has completed its initial processing of documents and rendered its subsequent administrative appeal decision. Accordingly, this Office is

DOJ-03123

MAY 12 '95 11:07AM STEEL HECTOR & DAVIS

P.5

- 2 -

unable to assist you in this matter at this time, and I am closing these administrative appeals in this Office.

Judicial review of my action on your appeals pertaining to the EOUSA, the INS and the FBI is available to your client in the United States District Court for the judicial district in which your client resides, or in the District of Columbia, or in the Western District of Washington, which is where the records sought, if they exist, would be located.

Sincerely,



Richard L. Huff
Co-Director

cc: Russell J. Bruemmer
Wilmer, Cutler & Pickering
2445 M Street NW.
Washington, D.C. 20037-1420

DOJ-03124

Mr. HOGAN. I have it, sir.

Mr. LATOURETTE. That apparently is a communication to you, indicating that she has received Mr. Huff's response to the FOIA appeal, saying she is disappointed—and it is interesting, in the same first paragraph she seems to be chastising the Department for not living up to the Clinton administration's commitment to opening public records to public scrutiny.

In the second paragraph it says, would you assist the three of us in scheduling a meeting with Mr. Schmidt? We have not yet attempted to contact Mr. Schmidt.

Do you recall receiving this letter?

Mr. HOGAN. Now that I see it, I recall receiving it; yes, sir.

Mr. LATOURETTE. As I understood your testimony, you didn't do anything other than to give a heads-up to Mr. Schmidt's staff?

Mr. HOGAN. On the first page, the cover page, there is the check mark in the upper right-hand corner. When I would see something and give it to my secretary to file, that was our communication that it just got filed.

Mr. LATOURETTE. On the second page, she invites you to "harken back to the beginning of this matter when you and I first spoke." That is one of the times that she got through?

Mr. HOGAN. Right. If I can explain that paragraph, I had the same question of her back then, when she said some agencies are telling me that they have no records, and other agencies are telling us that they won't tell us. I didn't understand why the Department would have different rules for different components. I expressed that just as an aside. She makes reference to it in the letter. I followed that disclosure, although I am not a FOIA expert, I think that is what that second paragraph on the second page refers to.

Mr. LATOURETTE. Specifically, it says that you commented you couldn't understand why they couldn't just tell you whether they had a record. Do you remember telling her that?

Mr. HOGAN. Yeah, particularly because other agencies had. I had seen other FOIA requests where agencies said there are no records responsive to your request. I didn't understand why that was; but again, I am not a FOIA expert.

Mr. LATOURETTE. Do you recall during this conversation when you talked, that she was talking specifically that the difficulty was in obtaining criminal arrest records?

Mr. HOGAN. No. When she made the call—many calls come to the Attorney General's office from the public, and my job is simply to send her the right way. I did not focus on what the issue was. I simply realized it was FOIA, I knew which number to give her, and that really was the extent of my focus.

Mr. LATOURETTE. OK. Going to exhibit 47 and you can either trust me on this or not—you don't have to trust me, but those are Ms. Poston's billing records, and they show a number of contacts again with the staff at DOJ in the waning days of May, immediately before she sets up her appointment with Mr. Schmidt. And is it your recollection that you are not having contact with her at that time and if she is talking to somebody, it is your secretary?

[Exhibit 47 follows:]

REPORT 1 : WIP60 PRODUCED BY: RH9									
DETAIL FORMAT (FROM: 09/04/94 THRU 01/06/99) * BLANK-BILLABLE WIP, N=NON-BILL, R=RECEIVABLE, F=FIRST TIME									
WORK OFC DEPT ID	CLIENT NUMBER	MATTER DATE	TRAN NUMBER	HOURS/ ITEMS	RATE *	VALUE	DISB WK RCB AMOUNT	PREP/BILL WORK NUMBER	PREP/BILL WORK ID
1 10 RJP	83599	1333 11/09/94 F	3185017	.30	260.00 R	78.00			117812B RJP
		Return Conference call with representative of client							
1 10 RJP	83599	1333 11/10/94 F	3185040	.30	260.00 R	78.00			117812B RJP
		Conference with representative of client							
1 10 RJP	83599	1333 11/14/94 F	3185058	.70	260.00 R	182.00			117812B RJP
		REDACTED							
1 10 RJP	83599	1333 11/17/94 F	3185107	.30	260.00 R	78.00			117812B RJP
		Conference call to client							
1 10 RJP	83599	1333 11/17/94 F	3185110	1.00	260.00 R	260.00			117812B RJP
		Conference call with representatives of client							
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		REDACTED : Confer with representative of client							
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1 10 RJP	83599	1333 11/20/94 F	3212480	.30	260.00 R	78.00			117812B RJP
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1 10 RJP	83599	1333 11/28/94 F	3212536	1.80	260.00 R	468.00			117812B RJP
		Conference with representative of client							
1 10 RJP	83599	1333 11/30/94 F	3212546	3.20	260.00 R	832.00			117812B RJP
		REDACTED Follow up with investigator.							
1 10 RJP	83599	1333 12/01/94 F	3231607	.50	260.00 R	130.00			117812B RJP
		REDACTED							
1 10 RJP	83599	1333 12/03/94 F	3231703	.80	260.00 R	208.00			117812B RJP
		REDACTED							
1 10 RJP	83599	1333 12/05/94 F	3231780	1.20	260.00 R	312.00			117812B RJP
		Call to representative of client							
1 10 RJP	83599	1333 12/07/94 F	3231890	5.40	260.00 R	1404.00			117812B RJP
		Meeting with Client							
		REDACTED							
1 10 RJP	83599	1333 12/12/94 F	3233050	2.20	260.00 R	572.00			117812B RJP
		Conference call representative of client							
		REDACTED							
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REPORT L : 07/26/99 12:36 pm REPORT ID : WIP60 05.30.01 PRODUCED BY: RH9													STEEL HECTOR DAVIS LLP Legal Accounting System Work In Process List													PA																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																						
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REPORT : WIPED
PRODUCED BY: BH9

Legal Accounting System
Work In Process List

05-10-01

DETAIL FORMAT (FROM: 09/04/94 THRU 01/06/95) * BLANK-BILLABLE WIP, N-NON-BILL, R-RECEIVABLE, F-FIRMTIME									
WORK OFC DEPT ID	WORK NUMBER	CLIENT MATTER NUMBER DATE	TRAN CD	NUMBER	HOURS/ ITEMS	RATE *	VALUE	DISB WK/25B AMOUNT CD	VENDOR NUMBER ID
1 10 RJP	83599	1333 03/20/95 F Conference call with representative of client		3406714	.30	260.00 R	78.00		120425B RJP
1 10 RJP	83599	1333 03/28/95 F		3431974	1.40	260.00 R	364.00		120425B RJP
1 10 RJP	83599	1333 03/31/95 F		3432245	.90	260.00 R	234.00		120425B RJP
1 10 RJP	83599	1333 04/05/95 F Conference call with investigator		3436127	.30	260.00 R	78.00		129740B RJP
1 10 RJP	83599	1333 04/25/95 F		3475057	.30	260.00 R	78.00		129740B RJP
1 10 RJP	83599	1333 04/27/95 F Conference with investigator		3475049	.90	260.00 R	234.00		129740B RJP
1 10 RJP	83599	1333 04/28/95 F		3481063	.30	260.00 R	78.00		129740B RJP
1 10 RJP	83599	1333 04/30/95 F Conference with representative of client		3487666	.15	260.00 R	39.00		121386B RJP
1 10 RJP	83599	1333 05/01/95 F Review fax with representative of client		3487666	.15	260.00 R	39.00		126262B RJP
1 10 RJP	83599	1333 05/02/95 F		3486900	.30	260.00 R	78.00		126262B RJP
1 10 RJP	83599	1333 05/05/95 F Conference call to co-counsel		3495260	.70	260.00 R	182.00		126262B RJP
1 10 RJP	83599	1333 05/08/95 F		3495278	2.30	260.00 R	598.00		126262B RJP
1 10 RJP	83599	1333 05/11/95 F Conference calls to investigators		3507400	.30	260.00 R	78.00		126262B RJP
1 10 RJP	83599	1333 05/22/95 F Conference with representative of client		3534790	.80	260.00 R	208.00		126262B RJP

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REPORT 1: WIP60 05.30.01
PRODUCED BY: RH9

Legal Accounting System
Work In Process List

DETAIL FORMAT (FROM: 09/04/94 THRU 07/06/99) * BLANK-BILLABLE WIP, N-NON-BILL, R-RECEIVABLE, F-FIRMTIME

WORK ORIG	DEPT ID	CLIENT NUMBER	MATTER DATE	TRAN NUMBER	HOURS ITEMS	RATE *	VALUE	DEBIT AMOUNT	CREDIT AMOUNT	PREP NUMBER	WIP NUMBER
1	10	RJP	83599	1333 07/18/95 F	362249	2.60	260.00 R	676.00		1	129740B RJP
				Conference call with investigator.	REDACTED		Conference call with client; Conference call with investigator.				
1	10	RJP	83599	1333 07/19/95 F	3622564	1.50	260.00 R	390.00		1	129740B RJP
				Conference with investigator	REDACTED						
1	10	RJP	83599	1333 07/20/95 F	3625195	.30	260.00 R	78.00		1	129740B RJP
				Conference call with investigator.							
1	10	RJP	83599	1333 07/21/95 F	3630364	.60	275.00 R	208.00		1	129740B RJP
				Conference with investigator	REDACTED		Follow-up with client				
1	10	RJP	83599	1333 07/26/95 F	3636104	.30	260.00 R	78.00		1	129740B RJP
				Conference call with investigator.							
1	10	RJP	83599	1333 08/03/95 F	3649030	.30	260.00 R	78.00		1	129740B RJP
				Telephone conference with investigator	REDACTED						
1	10	RJP	83599	1333 08/08/95 F	3653646	.60	275.00 R	1712.50		1	129740B RJP
				Conference with investigator.	REDACTED						
1	10	RJP	83599	1333 08/11/95 F	3659242	.60	275.00 R	165.00		1	129740B RJP
				Conference call with investigator; follow-up with client.							
1	10	RJP	83599	1333 08/23/95 F	3680408	.60	275.00 R	165.00		1	129740B RJP
				Conference call with client	REDACTED		Letter to investigator				
1	10	RJP	83599	1333 08/25/95 F	3687496	.90	275.00 R	247.50		1	129740B RJP
				Two conference calls with client; Conference with investigator.							
1	10	RJP	83599	1333 08/28/95 F	3691721	2.30	275.00 R	632.50		1	129740B RJP
				Conference with client;	REDACTED						
1	10	RJP	83599	1333 08/29/95 F	3693091	.30	275.00 R	825.00		1	129740B RJP
				Conference with client	REDACTED						
1	10	RJP	83599	1333 08/30/95 F	3697463	1.50	275.00 R	412.50		1	129740B RJP
				Conference with client	REDACTED						
1	10	RJP	83599	1333 08/31/95 F	3699913	.80	275.00 R	220.00		1	129740B RJP
				Conference with client; Calls to investigator.	REDACTED						
1	10	RJP	83599	1333 09/01/95 F	3706062	.30	275.00 R	82.50		1	129740B RJP
				Conference with client.	REDACTED						

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REPORT E: 07/26/99 12:36 PM

REPORT ID: WIP60 05.30.01

PRODUCED BY: RH9

STEEL REC. J. DAVIS LLP

Legal Accounting System

Work In Process List

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DETAIL FORMAT (FROM: 09/04/94 THRU 07/06/99) * BLANK=BILLABLE WIP, N=NON-BILL, R=RECEIVABLE, P=PRIME TIME

WORK OFFC DEPT ID	CLIENT NUMBER	TRAN NUMBER	TRAN DATE	CD	TRAN NUMBER	HOURS/ ITEMS	RATE *	VALUE	DISB WK/USP AMOUNT CD	VENIOR NUMBER	PRE BIL WORK NUMBER
1 10 RJP	83599	1333 09/05/95 F			3706079	2.00	275.00 R	550.00		1	130495B RJP
Two conference calls with client; Two conference calls to investigator; Meeting with investigator.											
1 10 RJP	83599	1333 09/06/95 F			3707257	13.50	275.00 R	3712.50		1	130495B RJP
Conference with clients;											
1 10 RJP	83599	1333 09/07/95 F			3708523	2.50	275.00 R	687.50		1	130495B RJP
Confer with clients.											
1 10 RJP	83599	1333 09/14/95 F			3720819	3.40	275.00 R	935.00		1	130495B RJP
Conference call with investigator and client.											
1 10 RJP	83599	1333 09/15/95 F			3720989	.90	275.00 R	247.50		1	130495B RJP
call to client; REDACTED											
1 10 RJP	83599	1333 09/19/95 F			3729616	.30	275.00 R	82.50		1	130495B RJP
REDACTED											
1 10 RJP	83599	1333 09/20/95 F			3729617	.30	275.00 R	82.50		1	130495B RJP
REDACTED											
1 10 RJP	83599	1333 09/25/95 F			3735592	2.60	275.00 R	715.00		1	130495B RJP
Client; Conference call with investigator.											
1 10 RJP	83599	1333 09/28/95 F			3747337	1.20	275.00 R	330.00		1	130495B RJP
Two conference calls investigator; REDACTED ; conference call with client.											
1 10 RJP	83599	1333 10/03/95 F			3754110	.30	275.00 R	82.50		1	133769B RJP
Conference call with investigator.											
1 10 RJP	83599	1333 10/25/95 F			3797075	2.00	275.00 R	550.00		1	133769B RJP
REDACTED											
1 10 RJP	83599	1333 10/26/95 F			3797454	.30	275.00 R	82.50		1	133769B RJP
Conference call with investigator.											
1 10 RJP	83599	1333 11/01/95 F			3807587	1.50	275.00 R	412.50		1	134975B RJP
REDACTED											
1 10 RJP	83599	1333 11/01/95 F			3807598	.30	275.00 R	82.50		1	134975B RJP
Conference call to investigator											
1 10 RJP	83599	1333 11/26/95 F			3843826	.30	275.00 R	82.50		1	134975B RJP
REDACTED											

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WORK ORDER REPORT REPORTED BY: RH9 WORK ORDER: WIP60 DATE: 05.30.01 LEGAL ACCOUNTING SYSTEM WORK IN PROCESS LIST									
DETAIL FORMAT (FROM: 09/04/94 THRU 07/06/99) * BLANK-BILLABLE WIP, N=NON-BILL, R=RECEIVABLE, F=FIRM TIME									
WORK ORDER OFC DEPT ID	CLIENT MATTER NUMBER	TRAN DATE	TRAN CD	TRAN NUMBER	HOURS/ ITEMS	RATE *	VALUE	DISB WK/DSB AMOUNT CD	VENDOR NUMBER ID
1 10 RJP	83599	1333 11/27/95 F		3850073	.50	275.00 R	137.50		134975B RJP
				REDACTED			Conference call with G. Odano		
1 10 RJP	83599	1333 12/07/95 F		3871558	.30	275.00 R	82.50		137465B RJP
				Conference call to representative of client:			REDACTED		
1 10 RJP	83599	1333 12/11/95 F		3877099	2.50	275.00 R	687.50		137465B RJP
				Conference with clients:					
1 10 RJP	83599	1333 12/12/95 F		3877111	1.00	275.00 R	275.00		137465B RJP
				REDACTED					
1 10 RJP	83599	1333 12/19/95 F		3895072	.80	275.00 R	220.00		137465B RJP
				REDACTED					
1 10 RJP	83599	1333 01/04/96 F		3917980	.40	275.00 R	110.00		139628B RJP
				Conference call with G. Odano			REDACTED		
1 10 RJP	83599	1333 01/05/96 F		3919526	1.50	275.00 R	412.50		139628B RJP
				REDACTED					
1 10 RJP	83599	1333 01/10/96 F		3928682	.50	275.00 R	137.50		139628B RJP
				Conference call with G. Odano			REDACTED		
1 10 RJP	83599	1333 04/05/96 F		4140690	.60	275.00 R	165.00		152299B RJP
				REDACTED					
1 10 RJP	83599	1333 05/23/96 F		4218511	.30	275.00 R	82.50		152299B RJP
				Conference call with T. Kelley regarding station.					
1 10 RJP	83599	1333 05/24/96 F		4218506	.50	275.00 R	137.50		152299B RJP
				Conference with client representative.					
1 10 RJP	83599	1333 06/28/96 F		4236810	.30	275.00 R	82.50		152299B RJP
				Conference with client representative.					
1 10 RJP	83599	1333 10/03/96 F		4454628	.30	275.00 R	82.50		195663B RJP
				REDACTED					
1 10 RJP	83599	1333 10/04/96 F		4455098	.90	275.00 R	247.50		158763B RJP
				with G. Odano and investigator.					
				REDACTED					
1 10 RJP	83599	1333 11/05/96 F		4506295	.30	284.00 R	85.20		195663B RJP
				Conference call with B. Langberg			Call to G. Odano		
				REDACTED			REDACTED		

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REPORT : WIP60
PRODUCED BY: RH9
05.30.01
Legal Accounting System
Work In Process List

WORK DEPT ID	CLIENT MATTER NUMBER DATE	TRAN NUMBER	HOURS/ ITEMS	RATE *	VALUE	USUAL WK CD DAYS	PREP/BILL NUMBER	WORK NUMBER
1 10 RJP	83599 1333 11/06/96 F 4507701 Conference call with G. Odano and B. Langberg; Conference call with investigator. Calls to G. Odano and B. Woschella;	4507701 4512802	.80 1.00	284.00 R 284.00 R	227.20 284.00	1	195663B RJP	195663B RJP
1 10 RJP	83599 1333 11/07/96 F 4512802 Conference call with investigator.	4512802	.40	284.00 R	113.60	1	195663B RJP	195663B RJP
1 10 RJP	83599 1333 11/14/96 F 4522934 Conference call with investigator.	4522934	.50	284.00 R	142.00	1	195663B RJP	195663B RJP
1 10 RJP	83599 1333 11/16/96 F 4522863 Conference call with investigator.	4522863	1.30	284.00 R	369.20	1	195663B RJP	195663B RJP
1 10 RJP	83599 1333 11/19/96 F 4529568 Conference call with investigator.	4529568	.30	284.00 R	85.20	1	195663B RJP	195663B RJP
1 10 RJP	83599 1333 11/22/96 F 4534032 Conference call with investigator.	4534032	.30	284.00 R	85.20	1	195663B RJP	195663B RJP
1 10 RJP	83599 1333 11/23/96 F 4534033 Conference call with investigator.	4534033	.30	284.00 R	85.20	1	195663B RJP	195663B RJP
1 10 RJP	83599 1333 11/26/96 F 4541683 Meeting with investigators.	4541683	2.00	284.00 R	568.00	1	195663B RJP	195663B RJP
1 10 RJP	83599 1333 02/21/97 F 4672946 Conference with G. Odano	4672946	1.00	275.00 R	275.00	1	168763B RJP	168763B RJP
1 10 RJP	83599 1333 04/01/97 F 4739405 Conference with G. Odano	4739405	.30	275.00 R	82.50	1	168763B RJP	168763B RJP
1 10 RJP	83599 1333 05/11/98 F 5406156 Conference call with to client	5406156	.60	284.00 R	170.40	1	196533B RJP	196533B RJP
1 10 RJP	83599 1333 07/09/98 F 5511367 Conference call with to client;	5511367	.60	284.00 R	170.40	1	196533B RJP	196533B RJP
1 10 RJP	83599 1333 08/13/98 F 5560590 Conference call with to client;	5560590	7.00	284.00 R	1988.00	1	196533B RJP	196533B RJP

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REPORT E: 07/26/99 12:46 PM STEEL REC & DAVIS LLP
REPORT TO: WIFE 05.30.01 Legal Accounting System
PRODUCED BY: RRS Work in Process List

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DETAIL FORMAT (FROM: 09/04/94 THRU 07/06/99) * BLANK-BILLABLE WIP, N=NON-BILL, R=RECEIVABLE, F=FIRMTIME											
WORK CPC DEPT ID	CLIENT NUMBER	TRAN NUMBER	DATE	CD	NUMBER	HOURS ITEMS	RATE *	VALUE	DISB WK/DSB AMOUNT CD	VENDOR NUMBER	PRE/BIL WORK NUMBER ID
Meet with clients.											
1	10	RJP	83599	1333	08/14/98	F	5560591	6.50	284.00	R	1846.00
RECEIVED											
1	10	RJP	83599	1333	08/18/98	F	5576531	1.20	284.00	R	340.80
Conference calls with investigator and legal counsel. client											
1	10	RJP	83599	1333	08/18/98	F	5576532	1.00	284.00	R	284.00
Conference call with investigator and legal counsel.											
1	10	RJP	83599	1333	08/19/98	F	5576533	.30	284.00	R	85.20
RECEIVED											
1	10	RJP	83599	1333	08/20/98	F	5576534	.50	284.00	R	142.00
RECEIVED											
1	10	RJP	83599	1333	09/02/98	F	5599744	11.00	284.00	R	3124.00
RECEIVED meet with investigator.											
1	10	RJP	83599	1333	09/09/98	F	5602569	1.00	284.00	R	284.00
RECEIVED											
1	10	RJP	83599	1333	09/14/98	F	5614247	.30	284.00	R	85.20
RECEIVED											
1	10	RJP	83599	1333	09/17/98	F	5617338	1.50	284.00	R	426.00
RECEIVED											
1	10	RJP	83599	1333	10/09/98	F	5656448	.60	284.00	R	170.40
Conference call with G. Odano.											
1	10	RJP	83599	1333	10/12/98	F	5656449	.60	284.00	R	170.40
Conference calls with client and investigator.											
1	10	RJP	83599	1333	10/13/98	F	5656450	1.30	284.00	R	369.20
Conference calls with client and investigator.											
1	10	RJP	83599	1333	11/13/98	F	5714380	1.00	284.00	R	284.00
Meet with G. Odano; conference call to investigator; RECEIVED											
1	10	RJP	83599	1333	11/19/98	F	5723092	10.50	284.00	R	2982.00
Travel to Washington, D.C. to meet with client and various attorneys.											
1	10	RJP	83599	1333	12/17/98	F	5765426	.60	284.00	R	170.40
RECEIVED											

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DETAIL FORMAT (FROM: 09/04/94 THRU 07/06/99) * BLANK-BILLABLE W/P, N-NON-BILL, R-RECEIVABLE, P-FIRMTIME												
WORK CFC DEPT ID	WORK NUMBER	WATER NUMBER	TRAN DATE	TRAN CD	TRAN NUMBER	HOURS/ ITEMS	RATE *	VALUE	DISB WK/RSB AMOUNT CD	VENDOR NUMBER	PRE-BILL WORK NUMBER ID	
1	1.0	RJP	83599	1333	03/17/99 F	5896753	1.50	448.50	289.00 R	1	209773B RJP	
Confer with G. Osano.												
1	1.0	RJP	83599	1333	03/18/99 F	5901877	1.60	478.40	299.00 R	1	209773B RJP	
1	1.0	RJP	83599	1333	03/22/99 F	5901878	2.00	598.00	289.00 R	1	209773B RJP	
Update client on meeting:												
1	1.0	RJP	83599	1333	04/15/99 F	5947662	1.80	239.20	299.00 R	1	210691B RJP	
Conference call with B. Landberg												

DETAIL FORMAT (FROM: 09/04/94 THRU 07/06/99) * BLANK-BILLABLE WIP, N-NON-BILL, R-RECEIVABLE, P-ETIMTIME									
WORK OFC DEPT ID	CLIENT NUMBER	TRAN NUMBER DATE	TRAN NUMBER	HOURS/ ITEMS	RATE *	VALUE	DISH WIP RCH AMOUNT CH	NUMBER NUMBER	WORK ID
1 10 RJP	27158	3358 11/02/94 F	3165808	.50	260.00 R	130.00			117813B RJP
		Conference call with representative of client Follow-up with investigator.							
1 10 RJP	27158	3358 11/03/94 F	3165814	.50	260.00 R	130.00			117813B RJP
		Conference call with investigator; Conference call with representative of client REDACTED							
1 10 RJP	27158	3358 11/04/94 F	3168066	1.30	260.00 R	338.00			117813B RJP
		Three conference calls with investigator; Two conference calls with representative of client.							
1 10 RJP	27158	3358 11/07/94 F	3184712	.30	260.00 R	78.00			117813B RJP
		Conference call with investigator REDACTED							
1 10 RJP	27158	3358 11/09/94 F	3185016	.50	260.00 R	130.00			117813B RJP
		Conference with investigator REDACTED							
1 10 RJP	27158	3358 11/10/94 F	3320412	.30	260.00 R	78.00			117813B RJP
		Conference call with investigator REDACTED							
1 10 RJP	27158	3358 11/11/94 F	3185048	3.50	260.00 R	910.00			117813B RJP
		Conference calls with representatives of client; Conference calls with investigators. REDACTED							
1 10 RJP	27158	3358 11/14/94 F	3320413	.60	260.00 R	156.00			117813B RJP
		Two conference calls with REDACTED							
1 10 RJP	27158	3358 11/15/94 F	3185059	.30	260.00 R	78.00			117813B RJP
		Conference call with representative of client and investigator.							
1 10 RJP	27158	3358 11/16/94 F	3185095	.30	260.00 R	78.00			117813B RJP
		Update representative of client; Contact investigator.							
1 10 RJP	27158	3358 11/17/94 F	3320416	1.00	260.00 R	260.00			117813B RJP
		Conference call with investigator; Two conference calls to representative of client; REDACTED							
1 10 RJP	27158	3358 11/29/94 F	3212539	1.60	260.00 R	416.00			117813B RJP
		Conference with investigator; Conference call with representative of FBI. REDACTED							
1 10 RJP	27158	3358 11/30/94 F	3320426	3.30	260.00 R	858.00			117813B RJP
		Follow-up with investigator. REDACTED							
1 10 RJP	27158	3358 12/01/94 F	3320446	.50	260.00 R	130.00			117813B RJP
		Conference call with investigator.							
1 10 RJP	27158	3358 12/04/94 F	321217	.80	260.00 R	208.00			117813B RJP

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 WIP60
 PRODUCED BY: RH9

DETAIL FORMAT (FROM: 09/04/94 THRU 01/06/99) * BLANK-BILLABLE WIP, N-NON-BILL, R-RECEIVABLE, F-FIRST TIME

WIP	WORK	CLIENT MATTER	TRAN	HOURS/	DISB WK	PRE BIL	WORK
DEPT ID	NUMBER	DATE	NUMBER	ITEMS	AMOUNT	NUMBER	ID
REDACTED : Conference call with investigator.							
1	10	RJP	27158	3358 12/06/94 F 3231882	.30	260.00	R 117813B RJP
Conference call with investigator.							
1	10	RJP	27158	3358 12/08/94 F 3232219	1.00	260.00	R 117813B RJP
REDACTED							
1	10	RJP	27158	3358 12/08/94 F 3232973	3.50	260.00	R 117813B RJP
Numerous conference calls with client; Conference with investigator.							
1	10	RJP	27158	3358 12/09/94 F 3233011	2.00	260.00	R 117813B RJP
Conference calls with representative of client; Conference calls with investigator; REDACTED							
1	10	RJP	27158	3358 12/19/94 F 3261852	18.50	260.00	R 117813B RJP
Meeting with representatives of client REDACTED							
1	10	RJP	27158	3358 12/21/94 F 3261874	1.30	260.00	R 117813B RJP
Two conference calls with investigator; Conference call with representatives client REDACTED							
1	10	RJP	27158	3358 12/22/94 F 3262368	2.30	260.00	R 117813B RJP
Conference with investigator; Two conference calls with representative of client.							
1	10	RJP	27158	3358 12/27/94 F 3262397	2.40	260.00	R 117813B RJP
Conference with representative of client; REDACTED ; Conference call with investigators.							
1	10	RJP	27158	3358 12/28/94 F 3262418	.90	260.00	R 117813B RJP
Conference call to FBI; Conference call with investigator; REDACTED							
1	10	RJP	27158	3358 12/29/94 F 3262456	1.60	260.00	R 117813B RJP
Conference call with representatives of client REDACTED							
1	10	RJP	27158	3358 12/30/94 F 3262457	3.50	260.00	R 117813B RJP
Conference with representative of client REDACTED Confer with representative of client and B. Langberg;							
1	10	RJP	27158	3358 01/03/95 F 3292673	6.30	260.00	R 117813B RJP
Conference with client; REDACTED							
1	10	RJP	27158	3358 01/04/95 F 3267061	2.00	260.00	R 117813B RJP
REDACTED Conference with representative of client.							
1	10	RJP	27158	3358 01/05/95 F 3265931	.90	260.00	R 117813B RJP

