

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

THE NATIONAL SECURITY ARCHIVE,)
FUND, INC.)
)
Plaintiff,)
)
v.)
)
THE CENTRAL INTELLIGENCE)
AGENCY,)
)
Defendant.)
_____)

Case No. _____

DECLARATION OF MEREDITH FUCHS

I, MEREDITH FUCHS, do hereby depose and state,

1. I am counsel for Plaintiff The National Security Archive Fund, Inc. (“Archive” or “Plaintiff”).

2. Plaintiff, the National Security Archive Fund, Inc., is a not for profit corporation located at George Washington University, established to promote research and public education on U.S. governmental and national security decision-making and to promote and encourage openness in government and government accountability. The Archive collects and publishes declassified documents acquired through the Freedom of Information Act. In the course of its research on U.S. government policy and decision-making, Archive analysts file more than 1,000 FOIA requests annually and publish numerous document sets, briefing books and other publications for dissemination to the public. The Archive is the world’s largest nongovernmental library of declassified

documents, has published more than 500,000 pages of declassified records in various formats, and has become the leading non-profit user of the FOIA.

3. On September 16, 2004, the front page of the New York Times reported that:

[a] classified National Intelligence Estimate prepared for President Bush in late July [2004] spells out a dark assessment of prospects for Iraq, government officials said Wednesday. The estimate outlines three possibilities for Iraq through the end of 2005, with the worst case being developments that could lead to civil war, the officials said. The most favorable outcome described is an Iraq whose stability would remain tenuous in political, economic and security terms.”

“U.S. Intelligence Shows Pessimism on Iraq’s Future,” Douglas Jehl, The New York Times, September 16, 2004, at A1. Exh. A at 2. The disclosure of the 2004 Iraq NIE was widely reported by news media throughout the country.

4. The NIE was prepared by the National Intelligence Council, which reports to the Director of Central Intelligence. It was approved by the National Foreign Intelligence Board, which is the senior Intelligence Community advisory body to the Director of Central Intelligence on the substantive aspects of national intelligence. It was approved by then-Acting Director of Central Intelligence John E. McLaughlin. The existence of the NIE has been confirmed by Sean McCormack, a spokesman for the National Security Council, members of Congress who have seen the NIE, and the White House. *Id.*

5. On September 16, 2004, Plaintiff wrote to Defendant CIA and requested under the FOIA:

[T]he National Intelligence Estimate (NIE) prepared in [] 2004 on Iraq.
Exh. A at 1.

6. As noted in the FOIA request, the front page of the September 16, 2004, New York Times, a copy of which was attached to the FOIA request, described the 2004 Iraq NIE as:

the first formal intelligence estimate on the situation in Iraq since October 2002. Described as approximately 50 pages long, the document was prepared by the National Intelligence Council and was approved by the National Foreign Intelligence Board under John E. McLaughlin, the acting Director of Central Intelligence.

Id.

7. Plaintiff requested that the processing of its FOIA request be expedited pursuant to 5 U.S.C. § 552(a)(6)(E). The FOIA request asked for expedited processing because:

there exists a “compelling need” to review this document because the information is sought “by a person primarily engaged in disseminating information” and is “urgen[tly][needed] to inform the public concerning actual or alleged Federal Government activity.”

Id.

8. Plaintiff provided extensive evidence to support its assertion that there existed “an urgency to inform the public about an actual or alleged federal activity.” In support of expedited treatment and release, the FOIA request explained:

The front-page treatment of the existence of this document, the front-page treatment on a daily basis of its subject (conditions in Iraq and the future of Iraq), the intense public interest in Iraq as a matter of policy debate, the concerns of the families of the over 100,000 American servicemen and servicewomen in Iraq today – all demonstrate the compelling need for expedited review and release of this document.

Id.

9. The FOIA request further explained, in support of release:

In addition, this document is covered by President Bush’s executive order, issued on August 27, 2004, for “strengthening the sharing of terrorism information to protect Americans.” President Bush’s order requires that the intelligence community’s “records and reports related to terrorism

information to be produced with multiple versions at an unclassified level and at varying degrees of classification,” in “unclassified versions for distribution wherever possible,” and “to be shared free of originator controls,” among other provisions (posted at www.whitehouse.gov/news/releases/2004/08/20040827-4.html). Since this NIE contains extensive terrorism information about conditions in Iraq, threats to Americans, and future threats, the President’s order requires the CIA to undertake declassification review of the NIE and prepare an unclassified version of it.

Id.

10. Finally, in support of its argument for expedition and for its assertion that Plaintiff is “primarily engaged in disseminating information,” the FOIA request explained:

As CIA has long recognized, the National Security Archive qualifies for waiver of search and review fees as a representative of the news media. This request is made as part of a scholarly and news research project and not for commercial use.

