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10 **UNITED STATES DISTRICT COURT**
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
12 **WESTERN DIVISION**

13 H. RAY LAHR,) Case No. 03-08023 AHM (RZx)
14)
15 Plaintiff,) **DECLARATION OF JOHN H.**
16) **CLARKE IN OPPOSITION TO CIA**
17 v.) **MOTION FOR SUMMARY**
18) **JUDGMENT**
19 NATIONAL TRANSPORTATION)
20 SAFETY BOARD, *et al.*)
21)
22 Defendants.)
23)
24)

25 Date: July 10, 2006
26 Time: 10:00. a.m.
27 Place: Courtroom 14, 312 N. Spring
28 Street, Los Angeles, CA 90012
Judge: Honorable A. Howard Matz

(1) DECLARATION OF JOHN H. CLARKE

1 8. Plaintiff exercised due diligence in trying to finish this narrowing of
2 the issues by his June 5 Summary Judgment Opposition due date, but could not do
3 so before Monday June 19, when plaintiff served defendant the exhibits hereto by
4 hand.

5 9. On September 27, 2004 at oral argument on the NTSB's motion for
6 partial summary judgment, the Court circulated a chart and ordered the parties to
7 meet and confer and use the chart to assist the Court by filing of a joint statement
8 of disputed items.

9 10. Immediately after oral argument, the plaintiff asked the government to
10 use Microsoft Excel for the chart, seeking to participate in the preparation of that
11 joint filing, to facilitate this Court's ease in making categorical rulings.

12 11. The government refused to provide plaintiff with any chart until the
13 Court ordered it to do so, by October 27, 2004 entry of *Order Requiring*
14 *Compliance*: "Defendants shall complete columns three and four before plaintiff
15 completes column five."

16 12. The Court had instructed the parties to make the chart short.

17 13. In his first entry of this chart, plaintiff wrote that "[t]he Court
18 specifically instructed the parties to keep this submission short, yet, the NTSB's
19 submission to plaintiff was almost 900 pages long."

20 14. This filing was so unwieldy that it was useless.

21 15. In January 2006 plaintiff asked the CIA to work with him on a short
22 chart to submit to the Court. The government declined, stating that the previous
23 chart was of no use. On February 6, 2006, plaintiff provided the government with
24 a sample page of a proposed chart, a copy of which is attached, and asked the
25 government to participate for ultimate submittal to the Court. The government
26 declined again, whereupon plaintiff responded that he would file a chart and cull
27 the government's position from its pleadings.
28

1 **PROOF OF SERVICE – BY HAND AND BY EMAIL AND BY MAIL**

2
3 DISTRICT OF COLUMBIA:

4 I am a resident of the District of Columbia, over the age of 18 years. My business
5 address is 1717 K Street, NW, Suite 600, Washington, DC 20036. I am counsel
6 for plaintiff.

7 On June 19, 2006, I served by hand a true copy of all exhibits to the
8 **DECLARATION OF JOHN H. CLARKE IN OPPOSITION TO CIA**
9 **MOTION FOR SUMMARY JUDGMENT**, and on June 21, 2003, served by
10 email the and by regular mail the foregoing affidavit, on the interested parties in
this action, to:

11 David M. Glass, Esquire
12 Assistant United States Attorney
13 20 Massachusetts Avenue, NW
14 Room 7140
15 Washington, DC 20530

16 On June 19, 2006, I served by email Excel files to David M. Glass, Esquire, at
17 David.Glassusdoj.gov.
18
19

20 I declare under penalty of perjury that the foregoing is correct and that this
21 Proof of Service was executed on June 19, 2006.
22

23
24 _____
John H. Clarke
25
26
27
28

FOIA Request List

Rec No.	Date, Pages, Redactions	Record title, – agency	Privacy (b)(6)	Privacy (b)(7)(C)	Trade secret (b)(4)	Delib priv (b)(5)	Other laws (b)(3)	Failure segregate	Inadequate search	Seeks in camera	Comments	E-record	Cross References
1	Date: 7/30/96 Pages: 1 Redactions: 7	Hold the press – CIA					Yes 1-4, 6-7			Yes	This is chronologically the first record produced, generated 13 days after the disaster. It reports a ballistic fall, not a zoom-climb. Plaintiff seeks disclosure of the names of high level officials who were informed, thirteen days after the tragedy, that the aircraft immediately descended. Plaintiff does not believe that each of the many recipients of the memo were CIA personnel subject to (b)(3) protection.		Record at Bates page 103. MORI Doc. ID No. 1255556. 4/3/06 Vaughn Document Disposition Index page 55. Document No.: 1255556. Produced 4/3/06 on page 34.
2	Date: 2/12/97 Pages: 1 Redactions: 20	TWA 800 Witness Questions – CIA	Yes 3-20	Yes 3-20			No				This memo memorializes questions to ask nine eyewitnesses who saw a missile strike the aircraft. Plaintiff contests redactions 3 through 20, eyewitness identifications. The interest advanced by disclosure, shedding light on the agency's performance, warrants this minimal invasion of privacy. The CIA never interviewed a single eyewitness. These witnesses are unlike witnesses in criminal cases, who, more often than not, object to disclosure of their identities. For almost ten years, eyewitnesses have spoken at public events, on talk radio, at press conferences, and in documentaries. Eight witnesses placed a full-page ad in the <i>Washington Times</i> , <i>We saw missiles Destroy Flight 800 and We Won't be Silenced any Longer</i> ."		Record at Bates pages 106. MORI Doc. ID No. 1176343. 6/20/05 Vaughn Document Disposition Index page 43. Document No.: 1147318. Produced 8/16/05 on page 24.
4A	Date: N/A Pages: Redactions:	Unidentified – CIA							Yes		The attached "informal note" (Bates 117) provides a problem statement and requests Boeing technical data. That requested Boeing data is not identified in the CIA's Vaughn index.		See Bates 117 for record referencing unidentified responsive record.