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STEEL HECTOR & DAVIS LLP
Legal Accounting System
Work In Process List

PAGE: 3

DETAIL FORMAT (FROM: 09/04/94 THRU 01/06/99) * BLANK-BILLABLE WIP, N=NON-BILL, R=RECEIVABLE, P=PAYMENT

WORK DEPT ID	CLIENT NUMBER	MATTER DATE	TRAN ID	TRAN ITEMS	HOURS	RATE *	VALUE	DISH W/ B AMOUNT	VENDOR NUMBER	PRI BIL WORK ID
1 10 RJP	27158	3358 01/09/95 F	3319770	3.80	260.00 R		988.00		1	117813B RJP
		Conference call with investigators								
1 10 RJP	27158	3358 01/10/95 F	3319778	7.50	260.00 R		1950.00		1	117813B RJP
		Conference with investigator; Numerous calls to Los Angeles offices.								
1 10 RJP	27158	3358 01/11/95 F	3319782	1.00	260.00 R		260.00		1	117813B RJP
		Conference with attorneys; Conference with B. Langberg;								
1 10 RJP	27158	3358 01/12/95 F	3319800	2.30	260.00 R		598.00		1	117813B RJP
		Conference call with investigator.								
1 10 RJP	27158	3358 01/12/95 F	3319801	.50	260.00 R		130.00		1	117813B RJP
		with Larry Doss, FBI.								
1 10 RJP	27158	3358 01/13/95 F	3319810	11.00	260.00 R		2860.00		1	117813B RJP
		Travel to Washington, D.C. and attend meeting with investigators.								
1 10 RJP	27158	3358 01/17/95 F	3319809	2.30	260.00 R		598.00		1	117813B RJP
		Conference call with investigator of client								
1 10 RJP	27158	3358 01/17/95 F	3319815	.50	260.00 R		130.00		1	117813B RJP
		Conference call with California counsel and investigator								
1 10 RJP	27158	3358 01/18/95 F	3319830	1.30	260.00 R		338.00		1	117813B RJP
		Conference								
1 10 RJP	27158	3358 01/18/95 F	3319840	.50	260.00 R		130.00		1	117813B RJP
		Conference								
1 10 RJP	27158	3358 01/19/95 F	3319842	1.50	260.00 R		390.00		1	117813B RJP
		Letter to FBI.								
1 10 RJP	27158	3358 01/19/95 F	3319861	2.00	260.00 R		520.00		1	117813B RJP
		Conference								

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STEEL HECTO. DAVIS LLP
Legal Accounting System
Work In Process List

DETAIL FORMAT (FROM: 09/04/94 THRU 01/06/99) * BLANK-BILLABLE WIP, NON-BILL, P-RECEIVABLE, P-FTIME

WORK DEPT ID	WORK NUMBER	CLIENT MATTER NUMBER DATE	TRAN NUMBER	TRAN DATE	HOURS/ ITEMS	RATE *	VALUE	DISB WK USH AMOUNT (D)	VENOR NUMBER	PRE BIL WORK ID
1	10 RJP	27158	3358	01/20/95 F	3.30	260.00 R	858.00			117813B RJP
				Investigator: REDACTED				Conference calls		REDACTED
1	10 RJP	27158	3358	01/21/95 F	3319980	260.00 R	208.00			117813B RJP
				Investigator: REDACTED						
1	10 RJP	27158	3358	01/23/95 F	3319982	11.50	2990.00			117813B RJP
				Conference with FBI; Conference calls to B. Langberg.						
1	10 RJP	27158	3358	01/24/95 F	3319987	.50	130.00			117813B RJP
				Investigator: REDACTED						
1	10 RJP	27158	3358	01/24/95 F	3319996	4.80	1248.00			117813B RJP
				Two conference calls with investigator;				Conference call with		
1	10 RJP	27158	3358	01/25/95 F	3320003	.30	78.00			117813B RJP
				Investigator: REDACTED						
1	10 RJP	27158	3358	01/25/95 F	3320009	3.50	910.00			117813B RJP
				Investigator: REDACTED				Conference with client;		
1	10 RJP	27158	3358	01/26/95 F	3320034	2.00	520.00			117813B RJP
				Investigator: REDACTED				Conference call with investigator;		
1	10 RJP	27158	3358	01/27/95 F	3320045	7.30	1898.00			117813B RJP
				Investigator: REDACTED				Conference with Attorney General's office;		
1	10 RJP	27158	3358	01/27/95 F	3320058	.30	78.00			117813B RJP
				Investigator: REDACTED				Conference		
1	10 RJP	27158	3358	01/30/95 F	3320093	6.80	1768.00			117813B RJP
				Investigator: REDACTED				Conference with client;		
1	10 RJP	27158	3358	01/31/95 F	3320102	4.50	1170.00			117813B RJP
				Investigator: REDACTED				Conference with client;		
1	10 RJP	27158	3358	02/01/95 F	3320112	2.50	650.00			120424B RJP
				Investigator: REDACTED				Conference call with investigator		

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REPORT 1 : WIP60 PRODUCED BY: RH9										05.30.01										Legal Accounting System Work In Process List									
DETAIL FORMAT (FROM: 09/04/94 THIRD 07/06/99) * BLANK-BILLABLE WIP, N-NON-BILL, R-RECEIVABLE, F-FIRSTTIME																													
WORK	WORK	CLIENT MATTER TRANS		TRAN	HOURS/	DISB WK PER	VENDOR	PRI BIL WORK		WORK	WORK	CLIENT MATTER TRANS		TRAN	HOURS/	DISB WK PER	VENDOR	PRI BIL WORK		WORK	WORK	CLIENT MATTER TRANS		TRAN	HOURS/	DISB WK PER	VENDOR	PRI BIL WORK	
OFC DEPT ID	NUMBER	DATE	NUMBER	NUMBER	ITEMS	AMOUNT	ID	NUMBER	ID	OFC DEPT ID	NUMBER	DATE	NUMBER	NUMBER	ITEMS	AMOUNT	ID	NUMBER	ID	OFC DEPT ID	NUMBER	DATE	NUMBER	NUMBER	ITEMS	AMOUNT	ID	NUMBER	ID
1	10	RJP	271158	3358	02/02/95 F	3320123	1.80	260.00 R	1204248 RJP	1	10	RJP	271158	3358	02/02/95 F	3320123	1.80	260.00 R	1204248 RJP	1	10	RJP	271158	3358	02/02/95 F	3320123	1.80	260.00 R	1204248 RJP

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REPORT 1 : WIP60 05.30.01 Legal Accounting System
PRODUCED BY: RH9 Work In Process List

DETAIL FORMAT (FROM: 09/04/94 THRU 01/06/99) * BLANK-BILLABLE WIP, N=NON-BILL, R=RECEIVABLE, F=FIRM/OP									
WORK DEPT ID	CLIENT MATTER NUMBER	TRAN DATE	TRAN NUMBER	HOURS/ ITEMS	RATE *	VALUE	DISB WK'DCH AMOUNT	VENDOR NUMBER	PRE-BIL WORK ID
1 10 RJP	27158	3358 03/10/95 F	3388911	.60	260.00 R	156.00		1	1204268 RJP
		Conference call with investigator;							
1 10 RJP	27158	3358 03/13/95 F	3388979	.30	260.00 R	78.00		1	1204268 RJP
		Conference call with attorneys for H. Clow							
1 10 RJP	27158	3358 03/13/95 F	3389004	.80	260.00 R	208.00		1	1204268 RJP
1 10 RJP	27158	3358 03/14/95 F	3406688	3.50	260.00 R	910.00		1	1204268 RJP
		Conference call with client;							
1 10 RJP	27158	3358 03/15/95 F	3406697	.30	260.00 R	78.00		1	1204268 RJP
1 10 RJP	27158	3358 03/16/95 F	3406704	2.00	260.00 R	520.00		1	1204268 RJP
		client;							
1 10 RJP	27158	3358 03/20/95 F	3406718	.80	260.00 R	208.00		1	1204268 RJP
		and follow-up with client							
1 10 RJP	27158	3358 03/22/95 F	3406730	3.00	260.00 R	780.00		1	1204268 RJP
		Two conference calls with representative of client; with Langberg General's office.							
1 10 RJP	27158	3358 01/23/95 F	3406733	.60	260.00 R	156.00		1	1204268 RJP
		Conference call with representative of client in D.C. and counsel;							
1 10 RJP	27158	3358 01/24/95 F	3408745	2.50	260.00 R	650.00		1	1204268 RJP
		Two conference calls with staff at Attorney General's office; Conference call with representative of client;							
1 10 RJP	27158	3358 01/27/95 F	3429927	4.80	260.00 R	1248.00		1	1204268 RJP
		Call with representative of client							
1 10 RJP	27158	3358 01/28/95 F	3431953	1.10	260.00 R	286.00		1	1204268 RJP
		Conference with investigator.							
1 10 RJP	27158	3358 01/29/95 F	3432058	.30	260.00 R	78.00		1	1204268 RJP
		Conference call with investigator							

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REPORT : WIP60
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05.30.01
LEGAL ACCO.ING SYSTEM
WORK IN PROCESS LIST

DETAIL FORMAT (PRIM: 09/04/94 THRU 07/06/99) * BLANK-BILLABLE W/P, N-NOK-BILL, R-RECEIVABLE, F-FRFTIME											
OFC	DEPT ID	WORK	CL#	HRT	WTRT	TRAN	RATE *	VALUE	DISB WK T/H	VENDOR NUMBER	PFR-BIL WORK NUMBER
			NUMBER	DATE	NUMBER	ID	ITEMS		AMOUNT	ID	
1	10	RJP	2/158	3358 03/30/95	F	3432091	1.90	260.00	R	494.00	1204266 RJP

REDACTED

*Conference call with staff at Attorney General's office;
 **Conference call with investigators.

Mr. HOGAN. Right. The actual wording, sir, "phone call to," that doesn't mean that she spoke to me. Phone call to my office. Talked to staff; my secretary is staff. There are some that reflect that she spoke to me. In my brief review, it is consistent with my recollection of talking to her two or three times.

Mr. LATOURETTE. So again it is your recollection that you had nothing specifically to do with setting up the meeting with Mr. Schmidt?

Mr. HOGAN. I spoke to Nancy McFadden. I said there was this appeal issue coming. I wasn't sure whether they took appeals from it. I said that I had no role in it, and they should decide whatever they wanted to do. To that extent there was some role, but I certainly—I never called Ms. McFadden and said you have to see her, or said anything to Mr. Schmidt about it at all.

Mr. LATOURETTE. That leads me to you, Mr. Schmidt. As busy as you were in your position, why would you get involved in a FOIA matter of this trivial nature?

Mr. SCHMIDT. In general, if somebody called and complained about a decision that was made in one of the divisions that reported to me, I talked or met with them. It was a general policy.

Mr. LATOURETTE. So this wasn't unusual?

Mr. SCHMIDT. It was unusual because it was FOIA, and the FOIA part of the office, the whole information part sort of ran itself. It was not unusual to be getting a complaint about some decision within the Justice Department, and somebody wanted to meet with me about it.

Mr. LATOURETTE. Specifically the meeting with Ms. Poston took place on June 15, and at that meeting was Ms. Poston, John Smith, Russ Bruemmer and yourself. Is that the full cast of characters present at the meeting?

Mr. SCHMIDT. I don't remember the meeting, other than I remember I came out of it with the intention of looking into the matter.

Mr. LATOURETTE. And during the course of that meeting, what was her specific complaint? I understand that she was complaining that Mr. Huff had denied her request for records. Did you have an understanding what records she was concerned about?

Mr. SCHMIDT. I knew it was criminal arrest records of some sort, but I don't remember the meeting. I remember it more having heard descriptions of it in the course of this testimony. I know what it was about. All I really remember was she was complaining about a decision that had been made denying a Freedom of Information request, and she and the other lawyers that were there were expecting to litigate over it unless we resolved it, and therefore I was going to talk to Dick Huff about it.

Mr. LATOURETTE. Do you recall any conversation on her part that she was just trying to get to the bottom of something; she had information that this person had an arrest record and she was just trying to follow through?

Mr. SCHMIDT. No, I don't. I don't think that we talked about the underlying substance of the case. I don't think that I knew anything about that.

Mr. LATOURETTE. After that, I assume that you arranged a meeting with Mr. Huff, did you not?

Mr. SCHMIDT. I probably called him or asked my secretary to set it up.

Mr. LATOURETTE. Mr. Huff, do you recall such a meeting?

Mr. HUFF. I did attend such a meeting.

Mr. LATOURETTE. Had you ever been in a one-to-one meeting with the Associate Attorney General prior to this?

Mr. HUFF. I don't believe so.

Mr. LATOURETTE. Let me ask you this, Mr. Huff. During the course of this meeting, do you recall whether or not Mr. Schmidt asked you whether or not it was permissible for the Department to release arrest records for noncitizens?

Mr. HUFF. I don't remember whether he precisely asked me that question, but that topic came up, and the answer was that it was not prohibited by the Privacy Act.

Mr. LATOURETTE. And did the Department have a policy against releasing such information? Was that discussed at the meeting?

Mr. HUFF. Yes, he was generally aware of that, just by looking at the correspondence.

Mr. LATOURETTE. Were you asking whether it was permissible for the Department to vary from its policy in any given case?

Mr. HUFF. I don't know if those words were used, but in the discussion of the meeting, the question was asked, yes.

Mr. LATOURETTE. Did you give your opinion to Mr. Schmidt on that issue as to—did you express an opinion as to whether or not the Department should deviate from its policy in this particular case?

Mr. HUFF. I did.

Mr. LATOURETTE. What was that opinion?

Mr. HUFF. I recommended that we not do it.

Mr. LATOURETTE. How long have you been doing this work?

Mr. HUFF. Freedom of Information Act generally in the Department since 1976, and acting on administrative appeals since 1981.

Mr. LATOURETTE. I don't know whether it was to counsel's question or the chairman's question, that Mr. Schmidt may have mentioned to you during the course of this meeting if there wasn't an exception made to the policy that there would be litigation by Ms. Poston on behalf of her client. Was that discussed during the course of this meeting?

Mr. HUFF. I believe so, but I can't say with certainty.

Mr. LATOURETTE. Did you also express an opinion as to whether or not the Department would prevail in that litigation?

Mr. HUFF. If we discussed the issue, I would say that the Department had a very high likelihood of prevailing.

Mr. LATOURETTE. Following this particular meeting, were you asked to look to see if there were any records on the individual that was under discussion?

Mr. HUFF. I think it was during the meeting I was asked, and I did.

Mr. LATOURETTE. After the meeting you did the search?

Mr. HUFF. I communicated with the senior officials, the Executive Office for the U.S. Attorney and the senior official for the FBI in charge of FOIA.

Mr. LATOURETTE. Specifically—and I have seen your communique—the specific things that you asked for, you asked for a spe-

cific arrest record occurring in Seattle, WA in 1963. Is that what you searched for?

Mr. HUFF. That is what the components were asked to search for. I didn't do the search.

Mr. LATOURETTE. But you asked somebody to make that search?

Mr. HUFF. Yes.

Mr. LATOURETTE. I didn't read Ms. Poston's original FOIA request. Was it a request on that individual or did it request an arrest record occurring on dates in 1963 in Seattle, WA?

Mr. HUFF. I'm sorry, I am confused as to the question.

Mr. LATOURETTE. There are two ways to search a record. You can put in name, birth date, and Social Security number. I am wondering if that is the request that you made at your direction, or did you specifically request for an arrest record from Seattle, WA in 1963; do you recall?

Mr. HUFF. If you give me a second, I think I have a copy of the fax or the memo that I sent to each one of them.

Mr. LATOURETTE. OK.

Mr. HUFF. I believe that is on page 36.

Mr. BURTON. Exhibit 11.

Mr. LATOURETTE. Exhibit 11?

Mr. BURTON. That is the request.

Mr. HUFF. My referral to the FBI on what I asked them to look for was on exhibit 36. Her request may very well be earlier. But this is what I asked the FBI to look at and I had an identical letter/memo that I sent to the Executive Office for U.S. Attorney. I didn't ask them to look in the Seattle field office. I asked them to look in the Western District of Washington. That was exactly the search, and that is what I faxed them.

[Exhibit 36 follows:]



U.S. Department of Justice
Office of Information and Privacy

Telephone: (202) 514-3642

Washington, D.C. 20530

June 26, 1995

MEMORANDUM

TO: J. Kevin O'Brien
Chief, FOIA/PA Unit
Federal Bureau of Investigation

FROM: ~~PA~~ Richard L. Huff
Co-Director
Office of Information and Privacy

SUBJECT: Possible Discretionary Disclosure Concerning Nobuo Abe

I am writing at the request of Associate Attorney General John R. Schmidt, who is considering whether it might be appropriate to make a discretionary disclosure of records (or of the fact of no responsive records) concerning Mr. Nobuo Abe. In order to be fully informed on this matter, it is necessary for him to be aware of what, if any, records exist. Therefore, please cause a search to be conducted for records concerning a detention by the Seattle Police Department, on or about March 19-20, 1963, for suspicion of solicitation of prostitution by Nobuo Abe, DOB 12/19/22, a nonresident alien from Japan. The search should include the files of the Criminal Justice Information Services Division and the central records system of FBI Headquarters and the Seattle Field Office. I am attaching correspondence from Headquarters and the Seattle Field Office, as well as my action on the administrative appeal, to facilitate this matter.

Thank you for your prompt assistance.

Attachment



DOJ-02803

Mr. BURTON. Exhibit 36 is a request from Mr. Huff.

Mr. HUFF. The day after my meeting with Mr. Schmidt.

Mr. BURTON. It is June 26 from Mr. Huff to Kevin O'Brien. Do you see it, Mr. LaTourette?

Mr. LATOURETTE. Yes, I do.

Mr. BURTON. OK.

Mr. LATOURETTE. I am just wondering whether or not the information to look for a specific arrest occurring in 1963 in Seattle, whether that information was brought to the Department by Ms. Poston's communication and request, or you got that from some other means?

Mr. HUFF. I believe that was in her administrative appeal. I would have to search for that, but I think that specific information was in the administrative appeal.

Mr. LATOURETTE. Whoever you asked to conduct the search came back and told you that there were no such arrest records in the NCIC or whatever data bases were being searched; is that correct?

Mr. HUFF. Yes. They said that for the data bases that they searched for the different parts, for the FBI and for the Western District of Washington.

Mr. LATOURETTE. And the policy is similar to the one where the Department doesn't talk about ongoing investigations. You neither confirm nor deny, and the reason is to protect a person's privacy. But the problem is when you read the newspaper and someone says that John Brown is up to no good and he is being looked at by DOJ and the FBI, if the FBI or the DOJ said no, we are not looking at him as opposed to issuing—it always leads to the conclusion, if you don't deny, there is something going on and this person is into some kind of mischief; is that fair? That's kind of convoluted.

Mr. HUFF. I'm sure that is fair. Is that the question?

Mr. LATOURETTE. I get what I am talking about.

Anyway, when you found out that there were no records related to this individual in the criminal system data base, did you communicate that to Mr. Schmidt?

Mr. HUFF. I believe I did. I have notes in my file that I tried to call his office, but his secretary said he was not available and would be available the following week. A week after that, I sent this letter. I believe I must have contacted him.

Mr. LATOURETTE. Did you have a second meeting with Mr. Schmidt on this matter or was it through written correspondence?

Mr. HUFF. We may have had a phone conversation, but I don't believe we had a second meeting.

Mr. LATOURETTE. Thereafter, Mr. Schmidt made a decision to make an exception to the Department's policy for reasons that he has discussed with the committee; is that right?

Mr. HUFF. Yes.

Mr. LATOURETTE. How did you become aware of that if there was no second meeting?

Mr. HUFF. I think that was the phone conversation. When I called him back and tried to get back in touch with him, and I don't have notes in my file saying I did speak with him, but then I wouldn't have sent this letter had I not spoken with him.

Mr. SCHMIDT. I think we talked on the phone. I think I had effectively made the decision in the first conversation, if we find out we have nothing, we ought to go ahead with that. But I think you did call me back and tell me you had nothing.

Mr. HUFF. It is my impression, I think when I left the meeting, if we had no records, we were going to so state that; but I don't know that was absolutely firm. But I think that is the impression that I left the initial meeting with.

Mr. LATOURETTE. Did you express an opinion during the meeting or phone call that was a decision that you did not agree with based upon your position in the Department?

Mr. HUFF. Yes, I recommended against it in our first meeting.

Mr. LATOURETTE. How about during the phone call, do you have any separate recollection?

Mr. HUFF. That is the phone call I don't recall.

Mr. LATOURETTE. What is the typical involvement, again based upon your position at the DOJ relative to FOIA requests, what is the typical involvement that political appointees at the DOJ have in your experience with the FOIA requests that are made upon the Department—Mr. Schmidt being a political appointee?

Mr. HUFF. Other than when records are being sought in their particular office—such as Mr. Hogan, I believe, was the contact for records in the Attorney General's Office—where they would search for them and if they found them, they would discuss what they were going to hold or disclose, that was a separate, isolated part of our office that worked on those. Other than things such as that, or conceivably the associate's office might have somebody that would also deal on an issue like that. Other than that, the answer is it was very unusual.

Mr. LATOURETTE. Can you recall any other occasions during your tenure at the Department of Justice when your decision relative to FOIA requests have been overruled by political appointees of the Department?

Mr. HUFF. There have been—I can recall one where it was—I had not written a determination yet, and there was a disagreement as to just the opposite. Instead of what I thought ought to be withheld, I thought something ought to be disclosed; and leadership said no on something like that a number of years ago.

There was another one—which I think I mentioned—with staff dealing with Terry Anderson and his request for information about hostages. And I think the DEA refused to—I mean, kidnappers of Terry Anderson in Lebanon—and he asked for a number of different items, including information on several individuals that were his captors, and I confirmed DEA's refusal to confirm or deny.

Subsequently Mr. Anderson bought a lawsuit. There was press furor about whether or not it was appropriate for us to assert privacy on behalf of terrorists. Again they were foreign nationals and so the Privacy Act didn't apply to them. And in that particular case, I discussed that with political personnel in the Department, senior personnel, and we discussed whether or not that was appropriate. And the determination was made that we should go ahead and argue that case without using the privacy exemptions, and with what other exemptions would apply, perhaps the national se-

curity and other exemptions would be used in that litigation. So I was a part of that.

That was an example where my opinion or my views were overruled because we didn't support the position that I had taken initially in litigation.

Mr. LATOURETTE. I think in the notes that I have in your meeting with the committee staff, the one example that you brought up dealt with Justice O'Connor and her confirmation process; and the other was the famous hostage, Terry Anderson, which you just discussed.

Are you able, based upon your experience and knowledge of FOIA and how the policy has been implemented at the Department of Justice, are you able to distinguish the two overrulings or exceptions made in those two instances dealing with a Justice of the Supreme Court and a fellow held hostage over in Lebanon from the request that Ms. Poston has made in this request? Are they the same? Do exigencies exist in this case as existed in the others?

Mr. HUFF. I don't know if there are any particular unique circumstances about the request for Justice O'Connor concerning her papers that dealt with the Department's consideration of whether to recommend her to the President for the Supreme Court. The underlying papers.

Mr. LATOURETTE. And again, regardless of the threat of whatever litigation Ms. Poston had in mind, is there any doubt in your mind, based upon your experience at DOJ, that the Department would have prevailed?

Mr. HUFF. Yes, I think the odds were very good we would prevail.

Mr. LATOURETTE. Thank you, Mr. Chairman.

Mr. BURTON. I think we are just about to conclude. Can you think of any other questions?

It just seems interesting to me that there were three phone calls by Ms. Poston to Mr. Hogan—I guess two or three on May 30, May 31; and on June 1st, there was a conference call with I guess Mr. Schmidt, and that is the date that they set up the meeting.

Can you recall any other time when you met with somebody that you didn't know, like Ms. Poston—you didn't know her very well?

Mr. SCHMIDT. I had no conference call that I remember with Mr. Hogan and Ms. Poston.

Mr. HOGAN. Just so I can clarify something. Ms. Poston's bills say conference call. There never was more than two people on the phone that I knew of. I assume what that means, we had a conference during a phone call. But in normal parlance we think of a conference call as a multiparty communication.

Mr. BURTON. It says conference call with Associate Attorney General.

Mr. HOGAN. I noticed that same thing with mine. When I spoke to her, as far as I knew she and I were the only two on the line, but the bill seems to reflect a conference call. I think that means we had a conference on the call.

Mr. SCHMIDT. I am confident I never had a conference call with John Hogan. It never happened.

Mr. BURTON. Did you know Ms. Poston before you met with her?

Mr. SCHMIDT. No.

Mr. BURTON. Was it kind of a common practice for you to just meet with people you didn't know about issues like this?

Mr. SCHMIDT. When people called and complained about decisions made within the part of the Justice Department that reported to me, it was my general practice to talk with them and meet with them. I always felt it was a way of having some source of information about what was going on that wasn't channeled through the bureaucrats, if I can put it that way. So I did have a general policy of doing that.

Mr. BURTON. Did you ever have occasion to, in effect, overrule Mr. Huff's recommendations that you don't do this sort of thing?

Mr. SCHMIDT. I don't remember any other case where I overruled Mr. Huff. I remember talking to him about a couple of cases which involved timing issues. The most frequent complaint I heard in FOIA cases was, I can't get any response. And I do recall cases where people would call me and I would make some inquiry. But this is the only case that ever came to me where anybody complained about a specific decision that had been made to deny a FOIA request.

Mr. BURTON. So you don't recall talking to Mr. Huff about any case like this?

Mr. SCHMIDT. Mr. Huff reported to me. He came to my regular staff meetings and we talked about the affairs of the Office of Information and Inquiry, but I don't remember any specific case where anybody came and complained to me and I ended up reversing a decision or overturning a decision that he had made.

Mr. BURTON. Do you recall, Mr. Huff, ever having any kind of conversation about any other FOIA request like this with Mr. Schmidt?

Mr. HUFF. Not a specific request. The sort of statement, yes, we might talk about timing issues of the Department generally.

Mr. BURTON. Did you ever make any other recommendation of this type that this was a practice that should not be changed or something like this should be done? Is this the only time that you made that recommendation?

Mr. HUFF. This is the only time where we discussed a matter of this sort.

Mr. BURTON. Where you made that kind of recommendation. Anything else? Mr. LaTourette.

Mr. LATOURETTE. Mr. Schmidt, at the time you made the decision to make the exception to Department policy, were you aware of the Attorney General's recusal, the document that the minority counsel put in; were you aware that she had recused herself from the case?

Mr. SCHMIDT. I don't know if it would have come up because she wasn't in the loop, and I wasn't aware of any prior involvement she had had in the matter.

Mr. LATOURETTE. As a result of today's hearing, you are aware that she recused herself, and why. Were you aware of that before today's hearing?

Mr. SCHMIDT. I don't have any recollection of it at the time. I knew that Ms. Poston was from Steel, Hector and I knew that the Attorney General had briefly been at that firm, but I didn't have any other knowledge then about anything else and—I don't think

that I knew anything about the Attorney General having any prior contact with this matter.

Mr. BURTON. Let me interject that the memo that we have before us was from the Attorney General. This is from the Attorney General and it says—it is exhibit 31. It says—and this goes to—for the staff of the Attorney General. It was cc'd to the Associate Attorney General, carbon copy to you. So it went——

[Exhibit 31 follows:]



Office of the Attorney General
Washington, D. C. 20530

April 28, 1995

MEMORANDUM FOR THE STAFF OF THE ATTORNEY GENERAL

FROM: THE ATTORNEY GENERAL *[Signature]*

SUBJECT: Recusal from the FOIA Appeal for Information on Nobuo Abe

This is to inform you that I have recused myself from participation in the FOIA appeal made to the Department concerning requests for information relating to Nobuo Abe, a prominent religious leader, on behalf of Mrs. Hiroe Clow.