Id.

11. Upon information and belief, on or about September 21, 2004, CIA National Intelligence Officer for the Near East and South Asia Paul R. Pillar delivered a CIA-approved speech concerning the situation in Iraq in his official capacity as a National Intelligence Officer for the CIA. Upon information and belief, his statements were based in part on the 2004 Iraq NIE which he authored. Mr. Pillar’s speech was reported in the news media, including a column by columnist Robert Novak that appeared in a number of major newspapers.

12. On September 23, eight members of the Senate Select Committee on Intelligence asked the CIA to provide a declassified version of the 2004 Iraq NIE. They explained:

[t]he assessment places the current turmoil in an historical context and projects the likeliest scenarios for the next eighteen months. This kind of information not only informs policymakers, but it also can play a critical role as the Congress grapples with the difficult issues surrounding America’s involvement in Iraq. To facilitate that role, we believe that the

substance of this assessment should be make public in some fashion as soon as possible.

September 23, 2004 Letter to John Mc Laughlin, Acting Director of Central Intelligence Exh. B at 6. The Senators further stated that “[a]ny public discussion of such an important intelligence assessment should be balanced, and informed to the greatest extent possible by the document itself,” and that “[a]n unclassified version of this assessment will significantly improve the quality of the debate.” *Id.*

13. By October 1, 2004 (two weeks after disclosure of the existence of the 2004 Iraq NIE), over 1300 media sources reported on the Iraq National Intelligence Estimate, according to a search on Google News.¹

14. By letter dated October 4, 2004, Plaintiff amended its FOIA request to inform Defendant of additional information in support of its FOIA request. With respect to arguments in favor of release, Plaintiff explained:

the substance of the NIE has been officially acknowledged and released into the public domain through official CIA channels, including the unclassified comments of CIA National Intelligence Officer for the Near East and South Asia Paul R. Pillar that were delivered on or about September 21, 2004 at a meeting on the West Coast. Mr. Pillar, a senior official in the Agency, presented an Agency- approved text concerning the situation in Iraq in his official capacity as a National Intelligence Officer for the CIA. His statements, which reveal the main themes in the NIE, are official disclosures of the substance of the NIE and thus support the release.

Exh. B at 1.

15. Plaintiff further noted that:

¹ Google News presents information culled from approximately 4,500 news sources worldwide. It is updated continuously and covers only articles that appeared within the thirty days prior to the search. *See* “About Google News” < http://news.google.com/intl/en_us/about_google_news.html> (last viewed October 18, 2004).

Moreover, the Agency has previously released portions, including the key findings, of the October 2002 CIA intelligence estimate about Iraq's weapons of mass destruction "NIE 2002-16HC, October 2002, Iraq's Continuing Programs for Weapons of Mass Destruction," and an unclassified summary of that document (which was released in October 2002). Similarly, here, the Agency should be able to quickly review and release the key findings, table of contents, and other segregable portions of the 2004 NIE on Iraq without any harm to sources or methods.

Id.

16. With respect to arguments in favor of expedited processing, Plaintiff provided extensive additional evidence to support its assertion that there existed "an urgency to inform the public about an actual or alleged federal activity":

I wish to draw the Agency's attention to the compelling urgency to inform the public concerning actual or alleged Federal Government activity that would be served by prompt release of the NIE. The strong public concern about the situation in Iraq and the likely outcome of the war in Iraq is evidenced in part by the overwhelming media interest in the document. A News Search on www.google.com for current news stories concerning the NIE collected more than 1,300 news articles (as of October 1, 2004). The decision of a government to prosecute a military campaign is clearly of the highest public interest, and the coverage generated about the NIE demonstrates that my FOIA request for the document meets the FOIA's and the CIA's standards for expedited processing.

This compelling need and public urgency is also evidenced by the request of several members of the Senate Intelligence Committee who have reviewed the NIE asking the CIA and President George W. Bush to disclose a copy of the NIE. They state that the analysis "can play a critical role as the Congress grapples with the difficult issues surrounding America's involvement in Iraq. To facilitate that role, ... the substance of [the NIE] should be made public in some fashion as soon as possible." September 23, 2004 Letter to Mr. John McLaughlin (attached).

Id.