FOIA Request List

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5A	Date: N/A Pages: Redactions:	Unidentified – CIA							Yes		The basis for the March 1997 conclusion that the crippled and nose-less aircraft carcass ascended 2,800 feet (attached) remains unidentified. This underlying basis of the pre-decisional zoom-climb theory is the subject of record numbers 5A, 6A, 7A, 11A, 14A, and 21A.	Yes	See Bates 127 for record referencing unidentified responsive record.
6A	Date: N/A Pages: Redactions:	Unidentified – CIA							Yes		"TWA FL 800 data/animation notes" (attached) refers to four pages of "Hard" three-dimensional coordinate data points for TWA 800, and shows the crippled and nose-less TWA carcass rising 2,380 feet in 10.7 seconds. The records of the foundation for these data points is not provided or identified. The underlying basis of the pre-decisional zoom-climb theory is also the subject of record numbers 5A, 7A, and 11A. (See also Bates 129-130 -- Record disposition Report.) This underlying basis of the pre-decisional zoom-climb theory is the subject of record numbers 5A, 6A, 7A, 11A, 14A, and 21A.	Yes	See Bates 131-134 for record referencing unidentified responsive record.
7	Date: 3/??/97 Pages: 26 Redactions: 1	TWA Technical Analysis Briefing for CIA – CIA	Yes [FBI] 1	Yes [FBI] 1							The cover-page and trajectory page of this CIA PowerPoint presentation, a "Technical Briefing," is attached. The trajectory page designates an altitude apex of 16,800 feet (302-contradicted, unsupported, impossible). The FBI SAI Kallstrom's name appears, but the name of the other high-level Justice Department official who also engaged in misconduct is redacted.		Record at Bates pages 137-138. MORI Doc. ID No. 1176350. 6/20/05 Vaughn Document Disposition Index page 49. Document No.: 1147342. Produced 8/16/05

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7A	Date: N/A Pages: Redactions:	Unidentified – CIA							Yes		Record 7's pre-March 1997 trajectory page designates an unsupported and aerodynamically impossible altitude apex of 16,800 feet. The foundation records for the depicted zoom-climb remain unidentified. This underlying basis of the pre-decisional zoom-climb theory is the subject of record numbers 5A, 6A, 7A, 11A, 14A, and 21A.	Yes	See Bates 138 for record referencing unidentified responsive record.
9	Date: 4/15/97 Pages: 1 Redactions: 6	TWA FL 800: Revision of Time and Lat/Long for First Explosion – CIA	No	No			Yes 1, 5				An internal CIA memo, widely distributed within the agency, reporting that the FBI believes that a 3.817 second error existed with the CIA's first explosion time, thereby contradicting the CIA's scenario. The CIA author writes rambling and unclear responses, aimed at preserving the broadcast of the CIA zoom-climb video-animation, writing "it would strengthen our case a little that the eyewitnesses saw only the crippled aircraft, and not a missile." Plaintiff contests the redaction of the identity of the author, as this memo is highly probative of the author's conscious commitment to a common scheme designed to achieve an unlawful objective -- government impropriety.		Record at Bates page 159. MORI Doc. ID No. 1215015. 6/20/05 Vaughn Document Disposition Index page 68. Document No.:1215015. Produced 8/16/05 on page 270.

FOIA Request List

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10	Date: 4/16/97 Pages: 1 Redactions: 8	Location of Eyewitnesses — CIA	Yes 3-8	Yes 3-8			No				An internal CIA memo, widely distributed, discussing, belatedly, eyewitness testimony discrepancies which contradict the CIA scenario. (The author's responses to these eyewitness accounts try to reconcile the accounts with the CIA zoom-climb theory. Like many other produced records, this document too reflects agency impropriety.) Plaintiff contests redactions 6 through 8, as disclosure would enable the public to ask these eyewitnesses whether they are amenable to being interviewed, and would shed light on the agency's performance.		Record at Bates page 162. MORI Doc. ID No. 1215016. 6/20/05 Vaughn Document Disposition Index page 64. Document No.: 1215016. Produced 8/16/05 on page 259.
11A	Date: N/A Pages: Redactions:	Unidentified — CIA							Yes		The attached April 21, 1997 document refers to "modeling work," also known as a simulation. The author recommends using the "modeling work" for the "final animation renderings" in five weeks, "Friday, 30 May 1997." Plaintiff seeks the "modeling work," -- the underlying basis of the pre-decisional zoom-climb theory, unidentified in the CIA's Vaughn index. This underlying basis of the pre-decisional zoom-climb theory is the subject of record numbers 5A, 6A, 7A, 11A, 14A, and 21A.	Yes	See Bates page 165 for record referencing unidentified responsive record.