Apparently, an attorney, who is a close personal friend of mine and participated in my confirmation hearing preparation, has requested my intervention in the matter and I want to make it very clear that I have chosen to disqualify myself from any participation and request that no information regarding this matter be brought to my attention.

cc: The Associate Attorney General

Attachment



DOJ-03113

Mr. SCHMIDT. If she sent me a memo like that, it would have come around. We got a lot of memos like that from the Department of Justice people that reported to me. I am recusing myself from this or recusing myself from that.

Mr. BURTON. This was sent to you directly from the Attorney General, and she initialed it and put her name on it.

Mr. SCHMIDT. She sent a general memo around the office.

Mr. BURTON. She sent a specific carbon copy to you.

Mr. SCHMIDT. I don't remember it.

Mr. LATOURETTE. You were telling me—John Smith, his participation in a confirmation hearing; you didn't know that he was involved?

Mr. SCHMIDT. I did not know that. I knew he was from Steel, Hector, but I did not know that.

Mr. LATOURETTE. Thank you.

Mr. BURTON. I think that about covers the waterfront. We appreciate very much your being here.

Mr. PALMER. Mr. Chairman, may we have a copy of the report that the committee has issued?

Mr. BURTON. We will be very happy to give you a copy of the report and any other information that you would like. We stand adjourned.

[Whereupon, at 4:17 p.m., the committee was adjourned.]

[Additional information submitted for the hearing record follows:]

**FELONIES AND FAVORS: A FRIEND OF THE ATTORNEY GENERAL
GATHERS INFORMATION FROM THE JUSTICE DEPARTMENT**

**Staff Report
Committee on Government Reform
July 27, 2000**

EXECUTIVE SUMMARY

The Committee investigated the efforts of Rebekah Poston, a prominent Miami lawyer and a friend of the Attorney General, to obtain confidential law enforcement information from the Justice Department. The Committee has learned the following:

- Rebekah Poston was hired by Soka Gakkai, a large Japanese Buddhist sect, to obtain criminal justice records on a man named Nobuo Abe, the head of a rival Buddhist sect. Soka Gakkai hoped to use these records in a defamation lawsuit against Abe.
- Poston hired private investigators who illegally obtained confidential National Crime Information Center ("NCIC") records on Nobuo Abe.
- Poston then filed a Freedom of Information Act ("FOIA") request to legally obtain this same information on Abe. Long-standing Justice Department policy prohibited the Department from releasing this type of information pursuant to a FOIA request. Moreover, long-standing Department policy prohibited even confirming or denying the existence of a criminal record. Accordingly, Poston's FOIA request was rejected, as was her appeal.
- Poston used her influence with the Attorney General's Chief of Staff to obtain a reversal of the Justice Department's position. Poston had at least 22 contacts with senior Justice Department staff regarding her FOIA request. Her contacts resulted in a meeting between her and Associate Attorney General John Schmidt, the third-ranking official in the Justice Department. Schmidt reversed the earlier decision of Richard Huff, the head of the Office of Information and Privacy, who had rejected Poston's FOIA appeal. Huff could recall no other meetings like this in his twenty-five year career.
- When the Department of Justice responded to Poston's FOIA request, it stated that it had no records on Nobuo Abe. Poston's investigators believed that the record they had earlier obtained had been deleted by government officials. This deletion, as well as other evidence regarding the record, led a number of individuals involved in the case to speculate that the Abe record had been planted in the NCIC system by individuals associated with Soka Gakkai.
- The evidence that Abe's NCIC record was illegally accessed was provided to lawyers at the FBI's Office of Professional Responsibility on at least four

different occasions. Yet, the FBI and the Justice Department failed to conduct a thorough investigation of these allegations.

There are two deeply troubling aspects to the facts uncovered by the Committee. First, a prominent Florida attorney, a close friend of the Attorney General, was involved in criminal activity. This criminal activity has gone without any investigation or punishment for nearly six years. Now that the Committee has brought these facts to light, Rebekah Poston has refused to answer any questions regarding her activities, citing her Fifth Amendment rights. Second, this same friend of the Attorney General used her influence within the Justice Department to obtain a one-time reversal of long-standing Department policy. The implications of the Justice Department's failures in this case are severe: (1) it appears that the Department does not want to investigate allegations of improper access to its law enforcement databases; (2) it appears that the Department does not want to investigate allegations of wrongdoing by a friend of the Attorney General; (3) it appears that the Department applies a more lenient legal standard to FOIA requests made by a friend of the Attorney General than other FOIA requesters; and (4) the long-standing Justice Department policy of neither confirming nor denying the existence of criminal records relating to non-citizens is in doubt.

I. BACKGROUND

A. Background on Soka Gakkai

Soka Gakkai was formed in 1930 as an organization espousing the reform of Japanese schools. After World War II, Soka Gakkai became affiliated with the Nichiren Shoshu Buddhist sect. Between 1951 and 1991, Soka Gakkai operated as a lay organization affiliated with the Nichiren Shoshu Buddhist sect. During that period of time, Soka Gakkai grew to have approximately 10 million members and assets over \$100 billion.¹ Soka Gakkai also controls Komeito, which is the fourth-largest political party in Japan.

In 1991, after years of tension between Nobuo Abe (also known as Nikken Abe), leader of Nichiren Shoshu, and Daisaku Ikeda, leader of Soka Gakkai, the leaders of Nichiren Shoshu expelled Soka Gakkai members from their sect, and severed all ties between the groups. This action sparked extended litigation between the groups that continues to this day. This litigation reached American shores, as Nichiren Shoshu and Soka Gakkai both had extensive U.S. assets and membership.

In June 1992, two Soka Gakkai publications published a controversial allegation by Hiroe Clow, a Soka Gakkai member. Clow stated that in 1963, she traveled to the United States with Nobuo Abe, and was called by Mr. Abe late at night after he was detained by the Seattle police for being involved in an altercation with prostitutes. Ms. Clow stated that she picked Mr. Abe up at the police station, and that no charges were filed against Abe. Clow's charges against Abe were a major embarrassment for Abe and Nichiren Shoshu, and they responded by filing a lawsuit for libel against Clow and Soka

¹ Bob Whitby, *The Buddha Brotherhood*, Miami New Times (November 11, 1999).

Gakkai in Japan. This lawsuit, as well as counterclaims, and related litigation in the United States, was pursued by both sides with little regard for expense, and both sides employed large teams of lawyers and investigators in the U.S. and Japan.

Soka Gakkai International-USA had extensive real estate holdings in the U.S., including a 120-acre compound outside of Miami, Florida. Steel Hector & Davis, a leading Miami law firm, represented Soka Gakkai in connection with its Florida real estate projects, and considered Soka Gakkai a major client.² In late 1994, Soka Gakkai apparently asked Steel Hector if it could assist in connection with the Abe lawsuit.

B. Background on Steel Hector & Davis

Steel Hector & Davis was formed in 1925, and is now one of Florida's largest and best known law firms. The current Attorney General of the United States, Janet Reno, served as a partner at the firm prior to her service as Florida State Attorney. When Soka Gakkai was seeking help in getting information from the Justice Department, Steel Hector was a good choice for other reasons as well. John Edward Smith, a senior partner in the firm, was a long-time friend of the Attorney General, and was one of only two lawyers to help her prepare for her confirmation hearings.³ Rebekah Poston also made Steel Hector a good choice for Soka Gakkai. Poston had just joined Steel Hector as counsel, but she was an experienced white collar defense lawyer, and more importantly, was also a friend of the Attorney General. Poston's sister, Roberta Forrest, served as the campaign manager for Reno when she ran for State Attorney. Poston's sister also worked as a secretary in the State Attorney's office where both Reno and her future Chief of Staff at the Justice Department, John Hogan, worked.⁴ Poston describes herself as a friend of the Attorney General, and describes her sister as a close personal friend of the Attorney General.⁵

II. REBEKAH POSTON ILLEGALLY OBTAINS INFORMATION FROM THE JUSTICE DEPARTMENT

In 1992, Soka Gakkai printed the account of Hiroe Clow, a member of Soka Gakkai. Clow stated that in 1963, she witnessed the arrest of Nobuo Abe, the leader of Nichiren Shoshu, for soliciting prostitutes. Litigation in the U.S. and Japan commenced soon thereafter. Nichiren Shoshu argued that Nobuo Abe, its High Priest, had been defamed by the charges printed by Soka Gakkai. In response, Soka Gakkai argued that Mrs. Clow had been defamed by Abe's repeated statements that Clow's accusations were false. Central to these lawsuits was whether there was any proof that Abe had actually been arrested for soliciting prostitutes in Seattle in 1963. Soka Gakkai's lawyers faced two major problems. First, the incident occurred thirty years earlier, and few records remained, especially since charges were never brought against Mr. Abe. Second, if records did exist, they may have resided in non-public files or databases.

² Memorandum from Rich [Lucas] to Phil [Manuel] (November 4, 1994) (Exhibit 5).

³ Interview of John Hogan at 2 (June 23, 2000) ("Hogan Interview").

⁴ Interview of Rebekah Poston at 1 (June 29, 2000) ("Poston Interview"); Hogan Interview at 1.

⁵ Poston Interview at 1.

A. Soka Gakkai Illegally Obtains Information on Nobuo Abe Through Jack Palladino

Soka Gakkai's main lawyer in the United States, Barry Langberg, hired Jack Palladino, a well-known private investigator, to determine whether Abe was arrested in Seattle in 1963.⁶ Palladino then apparently contacted a source in the Bureau of Prisons who had access to the National Crime Information Center ("NCIC") database. This source accessed the database, and noted the following information:

3/63, NCIC-NATF, Complaint by four females of possible pandering and solicitation by a bald Oriental, male, no english at 12:40 AM, taken in for questioning, at 1:30 AM, no english. detained [sic] and released at 3:30 AM, forwarded by teletype.⁷

This information was then apparently provided to other attorneys working on the case. If this information on Abe was taken from the NCIC database and provided to private parties like Langberg or Palladino, the source at the Bureau of Prisons ("BOP") broke the law, as did possibly Langberg and Palladino. Federal law prohibits the theft, conversion, or unauthorized conveyance of government records, and cases have been brought for the theft of NCIC records specifically.⁸

Soka Gakkai would later attempt to confirm this record through other sources, and would have great difficulty in doing so. First, it received confirmation through Rebekah Poston and her investigators that there was a record on Abe in the NCIC system, but that it was different from the record viewed by the source at the Bureau of Prisons. Then, subsequently, when Poston tried to access the record through the FOIA process, she was told that no record existed. These later problems, which are discussed in detail below, have led individuals involved in the case to speculate that the NCIC information on Abe was planted there by the initial source at the Bureau of Prisons. This speculation is supported by several factors:

- It is unlikely that a computer record would have existed for Abe if he was detained and released in 1963 on a minor charge.
- Indeed, in his interview with Committee staff, Phil Manuel, the main investigator who worked for Poston, noted that he believed that the BOP source was a member of Soka Gakkai, and a friend or associate of Hiroe Clow.⁹ If that information is true, she would have had the motive to fabricate evidence against Abe.

⁶ Interview of Richard Lucas at 1 (July 11, 2000) ("Lucas Interview").

⁷ Memorandum from Rich Lucas to Phil Manuel (December 28, 1994) (Exhibit 19).

⁸ 18 U.S.C. § 641; *see also* facsimile from John Sebastian to Phillip Manuel (sic) (February 15, 1995) (attaching two newspaper articles about prosecutions for theft of NCIC records) (Exhibit 27).

⁹ Interview of Philip Manuel at 3 (July 18, 2000) ("Manuel Interview").

- Other private investigators were unable to verify the information provided by the BOP source.
- When conducting a search for records in response to Poston's FOIA request, the Justice Department was unable to find any records on Abe.

If indeed this information on Abe was planted in the NCIC system, it raises serious questions about the stewardship of the NCIC database, and makes the subsequent failure by the Justice Department to investigate this matter even more troublesome.

B. Poston Requests Her Private Investigators to Break the Law

While Soka Gakkai already had gained access to what purported to be Abe's arrest record, they chose to confirm its existence through another source. It is unclear why Soka Gakkai chose to hire another set of lawyers and investigators to access Abe's record a second time. Perhaps they were concerned with the reliability of Mr. Palladino's work, or perhaps they simply wanted a high degree of confidence in their information before they used it in court in Japan.

Billing records subpoenaed by the Committee indicate that Poston's work for Soka Gakkai began in early November 1994.¹⁰ Poston was one of a number of lawyers hired by Soka Gakkai through their main California-based lawyer, Barry Langberg. While the circumstances of Poston's hiring are not entirely clear, at least one document prepared by individuals working with Poston states that "Steel Hector was hired due to the relationship with the Attorney General."¹¹ Indeed, Poston confirmed to investigators working for her that she believed that the only reason Steel Hector & Davis was working on this matter was because of the firm's influence in Washington.¹²

Poston had her initial client meeting on the Abe matter on November 2, 1994.¹³ Due to an invocation of privilege by Soka Gakkai, the Committee has not learned who met with Poston, or what was discussed. However, immediately after her client meeting, Poston apparently contacted Richard Lucas, a private investigator in Florida who worked with the Philip Manuel Resource Group ("PMRG"), an investigative firm based in Washington, D.C. Poston retained PMRG to work on the case, and specifically, to determine whether Abe had a record in the NCIC system. Lucas explained Poston's request in a memo to Phil Manuel, the principal in PMRG:

[Poston] called this afternoon asking for assistance on a government inquiry. Her request is unusual and came with the usual promises that it will lead to bigger and better things.

¹⁰ See Steel Hector & Davis billing records at 0000143, 0000154 (Exhibit 47).

¹¹ Memorandum from Mike Wilson to John Gibbons at 1 (November 27, 1996) (Exhibit 45).

¹² Lucas Interview at 3.

¹³ Steel Hector & Davis billing records at 0000154 (Exhibit 47).

She is attempting to obtain a March 1963 document that substantiates an individual was arrested 30 years ago in Seattle for prostitution. It was confirmed, according to her, through the Federal Bureau of Prisons that they have in there [sic] files a reference of this arrest.¹⁴

This task, though, proved difficult for Lucas and Manuel to accomplish. Poston's billing records indicate that she had four telephone calls with "investigators" over the next two days.¹⁵ On November 4, 1994, Lucas sent another memo to Manuel:

As you know we received an assignment from Poston and now I am in a precarious position.

It appears the two alternatives are to use a confidential source or tell Poston that we do not want the case. The latter will cause ill feelings since we should have informed her on Wednesday but it is better to be up front now than to incur expenses, not get the information, and burn bridges with the our [sic] only inroad at Steel Hector Davis.¹⁶

Manuel responded by saying "Poston must realize that SUPERMAN does not exist. There is no confidential source who will give documentary evidence which is not released through proper channels. . . . If the document exists we can get it but it will take time – that's it. She'll have to take it or leave it."¹⁷ After an additional memo from Lucas asking him to reconsider, Manuel wrote "I do not know a confidential source in Seattle which has the authority to hand search criminal files that are not on a computer – remember we have no identifiers like DOB or SSN only a name therefore NCIC sources are useless. Computer files do not go back to 1963. The files must be hand searched by someone with access."¹⁸ Later on November 4, Poston obtained Abe's date of birth, and provided it to Manuel and Lucas to assist them in their search.

C. Poston Obtains the Information

Using the information provided by Poston, Manuel and Lucas each contacted confidential sources to determine whether Abe had a record in the NCIC. Manuel contacted Ben Brewer, the manager of the Program Support Section within the Administration Division at the FBI.¹⁹ According to Richard Lucas, Brewer accessed the

¹⁴ Memorandum from Rich Lucas to Phil Manuel (November 2, 1994) (Exhibit 1).

¹⁵ Steel Hector & Davis billing records at 0000154.

¹⁶ Memorandum from Rich Lucas to Phil Manuel (November 4, 1994) (Exhibit 2).

¹⁷ Memorandum from Rich Lucas to Phil Manuel (November 4, 1994) (with handwritten notations of Phil Manuel) (Exhibit 3).

¹⁸ Memorandum from Rich [Lucas] to Phil [Manuel] (with handwritten notations by Phil Manuel) (Exhibit 4).

¹⁹ Lucas Interview at 1. In an interview with Committee staff, Philip Manuel denied that he ever obtained NCIC information, or any other proprietary government information on Abe. Manuel Interview at 2-3. However, Manuel's interview statement is contradicted not only by Lucas, but also by Manuel's own sworn

NCIC database, and told Manuel the information on Abe contained in the database.²⁰ Lucas contacted a friend, Tony Gonzalez, a retired IRS investigator, to ask for help in obtaining NCIC information on Abe. Gonzalez in turn contacted a confidential source who provided him with the NCIC information on Abe.²¹ Several days later, on November 11, 1994, Lucas sent a memo to Poston containing the information that Manuel and Lucas had been able to obtain from their confidential law enforcement sources:

A source was contacted and provided the following information:

1. The source was provided with the identifiers of Nobuo Abe and Noburo Abbe, and the date of birth of December 19, 1922. The source was also told there was no social security number due to the subject not being a U.S. citizen.
2. The source relayed that under the data provided there was a reference to "Solicitation of Prostitution, Seattle Police Department, March 1963". The charge was abbreviated and not spelled out.²²

The memo then contained a detailed explanation of the NCIC database, as well as an explanation of why information like this would be in the NCIC:

6. The source theorized that if Abe was a Japanese citizen with no U.S. residence or forms of identification, other than a passport, an inquiry might have been made with NCIC to determine if he was wanted on other charges or had previous encounters with law enforcement.²³

After receiving this information, Poston and Soka Gakkai came back with a number of questions. George Odano, the Soka Gakkai representative dealing with Poston, posed a number of questions to Poston, seeking more detail on the information that the investigators had obtained, as well as confirmation that the information obtained by Manuel and Lucas was accurate.²⁴ Apparently, one concern was that the information that Soka Gakkai had previously obtained from the Federal Bureau of Prisons was more detailed than the information obtained by Manuel and Lucas. Poston forwarded these questions to Lucas, ordering him to "please get answers to as many of these as you can and be specific. This is a matter of serious importance."²⁵

affidavit, in which he states "I contacted a confidential and highly reliable source" and "my source told me that there was a federal government record for Nobuo Abe which referred to 'Suspicion of Solicitation of Prostitution, Seattle Police Department, March 1963.'"

²⁰ Lucas Interview at 1.

²¹ *Id.*

²² Memorandum from Richard Lucas to Rebekah Poston (November 11, 1994) (Exhibit 8).

²³ *Id.*

²⁴ Facsimile from Rebekah Poston to Richard Lucas (November 11, 1994) (attaching November 10, 1994 letter from George Odano to Rebekah Poston) (Exhibit 9).

²⁵ *Id.*

Lucas provided these follow-up questions to Phil Manuel, and Manuel worked to obtain the requested information. Six days later, on November 17, 1994, Lucas wrote another memo to Poston to address Odano's follow-up questions:

A source within the U.S. government in Washington D.C. was contacted and provided the following information:

1. There is no record or information on Hiroe Clow.
2. There is a record for Nobuo Abe. The record refers to "Suspicion of Solicitation of Prostitution, Seattle Police Department, March 1963". There is no reference to Abe's date of birth nor the exact date of the incident. There was no other significant date as to the facts and circumstances surrounding the incident.
3. The confidential source stated that the information on Mr. Abe was an inquiry for information by the Seattle Police Dept. not a recording of an arrest or conviction.
4. The source in Washington D.C. has access to any inquiries made by third parties on Mr. Abe. According to the computer tracking system there have been more than six inquiries on Mr. Abe from various U.S. cities over the last two weeks.
5. The various inquiries by the different government entities has caused concern in the Washington D.C. central office. The source stated the recorded information should never have been entered on Mr. Abe. The source also stated that if Mr. Abe made an official request, the entry under his name would be removed from the record. In addition, it is under consideration that the entire record be removed due to the obvious recent interest by numerous third parties, the date of the alleged incident and the fact it is a "questionable entry".
6. It is our opinion that any effort to obtain the information on Nobuo Abe through an official request be done expeditiously.²⁶

Lucas informed Committee staff that Manuel obtained this information from Ben Brewer, his confidential source in the FBI.²⁷

At this point, both Lucas and Manuel were becoming quite concerned with their involvement in the Soka Gakkai matter. Both were under the impression that this would

²⁶ Memorandum from Richard Lucas to Rebekah Poston (November 17, 1994) (Exhibit 10).

²⁷ Lucas Interview at 2. Again, Manuel denied in his Committee interview that he obtained NCIC information on Abe. However, Manuel's denials are contradicted by his own sworn affidavit, and are not credible.

be a small project when they accepted it.²⁸ In fact, the only reason they accepted it was because Poston was a senior lawyer with a prominent firm with close connections to the Justice Department. Otherwise, PMRG never would have accepted a case so small.²⁹ However, shortly after they started working on the project, Lucas and Manuel realized that the project was more complicated, and exposed them to significant risks. Lucas told the Committee that it was clear that “essentially you were breaking the law” by doing what Poston had asked.³⁰ In sum, Lucas and Manuel became convinced that Poston had asked them to expose themselves to a major risk for very little financial reward.³¹

D. The Information on Abe is Deleted

By December 1994, Manuel and Lucas became concerned that the NCIC record on Abe was going to be deleted. Apparently, Ben Brewer, Manuel’s source within the FBI, told Manuel that there was concern in the FBI about the origin of the Abe record, and that it might be deleted.³² By early December 1994, Lucas was discussing with Poston actions that Soka Gakkai could take to secure the Abe NCIC record before it was deleted. They discussed seeking a court injunction preserving the Abe record, but apparently decided not to.³³

By late December 1994, Abe’s NCIC record had been deleted. On December 22, 1994, Manuel wrote a memo to Poston in which he described his contacts with a confidential source who accessed NCIC on his behalf (Richard Lucas informed the Committee that this source was again Ben Brewer of the FBI):

This is to report that a highly confidential and reliable source has advised as follows regarding the subject of your inquiry:

(1) Whatever files of references, either in data base [sic] form or hard copy form, which were available previously have apparently been purged. There are currently no derogatory references to the subject of your inquiry in any files maintained by or under the control of the Department of Justice or any of its investigative agencies. Specifically, there is no information in NCIC.³⁴

Because of the confusion surrounding Abe’s NCIC record at this point, Poston apparently went back to the original source of the information on Abe – Jack Palladino’s source at the Bureau of Prisons. Poston apparently learned exactly what information the BOP source extracted from the NCIC, and passed this information on to PMRG.³⁵ Poston asked Lucas and Manuel to determine whether the BOP source’s notes were

²⁸ Lucas Interview at 2.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Memorandum from Richard Lucas to Rebekah Poston (December 9, 1994) (Exhibit 14).

³⁴ Memorandum from Philip R. Manuel to Rebekah Poston (December 22, 1994) (Exhibit 18).

³⁵ Memorandum from Rich Lucas to Phil Manuel (Exhibit 19).

legitimate, and whether that kind of information could have come from databases accessible at the BOP.³⁶

It is unclear what, if any, answers Manuel and Lucas were able to provide to Poston. A number of records show that Poston was hiring still more private investigators as late as 1996 to determine what happened to the NCIC records on Abe.³⁷ It appears that Poston decided that it was crucial to her case to determine where the original BOP source got the information on Abe. It also appears that Poston's desire to get information from the BOP source may have even led her to offer a bribe to the BOP employee. As one memo from 1996 notes:

Poston stated she was told the Bureau of Prison [sic] employee would not come forward due to her pension may be at risk if she was exposed. She added an offer may have been made as to severance pay by the client if that resulted.³⁸

Due to barriers raised by Poston and her attorneys, namely the invocation of the Fifth Amendment and attorney-client privileges, the Committee has not been able to learn whether Poston or Soka Gakkai ever made good on this payment to their confidential source.

E. The Actions Taken Were Illegal

There is no question that the actions taken by Rebekah Poston, Philip Manuel, Richard Lucas, and their confidential sources, were illegal. 18 U.S.C. § 641 provides for felony or misdemeanor penalties for anyone who “embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record . . . or whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted[.]”³⁹ This statute has been used to prosecute individuals who sell or give away government information.⁴⁰ It appears that both Poston and the private investigators at PMRG were aware of their legal exposure. Richard Lucas stated that “in direct conversations with Ms. Poston, she commented about her concern that the activities of the unknown Bureau of Prisons employee and the actions taken by PMRG on her behalf could be illegal[.]”⁴¹ There is also a document indicating that Phil Manuel was aware of the risks involved in improperly obtaining NCIC information. On February 15, 1995, an individual named John Sebastian sent Manuel a fax of two newspaper articles with the handwritten note “TITLE: OUT ON THE LIMB.” Sebastian then wrote on top

³⁶ *Id.*

³⁷ Memorandum from Michael Wilson to John Gibbons (November 19, 1996) (Exhibit 44).

³⁸ Memorandum from Michael Wilson to John Gibbons (November 27, 1996) (Exhibit 45).

³⁹ 18 U.S.C. § 641.

⁴⁰ See, e.g., *United States v. Elephant*, 999 F.2d 674 (2d Cir. 1993).

⁴¹ Letter from John C. Gibbons to David V. Ries, Deputy Chief, Office of Professional Responsibility, Federal Bureau of Investigation, May 28, 1997 (Exhibit 50).

of each article a caption stating “THEFT OF NCIC RECORDS.”⁴² The articles describe police officers prosecuted for selling NCIC printouts.

In addition, the 1996 memo describing Poston’s efforts to obtain information from Jack Palladino’s source at the BOP raises additional questions about illegal conduct by the Soka Gakkai lawyers and investigators. The memo indicates that Poston may have made an offer that Soka Gakkai would reimburse the BOP source if she lost her pension as a result of coming forward with her confidential information.⁴³ If these allegations are true, they could constitute a bribe or solicitation for bribery, in violation of 18 U.S.C. § 201.

III. POSTON REQUESTS INFORMATION ON ABE THROUGH FOIA

A. Poston Places FOIA Requests for Information on Abe

On November 21, 1994, Poston submitted FOIA requests to the Justice Department, the Federal Bureau of Investigation, the Immigration and Naturalization Service, and a number of other agencies, requesting information on Abe’s alleged detention in Seattle. Given the claims of attorney-client privilege made by parties involved in the investigation, all of Poston’s reasons for pursuing the information through FOIA are unknown. However, it appears that information obtained through legal means would be easier to use in the ongoing litigation in Japan. In addition, it appears that Poston had a concern that the Abe record might be deleted from the NCIC database, given the concern within the FBI that it was not a legitimate record.

B. Poston Publicly Confirms that She Already Has the Information

While her FOIA requests were still pending, in December 1994 and January 1995, Poston took steps that publicly acknowledged the receipt of confidential NCIC records from Manuel and Lucas. First, on December 9, 1994, Poston wrote a letter to Soka Gakkai confirming that she had obtained the NCIC information on Abe:

Your organization has requested us to investigate whether the United States government has maintained any records of an investigation concerning an individual known as Nobuo Abe, a foreign national, born December 19, 1922.

Subsequent to this request, we engaged the Philip Manuel Resource Group, Ltd. (“PMRG”), a highly prestigious private investigations firm based in Washington, D.C[.]

PMRG reported to us on November 17, 1994, that a source within the U.S. government in Washington, D.C. was contacted and the source confirmed

⁴² Facsimile from John Sebastian to Philip Manuel (February 15, 1995) (attaching articles regarding the theft of NCIC records).

⁴³ Memorandum from Michael Wilson to John Gibbons (November 27, 1996) (Exhibit 45)

to PMRG that there is a record for Nobuo Abe. According to PMRG's report to us, the record refers to:

Suspicion of Solicitation of Prostitution
Seattle Police Department
March, 1963

I am able to testify as to the truthfulness and accuracy of my statements in this letter.⁴⁴

Poston repeated the same information in a letter sent to Hiroe Clow on January 4, 1995.⁴⁵ Shortly thereafter, in a SGI-USA newsletter dated January 9, 1995, Barry Langberg, Hiroe Clow's lawyer, publicly disclosed Poston's letter to Clow.⁴⁶ Langberg included the letter in an interview in which he was explaining the progress of Clow's lawsuit against Abe.