17. In further support of its argument for expedited processing and to support its assertion that Plaintiff is "primarily engaged in disseminating information," Plaintiff again reminded that CIA that expedited processing is appropriate:

when the request is made by 'a person primarily engaged in disseminating information and the information is relevant to a subject of public urgency concerning an actual or alleged Federal government activity.' The National Security Archive, as an established member of the news media, is an organization that is primarily engaged in disseminating information to the public. As noted above, the information sought by this FOIA request is pertinent to an urgent public debate concerning the actions of the U.S. government in Iraq, the future conditions in Iraq, and U.S. government involvement in the region. It is difficult to imagine an issue of greater national concern than the state of affairs facing the United States in the current conflict in Iraq. This NIE is central to the public debate on the realities in Iraq and is an essential element in an informed public discourse on Iraq that will serve to hold U.S. officials accountable for their decisions. Such accountability and informed public debate are fundamental principles of the Freedom of Information Act.

Id.

18. In further support of its assertion that it is "primarily engaged in disseminating information" within the meaning of the FOIA and CIA regulations, Plaintiff addressed its news collection and dissemination activities:

The National Security Archive, as an established member of the news media, is an organization that is primarily engaged in disseminating information to the public.

Id.

19. By telephone communication on October 5, 2004, Defendant CIA informed Plaintiff that it had sent a letter dated September 26, 2004, that denied the request for expedited processing and would send a response to Plaintiff's supplemental information amending the request.

20. By letter received October 5, 2004, and dated September 26, 2004, Defendant CIA denied Plaintiff's request for expedited processing. Defendant explained:

With regard to your request for expedited processing, I must inform you that all requests are handled in the order received on a 'first-in, first-out' basis. Exceptions to this rule will be made only when a compelling need is established to the satisfaction of the Agency. ... Since your request

does not demonstrate a 'compelling need' ... we must decline your request to expedite processing.

Exh. C. Defendant CIA granted Plaintiff news media status and accepted the FOIA request for regular processing. Defendant CIA advised Plaintiff of its right to file an administrative appeal of the denial of expedited processing. *Id.*

21. By letter dated October 6, 2004, Defendant CIA confirmed its denial of the request for expedited processing. Exh. D. By telephone conversation on October 20, 2004, Defendant CIA informed Plaintiff that it had considered the matters in Plaintiff's October 4, 2004 amendment to the FOIA request, that the October 4, 2004 communication was interpreted as a continuation of the original September 16, 2004 FOIA request, and that the request for expedited processing was still denied.

22. Any further delay in the processing of Plaintiff's FOIA request will irreparably harm Plaintiff's ability (and that of the public) to obtain information vital to the current and ongoing debate surrounding U.S. activity in Iraq.

23. Unless Defendant CIA is ordered to process Plaintiff's FOIA request immediately, Plaintiff's right to expedition under the FOIA will be irretrievably lost, resulting in irreparable injury to Plaintiff.

24. Without the expedited access to information about the 2004 National Intelligence Estimate on Iraq to which it is legally entitled, Plaintiff's ability to inform the public about and to engage in an urgent and current public policy debate will be irretrievably lost.

Under penalty of perjury, I hereby affirm that the foregoing is true and correct to the best of my knowledge and belief.

DATE

MEREDITH FUCHS

Exhibit A

The National Security Archive

The George Washington University
Gelman Library, Suite 701
2130 H Street, N.W.
Washington, D.C. 20037

16 September 2004

Phone: 202/994-7000
Fax: 202/994-7005
nsarchiv@gwu.edu
www.nsarchive.org

Scott A. Koch
Information and Privacy Coordinator
Central Intelligence Agency
Washington D.C. 20505

FOIA Request
By fax: Request for expedited review
Archive #20041039CIA129

Dear Mr. Koch,

Pursuant to the Freedom of Information Act (FOIA), I hereby request a copy of **the National Intelligence Estimate (NIE) prepared in July 2004 on Iraq**. According to the front page of today's *New York Times* (copy attached), this NIE is the first formal intelligence estimate on the situation in Iraq since October 2002. Described as approximately 50 pages long, the document was prepared by the National Intelligence Council and was approved by the National Foreign Intelligence Board under John E. McLaughlin, the acting Director of Central Intelligence.

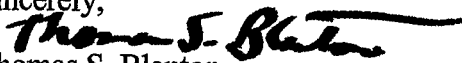
As the FOIA requires, please release all reasonably segregable non-exempt portions of this document. To permit me to make an informed decision whether or not to file an administrative appeal of any denied material, please describe any withheld material and explain the basis for your exemption claims.

Further, I request that you grant expedited processing. This request clearly meets the statutory criteria for expedition under the FOIA [5 USC 552 (a)(E)] since there exists a "compelling need" to review this document because the information is sought "by a person primarily engaged in disseminating information" and is "urgen[tly][needed] to inform the public concerning actual or alleged Federal Government activity." The front-page treatment of the existence of this document, the front-page treatment on a daily basis of its subject (conditions in Iraq and the future of Iraq), the intense public interest in Iraq as a matter of policy debate, the concerns of the families of the over 100,000 American servicemen and servicewomen in Iraq today – all demonstrate the compelling need for expedited review and release of this document.