FOIA Request List

Rec No.	Date, Pages, Redactions	Record title, — agency	Privacy (b)(6)	Privacy (b)(7)(C)	Trade secret (b)(4)	Delib priv (b)(5)	Other laws (b)(3)	Failure segregate	Inadeq uate search	Seeks <i>in camera</i>	Comments	E-record	Cross References
12	Date: 4/29/97 Pages: 6 Redactions: 28	Summary: FBI's [name redacted] Critique of TWA 800 Analysis — CIA	Yes 6-9, 11-18, 21-22	Yes 6-9, 11-18, 21-22	Yes 20		No				This CIA memo is an alleged defense to an FBI agent's fifteen problems with the CIA's zoom-climb theory. (Much of this CIA analysis is weak or non-existent.) The redactions of witness numbers involve no privacy concerns, initials and names are should be disclosed under the balancing test. Redaction 20 is neither a trade secret, nor adequately segregated.		Record at Bates pages 171-176. MORI Doc. ID No. 1255554. Document No.: 1255554. 4/3/06 Vaughn Document Disposition Index page 53. Produced 4/3/06 Vaughn index pages 4/3/06 on pages 26-33.
13	Date: 5/12/97 Pages: 1 Redactions: 9	Description of TWA 800 for Video — CIA			Yes 4		No				One page internal CIA memo with "requested info" regarding the aircraft's trajectory after the initiating event. The author writes of a number of facts that are irreconcilable with the CIA zoom-climb theory, including that Boeing believes the change in climb angle "takes about 10 seconds" and that "the aircraft may possibly have gone all the way over." Plaintiff contests the claimed trade secret: "pitch angle > [redacted] degrees." The record states that Boeing said that "the maximum pitch is about 40 degrees," but the author's estimated pitch angle of the aircraft is redacted.		Record at Bates pages 179. MORI Doc. ID No. 1215017. 6/20/05 Vaughn Document Disposition Index page 69. Document No.: 1215017. Produced 8/16/05 on pages 22-22.

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Rec No.	Date, Pages, Redactions	Record title, – agency	Privacy (b)(6)	Privacy (b)(7)(C)	Trade secret (b)(4)	Delib priv (b)(5)	Other laws (b)(3)	Failure segregate	Inadeq uate search	Seeks in camera	Comments	E-record	Cross References
14	Date: 5/16/97 Pages: 9 (of 15) Redactions: 3	TWA 800 Flight Simulation – CIA			Yes 1-3						Three full pages are redacted. This record is of Flight 800 Simulation Data, including computerized graphs of the flight parameters. Plaintiff challenges the asserted trade secret redactions, as there is no substantial likelihood that release of this data would cause Boeing substantial competitive harm.		Record at Bates pages 182-190. MORI Doc. ID No. 1215200. 6/20/05 Vaughn Document Disposition Index page 60. Document No.: N161215200. Produced 8/16/05 on pages 218 to 226.
14A	Date: N/A Pages: Redactions:	Unidentified – CIA							Yes		The second page of Record 14 reflects that the a computer program shows zoom-climb to 16,200 feet. The foundation, or inputs, to the software program yielding a zoom-climb to 16,200 feet is not identified in the CIA's Vaughn index. This underlying basis of the pre-decisional zoom-climb theory is the subject of record numbers 5A, 6A, 7A, 11A, 14A, and 21A.	Yes	See Bates page 194 for record referencing unidentified responsive record.

FOIA Request List

Rec No.	Date, Pages, Redactions	Record title, – agency	Privacy (b)(6)	Privacy (b)(7)(C)	Trade secret (b)(4)	Delib priv (b)(5)	Other laws (b)(3)	Failure segregate	Inadequate search	Seeks in camera	Comments	E-record	Cross References
18	Date: 10/27/97 Pages: 2 Redactions: 18	New Radar Plots Impact on TWA 800 Analysis – CIA	Yes	Yes			No				A 2-page CIA memo wherein the author has reviewed "new radar plots" which changed the location of the initial explosion. The CIA zoom-climb video-animation had already been completed, and was released three weeks later. The memo addresses new FBI concerns regarding the CIA analysis of correlation of radar, witnesses, and infrared (IR) satellite data. The nose is now said to have separated at 0831:16 – a full 8 seconds later than when the CIA video-animation was produced. Plaintiff challenges eyewitness identity redactions 4-12 & 17, as release will open the inner workings of government to public scrutiny. (This record, written over fifteen months after the disaster, is typical of the CIA's belated analysis of the basic facts of disaster. This conduct went on for years.)		Record at Bates pages 226-227. MORI Doc. ID No. 1176352. 6/20/05 Vaughn Document Disposition Index page 51. Document No.: 1147324. Produced 8/16/05 on pages 159-160.
18A	Date: N/A Pages: Redactions:	Unidentified – CIA							Yes		The subject of Record 18 are the "new" radar plots. This radar data is not produced or identified in the CIA Vaughn index.	Yes	See Bates page 230-231 for record referencing unidentified responsive record.