Poston's disclosure of the information that PMRG had obtained for her is surprising, given that her activities had been cloaked in secrecy to that point. Moreover, the disclosure by Poston constitutes a public admission that she had hired individuals who broke the law to obtain Abe's NCIC information, with Poston's apparent knowledge and consent. In addition, Poston's disclosure of the information obtained by PMRG constitutes a waiver of any attorney-client privilege or work product protection that she could invoke over those subjects.

C. Negative Responses to Poston's FOIA Requests

When Poston made her FOIA requests for NCIC information on Nobuo Abe, she was taking on a long-standing Justice Department policy against the release of that kind of information. According to Richard Huff, the Co-Director of the Office of Information and Privacy, the Department has a policy against releasing any criminal justice information to a third party without permission of the party involved.⁴⁷ Moreover, in cases where they cannot release records, the Department has a policy against even confirming or denying the existence of criminal justice records within the Department.⁴⁸ According to Huff, this policy ensures that individuals who have arrest records, and other records, have those records kept private. As Huff explained to Committee staff, if the Department confirmed when individuals did not have arrest records, and simply said "no comment" when they did have records, any person would be able to determine who had arrest records in the Justice Department.⁴⁹ Therefore, according to Huff, the Justice

⁴⁴ Letter from Rebekah Poston to Soka Gakkai (December 9, 1994) (Exhibit 15).

⁴⁵ Letter from Rebekah Poston to Hiroe Clow (January 4, 1995) (Exhibit 20).

⁴⁶ The SGI-USA Newsletter (January 9, 1995) (Exhibit 21).

⁴⁷ Interview of Richard L. Huff at 1 (June 16, 2000) ("Huff Interview").

⁴⁸ *Id.*

⁴⁹ *Id.* at 1-2.

Department's policy of refusing to confirm or deny whether criminal justice records exist is integral to a system that attempts to protect the privacy of individuals involved.⁵⁰

Poston apparently recognized the fact that she was attempting to obtain information in the face of long-standing Justice Department policy. She informed the Committee that she viewed her FOIA request as a long-shot, because she was requesting information on a person that she did not represent.⁵¹ Poston's client, Hiroe Clow, also seemed to recognize that the FOIA request would not be granted, stating in a letter to Janet Reno: "[m]y lawyers tell me that things don't look so good on the F.O.I.A. request if decided in accordance with previous practices."⁵² And, as expected, Poston's FOIA requests were rejected. The FBI informed Poston that she could not receive any information on Abe unless she provided either proof of death, or a notarized waiver from Abe.⁵³ Similarly, the Executive Office of United States Attorneys told Poston that she must provide a notarized waiver by Abe.⁵⁴

Poston met with the FBI to discuss their handling of the FOIA request, and according to Poston, the FBI was receptive to her arguments, but informed her that their general policy was not to release, or even confirm or deny the existence of records about third parties in NCIC without the permission of the third party.⁵⁵ According to Poston, the FBI told her that they would like to help her, but that any decision on the release of Abe's NCIC information would have to be made by the Attorney General, not the FBI.⁵⁶

After she received negative responses to her FOIA requests, on February 3, 1995, Poston submitted an appeal to the Justice Department. In her appeal, she argued that the Justice Department should release NCIC records on Abe, based on the fact that there was a significant public interest in whether Abe was arrested in Seattle in 1963; and that as a non-citizen, Abe was not protected by the Privacy Act.⁵⁷ However, Poston was aware that her arguments would not likely be accepted by the Justice Department.⁵⁸ The Justice Department had an established policy that it would not confirm or deny the existence of the records that Poston was seeking. This policy had been in place for a significant period of time, and Poston's arguments did not change that fact.

⁵⁰ *Id.* at 2.

⁵¹ Poston Interview at 3.

⁵² Letter from Hiroe Clow to Janet Reno, Attorney General, Department of Justice (March 21, 1995) (Exhibit 57).

⁵³ Letter from J. Kevin O'Brien, Chief, Freedom of Information – Privacy Acts Section, Information Resources Division, Federal Bureau of Investigation, to Rebekah Poston (December 8, 1994) (Exhibit 13).

⁵⁴ Letter from Bonnie L. Gay, Attorney-in-Charge, FOIA/PA Unit, Executive Office for United States Attorneys, to Rebekah Poston (January 12, 1995) (Exhibit 22).

⁵⁵ Poston Interview at 2.

⁵⁶ *Id.*

⁵⁷ Letter from Rebekah Poston to Attorney General Janet Reno (February 3, 1995) (Exhibit 24).

⁵⁸ Poston Interview at 3.

IV. REBEKAH POSTON'S LOBBYING CAMPAIGN

After her unsuccessful meeting with the FBI, Poston began a remarkable series of contacts with the Justice Department, in an effort to reverse the existing Justice Department policy, and obtain whatever information existed on Nobuo Abe in the NCIC system. Between January and June 1995, Poston contacted high-level Justice Department officials at least 22 times regarding her FOIA request.⁵⁹ These contacts were made with senior staff in the Office of the Attorney General, the Office of the Associate Attorney General, and the Office of Information and Privacy. Poston began this lobbying campaign even before her FOIA appeal had been rejected by the Justice Department. As she explained in her interview with Committee staff, she understood that her legal arguments were a long-shot, and she believed that she needed to raise this matter at the highest levels of the Justice Department.⁶⁰

A. Poston's Contacts with John Hogan

Over the next several months, Poston would be in frequent contact with John Hogan, the Chief of Staff to the Attorney General. According to Poston, Hogan is a good friend of hers, and a great friend of her sister.⁶¹ As an example of her family's friendship with Hogan, Poston informed the Committee that at the time of Hurricane Andrew, Hogan invited Poston's sister and Poston to stay with him in his house.⁶² Poston initially told Hogan that she was in a "FOIA situation," and wanted to meet with the decisionmakers face-to-face to make her case.⁶³ Poston explained to Hogan that she wanted him to make an introduction to the relevant individuals who could help her.⁶⁴ According to Poston, Hogan told her that "he didn't do FOIA, but would be happy to help her," and he told her that he would check into the matter.⁶⁵

Hogan's account differs in some significant respects from Poston's. First, he downplayed his relationship with Poston. He acknowledged that he knows Poston, but did not describe her as a friend.⁶⁶ He similarly downplayed Poston's relationship with the Attorney General, merely acknowledging that Roberta Forrest was a secretary for the State Attorney's Office, failing to mention that she managed Ms. Reno's campaigns for office.⁶⁷ Hogan acknowledged that he was contacted by Poston, and that Poston asked him for help with her FOIA appeal. However, he stated that he "did not pay much attention to what she was saying after he heard that it was a FOIA case," and that he generally suggested that she needed to talk to people in the DOJ FOIA office.⁶⁸

⁵⁹ See Steel Hector & Davis billing records (Exhibit 47).

⁶⁰ Poston Interview at 3.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ See Hogan Interview.

⁶⁷ *Id.* at 1.

⁶⁸ *Id.*

Hogan informed the Committee that he believed that he spoke with Poston on less than five occasions.⁶⁹ Similarly, Poston estimated that she spoke with Hogan on two to four occasions.⁷⁰ However, records subpoenaed by the Committee reveal a remarkable volume of contacts between Poston and Hogan. Between January 26, 1995, and June 2, 1995, Poston contacted John Hogan at least 18 times on the Soka Gakkai matter.⁷¹ While it is possible that some of these contacts were occasions when Poston merely left a message with Hogan, they clearly indicate that Hogan did more than suggest that Poston speak with officials in the Justice Department FOIA office.

B. Poston's FOIA Appeal is Rejected

During the time that Poston was making these contacts with Hogan, her appeal was rejected by the Justice Department's FOIA office. In a letter dated April 25, 1995, Richard Huff, the Co-Director of the Office of Information and Privacy, rejected Poston's arguments. Huff informed the Committee that he did not spend much time deliberating Poston's appeal, and viewed it as a clear-cut decision.⁷² In Huff's mind, the Supreme Court directly addressed this issue:

I find the Supreme Court's holding in United States Department of Justice v. Reporter's Committee for Freedom of the Press, 489 U.S. 749 (1989) to be controlling in this case. Thus, in the absence of such authorization [from Mr. Abe], and after careful consideration of your appeals from the actions of the EOUSA and the FBI, I have decided to affirm the initial actions of these components in refusing to confirm or deny the existence of records responsive to your request. Lacking an individual's consent, proof of death, official acknowledgment of an investigation, or an overriding public interest, even to acknowledge the existence of law enforcement records pertaining to an individual could reasonably be expected to constitute an unwarranted invasion of personal privacy.⁷³

At this point, the Office of Information and Privacy, which served as the highest office deciding FOIA appeals within the Justice Department, had spoken. To obtain a reversal would require the intervention of a high-level appointee at the Justice Department.

⁶⁹ *Id.*

⁷⁰ Poston Interview at 3.

⁷¹ See Steel Hector & Davis billing records. A number of the cited pages refer to contact between Poston and the Attorney General's Office. However, in her interview, Poston acknowledged that her sole contact in the Attorney General's Office was Hogan. Similarly, in his interview, Hogan stated that he believed that other than the Attorney General, he was the only person in the Attorney General's Office who knew Poston.

⁷² Huff Interview at 2.

⁷³ Letter from Richard L. Huff to Rebekah J. Poston (April 25, 1995) (Exhibit 30).

C. Attorney General Reno Recuses Herself

On April 28, 1995, only three days after Huff rejected Poston's FOIA appeal, the Attorney General recused herself from the Soka Gakkai matter. In a memorandum to her staff, copied to the Associate Attorney General, Ms. Reno stated:

This is to inform you that I have recused myself from participation in the FOIA appeal made to the Department concerning requests for information relating to Nobuo Abe, a prominent religious leader, on behalf of Mrs. Hiroe Clow.

Apparently, an attorney, who is a close personal friend of mine and participated in my confirmation hearing preparation has requested my intervention in the matter and I want to make it very clear that I have chosen to disqualify myself from any participation and request that no information regarding this matter be brought to my attention.⁷⁴

Poston was asked about the recusal memo, and stated that the memo clearly refers to a contact from John Edward Smith, a close friend of the Attorney General, and a senior partner at Steel Hector who worked on the Abe matter.⁷⁵ However, Poston denied having any knowledge that Smith contacted Reno on the Abe matter.⁷⁶ In addition, the Steel Hector billing records do not show that Smith billed any time on the Abe matter.⁷⁷ John Hogan, the Attorney General's Chief of Staff, similarly believed that the memo referred to Smith.⁷⁸ He also claimed that he was unaware that she had recused herself from this matter.⁷⁹ Given Smith's death two years ago, the reasons for Janet Reno's recusal are left somewhat unclear:

- Who contacted Attorney General Reno? If it was John Smith, why didn't he either inform Poston, who was overseeing the case, or bill his time?
- If Smith contacted Reno, why does Rebekah Poston claim to be unaware of the contact? Smith was not the main attorney on the case, and it is difficult to believe that he would contact the Attorney General about the case without informing Poston.
- Why did Reno recuse herself from the case? Richard Huff, who has directed the Office of Information and Privacy for almost twenty years, stated that he has never heard of the Attorney General, Deputy Attorney General, or Associate Attorney General ever recusing themselves from a FOIA appeal.

⁷⁴ Memorandum from Attorney General Janet Reno to Staff of the Attorney General (April 28, 1995) (Exhibit 31).

⁷⁵ Poston Interview at 4.

⁷⁶ *Id.*

⁷⁷ See Steel Hector & Davis billing records (Exhibit 47).

⁷⁸ Hogan Interview at 2.

⁷⁹ *Id.*

- Why was the Attorney General's Chief of Staff unaware that she had recused herself from the case? Hogan claimed that Reno would occasionally recuse herself from matters without informing him.⁸⁰ However, it is peculiar that in a matter involving her old law firm and a mutual friend from Florida, the Attorney General would not inform Hogan.
- The manner of Reno's recusal raises significant questions about the contacts that led to the recusal. What did Smith ask Reno to do? Hogan stated that in his experience, Reno would "not receive it well if [someone like Smith] asked her for special treatment on behalf of a client."⁸¹ If that is the case, why did Smith, a long time friend of the Attorney General, contact her?

D. John Hogan Arranges a Meeting with the Associate Attorney General

After the rejection of her FOIA appeal, Rebekah Poston continued her contacts with John Hogan, requesting a meeting with the Associate Attorney General. On May 12, 1995, she wrote to Hogan, and specifically requested a meeting. In a letter marked "PERSONAL AND CONFIDENTIAL," Poston stated that she was "rather disappointed" with the Justice Department's rejection of her FOIA appeal.⁸² She then requested the meeting with Schmidt:

Consequently, John Smith, Russell Bruemmer and I believe we must take one last step before deciding whether to initiate litigation on these issues. Believe me, we do not want to bring unnecessary or senseless litigation. Unfortunately, however, we are lacking an understanding, given our arguments and the failure of anyone in the Office of Information and Privacy to address them head on, as to why our appeal has been denied. If you could assist the three of us in scheduling a meeting with Mr. Schmidt, we would like to address our concerns with him. We have not yet attempted to contact Mr. Schmidt.

We trust that Mr. Schmidt will agree to one final conference on this matter; we will of course work with his schedule on a convenient date and time.

I harken [sic] back to the beginning of this matter when you and I first spoke. You commented that you didn't understand why they could not tell whether they have a record or not. Frankly, we would be satisfied with such a response.⁸³

Steel Hector & Davis billing records also indicate that Poston called Hogan at least four times in late May and early June, apparently the time when the meeting with

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Letter from Rebekah Poston to John Hogan (May 12, 1995) (Exhibit 32).

⁸³ *Id.*

Schmidt was scheduled.⁸⁴ In her interview with Committee staff, Poston stated that she was asking Hogan to help set up the meeting with Schmidt.⁸⁵ Poston stated that Hogan was responsive, and said he would contact Schmidt, and help set up the meeting.⁸⁶ When he was interviewed by Committee staff though, Hogan had a different recollection. He stated that he did not even recall Poston asking for help in setting up a meeting with Schmidt.⁸⁷ Hogan stated that “I cannot imagine that I would be so presumptuous as to ask Schmidt to meet with anyone.”⁸⁸ Hogan did allow that it was possible that he forwarded Poston’s May 12 letter to Schmidt’s office, but does not believe that he ever spoke with Schmidt about this matter.⁸⁹

Hogan’s account of how the Schmidt meeting was arranged is troubling. Poston clearly stated that Hogan helped arrange the meeting. The timing and volume of the telephone calls between Poston and Hogan supports the conclusion that Hogan was involved in scheduling the meeting with Schmidt. Under Hogan’s account, the 18 contacts from Rebekah Poston go unexplained. Poston continued to contact him, despite the fact that in their initial conversation, Hogan told her that he did not “do FOIA,” and directed her to the Office of Information and Privacy. The fact that there were so many more contacts, including contacts shortly before the meeting with Schmidt, supports the conclusion that Hogan was involved in scheduling the meeting. Finally, common sense supports the conclusion that Poston received some assistance in arranging a meeting with the Associate Attorney General on a matter so small as a FOIA appeal. It would be unlikely that the Associate Attorney General would meet with a party on this kind of matter unless there was some special request.

E. The Justice Department “Reverses its Policy”

Rebekah Poston, John Smith, and Russell Bruemmer met with John Schmidt on June 15, 1995, at 3:30 p.m.⁹⁰ Before their meeting with Schmidt, John Smith arranged for the group to visit Attorney General Reno in her office. In her interview, Poston confirmed that John Smith had made this appointment with the Attorney General.⁹¹ Poston stated that this was a social call, and that the group exchanged pleasantries with the Attorney General.⁹² For example, Poston stated that the Attorney General asked her how her sister and her children were doing.⁹³ Poston denied that she, Smith, or Bruemmer discussed the Soka Gakkai matter with the Attorney General.⁹⁴ When the

⁸⁴ Steel Hector & Davis billing records at 0000146 (Exhibit 47).

⁸⁵ Poston Interview at 3.

⁸⁶ *Id.*

⁸⁷ Hogan Interview at 1.

⁸⁸ *Id.* at 2.

⁸⁹ *Id.*

⁹⁰ Calendar of Rebekah Poston for June 15, 1995, Steel Hector & Davis document 000028 (Exhibit 46).

⁹¹ Poston Interview at 5.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

Attorney General asked them what brought them to the Justice Department, Smith stated that “we have other business in the Department.”⁹⁵

After their meeting with the Attorney General, Poston, Smith and Bruemmer met with Schmidt. According to Poston, Schmidt started the meeting by informing them that he had not yet discussed the matter with Richard Huff.⁹⁶ Poston took this as a positive sign, because it meant that Schmidt had an open mind on the subject.⁹⁷ On the other hand, it is slightly troubling that Schmidt would not take any steps to educate himself on the Department’s FOIA policy before he met with a party who was seeking the reversal of long-standing Department policy. Poston commented on another troubling aspect of the meeting with Schmidt -- Schmidt had no staff present at the meeting with Poston.⁹⁸ It is strange enough that Schmidt, the third-highest official in the Department of Justice, would even attend a meeting on a FOIA request. It is even more odd that he would attend this meeting by himself, and not seek to delegate this matter to a staffer. Due to Schmidt’s failure to recall even the most basic facts about this matter, we cannot determine whether Schmidt recognized that Poston’s request was irregular, or whether he simply wanted to work on this matter himself.

Poston informed the Committee that she, Smith and Bruemmer made their points with Schmidt, and he stated that he would take their arguments under advisement.⁹⁹ When he was interviewed by Committee staff, Schmidt could recall almost nothing about the entire Soka Gakkai matter. Schmidt did recall that he asked Huff to find out what information the Department had on Abe, and that when he discovered that there were no records, that he decided they could tell that to Poston.¹⁰⁰ According to Schmidt, “it was hard to see the adverse consequences” of confirming that there were no NCIC records on Abe.¹⁰¹ Schmidt told Committee staff that “Dick [Huff] said he would be comfortable with that.”¹⁰²

Richard Huff, though, tells a dramatically different story. Huff stated that Schmidt called him in mid-June to ask about the Poston FOIA appeal.¹⁰³ They arranged a meeting for June 22, 1995. At the meeting, Schmidt asked Huff what the Department policy was on releasing this kind of information.¹⁰⁴ Huff told Schmidt that Abe, as a foreign national, was not covered by the Privacy Act.¹⁰⁵ Huff also explained, however, that there was a Department policy against even confirming or denying the existence of criminal justice information on third parties, whether they were U.S. citizens or not.¹⁰⁶

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Interview of John R. Schmidt (June 16, 2000).

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Huff Interview at 2-3.

¹⁰⁴ *Id.* at 3.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

Schmidt asked Huff if they could make a disclosure in this case.¹⁰⁷ Huff responded by saying that they should not vary Justice Department policy in this case.¹⁰⁸ Huff believes that Schmidt also mentioned the fact that Poston was threatening to litigate if she did not receive the information that she had requested. Huff responded by telling Schmidt that the odds were “spectacular” that the Justice Department would prevail in such litigation, given that the Supreme Court had already addressed this precise issue.¹⁰⁹ Schmidt resolved the meeting by asking Huff to find out whether the Department had any NCIC records on Abe.¹¹⁰

After his meeting with Schmidt, Huff requested the FBI and the Executive Office of United States Attorneys to search for the requested information on Abe, and they confirmed that they had no information on Abe.¹¹¹ Huff communicated this fact to Schmidt.¹¹² Schmidt asked Huff if the Department could tell Poston that they had no NCIC records on Abe.¹¹³ Huff told Schmidt that they legally could do so.¹¹⁴ Schmidt then directed Huff to reverse his earlier decision, and confirm in a letter to Poston that they did not have any NCIC records on Abe.¹¹⁵ Accordingly, on July 11, 1995, Huff wrote to Poston to tell her that:

After considering your Freedom of Information Act request under Attorney General Reno’s policy of undertaking discretionary disclosure of information whenever no foreseeable harm would result, Associate Attorney General John R. Schmidt has determined that it is appropriate to disclose the fact that neither the Federal Bureau of Investigation nor the Executive Office for United States Attorneys maintains, or has any evidence of ever maintaining, any record within the scope of your request.¹¹⁶

While Schmidt told Committee staff that Huff was “comfortable” with this decision, Huff told a different story, and pointed out a series of remarkable facts about this matter.

- First, Huff made it clear to Schmidt that he disagreed with the decision.¹¹⁷ He told Schmidt that it wouldn’t be illegal to release this information, but that he

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.* Huff informed Schmidt that the Privacy Act did not apply to Nobuo Abe, since he was not a U.S. citizen or permanent resident. Therefore, the Justice Department’s confirmation that Abe had no records at DOJ was not a violation of the Privacy Act. Despite the fact that the Privacy Act was inapplicable in this case, Huff still believed that Justice Department policy not to confirm or deny the existence of any criminal justice records should apply.

¹¹⁵ *Id.*

¹¹⁶ Letter from Richard L. Huff to Rebekah J. Poston (July 11, 1995) (Exhibit 37).

¹¹⁷ Huff Interview at 3.

disagreed with the discretionary disclosure. In addition, Huff characterized Schmidt's decision as "unusual."¹¹⁸

- In his 25 years at the Justice Department, Huff had never had any one-on-one meetings with Schmidt, or any other Associate Attorney General.¹¹⁹
- When asked how much senior political appointees were involved in FOIA appeals, Huff stated that "typically, there is none."¹²⁰
- Huff is aware of involvement of senior political appointees in FOIA appeals in only two other cases. The first case involved a request for notes taken by a Justice Department lawyer relating to an interview of Sandra Day O'Connor before she was appointed to the Supreme Court. The Office of Information and Privacy initially made a decision to grant the request, and this decision was then overturned by a political appointee.¹²¹ The second case involved a request by Terry Anderson, who had been held captive in Lebanon, for criminal justice information possessed by the government on the individuals who had held him captive. The Office of Information and Privacy had denied his request, consistent with Justice Department policy, and then, after significant media attention, political appointees at the Department directed Huff to reverse the decision.¹²² Both cases stand in obvious contrast to this case.
- It is unclear what effect the Schmidt decision had on Justice Department policy. Huff was asked whether this decision was a change of DOJ policy, or whether it was a one-time departure from existing policy. Huff stated that he believed that it was a one-time departure.¹²³ When asked if Schmidt offered Huff any reason why this case would be treated differently from any other FOIA case coming to the Department, Huff stated that Schmidt offered no such rationale.¹²⁴

V. AFTERMATH

A. Poston "Wins the Battle, but Loses the War"

When Poston received the July 11, 1995, letter from Huff informing her that Schmidt had decided to disclose the fact DOJ had no NCIC records on Nobuo Abe, she felt like she had "won the battle, but lost the war."¹²⁵ When asked to explain why she felt that way, she declined, based on her lawyers' concerns that such an explanation would cause her to disclose the illegal activities conducted on her behalf by PMRG.¹²⁶

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.* at 1.

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.* at 3.

¹²⁴ *Id.*

¹²⁵ Poston Interview at 5.

¹²⁶ *Id.*

However, documents obtained by the Committee show how disturbed Poston was to find out that the Justice Department did not have any records on Abe. Huff's letter conflicted with the information that Phil Manuel, Richard Lucas, and Jack Palladino had extracted from confidential sources within the Justice Department. On July 19, 1995, shortly after she got the Huff letter, Poston wrote to Manuel and Lucas to ask them to follow up with their confidential sources:

I need your assistance in helping me explain to my clients the apparent inconsistencies between the letter we received from Richard L. Huff, dated July 11, 1995 and your investigative reports of November 11 and 17, 1994.

Our personal meeting with Deputy [sic] Associate Attorney General John Schmidt resulted in a policy decision by the Attorney General to reverse the original position of the Department of Justice by authorizing the release of the requested record or a statement as to whether it existed in the past. That is a major accomplishment and victory. The result, however, is quite perplexing.

I can only conclude that since a record existed, which your two independent sources verified, the places searched enumerated in Huff's letter must not have been the proper locations. Any other conclusion means that the sources are either not telling the truth or that the record was deleted (a real possibility according to the source in the November 17, 1994 report) without a trace, an impossibility according to former, FBI, S/A Lawler, if the record was ever in NCIC. That is part of the problem.

Our client views this letter as an absolute defeat for them in Japan.

Our client is requesting that each of you ask your sources for an explanation or [sic] where they found the record. The Attorney General's position is clear – its existence and/or its deletion is authorized to be disclosed.

I have the utmost confidence in your reports. We must try our best to resolve this critical issue for our client. Please give this matter your immediate attention. Leave no stone unturned.¹²⁷

Lucas informed the Committee that he took no action in response to Poston's requests.¹²⁸ He believes that Phil Manuel's confidential source, Ben Brewer, told Manuel

¹²⁷ Letter from Rebekah Poston to Philip Manuel and Richard Lucas at 2 (July 19, 1995) (Exhibit 39).

¹²⁸ Lucas Interview at 3.

that he believed that Abe's NCIC record was erased, and that there was no evidence of its erasure.¹²⁹

After Lucas and Manuel failed to produce any further information, Poston threatened to make both of them testify at trial in Japan, where apparently, Poston's earlier representations about the existence of an NCIC record on Abe were coming under considerable scrutiny.¹³⁰ Lucas refused to go to Japan and instead, Poston drafted an affidavit for Lucas to sign.¹³¹ Lucas refused to sign the affidavit unless Manuel signed one as well.¹³² The surprising result was that in September 1995, Manuel and Lucas both executed sworn affidavits regarding their activities in the Abe case, including their illegal conduct in obtaining the information on Abe. Manuel admitted:

11. As part of PMRG's investigation, I contacted a confidential and highly reliable source who I believed would be able to determine whether the federal government had documentary evidence.

12. My source told me that there was a federal government record for Nobuo Abe which referred to "Suspicion of Solicitation of Prostitution, Seattle Police Department, March 1963."

13. My source further told me that the record concerning Mr. Abe reflected that the Seattle Police Department had made an inquiry for information.

14. My source also told me that if Mr. Abe made an official request for the information under his name to be removed from the record, it could be removed.

15. Sometime later, my source informed me that the record concerning Mr. Abe apparently had been purged.

16. I am confident that the information provided to me by the source is accurate and reliable.¹³³

Lucas made similar admissions in his affidavit:

9. As part of my investigation for PMRG, I contacted a highly reliable source and advised the source that I was attempting to confirm the existence and the whereabouts of documents in the possession of the federal government related to Mr. Abe. I told this source that Mr. Abe's name is "Nobuo Abe" and that his date of birth is December 19, 1922. I

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ Affidavit of Philip R. Manuel at 2-3 (September 20, 1995) (Exhibit 42).

October 16, 1997, to tell Gibbons that OPR would not conduct any further investigation into the Abe matter, and that his “allegations remain without merit.”¹⁴⁰

In addition to numerous attempts made by counsel for Nichiren Shoshu, the Committee has referred this matter to the Justice Department. In 1998, Committee staff met with FBI personnel to explain this matter, and request the FBI to investigate the potentially illegal actions taken by Poston and PMRG.

It is astounding that the Justice Department has refused to take action on this matter. The Department has been provided on repeated occasions with clear-cut evidence of illegal activity. There is both documentary and testimonial evidence that Rebekah Poston, Philip Manuel, and Richard Lucas penetrated confidential law enforcement databases to obtain information on Nobuo Abe. However, the Department has concluded on three separate occasions, without explanation, that these charges are “without merit.” Apparently, though, they have not attempted to interview any of the witnesses in this case, including Richard Lucas, who offered repeatedly to be interviewed, against his own legal interests.¹⁴¹

CONCLUSION

Improper access to law enforcement databases is a serious and pervasive problem. While it is not uncommon for investigators to access databases like NCIC without permission, such activity is illegal. The Department of Justice and FBI should take seriously their responsibility to guard the privacy and integrity of the information in law enforcement databases. When confronted with clear evidence that a team of lawyers, private investigators, and law enforcement personnel were improperly accessing the NCIC record of Nobuo Abe, the Justice Department should have taken action, and prosecuted the responsible parties. By failing to investigate this case, the Justice Department and FBI have sent the clear message that they do not value the sanctity of law enforcement databases.

Similarly, Justice Department’s handling of Rebekah Poston’s FOIA request raises serious questions. Justice Department policy called for Poston’s FOIA request to be rejected, without confirming or denying the existence of any record. However, through her contacts in the Office of the Attorney General, Poston was able to obtain special treatment. While the disclosure made by the Justice Department in response to Poston’s FOIA request was not criminal, it was an unseemly favor for a friend of the Attorney General. This disclosure makes it appear that the Justice Department places the Attorney General’s personal friendships above the judgment of career Justice Department staff and long-standing Justice Department policy.