FOIA Request List

Rec No.	Date, Pages, Redactions	Record title, — agency	Privacy (b)(6)	Privacy (b)(7)(C)	Trade secret (b)(4)	Delib priv (b)(5)	Other laws (b)(3)	Failure segregate	Inadeq uate search	Seeks in camera	Comments	E-record	Cross References
20A 20B 20C 20D 20E	Date: N/A Pages: Redactions:	Unidentified — CIA							Yes		The attached November 14, 1997 memo (three days before the national broadcast of the CIA video-animation) enclosed five computer disks, the CIA's "Final Reports to the FBI." The CIA was tasked with answering the question "What did the eyewitnesses see?" to the FBI. The FBI then "withdrew" from the probe, on the day that the the government broadcast the zoo-climb video-animation. These records contain the CIA's answer to the title of the animation, "What did the eyewitnesses see?" They are responsive, absent from the CIA's Vaughn index, and show government impropriety.	Yes	See Bates page 240 for record referencing unidentified responsive record.
21A	Date: N/A Pages: Redactions:	Unidentified — CIA							Yes		The attached November 18, 1997 CIA record includes the language, "Analysts then created a template of what happened to Flight 800 from when it exploded to the time major pieces... hit the water." The referenced pre-decisional template refers to a computer program, is responsive to the request for zoom-climb records, and not in the CIA's Vaughn index. This underlying basis of the pre-decisional zoom-climb theory is the subject of record numbers 5A, 6A, 7A, 11A, 14A, and 21A.	Yes	See Bates page 255 for record referencing unidentified responsive record.

FOIA Request List

Rec No.	Date, Pages, Redactions	Record title, — agency	Privacy (b)(6)	Privacy (b)(7)(C)	Trade secret (b)(4)	Delib priv (b)(5)	Other laws (b)(3)	Failure segregate	Inadeq uate search	Seeks in camera	Comments	E-record	Cross References
23	Date: 10/04/97 Pages: 1 Redactions: 1	Multiple analyst notes (handwritten) including mathematical calculations and reflecting daily work and consultations with other analysts, regarding aerodynamics. Information withheld: analyst give and take,, i.e. deliberative process, CIA organizational data, and third party name(eyewitness). — CIA					Yes			Yes	This 4th page of a 6 page CIA document is totally blank except for its heading, "TWA 800 Analysis and the Science of Aerodynamics." This CIA zoom-climb aerodynamic record is responsive, and there is no (b)(3) intelligence source or method involved.		Record at Bates page 264. MORI Doc. ID No. 1176344. 6/20/05 Vaughn Document Disposition Index page 44, Document No.: 1147334. Produced 8/16/05 on page 27.
24A	Date: N/A Pages: Redactions:	Unidentified — CIA							Yes		This single December 12, 1997 (post-decisional) CIA page lists at least 74 output computer formatted files on 27 floppy discs. These "output files" are the work-product of many hours of (trial and error) CIA radar tracking, are key evidence in supporting or discounting the CIA zoom-climb conclusion, and must be identified by the CIA in its Vaughn index.	Yes	See Bates page 267 for record referencing unidentified responsive record. Not previously filed in the record in this case.

FOIA Request List

Rec No.	Date, Pages, Redactions	Record title, – agency	Privacy (b)(6)	Privacy (b)(7)(C)	Trade secret (b)(4)	Delib priv (b)(5)	Other laws (b)(3)	Failure segregate	Inadeq uate search	Seeks in camera	Comments	E-record	Cross References
27	Date: 3/3/98 Pages: 18 Redactions: DENIED IN FULL	Dynamic Flight Simulation – CIA			Yes	Yes		Yes			The CIA title "Dynamic Flight Simulation," an electronic record, is incompatible with its description of its being a (18 page) document. The CIA needs to revise its description. The record's title demonstrates its responsiveness. The denial in full of these 18 post-decisional pages is likely due to the CIA's aerodynamic trajectory modeling showing its knowing reliance on flawed data input or incorrect formulae or both. The claim that the aerodynamic parameters of a nose-less Boeing 747 is trade secret is false because there is no likelihood of substantial competitive harm. (Also, the aircraft's' aerodynamic properties are well-established, Boeing has freely publicized similar 747 aerodynamic data in NTSB Docket 22 C page 4, Boeing's press release belies the CIA's trade secret argument, and in any event Boeing data would be segregable from the non-exempt portions of the record.)		DENIED IN FULL. MORI Doc. ID No. N/A. 6/20/05 Vaughn Document Disposition Index page 57. Document No.: 1215195.
28	Date: 3/17/98 Pages: 17 Redactions: DENIED IN FULL	Analysis of Radar Tracking of the TWA 800 Disaster on July 17, 1996 – CIA	Yes	Yes	Yes	Yes		Yes			Claiming that standard FAA radar tracking analysis is "Technical data constituting trade secrets and/or confidential commercial information" is insupportable. FAA radar data is in the public domain, "frozen in time," and the record is post-decisional. These 17 pages are segregable from any exempt content and are responsive. Any names of high-level FBI employees are subject to disclosure under the balancing test.		DENIED IN FULL. MORI Doc. ID No. N/A. 6/20/05 Vaughn Document Disposition Index page 56, Document No.: 121519

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29	Date: 3/17/98 Pages: 22 Redactions: DENIED IN FULL	Various Charts Reflecting Analysis of Radar Tracking TWA 800 – CIA			Yes	Yes	No	Yes			Claiming that standard FAA radar tracking is “technical data constituting trade secrets and/or confidential commercial information” is insupportable and likely an attempt to hide a knowingly flawed radar analysis. These 22 pages are responsive, and segregable		DENIED IN FULL. MORI Doc. ID No. N/A. 6/20/05 Vaughn Document Disposition Index page 58. Document No.: 1215196.
32	Date: 3/27/98 Pages: 28 Redactions: 2	Run set-up for TWA 800 Analysis – CIA			Yes		No				This record is a software program print-out. The input parameter modules and the program's aerodynamic equations are major goals of this FOIA. The 28 CIA pages are computer-dated 3/15/04, not the CIA Vaughn index date of March 3, 1998. Plaintiff contests the redaction of Boeing data. <u>See</u> 3rd Lahr Aff.		Record at Bates pages 290-317. MORI Doc. ID No. 1215202. 6/20/05 Vaughn Document Disposition Index page 62, Document No.: 1215202. Produced 8/16/05 on pages 231-258.
32A	Date: Unknown Pages: Redactions:	Unidentified – CIA						Yes			This software program, the input parameter modules, and the program's aerodynamic equations and the output graphs associated with Record 32 is important. The CIA must include this record in its Vaughn index. <u>See</u> 3rd Lahr Aff.	Yes	See Bates page 320 for record referencing unidentified responsive record.

FOIA Request List

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35A	Date: N/A Pages: Redactions:	Unidentified – CIA							Yes		This undated four-pages contradicts the zoom-climb theory. This record is selected pages from a larger report, as evidenced by the context from one page to another, as well as the inclusion of Figures 1 and 8 but the exclusion of Figures 2 through 7. The CIA must identify all withholdings in its Vaughn index.		See Bates page 337-340 for record referencing unidentified responsive record. Not in the record.
36A	Date: N/A Pages: Redactions:	Unidentified – CIA							Yes		The attached record demonstrates the use of a computer software program to analyze eyewitness reports. The October 15, 1981, printout of this program, "Rotate MLM," is attached. The use of such a program was necessary to correlate radar with witness's sightings. It is responsive, but is not identified in the CIA's Vaughn index.	Yes	See Bates page 347-348 for record referencing unidentified responsive record.
41	Date: Undated Pages: 9 Redactions: 107	Timeline of Eyewitness Observations – CIA	Yes 1-9	Yes 1-9							Bar charts of data illustrating the timeline of eyewitness visual and audio accounts. It appears that witnesses' initials are redacted. The last two pages are handwritten notes of "underlying data," with two more redactions, also of eyewitnesses. (The CIA has seemingly assigned identification numbers from 1 to 105 in this document, but, in other documents, the CIA has acknowledged receiving from the FBI at least 233 FBI 302 eyewitness interview reports.) Plaintiff challenges all the redactions of the identification of eyewitness as the balancing test favors disclosure to shed light on the agency's performance.		Record at Bates pages 363-371. MORI Doc. ID No. 1215014. 6/20/05 Vaughn Document Disposition Index page 67, Document No.: 1215014. Produced 8/16/05 on pages 261-269.

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42	Date: 11/14/97 Pages: 7 Redactions: 23.	Final Report to FBI (from CIA) — CIA	Yes 1-23	Yes 1-23							This record's headings, <i>Eyewitnesses With Extensive Past or Possible Future Media Coverage</i> , and TWA Flight 800: <i>Eyewitnesses Whose Descriptions Conflict With CIA's Analysis</i> , underscores the importance to the CIA of discounting eyewitnesses accounts. Plaintiff challenges all the redactions of the identification of eyewitness, as the application of the FOIA's balancing test favors disclosure.		Record at Bates pages 374-380. MORI Doc. ID No. 1215018. 6/20/05 Vaughn Document Disposition Index page 70. Document No.: 1215018. Produced 8/16/05 on pages 373-380.
43	Date: Undated Pages: 5 Redactions: DENIED IN FULL	Response to Allegations of SA (FBI) regarding CIA analysis — CIA	Yes	Yes		Yes	No	Yes		Yes	Plaintiff challenges the CIA's privacy claims and the deliberative process privilege. The record is undated and cannot be claimed to be pre-decisional. The five pages are responsive and likely further confirm government bad faith in the underlying activities which generated the records at issue. The CIA also failed to segregate. Plaintiff seeks in camera review.		DENIED IN FULL. MORI Doc. ID No. N/A. 6/20/05 Vaughn Document Disposition Index page 65. Document No.: 1215024.
44	Date: Undated Pages: 3 Redactions: DENIED IN FULL	Analyst Note — CIA				Yes		Yes			This note "lists various information as originating with the NTSB." (The NTSB declared that it did not provide the CIA any information.) Because the burden to show the applicability of the exemptions is on the government, where responsive records are both pre and post-decisional, undated records are presumed to be post-decisional -- not deliberative. Plaintiff also challenges defendant's failure to segregate this "denied in full" record.		Record at Bates pages 226-227. MORI Doc. ID No. 1176352. 6/20/05 Vaughn Document Disposition Index page 51. Document No.: 1147324. Produced 8/16/05 on pages 159-160.