¹⁴⁰ Letter from David V. Ries, Deputy Assistant Director, Office of Professional Responsibility, Federal Bureau of Investigation, to The OSO Group, Ltd. (October 16, 1997) (Exhibit 54).

¹⁴¹ Although there is no doubt that Richard Lucas’ conduct was unlawful, it must be pointed out that he was the only witness involved in the illegal efforts to obtain information on Abe to cooperate fully with the Committee. As important, his offer of cooperation to the Justice Department indicates a willingness to atone for his part in improper conduct. By comparison, Poston and Manuel have taken no steps to cooperate with law enforcement.

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Date: November 2, 1994
 To: Phil Manuel
 From: Rich Lucas
 Re: Rebecca Poston

She called this afternoon asking for assistance on a government inquiry. Her request is unusual and came with the usual promises that it will lead to bigger and better things.

She is attempting to obtain a document that substantiates an individual was arrested 30 years ago in Seattle for prostitution. It was confirmed, according to her, through the Federal Bureau of Prisons that they have in there files a reference of this arrest. It is not known if the subject was in the Federal Bureau of Prisons on another matter or if it related to this previous arrest.

The individual is an Oriental male, Japanese but there are no other identifiers but his name: Nobuo Abe. He could of also been under the name of Noburo Abbe. He is not a U.S. citizen and possibly could have been involved in white slavery, but the facts are not clear, according to Poston.

The budget is a few thousand dollars although she prefer not to spend that much. The two key aspects are that time is of the essence and she needs a document.

Please let me know your thoughts.



Date: November 4, 1994
 To: Phil Manuel
 From: Rich Lucas
 Re: Rebecca Poston

As you know we received an assignment from Poston and now I am in a precarious position.

Her request is simple but difficult. She needs to confirm an Oriental male was arrested in March of 1963 in Seattle. She needs some type of document showing this arrest or conviction.

As previously conveyed, she has authorized a budget of \$2,000 but would not rather pay that much if avoidable. The other key factor is she needs the information as soon as possible.

The sending of a written request to Customer Service of the King's County Court House in Seattle is not going to satisfy Poston's request for expediency. Unless, we have someone there who has agreed in advance to search for the information promptly.

It appears the two alternatives are to use a confidential source or tell Poston that we do not want the case. The latter will undoubtedly cause ill feelings since we should have informed her on Wednesday but it is better to be up front now than to incur expenses, not get the information and to burn bridges with the our only inroad at Steel Hector Davis.

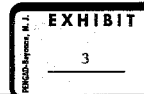
Please inform me of your thoughts.



Date: November 4, 1994
 To: Phil Manuel
 From: Rich Lucas
 Re: Rebecca Poston

*If the document exists we can get it but it will take time - That's it
 She'll have to take it or leave it - let me know*

Phil



As you know we received an assignment from Poston and now I am in a precarious position.

Her request is simple but difficult. She needs to confirm an Oriental male was arrested in March of 1963 in Seattle. She needs some type of document showing this arrest or conviction.

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Please inform me of your thoughts.

Rich: Poston must realize that SUPERMAN does not exist. There is no confidential source who will give documentary evidence which is not released through proper channels. On the other hand, we have already sent our request for such documentary evidence to Seattle with a request to expedite. Records going back to 1963 have to be hand searched. It will take time. It might take several days or it might take a week but if she wants a document there is no other way. We have already incurred the small expense but if she has a better way to do it with ~~her~~ her Godspeed. ~~There is no document, no source, miracles.~~

To: Phil
 From: Rich
 Re: Poston



After getting over your insulting tone toward me I would like to remind you I have been in this business for a number of years and have basic common sense on some business and investigative issues.

For an investigative firm this should not be a Superman request. A confidential source will reveal if our request for a document should be undertaken or even worthwhile. If there is no criminal history then why undertake the search. *Can't get it without SSN or DOB we can't*

If we receive our request back from Seattle within two weeks *usual* it will be a significant victory. The other option is to hire *Source!* someone in Seattle to do the search for us. This obviously gets into budgetary constraints but will probably result in a more thorough, prompt and accurate search. *This would be true if our investigator had access to the criminal files - since they are no longer only on murder*
 The bottom line is how we treat a client like her. Based upon *our* your prior guidelines if it was someone off the street we wouldn't take the case. The only reason we consider it is because she is *there* with a large law firm. *them.*

I am looking for direction and will relay whatever message you want me to. That is the reason I faxed you her request on Wednesday as soon as I received it. She is obviously under pressure from her client, has been around the block herself and is looking for a response if we can respond to her request within her time guidelines. *What are her time limits?*

Based upon your response I will tell her that we can not have the answer for until November 14, unless you inform otherwise.

4 - Perhaps my message was not clear - First it was not just an insulting toward you or your business judgement for which I have respect. I do not know a confidential source in Seattle which had the authority to handle Seattle criminal files at one not on a computer - Remember we have no identifiers the DOB or SSN only a name therefore NCIC sources are useless. Criminal files do not go back to 1963. The files must be hand searched someone with access. When we got the message on Wednesday, I was not aware of any specifics date by which she needed this or I don't know. I agree that it would be nice to have Street Officer client but frankly I think it's unreasonable to expect us to find a record which may not exist. If there is a better way

Date: November 4, 1994
 To: Phil
 From: Rich
 Re: Poston

I want to make sure we are on the same page as it deals with Poston and her request. First, a recap:

1. I sent you the fax on Wednesday and Phil S. called me back. I explained to him the urgency for the request, hoping to get a response by Friday.
2. Phil S. stated he was sending the request out by Fed Ex with a Fed Ex returned. He asked for identifiers and I told him at the time we did not have a date of birth and that the subject was not a US citizen but a citizen of Japan.
3. It was my understanding, obviously mistaken, that he had arranged to have the research done by a specific individual in the clerk's office in Seattle and he was going to contact that person once the Fed Ex arrived on Thursday.
4. On Thursday Lisa called and asked if I wanted the Fed Ex sent out. She said it would probably not result in a response by Monday but to go ahead anyway. She stated it was not addressed to anyone in particular but Customer ~~Service~~ ^{IN} Service Dept.
5. Poston was told of the importance in getting identifiers and told me she would by Thursday evening. She did not call by 6PM so I left. This morning Lisa told me Poston left a date on the recorder last night. I explained to Lisa this is the subject's date of birth.
6. As to fronting of fees, Lisa explained that at most we were fronting \$50 for the King County search. I do not recall many cases with my involvement that PMRG has received advance payment on fees. I usually wait 90 days from date of billing to receive payment of billable hours and often that has included advanced costs on my part.
7. As to the arrest records in King County, this is public record. Whether or not these records, due to their date, are accessible to the public is not known.



That having been said and behind us the following is an update:

A. The request being made is for an on-going trial in Japan.

B. Steel Hector represents a Buddhist religious group who purchases significant amounts of real estate in Florida and is considered one of their major real estate clients. There is a scandal involving one of the administrators of the religious group in Japan.

C. She understands the sensitivity of source records but needs some type of response as soon as possible. If the files in Seattle are accessible to the public she is willing to pay for a hand search and is willing to pay, with approval, for information obtained from any other source.

D. I told her we would get back with information from Seattle probably on Monday. She gave me her home phone if anything comes up in the meantime.

E. The information does not have value to her if received by Nov. 14.



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ATTORNEY WORK PRODUCT

Date: November 7, 1994
To: Rich Lucas
From: Philip R. Manuel, CFE
The Philip Manuel Resource Group, Ltd.
Washington, D.C.
RE: POSTON Request

I hope we are now on the same page regarding the POSTON matter, but here's how it looks from my perspective.

At 12 noon EST, I have instructed Lisa to get a status report from the Seattle Clerk's Office which has had our expedited Federal Express request with advance payment for a hand search of their old (pre 1978) files.

Lisa will determine:

- (1) If the Clerk's Office has received our Federal Express and begun the process of checking old files;
- (2) The identity of the person to whom the search is assigned;
- (3) An estimate of the time it will take to locate the file (if it exists) and return it to us via Federal Express - prepaid. To save time, this document can be Federal Expressed to you in Miami;
- (4) Determine whether an outside investigator would have access to the files in storage, and if so, would it save time to have our person do it. It is not clear at this juncture where the files to be hand searched are located. Hopefully they are filed alphabetically by subject name in the year of arrest and hopefully there is some semblance of order in the system;

PMRG, Ltd.

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FAX: (202) 775-0827

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TEL: (305) 558-9434
FAX: (305) 558-9415

SUITE 264
6001 SOUTH DECATUR BLVD.
LAS VEGAS, NEVADA 89103
TEL: (702) 562-8840
FAX: (702) 576-0000



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(5) Confidential sources, i.e. those with access to NCIC records will not help us in this case since:

- (a) We have no complete identifiers (ie. SSN and DOB)
- (b) More importantly such a source will not provide documentary evidence (the arrest record in printed form) to be used in litigation for obvious reasons.

This seems to me to be the best we can do under the circumstances, let me know what you think.

Questions

What is the final date by which this documentation has value to POSTON?

If for whatever reason the record either does not exist or cannot be found either by the Clerk's office personnel or our own contractor, if POSTON going to pay our expenses (and fees) for our "best efforts?"

There is no intention to slight either you or POSTON in this request. However, the time constraints, the geographical location, the lack of identifiers, the need for documentation and the 30 year age of the alleged arrest combine to make this a rather difficult assignment.

We should have some word on the status of our request as described above by early this afternoon. Any suggestions or comments, please call.



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TEL: (702) 362-8949
FAX: (702) 876-2003

**PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT**

Date: November 11, 1994

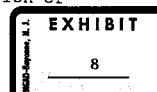
To: Rebekah Poston
Steel Hector Davis

From: Richard Lucas
Miami, FL

Re: Record Search on Nobuo Abe

A source was contacted and provided the following information:

1. The source was provided with the identifiers of Nobuo Abe and Noburo Abbe, and the date of birth of December 19, 1922. The source was also told there was no social security number due to the subject not being a U.S. citizen.
2. The source relayed that under the data provided there was a reference to "Solicitation of Prostitution, Seattle Police Department, March 1963". The charge was abbreviated and not spelled out.
3. As to the clients request as to the background of N.C.I.C.; it is available to all law enforcement agencies, Federal and State, including the Bureau of Alcohol Tobacco and Firearms. N.C.I.C. is maintained and operated by the Federal Bureau of Investigation in Washington D.C. It is a clearinghouse of information for law enforcement agencies around the world and has greatly expanded its capabilities and data storage since its inception. The mission of



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N.C.I.C., the type of data retained, the sophistication of the program and the access to data has greatly changed over the last 30 years.

4. Information was also received that in 1963 N.C.I.C. was operated in a different fashion than it is now. At that time there was no immediate access, via computer database, to input or receive information from the N.C.I.C. files. The input of data was accomplished through a telephone and then followed with a written summary. Inquiries as to information available on a third party was also by telephone or in writing. A telephone request in 1963 had to be classified as a "Rush" or an "Emergency" and reserved for special cases. An example; a local police officer could not make a telephone request without the approval of his superiors.

5. A misdemeanor arrest for a morals charge, such as solicitation for prostitution, may not be recorded on N.C.I.C. today. Some local police departments report misdemeanor convictions and others do not. In addition, a subject brought into the police department for questioning on similar charges, or for pandering, indecent exposure or any other similar type of felony would not be recorded unless the subject was arrested and charged with a crime. It is an unusual circumstance to enter data on a subject if an arrest was not made, unless of course the subject is considered a terrorist and a danger to the safety of citizens.

6. The source theorized that if Abe was a Japanese citizen with no U.S. residence or forms of identification, other than a passport, an inquiry might have been made with N.C.I.C. to determine if he was wanted on other charges or had previous encounters with law enforcement. This suspicion would have been compounded if at the time Abe was unable to communicate in English.

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7. A hand search was done of the King County records in Seattle for the time period 1960-1967. There was no arrest record on the two versions of the name provided. Records for this time period were maintained by written entries and no identifiers, such as date of birth or social security number are needed to conduct the search. If Abe was arrested by the Seattle Police Dept. in 1963 the record of the arrest would have been recorded at the Clerk's office. If he was arrested or brought in for questioning records would be kept by the Seattle Police Department but it is doubtful if the records would be retained 30 years later.

8. Contact was made with the Federal Bureau of Prisons and there is no record of Abe or Abbe ever being in their custody or control.

9. Based upon your fax of November 10, 1994 we will attempt to obtain the following information on November 14, 1994:

- A. The exact spelling of the name under which the entry is recorded.
- B. Any listing of the date of birth.
- C. The exact date referenced as to the incident.
- D. The full extent of the data entered as to the interest in Abe.



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TOTAL PAGES INCLUDING COVER PAGE 3

Date: 11/17/94
To: Rebekah Poston, Steel Hector Davis
From: Rich Lucas
RE: Nobuo Abe



To Rebekah Poston
577-7161

**PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT**

Date: November 17, 1994

To: Rebekah Poston
Steel, Hector Davis
Miami, FL

From: Richard Lucas
Miami, FL

Re: Record Search on Nobuo Abe

A source within the U.S. government in Washington D.C. was contacted and provided the following information:

1. There is no record or information on Hiroe Clow.
2. There is a record for Nobuo Abe. The record refers to "Suspicion of Solicitation of Prostitution, Seattle Police Department, March 1963". There is no reference to Abe's date of birth nor the exact date of the incident. There was no other significant data as to the facts and circumstances surrounding the incident.
3. The confidential source stated the information on Mr. Abe was an inquiry for information by the Seattle Police Dept. not a recording of an arrest or conviction.

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4. The source in Washington D.C. has access to any inquiries made by third parties on Mr. Abe. According to the computer tracking system there have been more than six inquiries on Mr. Abe from various U.S. cities over the last two weeks.

5. The various inquiries by the different government entities has caused concern in the Washington D.C. central office. The source stated the recorded information should never have been entered on Mr. Abe. The source also stated that if Mr. Abe made an official request the entry under his name would be removed from the record. In addition, it is under consideration that the entire record be removed due to the obvious recent interest by numerous third parties, the date of the alleged incident and the fact it is a "questionable entry".

6. It is our opinion that any effort to obtain the information on Nobuo Abe through an official request be done expeditiously.

Steel Hector & Davis
Miami, Florida

Frederick J. Poston
Of Counsel
(305) 577-7022

FILE COPY

November 21, 1994

U.S. Department of Justice
Ms. Olga R. Trujillo
Office General Counsel
Department of Justice
633 Indiana Avenue
Room 1245
Washington, D.C. 20531

CERTIFIED-RETURN RECEIPT REQUESTED



Re: Freedom of Information Act Request on
Mr. Nobuo Abe
DOB: 12/19/1922
Non-resident Alien of Japan

Dear Ms. Trujillo:

Under the provisions of the Freedom of Information Act, 5 U.S.C. § 522, we are requesting access to any records kept by your agency regarding the detention by the Seattle Police Department, on or about March 19-20, 1963, for suspicion of solicitation of prostitution, the following person:

Mr. Nobuo Abe,
DOB: 12/19/22,
a non-resident alien from Japan.

Mr. Abe entered the United States on March 15, 1963 through Honolulu, Hawaii and after travelling to many U.S. cities, departed San Francisco, California for Tokyo on March 29, 1963. He was detained by Seattle Police on or about March 20, 1963.

The public interest in releasing this information is great, and -- following the Reporter's Committee¹ analysis -- the release would not constitute an "unwarranted invasion" of Mr. Abe's personal privacy under FOIA § 522(b)(7)(C).

The general public have an interest in knowing whether this record exists. Mr. Abe is currently bringing a defamation suit using the organization which he represents as plaintiff, in Tokyo

¹ U.S. Dept. of Justice v. Reporters Committee For Freedom of the Press, 489 U.S. 749 (1989)

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Tallahassee, FL 32301-1804
(904) 222-2300
Fax: (904) 222-8410

DOJ-02853

Steel Hector & Davis

U.S. Department of Justice
November 21, 1994
Page 2

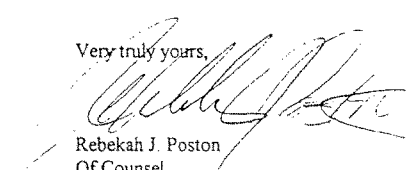
District Court (Case No. 1993 WA 23821) against our client. This lawsuit was filed when our client's newspaper reported an eyewitness' account that Mr. Abe was detained for suspicion of solicitation of prostitution by the Seattle Police on or about March 19 or 20, 1963. Mr. Abe has denied that he was ever detained by the Seattle Police for this alleged offense. In order to defend this lawsuit, we must prove that the witness' statement is true. The Seattle Police have eliminated this 31-year-old record from their archives. However, it is believed that the Seattle Police made an inquiry of NCIC on March 20, 1963 to check Mr. Abe's background and that evidence of this inquiry is in the NCIC computer. It is believed that this NCIC record is the only record of Mr. Abe's detention in existence in the United States. Thus, information from the NCIC computer or evidence that such a record did or does exist will provide the only way to present dispositive proof against Mr. Abe's claim. Because this litigation has been brought in a public forum, there is substantial public need to access this information. Time is of the essence. We agree to pay any expense connected with the search and document reproduction.

Mr. Abe has the most minimal privacy interest at stake. In fact, by initiating a lawsuit which asks a public system to resolve this issue, he has waived any possible privacy interest. Further, the incident is so old that its disclosure would hardly constitute an invasion.

In sum, the disclosure of information about Mr. Abe's detention in March of 1963 is clearly warranted. Mr. Abe has made the incident one of public concern by bringing a defamation suit about it. He cannot bring a public lawsuit denying the incident, and simultaneously prevent the only agencies with knowledge of it from releasing this information.

In the event you will not grant access to the contents of your files, at the very least, we are entitled access to the fact of whether the record did or does exist. I look forward to hearing from you in ten (10) days as the law stipulates.

Very truly yours,



Rebekah J. Poston
Of Counsel

MIAMI/47624_1

DOJ-02854



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MIAMI, FLORIDA 33131
TEL: (305) 358-3434
FAX: (305) 358-4423

SUITE 364
4001 SOUTH DECATUR BLVD.
LAS VEGAS, NEVADA 89103
TEL: (702) 362-8946
FAX: (702) 876-2003

PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT

Date: December 2, 1994

To: Rebekah Poston
Steel, Hector & Davis
Miami, FL

From: Richard Lucas
Miami, FL

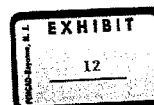
Re: F.B.I. Criminal Justice Information Services
Division

Within the FBI there are at least 10 operating divisions that report to the Director, Deputy Director and Associate Deputy Director. One of these divisions is called the "Criminal Justice Information Services Division". The following are individuals who make-up the management of this division at FBI headquarters in Washington D.C.:

Assistant Director: Steven L. Pomerantz 202 324-8901

Deputy Assistant Directors for:

Administration:	C. David Evans	324-8910
Engineering:	Peter T. Higgins	324-8440
Operations:	Dennis G. Kurre	324-5404



PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT

The Administration Division has a subsection called "Policy Administration & Liaison". This section is headed by Demry Bishop. Mr. Bishop oversees program implementation and development of N.C.I.C. Another section in the Policy Administration & Liaison section is called "Program Support Section" and is managed by Ben Brewer. He has a staff of attorneys who maintain N.C.I.C. His telephone number is 202 324-2606. Other key people within this division and who oversee the operation of N.C.I.C. are Harper Wilson and Virgil Young, 202 324-5084.

For your clients objective contact will have to eventually be made with Ben Brewer or his staff.



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535

REBEKAH J POSTON, ESQ
STEEL HECTOR & DAVIS
41ST FLOOR
200 BISCAYNE BOULEVARD, SOUTH
MIAMI, FL 33131-2398

DEC 08 1994

FOIA No. 393613

Dear Requester:

RE: ABE, NOBUO

A copy of your letter asking for information maintained by the FBI under the Freedom of Information Act (FOIA) concerning another individual(s) is being returned to you.

Before we can commence processing your request for records pertaining to another individual(s), you must submit to the FBI either proof of death or a notarized authorization (privacy waiver) from that person. Proof of death can be a copy of a death certificate, obituary or a recognized reference source. Death is presumed if the birth date of the subject is more than 100 years ago. Without proof of death or a notarized privacy waiver, the disclosure of law enforcement records or information about another person is considered an unwarranted invasion of personal privacy. Such records, if they exist, are exempt from disclosure pursuant to Exemptions (b)(5) and/or (b)(7)(C) of the FOIA, Title 5, United States Code, Section 552.

Enclosed is a Privacy Waiver and Certification of Identity form. (You may make additional copies if you are requesting information on more than one individual.) The subject of your request should complete this form and then sign it in the presence of a notary. The original notarized privacy waiver must be provided to the FBI.

In order to ensure an accurate search of our records, please provide your subject's complete name, date of birth and place of birth, if you have not already done so.

Upon receipt of the above information, we will conduct a search of our records and advise you of the results.

This response should not be considered an indication of whether or not records responsive to your request exist in FBI files.

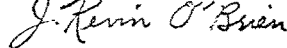


ALL ATTACHED CORRESPONDENCE MUST BE RETURNED TO THE FBI WITH
THIS LETTER.

DOJ-02874

You may submit an appeal from any denial contained herein by writing to the Co-Director, Office of Information and Privacy, Room 7238 MAIN, U. S. Department of Justice, Washington, D. C. 20530, within 30 days from receipt of this letter. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIA number assigned to your request so that it may easily be identified.

Sincerely yours,



J. Kevin O'Brien, Chief
Freedom of Information-Privacy
Acts Section
Information Resources Division

Enclosure

DRAFT

PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT

Date: December 9, 1994
To: Rebekah Poston
Steel Hector & Davis
From: Richard Lucas
Miami, FL
Re: Hypothetical Fact Situation and Recommendation

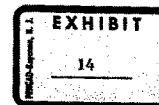
George ODANO of SGI USA contacted our office, provided a hypothetical fact situation and requested we provide an opinion. The following are the facts provided:

A foreign national has an entry under his name on N.C.I.C. pursuant to an incident in a U.S. city more than 30 years earlier. The incident resulted in the foreign national being questioned and eventually released without arrest pursuant to a morals complaint.

The N.C.I.C. file is crucial evidence, and possibly the only source of evidence, to a U.S. citizen who has been severely harmed by the foreign national.

The entry under the foreign national's name has been accessed by numerous law enforcement agencies throughout the country over the last three weeks and this unusual amount of inquiry has prompted concern at the FBI office in Washington D.C. Their concern is:

1) there has been at least six recent N.C.I.C. inquiries made on the foreign national who was involved in an incident over 30 years earlier that did not result in an arrest or conviction,



DRAFT

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ATTORNEY WORK PRODUCT

- 2) these have been the only inquiries ever made on this individual with N.C.I.C.,
- 3) the incident recorded in the system 30 years earlier would not be listed under current guidelines,
- 4) Freedom of Information Requests have recently been made on this individual with a response from the FBI that the information predated the establishment of N.C.I.C. and the information is only obtainable if the individual himself requests it, and
- 5) in order to avoid possible entanglement in a civil suit guidelines may call for the entire file to be deleted.

Mr. ODANO requested our opinion, based upon our prior experience in working for and dealing with Federal law enforcement agencies, how to prevent the destruction of the records and how to obtain a copy of the record.

IT MUST BE STRESSED WE ARE AN INVESTIGATIVE CONSULTING FIRM AND DO NOT PROVIDE LEGAL CONSULTATION OR ADVICE. THIS OPINION IS NOT INTENDED TO BE LEGAL ADVICE BUT CONSULTATION BASED ON OUR PRIOR EXPERIENCE.

Based upon our prior experience it is our opinion that the only method to prevent the FBI from destroying a record currently in their files is to obtain an injunction from a judge ordering the agency not to alter the file. It is also our opinion that a current FOIA request on file with the FBI or any other Federal law enforcement agency will not prevent or deter the FBI from permanently deleting the file.

FOIA requests are a common filing with the FBI with scores of employees responding to their requests. Without inside assistance the current average response time to an FOIA request with the FBI

DRAFT

PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT

is ten months. An introduction to FBI management with the intent of informing them of the FOIA request would be unproductive and possibly counter-productive.

On a regular and routine basis the N.C.I.C. files are purged for outdated, incorrect or irrelevant information. The hypothetical file on the foreign national would be irrelevant information to the N.C.I.C. and to any Federal law enforcement agency.

We realize that a court injunction is a difficult objective and can only be obtained if there is existing litigation or if litigation is filed. If an injunction is obtained from on-going litigation the opposing counsel becomes aware of the existence of key information that they may not currently be aware of. An attorney should be consulted to determine if a "John Doe" type law suit would be productive that would not require notification to the foreign national.

Without the consent of the foreign national we are not aware of any other method to obtain the file from N.C.I.C., unless a court injunction is obtained.



U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to
File No.

915 Second Avenue, Room 710
Seattle, WA 98174
December 14, 1994

Rebekah J. Poston
of Counsel
Steel Hector & Davis
200 South Biscayne Blvd.
Miami, Florida 33131-2398

Dear Ms. Poston:

Re: Nobuo Abe

This is in response to your letter dated November 21, 1994, and received by this office November 29, 1994.

If you desire a search of our identification Division records for any arrest record that might pertain to you, please comply with the instructions set forth in Attorney General Order 556-73, a copy of which is enclosed. Original fingerprint impressions are needed for comparison with records in the Identification Division to insure that an individual's record is not disseminated to an unauthorized person.

Effective January 17, 1983, the combined NCIC-CCH file was abolished. Any information which was formally contained in the NCIC-CCH file can be obtained from the Identification Division. However, you must comply with the instructions set forth in Attorney General Order 556-73 attached.

Sincerely,

Thomas M. Kuker
Special Agent in Charge

By:
Thomas A. Harney
Principal Legal Advisor



DOJ-02873



THE PHILIP MANUEL RESOURCE GROUP LTD.
WASHINGTON, D.C. • MIAMI, FLORIDA • LAS VEGAS, NEVADA

SUITE 1201
1738 K STREET, NORTHWEST
WASHINGTON, D.C. 20004
TEL: (202) 841-0451
FAX: (202) 778-0427

SUITE 801
1500 BRICKELL AVENUE
MIAMI, FLORIDA 33131
TEL: (305) 558-3454
FAX: (305) 558-4455

SUITE 344
4001 SOUTH DECATUR BLVD.
LAS VEGAS, NEVADA 89103
TEL: (702) 343-8649
FAX: (702) 876-2005

PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT

Date: December 14, 1994
To: Philip R. Manuel
From: L.N. LeGare
The Philip Manuel Resource Group, Ltd.
Washington DC
Subject: Miami/Rebecca Poston Matter
RE: Communication with Criminal Justice Information Service

On December 14, 1994, I had two telephone conversations with Sue STELTNER, an information officer with the Federal Bureau of Investigation, Criminal Justice Information Service (CJIS) Division (202) 324-1140. I informed Ms. STELTNER that I was working on a research project on the communications tools used by federal agencies which administer computer databases to update and educate subscribers on the database and its usage. In particular she was asked about NCIC and communications about NCIC with subscribing agencies. She relayed to me the following information:

- (1) The newsletter distributed by the CJIS has a restricted distribution to criminal justice agencies which use the FBI services including NCIC information access. The newsletter, entitled The CJIS Newsletter, is not for public distribution although other publications of CJIS are available to the public, copies of which are being forwarded to us.

PMRG, Ltd



DEC 14 '94 04:05PM PMRC WASHINGTON

PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT

- (2) The CJIS newsletter is sent out quarterly and is not limited in content to information on NCIC but rather contains information on all of the services in the CJIS Division and would encompass a wide variety of information on the services of interest to subscribers of numerous CJIS services
- (3) She explained that the newsletter is not a technical publication when questioned about the content of the newsletter. Specifically she was asked if the newsletter communicated information on efficient database use, hot issues and new services or updates on the changing characteristics of the database service.
- (4) Ms. STELTNER stated that the CJIS Newsletter was not the only publication sent to criminal justice agency subscribers and that other FBI sections advise subscribers on issues of current interest.

Ms. STELTNER was asked if she could gather some information on other persons who may be of assistance in my effort to research the communication methods providing subscriber information about the database services operating within the FBI. She stated that it may take her until tomorrow but that she would try to get me this information.