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45	Date: Undated Pages: 6 (of 15) Redactions: 18	Trajectory simulation program input and clarification of process/ decisions. — CIA		No	Yes 4-6		No				Plaintiff challenges the CIA's (b)(4) redactions of Boeing-supplied information (not Boeing names), as disclosure of the aerodynamic properties at issue would have not have a likelihood of substantial competitive injury.		Record at Bates pages 387-392. MORI Doc. ID No. 1215200. 6/20/05 Vaughn Document Disposition Index page 60. Document No.: 1215200. Produced 8/16/05 on pages 212-217.
46	Date: Undated Pages: 1 Redactions: DENIED IN FULL	Preliminary # 1 — CIA			Yes						The CIA's description is "Multiple graphs conveying technical data. Information withheld: trade secrets or confidential commercial and/or proprietary information." The CIA failed its burden of proof that disclosure would likely cause substantial competitive injury.		DENIED IN FULL. MORI Doc. ID No. N/A. 6/20/05 Vaughn Document Disposition Index page 63. Document No.: 1215209.

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Rec No.	Date, Pages, Redactions	Record title, – agency	Privacy (b)(6)	Privacy (b)(7)(C)	Trade secret (b)(4)	Delib priv (b)(5)	Other laws (b)(3)	Failure segregate	Inadeq uate search	Seeks in camera	Comments	E-record	Cross References
48	Date: Undated Pages: 3 Redactions: 6	Response to DIA Concerns on TWA-800 Findings – CIA	Yes 1-6	Yes 1-6							This memo demonstrates that the CIA analyst's zoom-climb conclusions are knowingly false, relating that, before the first explosion, eyewitnesses clearly saw an object moving from "Left to Right [or] East to West..." This is the opposite of the CIA animation that "the witnesses [saw] only Flight 800 in crippled flight" traveling from West to East. Plaintiff challenges all the redactions of the identification of eyewitness under the balancing test.		Record at Bates pages 403-405. MORI Doc. ID No. 1255552. 4/3/06 Vaughn Document Disposition Index page 51. Document No.: 1255552. Produced 4/3/06 on pages 22-24.
50	Date: Undated Pages: 48 Redactions: 233	Eye Witness Names/Data – CIA	Yes 1-40	Yes 1-40							This record states the locations of 230 eyewitnesses. The CIA claims to have used this record in its "sound propagation analysis." Plaintiff challenges all the redactions of the identification of eyewitness, as disclosure would shed light on the agency's performance.		Record at Bates pages 416-463. MORI Doc. ID No. 1175603. 6/20/05 Vaughn Document Disposition Index page 55. Document No.: 1080903. Produced 8/16/05 on pages 164-211.

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52	Date: Undated Pages: 13 Redactions: 26	Eye witness accounts/ reports – CIA	Yes	Yes				Yes			CIA version of eyewitness accounts, along with CIA-drawn conclusion for approximately 15 witnesses. This record reveals the CIA's misstatements of eyewitness accounts and unsustainable conclusions. These eyewitnesses' privacy interest, balanced against the public scrutiny that would result from disclosure favors release. And the government did not segregate page 513, which is entirely redacted.		Record at Bates pages 509-521. MORI Doc. ID No. 1232320. 6/20/05 Vaughn Document Disposition Index page 17 (2nd Buroker Decl.). Produced 8/16/05 on pages 284, 290, 307, 322, unknown page, 332, 333, 338, 339, 361, unknown page, 371, 389.
54	Date: Undated Pages: Redactions: DENIED IN FULL	Simulation – NSA					Yes				See record 32A, which is apparently the same simulation. Record 32 is a (redacted) printout of this NSA record, which was run in 1998 and in 2004. The NSA must provide the same information in its Vaughn index as any other agency, including the dates that it generated the record. And, as discussed in record 32A and 3rd Lahr Aff., the NSA could segregate the record that plaintiff seeks even if the Court holds that the program itself is exempt. Moreover, the NSA analyzes intercontinental ballistic missiles, not aircraft trajectories, and the apparently inappropriate use of the NSA program appears to be an attempt to circumvent open government laws to hide government malfeasance. Plaintiff also contests the withholding of this record under exemption 2.	Yes	DENIED IN FULL. See Bates pages 524-527 for agency administrative record. 3/4/06 Vaughn index, Giles Decl. p. 4, 6, 7 ¶¶ 3, 10, 11. Attached: 12/7/05 NSA FOIA denial at Bates 524-525. Attached Plaintiff's 11/16/05 NSA FOIA Administrative Appeal at Bates 526-527.

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56	Date: 3/25/97 Pages: 4 Redactions: DENIED IN FULL	NTSB Record 6. Graph and Chart Depicting the Lift Coefficient of Boeing Model 747 aircraft; Graph and Chart depicting Pitching Moment Coefficient of Boeing Model 747 aircraft. – NTSB	No		Yes				Yes		The withheld record is responsive. Plaintiff contests the (b)(4) "trade secret" redaction due to the absence of a likelihood of substantial competitive injury. (The redactions of the identities of Boeing employees are uncontested.) (NTSB Record 2, the 3/25/97 Rapidfax Lead Sheet from Boeing, appears to be lead sheet for this information.)		Discussed on pages 338-346, docket # 23. See Bates page 530 for record referencing unidentified responsive record: Corresponding fax cover-sheet, NTSB Record 2, 3/25/97 Rapidfax Lead Sheet, Boeing Commercial Group Air Safety Investigation. 5/19/04 Vaughn index page 316, discussed 310-315 (redactions in NTSB Record 2 uncontested).
57A	Date: Unknown Pages: 1 Redactions:	Unidentified – NTSB							Yes		The unidentified record is the enclosure to the attached Boeing fax cover sheet: the enclosed "aerodynamic characteristics." This record is responsive but unidentified in the NTSB's Vaughn index.		See Bates page 533 for record referencing unidentified responsive record: NTSB Record 3, 3/31/97 Fax Cover Sheet, Boeing Commercial Airplane Group Air Safety Investigation. 5/19/04 Vaughn index page 322, discussed 316-321 (redactions in NTSB Record 3 uncontested).

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59	Date: 10/27/97 Pages: 5 Redactions: DENIED IN FULL	NTSB Record 8. 3 Graphs and 2 Charts Depicting the Lift Coefficient, Pitching Moment Coefficient, and the Drag Coefficient of Boeing Model 747 aircraft. – NTSB	No		Yes			Yes			Plaintiff contests the (b)(4) "trade secret" claim for this entirely withheld record, as well as the NTSB's failure to segregate this record. (Plaintiff does not contest the redaction of the identities of Boeing employees.)		DENIED IN FULL. See Bates page 536 for record referencing unidentified responsive record: NTSB Record 4, 4/4/97 Fax Cover Sheet, Boeing Commercial Airplane Group Air Safety Investigation. Discussed 5/19/04 Vaughn index pages 338-346 (redactions in NTSB Record 4 uncontested).
66	Date: 12/16/97 Pages: 2 Redactions: 10	NTSB Record 33. Charts of segments of radar data – NTSB				Yes 1-10					This appears to be radar data from the radars at Riverhead, Islip, and JFK. The radar data are records upon which the aircraft's trajectory was determined, and there is no legitimate reason for withholding this data. It consists of facts – radar recorded data, the release of which would not involve any deliberative process considerations.		Record at Bates pages 558-566. MORI Doc. ID No. 1147380. 4/3/06 Vaughn index pages 65-73, discussed 62-64.

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70	Date: Unknown Pages: Redactions: DENIED IN FULL	NTSB Record 15. Computer program written by NTSB staff to simulate the flight path of aircraft – NTSB			Yes	Yes		Yes			The NTSB claims that this is a "Computer program written by NTSB staff to simulate the flight path of aircraft." But it was written by a single staff member, Dennis Crider. In his 2004 declaration, Crider added that he conducted three simulations, that one was written over and irretrievable, and that the Boeing data could be segregated out of the two remaining simulations but that the "two source files with the redacted Boeing data are useless to any reconstruction of my simulation." Here we have the NTSB refuting all eyewitness testimony and irrefutable laws of physics based on one government official's secret computer program which uses secret data and formulae as its inputs. The simulation is not deliberative nor does it contain any Boeing trade secrets. And the source codes are segregable. Moreover, the balancing test strongly works in favor of disclosure.	Yes	DENIED IN FULL. See Bates pages 573-574. Attached: 5/19/04 Vaughn index pages 416-423, at Bates 575-582. Attached: 10/2/03 Crider Dec. (excepts at Docket 34, pages 477-479), at Bates 583-585. Attached: 5/19/04 Crider Dec. pages 6-12, at Bates 586-592.
74	Date: Undated Pages: 15 Redactions: DENIED IN FULL	NTSB Record 27. Table tracking the location in the ocean of debris from TWA flight 800 – NTSB				Yes					This record is simply a factual account of what was found, where it was found, and when it was found. It is a necessary component of any aircraft accident investigation. This data was used in the simulation program. It is exceptionally valuable information and it should be a part of the public record. The (b)(5) deliberative process is unavailable to purely factual matters.		DENIED IN FULL. Discussed 5/19/04 Vaughn index pages 483-485.