Steel Hector & Davis
Miami, Florida

Rebekah J. Poston
Of Counsel
(305) 577-7022

January 4, 1995

Ms. Hiroe Clow
c/o Barry B. Langberg, Esq.
Langberg, Leslie & Gabriel
2049 Century Park East, Suite 3030
Los Angeles, California 90067

Dear Ms. Clow:

You requested us to investigate whether the United States government has maintained any records of an investigation concerning an individual known as Nobuo Abe, a foreign national, born December 19, 1922.

Subsequent to this request, we engaged The Philip Manuel Resource Group, Ltd. ("PMRG"), a highly-prestigious private investigations firm based in Washington, D.C. Mr. Philip Manuel, as his firm brochure indicates, is the founder and current president of PMRG and has served as Chief Investigator of the Permanent Subcommittee on Investigations, United States Senate, and as a member of the President's Commission on Organized Crime.

PMRG reported to us on November 17, 1994, that a source within the U.S. government in Washington, D.C. was contacted and the source confirmed to PMRG that there is a record for Nobuo Abe. According to PMRG's report to us, the record refers to:

Suspicion of Solicitation of Prostitution
Seattle Police Department
March, 1963



From 1974 to 1979, I served as an Assistant United States Attorney and Special Attorney with the United States Department of Justice. Following my government service, I have been practicing law primarily in the area of criminal defense. Based

Miami Office
41st Floor
200 South Biscayne Boulevard
Miami, FL 33131-2398
(305) 577-7000
Fax: (305) 577-7001

West Palm Beach Office
1900 Phillips Point West
777 South Flagler Drive
West Palm Beach, FL 33401-6198
(407) 650-7200
Fax: (407) 655-1509

Tallahassee Office
Suite 601
215 South Monroe
Tallahassee, FL 32301-1804
(904) 222-2300
Fax: (904) 222-8410

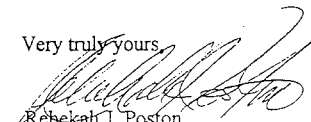
Steel Hector & Davis

Ms. Hiroe Clow
c/o Barry B. Langberg, Esq.
January 4, 1995
Page 2

on my experience, the contents of the record on Nobuo Abe, as revealed to us by PMRG, indicate to me that some type of inquiry or investigation regarding suspicion of solicitation of prostitution was conducted in March, 1963, by the Seattle Police Department on Nobuo Abe.

I am able to testify as to the truthfulness and accuracy of my statements in this letter.

Very truly yours,



Rebekah J. Poston
Of Counsel

RJP/sL/83030



U.S. Department of Justice

Executive Office for United States Attorneys
 Freedom of Information/Privacy Act Unit
 600 E Street, N.W., Room 7100
 Washington, D.C. 20530
 202-616-6757 Fax 202-616-6478

JAN 12 1995

Requester: REBEKAH J. POSTON Request Number: 95-141Subject of Request: MR. ABE

Dear Requester:

Your recent request for records from the Executive Office for United States Attorneys (EOUSA) has been received. Before the Executive Office can begin processing your request, it is necessary for you to correct one or more deficiencies. Please comply with the paragraph(s) checked below:

1. ☒ [X] A requester must provide a notarized example of his/her signature. This insures that information pertaining to an individual is released only to that person. A form is enclosed for your use.
2. ☐ [] The files and records of United States Attorneys are maintained in over one hundred separate offices throughout the United States. Please identify the specific United States Attorney's office(s), where you believe records may be located. This would be primarily the district(s) in which a prosecution or litigation occurred.
3. ☒ [X] To insure that records are properly identified, provide subject's full name, current address, and date and place of birth.
4. ☐ [] A request must describe the records sought in sufficient detail to allow location of the records with a reasonable amount of effort (i.e., processing the request should not require an unduly burdensome effort or be disruptive of Department operations). Please provide more specific information about the records you seek, such as appropriate dates, locations, names, nature of the records, etc.

Please cite the above EOUSA Request Number in all of your future correspondence. Mail your response to this letter to the address above. If the deficiencies noted are not corrected within 30 days from the date of this letter, we will be unable to process your request, and your FOIA/PA file will be closed.

Sincerely,

Bonnie L. Gay
 Bonnie L. Gay
 Attorney-In-Charge
 FOIA/PA Unit

NOTE: "You must complete entire form on behalf of your client."
☐ [] Enclosure(s)

Form No. 003 -3/94



STEEL HECTOR & DAVIS

200 South Biscayne Blvd.
Miami, Florida 33131-2398
(305) 577-7000
Telecopier Cover Sheet
Confirmation # (305) 577-2887

Date: **January 13, 1995**
Send To: **Richard M. Lucas** *11:00 am.*
Firm: **The Philip Manuel Resource Group**
Telecopier No: **(305) 358-4425**
Confirmation No: **(305) 358-3434**

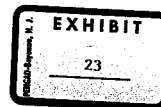
Total Pages Including Cover Sheet: 5☒ Letter Size ☐ Legal SizeOriginator: **Rebekah J. Poston** Ext 305-577- **7022**

Special Messages:

Please deliver ASAP. Thanks.

The information contained in this transmission is attorney privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone collect and return the original message to us at the above address via the U.S. Postal Service. We will reimburse you for postage. Thank You

Original Mailed _____ **MIAMI: FAX (305) 577-7001**
Original sent Overnight Courier _____ **WEST PALM BEACH: FAX (407) 655-1509**
☒ Original Held in File _____ **TALLAHASSEE: FAX (904) 222-8410**
Client Code: **83599** Matter Code: **1333**



January 8, 1995

Nichiren Shoshu Bureau of Religious Affairs (Official Seal)

To all teachres

**PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION.**

NOTICE

**ATTORNEY WORK PRODUCT
PRIVILEGED**

The revelation of the so called "new evidence" by the Gakkai in the useless struggle for the Clow case.

The criminal prone nature of the Gakkai is exposed again.

The Bureau of Religious Affairs announces the following notice concerning the evil propaganda of the so called decisive evidence in the Clow case, reported in the Seikyo Press dated January 8.

1. The priesthood was well prepared for the Gakkai to make public some material, said to be from the Federal Bureau of Investigation (FBI) of the United States, which could be "interpreted" as "new evidence" that shows the relationship between "Nobuo Abe" and the prostitutes, sometime between January 6 (Friday) and 9 (Monday). This is what was carreied in today's Seikyo Press.

The litigation brought by the Gakkai, using Hiroe Clow as a nominal plaintiff, was entirely dismissed last November. The Gakki was also cornered to a position where it had to prove the truthfulness of the Clow article in the defamaion lawsuit brought by the priesthood against Daisaku Ikeda and the Gakkai, in Tokyo District Court.

Thus, information was relayed to the priesthood that the Gakkai had been involved in some "insane" evidence frame up operation by sending in three Gakkai attorneys to the United States from Japan, assisted by a local Gakkai attorney. When the priesthood asked law firms in Los Angeles and in Seattle to conduct some investigation, it was discovered two weeks ago that:(a) these Gakkai attorneys pretended that

they had acquired an important piece of information from a retired FBI police officer in Washington DC; (b) it was ultimately decided that this would be made public, sometime between January 6 and 9, in a large scale with the head line "new evidence had been found," nevertheless the fact that there were intense confrontation among the Gakkai lawyers concerning the revelation, and; (c) they would allege that the evidence was a data in "NLETS," National Law Enforcement Telecommunication System, a computer system of the FBI. Thus, the revelations made in the SGI organ paper "World Tribune," did not come as a surprise at all.

2. The most important thing to be noted in this revelation is the fact that this was a recent "discovery." In other words, it is now clear that the revelation of Clow's article and filing of her lawsuit was done without any corroborative investigation with the police authorities. Two years ago, around the time when the Gakkai filed the Clow lawsuit, they ran an advertisement in a Seattle police affiliated magazine everymonth, stating "What were you doing on the night of March 19, 1963? Please give us a call," and sent out rumors that informants will be paid a "three dollar bill (since there are no three dollar bills, it means that they will be rewarded greatly)." But, it seems that no former officer responded to this advertisement after all.

3. In fact, it has been confirmed by official investigations conducted on the Seattle Police Department, by the priesthood directly after the revelation of Clow's article that: (a) there are no records that even slightly indicate that some incident happened in March, 1963 that Clow had discribed; (b) if an incident such as the one that Clow had discribed had actually happened, it would most certainly be talked about among the police officers, where, in reality no one has remembered of the incident, and; (c) at the time, the Seattle Police did not conduct investigations in the way that Clow had discribed it.

4. Thus, the Gakkai had to give up on obtaining the testimony of the officer of the local Seattle Police Department, changing its strategy and turning to FBI's "NLETS." However, according to the

ATTORNEY WORK PRODUCT
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PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION

*shows they
don't know NLETS*

*not true
they
have
a SPD
witness*

priesthood's investigations up to this point, the purpose of this computer system is to investigate the background of spies and foreign fugitives, and the data entered into this computer will be deleted within two weeks after its entry. Therefore, the record of referring to "Suspicion of Solicitation of Prostitution, Seattle Police Department, March, 1963," is not an print out of the data in the present NLETS system. If such an print out exists, it is a copy of something that someone had printed out 30 years ago. And generally speaking, it is quite easy to forge fake copies of computer print outs, as it is easy to make forged facsimile transmissions. It is far more easier than making altered photographs that Gakkai is so good at. We cannot think of any reason why the FBI had to print out and keep for 30 years, some "inquiry" from a local police department concerning one "Nobuo Abe," a traveller, whose real name they did not even try to verify.

5. This is clearly nothing but an international evidence frame up that the Gakkai, which has already lost 100 of its litigations, had plotted, in desperation.

The priesthood, like the altered photo case, is determined to reveal the truth of the so called "new evidence," and to show to the people in the world the terrible criminal prone nature of the Gakkai.

When the international crime of the Gakkai, funded by enormous amount of money collected by deceiving Gakkai members, is revealed, its down fall is inevitable.

NOT
True

they've
obtained
info from
NLETS

ATTORNEY WORK PRODUCT
PRIVILEGED

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ATTORNEY-CLIENT COMMUNICATION.

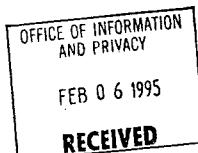
Steel Hector & Davis
Miami, Florida

Rebekah J. Poston *atty*
Of Counsel
(305) 577-7022

FREEDOM OF INFORMATION ACT APPEAL

February 3, 1995

Attorney General
Janet Reno
c/o Richard L. Huff
Co-Director
Office of Information and Privacy
Room 7238
Department of Justice
10th and Constitution, N.W.
Washington, D.C. 20530



FOIA
b (A)
95-0283 EOUSA
95-0284 INS/CO
95-0285 FBI - South For
95-0286 FBI - HQ
95-0287 NAJ { Treasury, State
Soka Gakkai
APP



Re: Appeal of Denial of Freedom of Information Act Requests
On Mr. Nobuo Abe *sub*
FBI FOIA No. 393613
EOUSA Control No. 95-141

Dear Director Huff:

Pursuant to instructions I received from Ms. Peggy Irving, please find enclosed our FOIA appeals. To facilitate your review, I have presented a portion of our appeal in exhibit format. The narrative part of our appeal addresses the law. The exhibits contain a factual accounting (Exhibit A), the FOIA requests and responses (Exhibits B, C), the Wilmer Cutler & Pickering (our outside legal counsel) memorandum on the Privacy Act (Exhibit D), Abe's biographical information (Exhibit E) and Abe's U.S. travel itinerary in March, 1963 (Exhibit F).

DOJ-02821

Miami Office
41st Flc.
200 South Biscayne Boulevard
Miami, FL 33131-2396
(305) 577-7000
Fax: (305) 577-7001

West Palm Beach Office
1900 Phillips Point West
777 South Flagler Drive
West Palm Beach, FL 33401-6198
(407) 650-7200
Fax: (407) 655-1509

Tallahassee Office
Suite 601
215 South Monroe
Tallahassee, FL 32301-1804
(904) 222-2300
Fax: (904) 222-8410

Steel Hector & Davis

Attorney General
Janet Reno
c/o Richard L. Huff
February 3, 1995
Page 2

THE LAW

In the interests of clarifying our entitlement to certain public records and avoiding litigation against several component agencies within the Department of Justice, we urge you to reconsider the initial denial of several Freedom of Information Act ("FOIA") requests.

Pursuant to the FOIA, we have served requests to several agencies within the Department of Justice for access to any records regarding the 1963 detention by the Seattle Police Department of a non-resident alien, Mr. Nobuo Abe, presently known as Nikken Abe and hereinafter referred to as Nobuo Abe.^{1/} We have received a variety of responses from the agencies, generally indicating either that no such record exists, or that the agency will not disclose the existence of a record without a privacy waiver.^{2/} Because the Privacy Act -- by its terms --

^{1/}

As discussed in the FOIA letter requests, Mr. Abe (through his religious organization, Nichiren Shoshu, over which he has absolute control) is suing our client, Soka Gakkai, in Tokyo District Court, Japan (Case. No. 1993 WA 23821). The lawsuit alleges that an article in our client's newspaper is libelous. Soka Gakkai is the largest Buddhist organization in Japan, numbering over 10 million members. The article concerns an eyewitness's account that Mr. Abe was detained by the Seattle Police Department for solicitation of prostitution in March of 1963. (The eyewitness has, in turn, filed suit against Mr. Abe in California state court for defamation, based on Mr. Abe's numerous public statements that her account is a "fabrication.") We are informed that all local police records of this event are either missing or have been destroyed. Thus, production of a federal record of this incident will be the only way that our client can present irrefutable proof against Mr. Abe's claim of libel.

^{2/}

Customs responded that there are no responsive records. See Letter to Rebekah Poston (Jan. 5, 1995). I.N.S. responded that "The Microfilm reel which may possibly contain (continued...)

NO 1-02822

Steel Hector & Davis

Attorney General
Janet Reno
c/o Richard L. Huff
February 3, 1995
Page 3

does not apply to Mr. Abe, and because there is a substantial public interest in these records, we urge you to grant us appropriate access. The decision to disclose is a matter within your discretion, in light of your balancing the relevant policy considerations. See Chrysler Corp. v. Brown, 441 U.S. 281, 294, 99 S. Ct. 1705, 1714 (1979) ("Congress did not limit an agency's discretion to disclose information when it enacted the FOIA."); 28 C.F.R. § 16.1(a) ("To the extent permitted by other laws, the [Justice] Department will also consider making available records which it is permitted to withhold under the FOIA if it determines that such disclosure could be in the public interest.").

"[T]he basic purpose of the [FOIA is] to open agency action to the light of public scrutiny." Dep't of Air Force v. Rose, 425 U.S. 352, 372, 96 S. Ct. 1592, 1604 (1976). "Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose." United States Dep't of Justice v. Reporters Comm. for Freedom of the Press, 489 U.S. 749, 773, 109 S. Ct. 1468, 1482 (1989) (internal quotation marks and citations omitted). Subject to several clearly delineated exemptions, the FOIA reflects "a general philosophy of full agency disclosure." Rose, 425 U.S. at 360-61, 96 S. Ct. at 1599.

We have requested that various component agencies disclose records of inquiries made in March of 1963, or some time thereafter, by a local police

²(...continued)

your record is illegible. Please provide any additional information for possible location of another record." See Letter to Rebekah Poston (Dec. [sic, Jan.] 6, 1995). Justice referred it to the F.B.I., I.N.S., and E.O.U.S.A. See Letter to Rebekah Poston (Jan. 3, 1995). The FOIA/PA Unit of Justice indicated that the inquiry was outside of the scope of the FOIA, and must be made to state or local agencies. See Letter to Rebekah Poston (Dec. 1, 1994). The F.B.I. requested a privacy waiver. See Letter to Rebekah Poston (Dec. 8, 1994). Copies of the FOIA requests and the component agency responses are attached.

DOJ-02823

Steel Hector & Davis

Attorney General
Janet Reno
c/o Richard L. Huff
February 3, 1995
Page 4

department concerning a detention of Mr. Abe, a non-resident alien. The applicable exemption under the FOIA is Exemption 7(C). See generally Reporters Committee, 489 U.S. at 762 n. 12, 109 S. Ct. at 1476 n. 12. Under that exemption, an agency need not disclose records or information compiled for law enforcement purposes if production of such materials "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C). Even when an exemption applies to a record, however, the agency may still properly disclose it. See Chrysler Corp. v. Brown, 441 U.S. at 293, 99 S. Ct. at 1713 ("Congress did not design the FOIA exemptions to be mandatory bars to disclosure.").

According to the analysis provided by the Supreme Court in Reporters Committee, disclosure of these records is "warranted" if the public interest in disclosure outweighs the relevant personal privacy interests. Reporters Comm., 489 U.S. at 772, 109 S. Ct. at 1481. Here, any privacy interests are slight, because the Privacy Act, 5 U.S.C. § 552a, is wholly inapplicable to non-resident aliens, such as Mr. Abe.^{3/} The Privacy Act protects information from disclosure only where that information constitutes a "record." 5 U.S.C. § 552a(b). The Act defines "record" as "information about an individual." 5 U.S.C. § 552a(a)(4). "Individual," in turn, is defined as "a citizen of the United States or an alien lawfully admitted for permanent residence." 5 U.S.C. § 552a(a)(2). Therefore, the Privacy Act has no application to records kept by federal agencies of non-resident aliens. Consequently, the agency may, within its discretion, disclose such records. See 28 C.F.R. § 16.1(a).

^{3/}

Attached hereto are copies of the certified Japanese records verifying that Mr. Nobuo Abe is a citizen and resident of Japan. We can produce the original certified copies from our files, if necessary.

DOJ-02824

Steel Hector & Davis

Attorney General
Janet Reno
c/o Richard L. Huff
February 3, 1995
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The case law supports such a narrow reading. See Raven v. Panama Canal Co., 583 F.2d 169, 170 (5th Cir. 1978) (Panamanian citizen not entitled to invoke Privacy Act's civil remedies), cert. denied, 440 U.S. 980 (1979); Dresser Indus., Inc. v. United States, 596 F.2d 1231, 11237 (5th Cir. 1979) (because it was not an "individual," corporation lacked standing to bring a Privacy Act claim), cert. denied, 444 U.S. 1044 (1980); see also St. Michael's Convalescent Hosp. v. California, 643 F.2d 1369, 1373 (9th Cir. 1981); Cell Assocs., Inc. v. Nat'l Insts. of Health, 579 F.2d 1155, 1157 (9th Cir. 1978); O'Rourke v. U.S. Dep't of Justice, 684 F. Supp. 716, 718 (D.D.C. 1988).

Furthermore, Reporters Committee's categorical bar against the release to a third-party of a citizen's rap sheet, does not control the issue presented here. That case did not address the release of a record about a non-citizen. Cf. Reporters Comm., 489 U.S. at 780, 109 S. Ct. at 1485 (holding that third-party's request for law enforcement information about a "private citizen" can reasonably be expected to invade "that citizen's" privacy).

The legislative history also reveals Congress's deliberate intent to narrow the scope of the Privacy Act. The Senate Report accompanying the Act stated that the definition of "individual" had been chosen

instead of the term "person" throughout the bill in order to distinguish between the rights which are given to the citizen as an individual under this Act and the rights of proprietorships, businesses and corporations which are not intended to be covered by this Act ... [and also] to exempt [from] the coverage of the bill intelligence files and data banks devoted solely to foreign nationals ...

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Steel Hector & Davis

Attorney General
Janet Reno
c/o Richard L. Huff
February 3, 1995
Page 6

S. Rep. No. 93-1183, 93rd Cong., 2d Sess. (1974), reprinted in 1974 U.S.C.C.A.N. 6916, 6994 (1974).

Assuming for the sake of argument that Abe had a privacy interest separate from the Privacy Act, he would still not be entitled to raise it to prevent the production of this record to the public. Abe waived his right to privacy by initiating a lawsuit in Japan in the name of the corporation he controls, bringing this issue even further into the public arena. Moreover, Abe is a public figure as the high priest of Nichiren Shoshu. As the religious leader of approximately 60,000 members and one who travels throughout the world giving speeches, newspaper and television interviews, as well as conducting religious ceremonies, he has a limited privacy interest.

On the other side of the balance, because of the international prominence of this issue, and its importance to millions of people, the public interest in the dissemination of this information weighs heavily. Abe is the leader of Nichiren Shoshu, which alleges to have approximately 60,000 members and six temples in the United States. Hiroe Clow, the eyewitness to the 1963 incident in Seattle, is a member of Soka Gakkai International-U.S.A. Soka Gakkai International has over 10 million members and more than 1200 facilities throughout the world. Abe has stated to thousands of his followers in public speeches in the United States and Japan, and disseminated in his publications in English, Japanese and other languages, that the incident with the Seattle police in March of 1963 never occurred. His statements were published in the Nichiren Shoshu and Soka Gakkai newspapers and disseminated to more than 12 million readers throughout the world. In his statements he accused the eyewitness, Hiroe Clow, of "perjury," "venomous lies" and "fabrication" regarding her stated recollection of this incident. Mr. Abe has vociferously denied the allegations of

DOJ-02826

Steel Hector & Davis

Attorney General
Janet Reno
c/o Richard L. Huff
February 3, 1995
Page 7

the incident in Seattle using the print media and other vehicles.^{4/}

Additionally, the general public in the United States has a right to know that the United States Department of Justice and its component agencies keep and maintain a system of records that monitor the activities of foreign nationals who entered the United States at the height of the Cold War, especially where a state law enforcement agency inquired of a federal agency in its criminal investigation of that person. This information has important significance to the historical study of the implementation of foreign and domestic policy during a time of unprecedented international tensions. Thus the public has a compelling interest in understanding the manner in which the relevant government agencies carried out their official duties in this regard. Similar public interest considerations have led the courts to direct the disclosure of similar information. See e.g., Akron Standard Div. of Eagle-Pitcher Indus., Inc. v. Donovan, 780 F.2d 568, 571 (6th Cir. 1986) (citing public interest in extent and nature of agency's investigation into a charge of retaliatory discharge, and ordering disclosure of OSHA report on discharge of whistle blower), reh'g denied, 788 F.2d 1223 (6th Cir. 1986); Simon v. United States Dept of Justice, 752 F. Supp. 14 (D.D.C. 1991) (ordering 1951 report of physician's alleged Communist activities to be disclosed with redactions of, among other things, names of federal agents), aff'd, 980 F.2d 782 (D.C. Cir. 1992); Int'l Brotherhood of Elec. Workers v. United States Dept of Housing and Urban Dev't,

^{4/} Abe's denials of the incident in Seattle were published with his permission on July 16, 1992, and August 1, 1992, in the Daibyakuho, a Nichiren Shoshu newspaper, as well as in a special edition of Dai-Nichiren, another Nichiren Shoshu publication. These publications reach Nichiren Shoshu members throughout the entire world. His denials were also carried by Soka Gakkai International's various publications. Together, these publications reach over 6 million readers. In addition, Abe denied the Seattle incident in a public memorial service on July 22, 1992, and denied the incident in lectures to two different audiences at a teacher's training course on August 28, 1992.

Steel Hector & Davis

Attorney General
Janet Reno
c/o Richard L. Huff
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Page 8

593 F. Supp. 542, 545 (D.D.C. 1984) (holding that the strong public interest in assuring compliance with the law warranted disclosure of HUD documents), aff'd, 763 F.2d 435 (D.C. Cir. 1985).

We recognize that the Department of Justice does not wish to become involved in private litigation. Nevertheless, the Code of Federal Regulations provides the public access to records within the government even where the government is not a party to the case. See 28 C.F.R. §16.21 et seq. Access to this system of records is necessary to promote open government and carry out congressional intent.

We first seek the production of this record. In the alternative, we request mere confirmation that such a record exists or did at one time, if it has been deleted or destroyed. It is not so much the nature of the incident that is at stake, but the public's right to know that a record exists or did exist containing the truth. Abe has chosen to take his case to the world public, to openly and notoriously deny the existence of this incident. The federal government appears to hold the only documentary proof that such an incident ever occurred. Permitting Abe to shield himself with the FOIA abuses the very purpose to which the FOIA was enacted.

We request that you now review our exhibits, with particular attention to The Factual Accounting (Exhibit A) and the FOIA responses referring us to the FBI (Exhibit C). Following that, we greatly appreciate your reconsideration of the initial denial of some of these FOIA requests by the component agencies. We hope to avoid litigation, if at all possible.

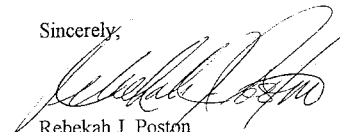
DOJ-02828

Steel Hector & Davis

Attorney General
Janet Reno
c/o Richard L. Huff
February 3, 1995
Page 9

I am informed that we can expect a response from you within twenty (20) days of your receipt of our appeal. We anxiously await your response. Thank you for your prompt attention to this matter.

Sincerely,



Rebekah J. Poston
Of Counsel

RJP:mt

Enclosures

MIAMI/105595_2

DOJ-02829

WILMER, CUTLER & PICKERING
 2445 M STREET, N.W.
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 FACSIMILE (202) 663-6363

WASHINGTON
 LONDON
 BRUSSELS
 BERLIN

February 3, 1995

MEMORANDUM FOR REBEKAH J. POSTON (STEEL HECTOR & DAVIS)

From: Stasia D. Kelly

Re: Privacy Act Research



You have asked us to research the question whether federal agencies could be forbidden under the Privacy Act, 5 U.S.C. § 552a, from disclosing information related to non-resident foreign nationals such as Mr. Nobuo Abe.

Conclusion

The plain language of the Privacy Act renders it inapplicable to such cases. The relevant case law and legislative history bolster this conclusion.

The Privacy Act

In appropriate circumstances only, the Privacy Act prevents federal agencies from disclosing information about an "individual" that is contained in a "record." 5 U.S.C. § 552a(b). Under subsection 552a(a)(2), "'individual' means a citizen of the United States or an alien lawfully admitted for permanent residence." Under subsection 552a(a)(4), "'record' means any item, collection, or grouping of information about an individual that is maintained by an agency"

By its explicit terms, then, the Privacy Act's proscription on disclosure does not apply to any information concerning Mr. Abe -- a foreign national who has never held U.S.-resident alien status.

Both case authority and the legislative history of the Privacy Act support this narrow reading. For instance, Raven v. Panama Canal Co., 583 F.2d 169 (5th Cir. 1978), held that plaintiff Panamanian citizen was not entitled to invoke the Privacy Act's civil remedies to compel disclosure of information relating to her employment with the Panama Canal Company because she was "not an 'individual' within the meaning of the Privacy

DOJ-02881

Act." Id. at 170; see also Dresser Inds., Inc. v. United States, 596 F.2d 1231, 1237 (5th Cir. 1979) (corporation was not an "individual" and thus lacked standing to bring a Privacy Act claim); Cell Assoc., Inc. v. National Inst. of Health, 579 F.2d 1155, 1157 (9th Cir. 1978) (same).

The legislative history illustrates a deliberate congressional intent to narrow the Privacy Act's scope. The Senate report accompanying the Privacy Act stated that the definition of "individual" had been chosen

instead of the term 'person' throughout the bill in order to distinguish between the rights which are given to the citizen as an individual under this Act and the rights of proprietorships, businesses and corporations which are not intended to be covered by this Act[,] . . . [and also] to exempt [sic] the coverage of the bill intelligence files and data banks devoted solely to foreign nationals

S. Rep. No. 93-1183, 93rd Cong., 2d Sess. (1974), reprinted in 1974 U.S.C.C.A.N. 6916, 6993 (1974); see also Stone v. Export-Import Bank, 552 F.2d 132, 136-37 (5th Cir. 1977).



THE PHILIP MANUEL RESOURCE GROUP
1730 K Street, Northwest, Washington, D.C. 20006
Tel: (202) 861-0651 FAX: (202) 775-0827

FAX TRANSMISSION

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THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE ADDRESSEE AND MAY
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If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone. Thank you.

If problems are encountered with this communication, please call the number above immediately.