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75A	Date: Unknown Pages: Redactions:	Unidentified – NTSB								Yes	Plaintiff seeks the identification of additional simulations. "Text and graph titled Later Nose Separation Timing" (NTSB Record 31) describes part of the additional simulations that were done to further derive the flight path responses." Simulations are the most responsive records. The report demonstrates that these simulations were performed after the NTSB released its zoom-climb video-animation, at its first hearing, in December of 1997. The NTSB must include all information for all of its simulations in Vaughn index, including the dates that they were conducted.	Yes	See Bates pages 603-605 for record referencing unidentified responsive record.
76	Date: Undated Pages: 29 (5 attached) Redactions: 5	NTSB Record 34. Graphic representation of FAA radar data for TWA flight 800 – NTSB				Yes 1-5					Five pages of radar data are completely redacted. The NTSB claims deliberative process in Radar data, and asserts that the "data reflect the personal opinion of the writer rather than the policy of the agency." Radar data is data. It is not the personal opinion of its compiler. Attached are the five redacted pages of 29 pages of radar data. (It is highly likely that the redacted data contradicts the NTSB's zoom-climb hypothesis, which also works in favor of disclosure under the balancing test.)		Record at Bates pages 608-612 (five redacted pages of 29). MORI Doc. ID No. 1147382. 4/3/06 Vaughn index pages 75-103, discussed at 74.

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77	Date: Undated Pages: 10 Redactions: 9	NTSB Record 35. Graphic representations of NTSB TWA flight 800 Main Wreckage Simulation – NTSB				Yes					This record contains 10 pages, nine of which are completely redacted. Page five contains a plot of the Main Wreckage Simulation. The deliberative process privilege is not available to shield the disclosure of these representations of the simulation because the NTSB claims to have incorporated these conclusions into its report of its final disposition. (This one page that was not redacted contains enough information to determine that the NTSB has made false assumptions. The track shown is sharply curved, and the only way to generate the lateral forces necessary to curve the track is to have a functioning wing that is not stalled. When the nose of this aircraft departed, the aircraft pitched up into a stall, and the aft center-of-gravity meant that the aircraft could not recover from that stall. The aircraft could not have flown that curved track.)		Record at Bates pages 615-624. MORI Doc. ID No. 1147382. 4/3/06 Vaughn index pages 105-114, discussed 104.
78	Date: Undated Pages: 62 (not attached - at docket # 84 pages 118-179) Redactions: 46	NTSB Record 36. Charts of segments of radar data – NTSB				Yes 1-46					The NTSB claims that its Record 36, an undated 62-page record, are Charts of Segments of Radar Data. Close inspection reveals that a page numbered 141 to 162 (22 pages) is the very same redacted page, over and over again. The 46 redactions of radar data suggest that the NTSB is hiding something. Charts of segments of radar data are simply factual evidence, to which there is no deliberative process privilege. They reflect no opinions -- just facts. <u>See</u> Fifth Schulze Aff.		Record at Bates page 627 (one page of 62 -- repeated 22times). Record not attached: 62-page record at 4/3/06 Vaughn index pages 118-179, discussed 115-117.

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79	Date: N/A Pages: Redactions:	NTSB FOIA Requests 5 thru 68							Yes		These 64 requests seek the underlying formula and data used to create the 64 graphs and charts in the NTSB's primary written report, NTSB Exhibit 22C, MAIN WRECKAGE FLIGHT PATH STUDY, as well as its ADDENDUM I. Plaintiff contests the NTSB's assertion that a diligent search identified not a single piece of paper or electronic record upon which the 64 exhibits are based.		
80	Date: Unknown Pages: Redactions: DENIED IN FULL	BREAKUP program [NTSB Ex, 22A, p. 4.]							Yes		The NTSB recites that the BREAKUP program was used to "determine the trajectory of certain pieces of the aircraft;" denying that the program is responsive because Flight 800's debris falling from the sky is not part of its theory that the main wreckage climbed. But defendant's theory of wreckage climbing is inextricably intertwined with the falling wreckage, and, in any event, the BREAKUP simulation program is a specific FOIA request and thus the program is also responsive as having been specifically requested.	Yes	Discussed docket # 52, government's Filing of Joint Chart, at, inter alia, pages 817-818, wherein the NTSB denied production on the basis of its being non-responsive to the overarching request for records upon which the zoom-climb was based.

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81	Date: Unknown Pages: Redactions: DENIED IN FULL	BALLISTIC program [NTSB Ex, 22A, p. 4.] — NTSB							Yes		The NTSB recites that the BALLISTIC program was used to "determine the trajectory of certain pieces of the aircraft." The NTSB denies that the program is responsive. But the NTSB's theory that wreckage climbed is inextricably intertwined with falling wreckage. In any event, the BALLISTIC simulation program is a specific FOIA request and thus the program is responsive.	Yes	Discussed docket # 52, government's Filing of Joint Chart, at, inter alia, pages 819-820, wherein the NTSB denied production on the basis of its being non-responsive to the overarching request for records upon which the zoom-climb was based.