ATTENTION:	RICH LUCAS
COMPANY:	MIAMI
FAX NUMBER:	
REMARKS:	Rich - Here is the engagement letter with indemnification provisions which I sent to Rebelush on Feb 1. I know it was forced since the red circle appears in the lower left hand of the page & our fax transmittal sheet shows the fax was changed on that date. Please see that she gets a copy and I will report also send by mail
Number of Pages Including Cover:	7
Date:	Feb 15
Sender:	PRM

Offices in Washington, D.C., Miami, FL, Las Vegas, NV



The Philip Manuel Resource Group, Ltd.
Washington DC; Miami, FL; and Las Vegas, NV

Facsimile Cover Sheet

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This message is intended only for the use of the addressee and may contain information that is privileged and confidential. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received the communication in error, please notify us immediately. Thank you.

To: Rebekah Poston, Esq.
Company: Steel Hector & Davis
Phone:
Fax: (305) 577-7001

From: Phil Manuel
Company: The Philip Manuel Resource Group
Phone: (202) 861-0651
Fax: (202) 775-0827

Date: February 1, 1995
Pages including
this cover page: 6

Comments:

SEE ATTACHED



PHILIP MANUEL RESOURCE GROUP LTD.
WASHINGTON, D.C. • MIAMI, FLORIDA • LAS VEGAS, NEVADA

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WASHINGTON, D.C. 20006
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1200 BRICKELL AVENUE
MIAMI, FLORIDA 33131
TEL: (305) 358-5434
FAX: (305) 358-4413

SUITE 700
900 SOUTH FOURTH STREET
LAS VEGAS, NEVADA 89101
TEL: (702) 471-7300
FAX: (702) 471-7474

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ATTORNEY WORK PRODUCT

February 1, 1995

Rebekah Poston, Esq.
Steel Hector & Davis
200 South Biscayne Blvd.
Miami, Florida 33131-2398

Via FAX (305)/577-7001

Dear Rebekah:

As discussed, I am forwarding a copy of our standard retainer agreement in connection with our services in the Hiroe CLOW v. ABE litigation.

Please observe that paragraph 3 on page 3 deals with the issue of indemnification and source confidentiality. As you know, these provisions are extremely important to us and I would appreciate your comments and ultimate approval so that we can continue to be of service.

If you would prefer to redo the essence of the engagement letter in your own format please let me know.

Best Regards.

Sincerely,

Philip R. Manuel, CFE
President, PMRG

PMRG, Ltd.



PHILIP MANUEL RESOURCE GROUP LTD.
WASHINGTON, D.C. • MIAMI, FLORIDA • LAS VEGAS, NEVADA

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PRIVILEGED AND CONFIDENTIAL

February 1, 1995

Rebekah Poston, Esq.
Steel Hector & Davis
200 South Biscayne Blvd.
Miami, Florida 33131-2398

Re: THE PHILIP MANUEL RESOURCE GROUP, LTD. (PMRG)
RETAINER AGREEMENT

Dear Ms. Poston:

This letter confirms and ratifies the nature and terms of our assignment with Steel Hector & Davis on behalf of your client Hiroe Clow. For purposes of this Agreement, The Philip Manuel Resource Group, Ltd. shall be referred to as "PMRG," and the combination of Steel Hector & Davis and Hiroe Clow shall be referred to as "Client" and this letter confirms the agreement to retain PMRG to provide services as of November 1994.

We appreciate your decision to retain The Philip Manuel Resource Group (PMRG) as of November 1994 to perform investigation and research regarding matters relevant to current litigation styled Hiroe CLOW v. ABE; and CLOW v. OBAYASHI as directed by your firm. Such investigative and research services shall include: reviewing materials supplied by Client relative to specific assignments, conducting background investigations as to specified individuals and/or companies, and any other services as discussed with you or your client in support of this litigation.

We will bill on a monthly basis throughout the course of the investigation and our monthly invoices are due when rendered. Our invoices consist of a concise summary of hours worked by PMRG personnel on this assignment, as well as the working expenses accumulated during the period mentioned. All time records and receipts for expenses will be kept in the possession of PMRG. For reasons of confidentiality, we prefer not to

PMRG, Ltd.

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Rebekah Poston, Esq.
February 1, 1995
Page 2

include copies of these items with our invoices, however, they will be made available to you at your request should any questions arise regarding invoice billing amounts. Our assignment is terminable at will by either you or us, subject to payment of all fees for services and expense costs advanced by PMRG through the date of termination.

Our fees for services are established primarily by the estimated time and labor required to thoroughly clarify and/or resolve the problem issues in question. Other appropriate factors taken into consideration are such things as the novelty or difficulty of the issues involved, the investigative and research skill required to perform the particular assignment, time-saving use of resources (including research, analysis, data and documentation) that we have previously developed and stored in quickly retrievable forms, the fee customarily charged by comparable firms for similar special investigative services, the amount of money involved or at risk and the time constraints imposed by either the client or the circumstances. Our fees are charged at the rate of \$175 per hour for Philip R. Manuel and other PMRG principals, \$135 per hour for special auditors and \$75 - \$115 per hour for investigative field services. However, fees in this case are expected to average \$150 per hour. Please also be advised, that when the situation arises and work is conducted through our Miami, Florida office, a mandatory Florida State Sales Tax of 6% and a .5% Dade County Surtax will be applied to relevant fees only, as directed by the tax laws of the State of Florida.

As stated previously, our invoices will document all expenses incurred during any stage of the assignment. These expenses consist of such items as travel costs, communication costs, hotel and lodging, postage, computer database charges and other miscellaneous expenses and charges that may be accumulated. These amounts will be itemized on each separate invoice.

If our monthly invoices are not paid within sixty (60) days after they are rendered, we reserve the right to discontinue service until your account is brought current. Additionally, if our invoice has not been paid within thirty (30) days from the date of the invoice, we impose an interest charge of 1.5% per month (an 18% annual rate) from the 30th day after the date of issuance until it is paid in full. Interest charges apply to specific monthly invoices on an individual invoice basis. Any payments made on past due statements are applied first to the oldest outstanding statement. We are entitled to attorney's fees and costs if collection activities are necessary.

PMRG will provide Client with confidential written reports, as they are generated, as to the results of the investigation and such other information as Client may reasonably require, including a final report at the end of the investigation. If we receive instruction

PMRG, Ltd.

PRIVILEGED AND CONFIDENTIAL

Rebekah Poston, Esq.
February 1, 1995
Page 3

and report from you in support of anticipated or pending litigation, all such reports, both written and oral, will be submitted to Steel Hector & Davis with the understanding that it shall be confidential and privileged. All communication and reports shall be submitted as Privileged and Confidential Attorney Work Product and Attorney Client Communications.

In this same regard, any confidential information supplied to PMRG will be mandated appropriately. PMRG agrees to keep such documents and all information contained therein strictly confidential and not reveal such information to any persons other than such agents of PMRG in connection with the performance of their professional duties hereunder and that have agreed to keep the information strictly confidential.

If any person or entity requests, subpoenas, or otherwise seeks to obtain any testimony or materials within PMRG's possession, custody or control or the possession, custody or control of any of PMRG's employees, agents or representatives, which relate or refer in any way to the services contemplated by this Agreement, PMRG shall promptly inform Client of such request or subpoena. Should Client require PMRG to take any legal action to seek protection against disclosure, Client will either represent PMRG and/or the applicable party(ies) in the matter (or furnish such representation) or Client will indemnify PMRG and/or the applicable party for all costs, expenses and liability including attorneys' fees and disbursements. PMRG shall not be liable in any manner whatsoever for any loss or injury to the Client resulting from the obtaining or formulating of any information which the Client directs PMRG to obtain. If any such information furnished is based upon reports and investigations obtained from sources considered by PMRG to be reliable, the Client agrees not to ask this agency to disclose the sources from whom or by which the information was obtained.

This Agreement, together with any prior correspondence between Client and PMRG represents the entire agreement between PMRG and Client. Your signature on this engagement Agreement constitutes your acceptance of the foregoing terms and conditions. If any of the items contained herewith are unacceptable to you, please advise us now so that we can resolve any differences and proceed with a clear, complete, and consistent understanding of our relationship. If you agree to all of the terms and conditions contained herewith, please sign and return this copy to PMRG's headquarters in Washington, D.C.

PMRG, Ltd.

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Rebekah Poston, Esq.
February 1, 1995
Page 4

We are pleased to provide service to you in connection with this matter and look forward to a mutually beneficial relationship.

Sincerely,

A handwritten signature in cursive script that reads "Philip R. Manuel".

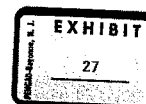
Philip R. Manuel, CFE
President, PMRG

Client's/Representative's Signature

Date

Facsimile Transmission Cover Sheet	
TO:	<u>PHILIP MANUAL</u>
COMPANY:	<u>PHILIP MANUAL RESOURCES GROUP</u>
FAX NUMBER:	<u>305-358-4425</u>
DATE:	<u>2/15/95</u>
FROM:	<u>JOHN SEBASTIAN</u>
COMPANY:	_____
Pages including cover sheet:	<u>3</u>
Message: <u>TITLE: OUT ON THE LIMB</u>	

If any problems occur in the transmission of this information, please call (202) 408-0600.



THEFT OF NCIC RECORDS

Former police officer gets \$1,000 fine, probation

By Alex Prins
Associated Press Writer

A former Castle Hills police lieutenant was given three years probation and fined \$1,000 Wednesday for selling computerized criminal records belonging to the FBI.

U.S. District Judge Ed Prado also ordered John W. Lee II, 44, to make restitution of \$66 to the FBI for the records.

Lee pleaded guilty Sept. 17 to selling the National Crime Information Center computer records or "black box" information, out-

let. Lee, a father of four and 11-year veteran of the Houston Police Department before he was fired three months ago, also must serve 300 hours of community service, Prado ordered.

Lee openly admitted in court that when he did was wrong.

"John is paying the price for his actions," said his attorney, Javier Oliva, noting that both Lee and his wife, who also was a Castle Hills employee, have lost their incomes.

Oliva called Lee a community leader, adding his client has been

involved with the Red Cross and last summer's Junior Olympic Festival.

Oliva said Lee became involved in selling the reports because an-

other "detective offered an inducement" for the reports.

He did not identify the detective allegedly involved.

Lee has been the only person

charged in the case.

Lee admitted selling 18 confidential criminal histories for \$240 on June 18 and another 20 for \$480 on July 6.

—THEFT OF NCIC RECORDS

Fired policeman pleads guilty to printout sales

A fired Castle Hills police lieutenant pleaded guilty Friday in federal court to selling national crime computer printouts.

U.S. District Judge Edward Prado set sentencing for John W. Lee II, 44, for Nov. 17.

The former suburban policeman faces a maximum sentence of 18 years, a fine of \$250,000 or both.

Lee, who was allowed to remain free on bond, pleaded guilty to stealing and selling National Crime Information Center computer printouts belonging to the FBI on July 6.

As part of his plea bargain agreement, Lee agreed to make restitution of \$190 he received for the printouts.

Last month Castle Hills Police Chief Jose Ponce announced Lee, a 11-year veteran of the department, was fired for unauthorized use of city equipment for personal gain.

"He was a model officer. I never suspected this was going on," Ponce said.

“ He was a model officer. I never suspected this was going on. ”

— Police Chief Jose Ponce of Castle Hills

Lee, the father of four children, was fired after police were notified by the FBI that agents were investigating Lee in connection with the theft of government property.

Police said the investigation focused on the sale of criminal histories obtained from the national crime computer center and the Texas Crime Information Center.

Lee joined the Castle Hills department in 1982 and at the time of his firing was a detective lieutenant supervising eight people in the detective, investigations and communications sections, Ponce said.



U.S. Department of Justice
Office of Information and Privacy

materials & ~~was~~ was checking
to be sure it had been kept
in transit. He said not to worry
but would ~~be~~ soon & ~~be~~
advised & didn't want to have
a meeting in ~~in~~ ~~in~~ & ~~had~~
from just one side. He said
he understood, R/H

Please Note:

Dick Huff asked
that I put a note
on this asking that
it be routed to
his direct attention.
Galt. Carome



U.S. Department of Justice
Office of Information and Privacy

Memorandum to file

2/24/95

DOJ-02919



In response to a call yesterday
from Pat Carome (603/610) of Wilmer,
Cutler asking me to give him a
call if it appeared my action
would be adverse on the appeal
of his client, John Holder, & call
him so he could ask further
arguments. I advised & would not
act prior to receiving his arguments.
He said he would submit them
next week. R/H

I called Carome to advise that I ~~will~~ ~~will~~
have not received his arguments.

WILMER, CUTLER & PICKERING
2445 M STREET, N.W.
WASHINGTON, D. C. 20037-1420
TELEPHONE (202) 663-6000
FACSIMILE (202) 663-6303

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March 31, 1995

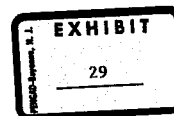
BY HAND

Richard L. Huff, Esq.
Co-Director
Office of Information and Privacy
Department of Justice
Tenth and Constitution Ave., N.W.
Room 7238
Washington, DC 20530

Re: FOIA Appeal Concerning Requests for Information Relating To
Nobuo Abe, Appeal Nos. 95-0283 to 95-0288

Dear Richard:

This letter supplements and supports a pending Freedom of Information Act appeal arising out of FOIA requests previously made to the Federal Bureau of Investigation and other offices for any records concerning an incident thirty-two years ago in which a non-resident alien (Nobuo Abe, presently known as Nikken Abe) was detained by the Seattle Police Department. The FOIA requests and appeal were made by the law firm of Steel, Hector & Davis. The appeal was dated February 3 and addressed to Attorney General Reno, c/o your office. The Office of Information and Privacy has denominated the appeal as Appeal Nos. 95-0283 to 95-0288.



DOJ-01572

Richard L. Huff, Esq.
March 31, 1995
Page 2

The purpose of this letter is to bring to your attention additional information that contributes to the unusually compelling case for disclosure of the information in question. We respectfully request that the Department take this additional information into account in resolving the appeal, and that the Department instruct the FBI to conduct a thorough search for the requested records.

Although the FOIA requests and appeal were submitted by the Steel Hector & Davis firm, the real parties in interest are a woman named Hiroe Clow and an international religious organization (Soka Gakkai) to which Mrs. Clow belongs. Mrs. Clow is a sixty-two-year-old Japanese citizen who has lived in the United States (now in Southern California) for nearly all of the past thirty-five years. She is a permanent resident alien of the United States. Her late husband served in the United States Navy for over twenty-three years, both in Japan and the U.S., and as an officer rose to the rank of Chief Warrant Officer 3. She is the mother of two (now adult) children, both American citizens, whom she raised as a single mother following her husband's death in 1962.

Mrs. Clow has an extraordinarily great need for disclosure of the information sought by the FOIA requests and appeal. She has been the victim of terrible public ridicule and malicious accusations in retaliation for her disclosure to other members of Soka Gakkai that she had witnessed in March 1963 certain public and embarrassing conduct by Mr. Abe, who is now the high priest and leader of Nichiren Shoshu, a prominent and powerful Buddhist denomination based in Japan. (Soka Gakkai was the lay organization of Nichiren Shoshu until Mr. Abe excommunicated it in 1991.) Among other things, Mrs. Clow (who is herself a follower of Nichiren Shoshu) revealed that as a leader of a small Soka Gakkai organization in the Seattle area who was responsible for hosting a visit to Seattle by Mr. Abe in March 1963, she was called by Seattle police to a scene where Mr. Abe was under police detention. Mrs. Clow brought these matters to public light in 1992 as a matter of conscience and out of a deep commitment to her personal religious faith.

Richard L. Huff, Esq.
March 31, 1995
Page 3

As a result of her disclosures, Mrs. Clow has been subjected to a firestorm of vicious public denunciations in newspapers published by Mr. Abe's sect and in public speeches made by Mr. Abe. Mr. Abe and the powerful Nichiren Shoshu sect have categorically denied Mrs. Clow's account of the events she witnessed. But they have not stopped there, and have gone on to defame her by calling her a liar and a perjurer, accusing her of being part of an evil conspiracy, and asserting that she is suffering from a mental disorder. These vituperative attacks, issued by a prominent religious leader -- whose status in the Buddhist sect is not unlike that of the Catholic Pope -- and published in widely read newspapers, have taken an enormous personal toll on Mrs. Clow. Her good name and personal honor, built up over more than six decades, have been severely and perhaps irreparably damaged.

The FBI has been most sympathetic to Mrs. Clow's plight and has expressed a willingness to assist her if at all possible. Thus, Tom Kelly, Deputy Counsel of the FBI, and Leighton W. McFarland III, Chief of the Litigation Section of the FBI's General Counsel's office, met with representatives of Mrs. Clow and the Soka Gakkai on January 23, 1995. The FBI represented that it would be more than willing to search for and release responsive records if only the Department of Justice would provide guidance indicating that doing so would be permissible. We believe that the FBI perceives a need for such guidance on account of a standing FBI practice in which requests for these sorts of law enforcement records concerning living individuals are routinely denied, without acknowledgement of whether responsive records exist, absent a privacy waiver signed by the individual or an overriding public interest. The FBI, we believe, sees a decision to search for and release such a record to be a matter of policy to be resolved through the exercise of the Attorney General's discretion.

We also note, and wish to commend the Department of Justice for, assistance that has already been provided to Mrs. Clow and the Soka Gakkai by both the Immigration and Naturalization Service (another DOJ component) and the FBI in connection with a related FOIA request to INS for records

Richard L. Huff, Esq.
March 31, 1995
Page 4

potentially relating to Mr. Abe. INS not only searched for and located a microfiche record in response to that request, but also collaborated with the FBI in creating an enhanced, more legible version of that record. Ultimately, the enhancement revealed that the INS record pertained to another person named Abe, rather than the Nobuo Abe who is the subject of the FOIA request, and consequently the record was not released. If the record had been responsive to the FOIA request, INS would have released it. Mrs. Clow and the Soka Gakkai appreciate these efforts, and hope that similar openness will prevail with respect to the pending FOIA appeal.

We respectfully submit that in these unusual circumstances, there are compelling interests in favor of searching for and disclosing any responsive records, and no significant interests militating against disclosure. With the equities all pointing toward openness, this is a paradigmatic case for adhering to the "presumption of disclosure" set forth in Attorney General Reno's Memorandum for Heads of Departments and Agencies of October 4, 1993, which announced new policies of openness under the FOIA. As you know, that memorandum declared that "[f]irst and foremost, we must ensure that the principle of openness in government is applied in each and every disclosure and non-disclosure decision that is required under the Act," and that the Department of Justice will "defend the assertion of a FOIA exemption only in those cases where the agency reasonably foresees that disclosure would be harmful to an interest protected by that exemption." These guiding principles plainly warrant disclosure in this case.

First, as articulated in the appeal itself, there are strong and overriding "public interests" favoring disclosure, both because these records (if they exist) may shed light on the historical activities of government law enforcement agencies in monitoring the activities of a foreign official of a religious sect, and because disclosure would help to elucidate a matter of great public controversy in religious society in Japan and elsewhere, including the United States.

Richard L. Huff, Esq.
March 31, 1995
Page 5

Second, as articulated in more detail in the appeal, there are no significant privacy interests to be protected by maintaining secrecy in this case. As a threshold matter, because Mr. Abe is not an American citizen, the Privacy Act is inapplicable here, and thus there can be no question that, at a minimum, the FBI has discretion to disclose in these circumstances. In addition, since Mr. Abe is a highly prominent public figure who has made numerous public statements on the events in question, and whose organization has initiated defamation litigation in Japan challenging the truth of Mrs. Clow's account, he does not possess, or has waived, any significant privacy interest relating to this subject. Thus, even if you were to determine that the requested information technically falls within the privacy exemption due to privacy interests other than those protected by the Privacy Act, Mr. Abe's conduct clearly calls for discretionary disclosure, a measure which Attorney General Reno "strongly encourage[d]" all agencies to take in her October 1993 memorandum.

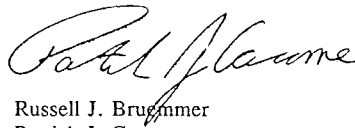
Third, as set forth in this letter, Mrs. Clow has an unparalleled interest in disclosure as a result of the public attacks levied against her by Mr. Abe and his sect: restoration of her good name, reputation, and personal dignity is dependent upon the uncovering of some objective independent evidence to corroborate her account of the March 1963 detention incident. Even if the FBI might in other circumstances be permitted to withhold such records (or decline to acknowledge whether such records exist) pursuant to the FOIA's privacy exemptions, we submit that the interests of Mrs. Clow, together with the other attendant public interests, make those exemptions inapplicable or, at a minimum, warrant the FBI's exercise of discretion to disclose.

In sum, in addition to all of the other factors supporting disclosure set out in the appeal itself, there are profound issues of justice and fairness favoring openness in this instance. In the spirit of openness announced in the Attorney General's October 1993 memorandum, we ask that you instruct the FBI to conduct a thorough search for records in response to the FOIA requests and to disclose, at a minimum, whether any responsive records are found by such search.

Richard L. Huff, Esq.
March 31, 1995
Page 6

We very much appreciate your attention to this matter. Because this matter affects ongoing litigation and continuing attacks on Mrs. Clow, we respectfully request as prompt a response as practicable.

Sincerely,



Russell J. Brummmer
Patrick J. Carome

cc:

The Honorable Janet Reno
Attorney General of the United States
Department of Justice
Tenth & Constitution Ave., N.W.
Room 4400
Washington, D.C. 20530

John R. Schmidt, Esq.
Associate Attorney General
Department of Justice
Room 5214
Tenth and Constitution Ave., N.W.
Washington, DC 20530

Nancy E. McFadden, Esq.
Principal Deputy Associate Attorney
General
Department of Justice
Tenth & Constitution Ave., N.W.
Room 5215
Washington, D.C. 20530

John M. Hogan, Esq.
Counselor to the Attorney General
Department of Justice
Room 5119
Tenth and Constitution Ave., N.W.
Washington, DC 20530

bcc: Mr. George Odano
Rebekah J. Poston, Esq.
Barry Langberg, Esq.



PHILIP MANUEL RESOURCE GROUP LTD.
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TOTAL PAGES INCLUDING COVER PAGE 3

Date: 5/1/95

To: Rebekah Poston Steel Hector Davis

From: Rich Lucas

RE: Observations on Justice Department Repl/





PHILIP MANUEL RESOURCE GROUP LTD.
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MIAMI, FLORIDA 33131
TEL: (305) 358-3434
FAX: (305) 358-4425

SUITE 364
4001 SOUTH DECATUR BLVD.
LAS VEGAS, NEVADA 89103
TEL: (702) 362-4949
FAX: (702) 876-2003

Date: May 1, 1995

To: Rebekah Poston
Steel, Hector & Davis

From: Richard Lucas
Miami, FL

Re: Nobuo Abe Request With The U.S. Justice Department

The following are my observations on the response by Richard L. Huff of the U.S. Justice Department:

1. Huff ignores the issue that Abe should not have an expected right to privacy since he is not a U.S. citizen.
2. He does not reference public policy statements as mentioned in your appeal and supplemental appeal as to the right to know and the public good versus an aliens right to privacy.
3. Huff undertook the task of attempting to verify information on file with the INS. He admitted there is no information on file with that agency. The obvious question is did he attempt to verify information on file with the FBI and/or NCIC. If he did, with whom at the FBI did he have contact? What was Huff told as to the available information?
4. Huff concludes with a statement that the records, if they exist, would be located in the Western District of Washington. This is contrary to information previously obtained that the records exist in Washington D.C. In addition a past inquiry indicated the records do not exist in the state of Washington.

5. Are you interested in additional contacts, specifically in the state of Washington? Even if there is no information in the Western District of Washington a recent inquiry by Huff may have left a trail.

June 2, 1995

Honorable John Schmidt
Associate Attorney General
U.S. Department of Justice
10 Constitution Avenue, N.W.
Room 5214
Washington, D.C. 20530

Re: FOIA Appeal Nos. 95-0283 through 95-0287

Dear Mr. Schmidt:

This letter will confirm our appointment with you at your office at 3:30 p.m., on Thursday, June 15, 1995. Attending the meeting will be John Smith, Russell Bruemmer of Wilmer, Cutler and Pickering and myself. We will be prepared to utilize our half hour and we do not intend to run over our allotted time. Pursuant to your request, I am enclosing the materials we have filed to date which are pertinent to our meeting. The enclosed materials consist of the following:

- (1) FOIA Appeal addressed to Attorney General Janet Reno, dated February 3, 1995;
- (2) Wilmer, Cutler and Pickering letter supplementing and supporting our FOIA appeal, addressed to Richard L. Huff, Esq., dated March 31, 1995;
- (3) Richard L. Huff letter, dated April 25, 1995, addressed to myself responding to our FOIA appeal of February 3, 1995 and our Wilmer, Cutler and Pickering letter of March 31, 1995.

Before we can appropriately advise our clients as to whether or not they should pursue litigation in the courts regarding the denial of their FOIA requests, we want to exhaust absolutely every administrative avenue available to us. We believe we will accomplish that following our visit with you.



Honorable John Schmidt
Associate Attorney General
June 2, 1995
Page 2

We were disappointed in Mr. Huff's failure to address many of the substantive issues that we raised, not the least of which is the Clinton administration's commitment to opening records to public scrutiny, particularly where no legitimate privacy rights exist. We lack an understanding, given our arguments and the failure of anyone in the Office of Information and Privacy to address them head on, as to why our appeal was denied.

These are a few of the basic issues that we would like to discuss at our meeting. We look forward to seeing you then.

Very truly yours,

Rebekah J. Poston
Of Counsel

Enclosures

RJP/da/MIAMI/152948-1

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DOJ-03012

August 2, 1995

Rebekah Poston
Steel Hector & Davis
200 S. Biscayne Blvd.
41st Floor
Miami, FL 33131

Dear Rebekah:

I have reviewed your July 19, 1995 letter requesting a response to the statements by Richard L. Huff that the Federal Bureau of Investigation and the Executive Office for United States Attorneys does not maintain or has evidence of ever maintaining any record within the scope of your Freedom of Information Request.

Attached to your July 19 letter were two reports sent by me to your attention while I was in the employment of The Philip Manuel Resource Group. The circumstances surrounding the first report dated November 11, 1994 accurately reflects conversations with a reliable confidential source. Currently, the confidential source will not retrace his/her steps to reconfirm the information previously provided due to the recent developments.

The report dated November 19, 1994 was sent to your office for discussion purposes and not placed on the firms letterhead. This information was relayed by Philip Manuel to me for conveyance to you. It is an accurate and complete summary of the information as it was relayed by Philip Manuel. He subsequently submitted another report to your office on December 22, 1994, which we recently reviewed in your office, which provides greater detail on his inquiries.

Please be advised that I am currently available to assist you in legal proceedings in Japan but that due to a contractual relationship I must first receive the approval of The Philip Manuel Resource Group as to testifying on assignments from your office prior to March 1, 1995.



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Rebekah Poston
August 2, 1995
Page -2-

If I could be of further assistance please do not hesitate to call.

Regards,

Richard M. Lucas

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August 4, 1995

Rebekah Poston
Steel Hector & Davis
41st Floor
200 S. Biscayne Blvd.
Miami, FL 33131

INVOICE

Re: Japanese Inquiry

4 Hours @ \$125.00 per hour \$500.00

Please Make Payable to: Richard Lucas
P.O. Box 970188
Boca Raton, FL 33497-0188

SUMMARY OF TIME

1995

July 14: Discuss letter of Richard Huff with Al LaManna, 1 Hour

July 19: Meet with Rebekah Poston and discuss letter from Richard Huff and strategize on future action, 2 Hours

July 21: Re-contact third parties on content of letter, 1 Hour

Total: 4 Hours

AFFIDAVIT OF RICHARD LUCAS

STATE OF FLORIDA)
) SS:
 COUNTY OF DADE)

BEFORE ME, the undersigned authority, personally appeared **RICHARD LUCAS**, who, being placed under oath, said as follows:

1. My name is Richard Lucas and the statements contained in this affidavit are true, correct and based upon my personal knowledge.
2. I hold a Bachelor of Arts degree from the University of Illinois and a Master of Taxation degree from De Paul University. I am a Certified Public Accountant and a Certified Fraud Examiner.
3. I served as a Special Agent of the Internal Revenue Service ("IRS") Investigations Division for seven years. In my work for the IRS, I was assigned to numerous investigations pertaining to Chicago organized crime involvement in money laundering activities with Las Vegas casinos, involvement in union pension fund activities, and infiltration into legitimate businesses. I received letters of commendation and incentive awards from the IRS District Director in Chicago for the development of key informants in the Chicago crime syndicate.
4. I became licensed as a private investigator in Illinois in January 1983 through January 1990, in Florida in 1989 through 1991 and again in Florida in September 1993 through April 1995. I have served as an investigative consultant for over ten years, specializing in money laundering, franchise fraud, corporate embezzlement, and financial institution investigations. I have been certified as an expert witness by federal courts in the Northern District of Illinois and the Middle District of Florida.
5. I am currently the President of Florida Federal Property Management, Inc. ("FFPM").
6. On May 1, 1993, FFPM entered into an agreement with the Philip Manuel Resources Group, Ltd. ("PMRG"). Under this agreement, FFPM became responsible for management, administration, and marketing for PMRG's office in Miami, Florida, as well as certain investigative functions.
7. PMRG is a private investigation firm with offices in Miami, Florida, Las Vegas, Nevada, and Washington, D.C.
8. Steel Hector & Davis, a law firm in Miami, Florida, engaged PMRG to investigate the likelihood of the existence of any documentary evidence that would corroborate eyewitness accounts of an incident that occurred in Seattle, Washington, on or about March 19 and 20, 1963,



9. As part of my investigation for PMRG, I contacted a highly reliable source and advised the source that I was attempting to confirm the existence and the whereabouts of documents in the possession of the federal government related to Mr. Abe. I told this source that Mr. Abe's name is "Nobuo Abe" and that his date of birth is December 19, 1922. I also told the source that Mr. Abe had no social security number because he was not a U.S. citizen.

10. The source later reported to me that he had determined that the federal government did have a record regarding a Nobuo Abe which referred to solicitation of prostitution, Seattle Police Department, March 1963.

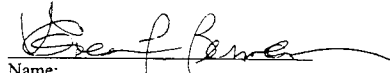
11. I am confident that the information provided to me by the source is accurate and reliable.

FURTHER AFFLIANT SAYETH NAUGHT.


RICHARD LUCAS

I HEREBY CERTIFY that on this 22nd day of September, 1995, before me, an officer fully authorized in the State and County aforesaid to take acknowledgments and to administer oaths, personally appeared RICHARD LUCAS, who produced his Florida Driver's License (No. L220-753-53-302-C) as identification, who acknowledged before me that he executed the foregoing affidavit as his free act and deed and who did take an oath.

IN WITNESS WHEREOF, I have hereunto set my hand and seal in the State and County aforesaid as of this 22nd day of September, 1995.


Name: _____
Notary Public, State of Florida
Commission No.: _____
My Commission Expires: _____

(Notary Seal)



VANESSA P. BERMAN
MY COMMISSION # 02 177328 EXPIRES
February 2, 1996
BONDED TRUITY FARM INSURANCE, INC.

November 19, 1996

Facsimile Transmission: 2 Pages

To: John Gibbons
From: Michael Wilson
Re: Recent Developments

I was contacted by Poston by telephone today. She put me on a conference call with an individual identified as Emil Moshela (phonetic). He claimed to be a former attorney with the FBI general counsel's office and in the FOIA section. He recently left the FBI but did not define recent.

He asked if I could come to Miami today and I stated it was not possible. He had a 1:30PM flight back to Washington D.C today and asked to schedule an appointment in the next few weeks. We exchanged phone numbers. His phone number is 703 242-7508. He stated he wanted to talk to me before he met with Phil Manuel.

Poston said that he had in his possession all of the Philip Manuel Resource Group reports and that he had been retained by Barry Landberg as an attorney for Hiroe Clowe. Poston stated her firm also represented Clowe. I pointed out Clowe was dead and she stated they both represented the estate.

He first asked if I knew if the record was possibly not in NCIC or the FBI but some other agency. I stated I didn't know but that Manuel had indicated in one report that the record may possibly have been in a counter-intelligence file. Moshela stated that would probably still be the FBI.

Moshela said he was very familiar with the NCIC staff at D.C. headquarters and asked my opinion of the disposition of the Abe record. I explained that I believed Phil Manuel's version that the record was removed by Brewer after Manuel made the inquiry, Brewer determined their had been 5-6 recent inquiries and the record (wherever it was) did not belong since there was no arrest. Brewer then removed it and advised Manuel that he did so. Moshela asked if I talked to Brewer and I stated I had not.

Moshela asked what I would recommend as to the current situation. I stated Brewer should be approached and asked about the incident. If the record existed Brewer did the right thing by removing it and he should not be adverse to saying so.

Moshela stated he should be back in contact with me in about a week to schedule an appointment.

I called Poston back a few hours later and asked why Moshela wanted to meet me alone and that I thought Poston should be present. Poston expressed appreciation for the call. She said Landberg called her two weeks ago and advised Moshela had been retained. Poston then called George Odano for confirmation, which he did. Odano stated they wanted to look at the situation from a



different perspective.

Landberg had asked Poston if she had been taken in by her investigators and she stated absolutely not. She explained her firm did a time line of all the activity and the story could not have been possibly made up and there was no incentive for The Manuel firm to make anything up since they did not even submit an invoice or receive any payment until after the key contacts were made and reports issued.

Poston stated there was always a suspicion by Manuel and others that Paladino had set them up by planting false information, Manuel's firm reporting on it and then the information was removed.

Poston asked if it was possible that when the inquiries were made, the FBI contacts reported back that there was a record but what they meant was that there had been numerous inquiries in a short period of time all with the same details and allegations. I stated I didn't think so.

She stated the case in Tokyo with the former police officers is going well. She added anything is possible since both sides take the attitude that money is not an issue.

Al LaManna was contacted by Poston and he came back with a good report on Moshela, that he was high up in the FBI and very well regarded among his contemporaries. She asked if the litigation with Manuel was settled and I responded not even close.

She stated that after the "Huff letter" was made available to the other side there was concern there was a mole. She said Huff was contacted and he stated he sent a copy of the letter to the other side and that it was sometimes a standard procedure to do so. This relieved a lot of concern. The Huff letter was a huge let down but he qualified his statement by listing the files that were searched.

Poston stated Moshela told her he knows Brewer and he is very straight laced and closed minded. Moshela stated that if the facts transpired as Manuel reported, Brewer would have just erased the record from the file and believed he did the right thing.

She added that before Moshela left he told her it probably wasn't necessary for him to come back to Florida since he got the information he needed. He was going to talk to Manuel. (There was an indication there may be some friction between Manuel and Poston).

415 362-3153

Rough Draft

November 27, 1996

To: John Gibbons

From: Mike Wilson

A meeting was held between Rebecca Poston and Emil Moschella in Miami on November 26, 1996.

Pre and Post Meeting Observations:

Emil has been hired by the estate of Hiroe Clowe as a consultant. He reports to Barry Landberg. He was hired by George Odano. He has recently traveled to the West Coast at least twice on this matter.

Poston is not overall pleased with the hiring of Emil. She claims attacking the same problem consistently from different angles can only cause waves and potential problems. She states "it is possible the client will eventually find something they don't like".

Emil apparently does not have affidavits of Manuel and Lucas. The documents are kept in the safe of Steel Hector Davis.

Poston is leery of Barry Landberg and is suspicious of his motives. She confirmed with Odano on the hiring of Emil. He came recommended by Wilmer Cutler. She expressed the lack of candor by Landberg with Emil.

Poston was recently in Washington D.C. reportedly on another matter and met with Wilmer Cutler lawyers. They all spoke highly of Emil.

Poston had a recent chance meeting with Janet Reno on a plane and had a brief and friendly conversation. Emil later confirmed that Steel Hector was hired due to the relationship with the Attorney General. Reno and Poston's sister are good friends.

Emil explained he was recently retired from the FBI and his immediate supervisor was Howard Shapiro. His son, a Washington D.C. police officer will soon be



joining the FBI, which pleases Emil.

Meeting:

Emil had a series of reports by The Philip Manuel Resource Group (PMRG). He asked a few questions as to the timing of the inquiries and if all inquiries were done through the FBI.

One of Manuel's reports states that in December 1994 there were reportedly six inquiries on file with the NCIC office in Washington over a two month period on the name Abe. He asked how many were PMRG responsible for and it was answered at the most two and possibly only one. Manuel's direct contact with the NCIC source did not count as one of the six inquiries.

Emil and Poston agreed it may have been Abe's people who made some of the inquiries. Poston stated Abe will stop at nothing to defend himself in this case, money is no object. She added they are very resourceful and cunning. Emil added that the litigation in Japan is a matter of honor not damages or money.

One report by PMRG reflected a record of "Solicitation of Prostitution" and shortly thereafter a subsequent report stated "Suspicion of Solicitation of Prostitution". Emil asked for explanation and one was provided that a clarification was asked for from the initial contact.

Poston got into that the initial source for Landberg, Bureau of Prisons employee, had a much more detailed explanation. This was shown to Emil who acted as if he never saw it but never took notes as to what the document said. He stated this long reiteration of what this Bureau of Prison employee saw did not make any sense. He did not elaborate on this inquiry but Poston kept coming back to it as the basis for her firm's initial inquiry.

Emil wanted to know how Manuel would react if he contacted him. Poston stated not good for the following reasons:

1. If Manuel knows Emil talked to Lucas it would upset him. Manuel believe Lucas should not be having any dealings with Poston due to the current litigation the two are involved in.

2. Manuel is convinced Paladino set him up and no one is going to change his mind.
3. Manuel will not identify his source to Emil but will contact the source and tell him Emil is involved. (Emil stated he wants to contact the source without Manuel's or anyone else's knowledge. Manuel does not know that Emil knows the identity of the source and Emil gives a strong impression he knows the source from when he was with the Bureau.)
4. Manuel stated he will stand by his affidavit, nothing more nothing less.

Emil gives an impression he knew much about the FOIA requests by both sides that were filed when he was with the Bureau. Poston stated during the meeting it helps that Emil has FOIA experience on these matters.

After a review of other facts Emil stated it was his opinion that it was a situation of a dog chasing his own tail. The inquiries by PMRG and others caused a report to be generated based on the inquiries not on the initial incident. The source at NCIC saw this was the case, knew the report did not belong on the system and erased the report.

Emil believes he can determine if a report was erased but he does not know on which system the report was kept that Manuel had identified. Discussion centered on foreign intelligence files and that Manuel had insinuated to Poston on more than one occasion the report was in a foreign counter-intelligence file. Emil asked about Manuel's background and he was told in the 1960's Manuel was in a military intelligence position before joining the Senate as an investigator.

Poston stated the key is the Bureau of Prison employee and that Manuel and Lucas had previously expressed concern they were set up. Emil never made any mention if he would contact her. Poston stated she was told the Bureau of Prison employee would not come forward due to her pension may be at risk if she was exposed. She added an offer may have been made as to severance pay by the client if that resulted. Emil did not follow-up after Poston the statement.

Poston also stated that the investigative activities are divided into east coast and west coast and that the west coast investigative findings are not shared with attorneys in Miami or Washington D.C. She finds this frustrating and can not believe that with all the time Paladino put in on this case prior to November 1994 that he never checked NCIC for the record and if he did, what did he find.

Lucas explained PMRG would have never taken the case if there was knowledge as to what was going to be done with the information, the issuance of the Poston letter and the law suits in Japan and California. The initial inquiry was done for Poston as a favor to her based upon past assignments and her joining a new firm.

Emil stated his objective was to determine if:

1. The FBI will admit it erased a record,
2. Determine what was erased, and
3. Determine when the record was entered.

(It is believed Emil only wants to get an admission on No. 1 above.)

Poston stated accomplishing 1. was beneficial to the client. Emil added 2. and 3. are much more difficult to accomplish and may not be possible.

Emil asked Lucas' opinion of Paladino. He stated he did not know him personally and only by reputation, which was not to flattering.

Poston stated she believes Manuel will testify if asked in Japan but not in the US. Emil stated the US litigation is a problem if the alleged record has to be substantiated.

Emil asked permission from Poston to contact Lucas again and she gave it.

Emil and Poston then met privately.

Friday
February

10

February				1996
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Mo	5	13	20	27
Tu	7	14	21	28
We	1	8	15	22
Th	2	9	16	23
Fr	3	10	17	24
Sa	4	11	18	25
Su	5	12	19	26

8 A.M.

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12

1 P.M.

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2:30 G. Hagan

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41-324



May	18	19	20	21	22
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Tue	2	9	16	23	30
Wed	3	10	17	24	31
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Su	7	14	21	28	

7Friday
April

8 A.M.

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12

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1 P.M.

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1/10/11

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REDACTED

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1995			
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Thursday
June

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DC. 11:30 Ely - Limer
2445 M St - NCO
REDACTED REDACTED
15 Insyite Ave. Limer
AG GR
5 PL
REDACTED

30 Schmidt

REDACTED



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535

February 19, 1997

VIA FACSIMILE

The OSO Group, Ltd.
433 California Street
Suite 800
San Francisco, California 94104-2012

Attn: Mr. John C. Gibbons

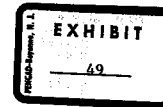
Re: Nichiren Shoshu/Soka Gakkai

Dear Mr. Gibbons:

Mr. DeFeo has referred your letter dated February 13, 1997, regarding referenced matter to me for response. Because of your prior relationship with Mr. DeFeo, he felt it was more appropriate that he recuse himself from this matter and so he has referred it to me for future handling.

I have reviewed the documents that you provided to Special Agent in Charge, Raymond A. Mislock, Jr., of our Washington Field Office on December 13, 1996. I have also reviewed various documents that have been provided to the FBI in regard to referenced matter over the past couple of years. Additionally, I have spoken with Mr. Thomas A. Kelley, Inspector - Deputy General Counsel, Office of the General Counsel, in regard to his knowledge of captioned matter.

Based on my review, your concerns regarding possible falsification of FBI records, to include NCIC entries, have no merit. However, we are not opposed to re-visiting this issue if provided a specific factual predicate which would justify such a course of action. To that end, I request that you have your



FEB 19 '97 14:32

PAGE 02

confidential source prepare a comprehensive, detailed written document articulating all information that he/she possesses regarding this matter for our review. If, after this review, we believe an interview of your confidential source is warranted, we will recontact you to arrange for such an interview. Prior to receipt of a detailed exposition from the confidential source, I see no point in meeting to discuss this matter further.

Sincerely,



David V. Ries
Deputy Chief,
Office of Professional
Responsibility



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535

September 4, 1997

The OSO Group, LTD
433 California Street
Suite 800
San Francisco, California 94104-2012

Attn: Mr. John C. Gibbons

RE: Nichiren Shoshu/Soka Gakkai

Dear Mr. Gibbons:

The Office of Professional Responsibility (OPR) has conducted a thorough review of prior and recent correspondence from you and other individuals representing referenced parties regarding allegations of improprieties concerning FBI computerized criminal records.

The allegations presented by you and others have been repeatedly brought to the attention of the FBI by numerous individuals in various communications and in various meetings, for a number of years. In my communication to you dated February 19, 1997, I indicated that absent a specific, factual predicate, no further investigation would be conducted in this matter. A review was conducted of the documentation you provided by communication dated May 28, 1997. This review indicates the allegations remain without merit.

The conclusion of OPR is based on objective investigative results. However, no specific information regarding the substance of the FBI's actions or findings in this matter can be released to you.




** 00'39'47 101 **

The OSO Group, LTD

Further correspondence concerning this matter, absent articulable, independently verifiable information, is not necessary and will not be considered by this office.

Thank you for bringing your concerns to our attention.

Sincerely yours,



David V. Ries
Deputy Assistant Director
Office of Professional
Responsibility



September 26, 1997

**PRIVILEGED ATTORNEY/CLIENT
WORK PRODUCT PREPARED AT
THE DIRECTION AND UNDER THE
SUPERVISION OF COUNSEL**

VIA FEDERAL EXPRESS

David V. Ries, Esq.
Deputy Chief, Office of
Professional Responsibility
Federal Bureau of Investigation
935 Pennsylvania Ave. N.W.
Washington, D. C. 20535

Re: Nichiren Shoshu/Soka Gakkai

Dear Mr. Ries:

I am sorry it has taken me a few weeks to respond to your letter of September 4, 1997, which was received in our offices on September 8th. However, I have been traveling and this is the first opportunity I have had to consider what you had to say in that communication.

This submission is made for the purpose of assisting the government in any investigation that might arise from the facts described below, and is submitted with the understanding that confidentiality will be protected to the fullest extent possible under the applicable federal laws and regulations, including without limitation, 28 CFR 0.39b.

I would like to thank you for the attention you have given this matter, along with your colleagues. I know you consider these matters to be important to the integrity and fabric of the FBI and I know this matter, as you point out, has been brought to your attention on several occasions previously.

After discussing your letter of September 4th with my colleagues, who are former Federal prosecutors and former FBI special agents, I think it is incumbent upon us to point out that Mr. Lucas was a percipient witness in this matter, and has not been interviewed by the



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WASHINGTON, DC 20036
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FAX 202 872 0898

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NORTHUMBERLAND HOUSE
44 NORTHUMBERLAND ROAD
DUBLIN 4, REP. OF IRELAND
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FAX 353 1 626 1876

260 EAST MAIN STREET
SUITE 100
SMITHTOWN, NY 11787
TEL 516 366 1300
FAX 516 366 1309

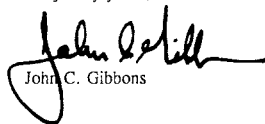
David V. Ries, Esq.
September 26, 1997
Page 2

government. If interviewed, as we have pointed out in previous communications of May 28, 1997, and July 30, 1997, Mr. Lucas would give a statement against his penal interest that he indeed participated with Mr. Philip Manual of the Philip Manual Resource Group, his then employer, in penetrating the FBI by making inquiry with an agent of the FBI and publishing his response after that agent reviewed confidential data within the Bureau. In addition, Mr. Lucas would shed light upon possible violations Title 18 U.S. Code Section 207, *et. seq.* Reflecting that a present practicing lawyer/recently retired special agent was conducting interviews on behalf of the Soka Gakkai on this matter that was indeed a matter within the FBI at the time of his employment at headquarters, and in a section within which he served.

Needless to say, I have been extremely reluctant to reiterate these concerns, but I sincerely believe that this matter is one that should be examined at least with the interview of a percipient witness who has first-hand knowledge and can provide original documentation of these allegations.

Your consideration and attention in this matter will be greatly appreciated.

Very truly yours,


John C. Gibbons

JCG:sjc



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535

October 16, 1997

The OSO Group, Ltd.
433 California Street
Suite 800
San Francisco, CA 94104-2012

Attn: John C. Gibbons

Re: Nichiren Shoshu/Soka Gakkai

Dear Mr. Gibbons:

Reference my letter to you dated September 4, 1997, and your letter to me dated September 26, 1997, received by facsimile on October 15, 1997.

As I indicated in my letter of September 4, 1997, a thorough review was conducted of the information that you provided by communication dated May 28, 1997. Based on this review we believe your allegations remain without merit. Your letter of September 26, 1997, provides no basis to change our opinion. OPR will conduct no further investigation regarding this matter.

Regarding your comments as to a possible violation of Title 18 U.S. Code Section 207 et seq., by a former FBI Special Agent, OPR has jurisdiction only over on-board FBI employees. If you have specific information regarding possible criminal violations by a former FBI employee, I suggest that you provide this information to the appropriate FBI field office within whose territory the alleged violations occurred.

Sincerely,

David V. Ries
Deputy Assistant Director
Office of Professional
Responsibility



OCT 16 1997 10:18

202 324 2012

TOTAL P.02
PAGE 02

ORIGINAL

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(818) 706-1800 (805) 496-4668
FAX (818) 706-2956

RICHARD J. RIORDAN
(RETIRED)
FILE NO.

July 25, 1995

FOIA REQUEST LETTER

Freedom of Information Act Officer
Office of the Attorney General
10th Street & Constitution Avenue, N.W.
Washington, D.C. 20530

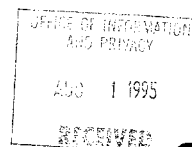
Dear Sir or Madam:

This is a request under the Freedom of Information Act.

I represent the requester Nichiren Shoshu Temple, a California religious corporation. I request that a copy of all documents containing the following information be provided to me:

1. All FOIA requests since 1993 for information about Mr. or Rev. Nobuo Abe, or Mr. or Rev. Nikken Abe, born December 19, 1922;
2. All appeals of any denials of FOIA requests for the above information; and
3. All correspondence to and from the Department of Justice and/or its subordinate agencies and all requesters regarding the FOIA requests and appeals listed above.

My client is willing to pay fees for this request. If you estimate that the fees will exceed \$1,000.00, please inform me first.




RIORDAN & MCKINZIE
A PROFESSIONAL LAW CORPORATION

Freedom of Information Act Officer
Office of the Attorney General
July 25, 1995
Page 2

I look forward to your response within 10 days or earlier if possible. Thank you for your consideration of this request.

I declare under penalty of perjury that the foregoing is true and correct. Executed within the United States on July 25, 1995.

Very truly yours,



Louise A. LaMothe

LAL/zch

63299.1

YASUHIRO FUJITA
ADMITTED IN
JAPAN & CALIFORNIA

YASUHIRO FUJITA
A LAW CORPORATION
445 SOUTH FIGUEROA STREET, SUITE 2570
LOS ANGELES, CALIFORNIA 90071
TELEPHONE (213) 627-9001
FACSIMILE (213) 627-9007

November 19, 1999

Mr. David A. Cass
Deputy Counsel
GOVERNMENT REFORM & OVERSIGHT COMMITTEE
HOUSE OF REPRESENTATIVES
2157 Rayburn House Office Bldg.
Washington, D. C. 20515

Dear Mr. Cass:

This firm has been representing Nichiren Shoshu (a denomination of Japanese Buddhism) and its High Priest Nikken Abe (formerly known as Shinno Abe or Nobuo Abe) since 1991. Neither Nichiren Shoshu nor the High Priest has ever authorized or consented to anyone to obtain, or to have access to, any information about him (Nobuo Abe) in the U. S. government files or databases.

As a result of the Soka Gakkai's defamatory publication of the so-called " record of the ' 1963 Seattle Incident ' existing in the U. S. government files, " Nichiren Shoshu and the High Priest have suffered extraordinary damage to their reputation, and incurred substantial legal expenses to defend themselves against such false publication.

We appreciate your concern and would be happy to discuss this matter, and to answer any questions you may have.

Very truly yours,


Yasuhiro Fujita

YF:ma

cc: Rev. Kogaku Akimoto, Nichiren Shoshu, General Counsel



THE OFFICE OF THE ATTORNEY GENERAL

[REDACTED]

b6

March 21, 1995

Ms. Janet Reno
Attorney General
Department of Justice
10th & Constitutional Ave., N.W.
Washington, D.C. 20530

Dear Ms. Attorney General:

Please permit me to briefly introduce myself to you. My name is Hiroe Clow. I am [REDACTED]. I was married to Leslie Elton Clow. My husband passed away December 30, 1962. We had [REDACTED]

b6

My husband served proudly in the U.S. Navy for 23 years, achieving the high rank of Chief Warrant Officer. We lived in Washington because he was stationed at the nearby Bremerton Naval Base.

I am writing to you personally because I know you stand for the protection of individual rights, fairness and justice and open government. I have followed your service to our President Clinton with great interest. I have read newspaper and magazine articles about you and admire your courage. You are correct to fight for safe streets for the protection of our children. They are our country's future. You stand as a shining example to those who strive to make something out of themselves from humble beginnings.



MAR 22 '95 04:21PM SENATOR DIANNE FEINSTEIN

P.S

I write to you because I believe that our government should serve the people and be open to inspection by those of us who obey its laws and had served to protect it. I know you believe in open government. You have said so in public. It is this belief that brings me to the point of why I seek your help.

In March, 1963, in Seattle, Washington, I witnessed and participated in a criminal investigation of a prominent priest of my Buddhist faith. I was his hostess in Seattle where he had come from Japan to perform a religious ceremony. I was called to the scene late at night by the Seattle Police, who were holding the priest in detention. The police told me he had been involved in an altercation with prostitutes. I was shocked! Such conduct by a priest in our faith would immediately disqualify him from such a respectable position. Nevertheless, I pleaded with the police to release the priest to me. Upon my promise to take him back to his hotel and return myself to the police station to answer their questions, I agreed.

When I arrived at the police station, a plain clothes officer and the same two police officers who were at the scene were waiting for me. I was required to sign several documents. In one of the documents, I wrote down more information about me, my husband, and his rank and station in the U.S. Navy, using my Naval I.D. card and license.

As time passed, this prominent priest rose to that of high priest in my Buddhist sect. Once he became high priest, he forgot his religious mission as a priest and started to lead questionable lifestyles both ethically and worldly. He persecuted his followers and the lay organizations that did not obey his will, by using his tremendous economic resources. When I saw his deeds, I realized that what he did 30 years ago was not just an accident, but was something that arose from his impious nature as a priest who took his position only as a job. At the same time, I realized that it was wrong and inappropriate to keep my recollection a secret, and decided to let the truth be made public.

The high priest has now declared in a public lawsuit in Japan, through public speeches at his temples in Japan, to newspapers whose papers are distributed to millions of members of the several Buddhist sects throughout

MAR 22 '95 04:21PM SENATOR DIANNE FEINSTEIN

P.6

the U.S. and the world, that the Seattle incident never occurred. The high priest has not only called me a liar and a perjurer in the newspapers but also had my picture carried in their newspaper and had me called mentally ill. He has sent emissaries from his temples in the U.S. to distribute these speeches in my own neighborhood. He has disgraced me and my children. My honor, my integrity, my soul have been irreparably damaged.

My goal is to prove I spoke the truth. Toward this end, I have retained legal counsel. I have filed a defamation suit in the U.S. against the priest. I am desperately seeking any physical evidence that might exist corroborating this incident with the Seattle Police in March 1963. My attorneys, on my behalf, have hired investigators, obtained the full cooperation of the Seattle Police Dept., contacted the Bremerton Naval Base, spoken with attorneys for the FBI, seeking the production of any record about this night. We believe that such a record may exist in some federal agency in Washington, D.C. based upon the viewpoint of how information involving prominent foreign nationals and military families was recorded and stored back in 1963. My attorneys have filed F.O.I.A. requests to the Justice Department and its constituent agencies, as well as to other federal agencies.

Several of the other agencies we wrote to, like the Customs and the State Dept. referred us to the FBI. My lawyers met with the FBI, and they said that the request will be denied because the high priest has not waived his privacy interests but that whether or not the record should be disclosed is a matter of policy, and that this policy is decided by the Attorney General. It is my lawyers opinion, having met with FBI counsel, that FBI is willing to fully cooperate in searching for this record once you make a decision at the policy level.

My lawyers tell me that things don't look so good on the F.O.I.A. request if decided in accordance with previous practices. I don't know all these things about the law or actual practices. I do know that if my President says records of government should be open to the people, that if you believe that too, then fairness and justice should require the government to carry out this policy and look for this record.

MAR 22 '95 04:22PM SENATOR DIANNE FEINSTEIN

P.7

The only way to prove that I spoke the truth and that justice lies on my side rests with you. Ms. Attorney General, you were selected by President Clinton to carry out his policies of free access to our government, to be fair and just. My attorneys share the view with the FBI's attorneys that you have the power to decide whether a certain F.O.I.A. request should be granted and the information disclosed, and that you have the discretion to change previous practices if necessary. I ask you to help me. I am just telling what actually happened and what I actually saw. Besides, I was the one who helped the priest to be released. I pleaded with the police to win his release and fully cooperated with the police. They made reports of it all. Now, I stand humiliated and totally disgraced by a man who is in a position of power and financial wealth, calling me crazy, a liar, using his religious position and finances to defame me and deny the truth.

It is he who sought to become criminally involved with prostitutes while in the U.S. It is he who sought to ignore our Buddhist teachings and lead an immoral life despite his being a priest. Now, he takes to the world public my statements and says they are lies. Such a person has no privacy interest to waive. Justice could only be realized by disclosing the truth. Such "privacy interests" would only deny justice. Under such desperate circumstances as these, I beg you, Ms. Attorney General, to let our laws carry out justice and fairness. I ask you to personally exercise your power of discretion and let the truth be set free. For it is in your domain that I believe the truth lies.

✓ Thank you for caring enough about me to read my entire letter.

Sincerely,


Hiroe Clow