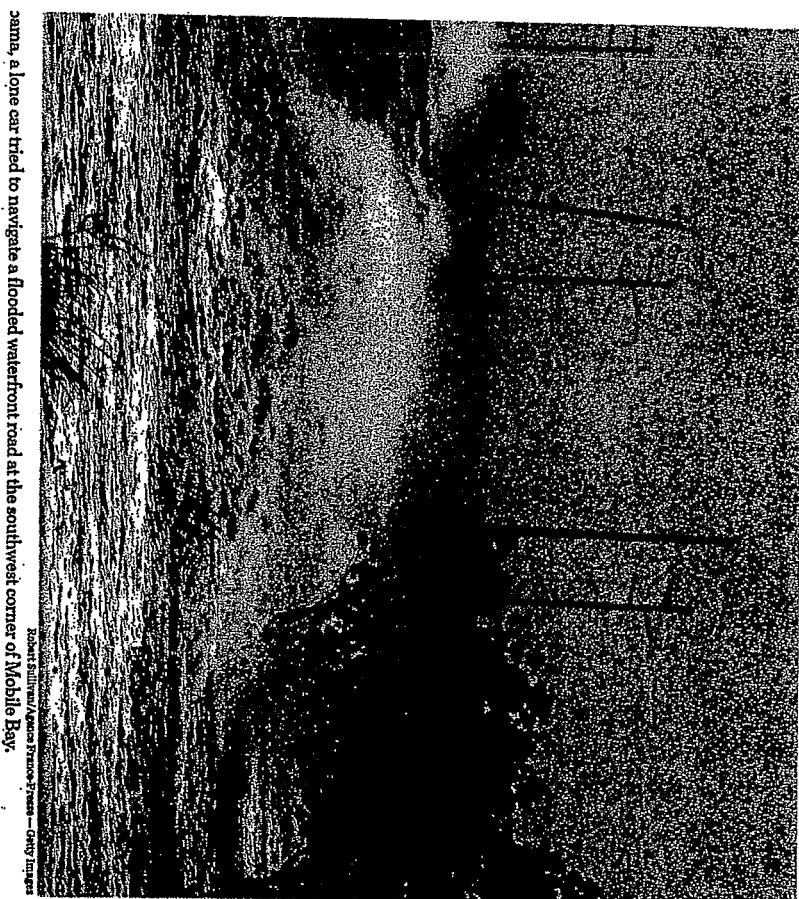
In addition, this document is covered by President Bush's executive order, issued on August 27, 2004, for "strengthening the sharing of terrorism information to protect Americans." President Bush's order requires that the intelligence community's "records and reports related to terrorism information to be produced with multiple versions at an unclassified level and at varying degrees of classification," in "unclassified versions for distribution wherever possible," and "to be shared free of originator controls," among other provisions (posted at www.whitehouse.gov/news/releases/2004/08/20040827-4.html). Since this NIE contains extensive terrorism information about conditions in Iraq, threats to Americans, and future threats, the President's order requires the CIA to undertake declassification review of the NIE and prepare an unclassified version of it.

As CIA has long recognized, the National Security Archive qualifies for waiver of search and review fees as a representative of the news media. This request is made as part of a scholarly and news research project and not for commercial use. I look forward to receiving your response within the ten-day statutory time limit for expedited review.

Sincerely,


Thomas S. Blanton
Executive Director

FROM THE NEW YORK TIMES
SEPT. 16, 2004



A lone car tried to navigate a flooded waterfront road at the southwest corner of Mobile Bay.

Ferocious Hurricane Punishes the Gulf Coast

By ANDREW C. REVKIN

MOBILE, Ala., Sept. 15 — Hurricane Ivan pummeled and paralyzed communities from New Orleans to Panama City, Fla., on Wednesday as it surged toward the broad bay here with a ferocity not seen along the Gulf Coast since Hurricane Camille struck to the west in 1969.

By evening giant waves, measured at 85 feet by automated buoys offshore, were running onto the barrier beaches and islands south of this city of 185,000.

"It's going to be extreme damage," said Max Mayfield, the director of the National Hurricane Center in Miami, saying all indications were that the center of the storm would arrive about 3 a.m. with peak winds of 135 miles an hour, putting the storm in Category 4 of the five-step Saffir-Simpson scale of hurricane damage potential.

For this storm in this region of bays and shallow bays, Mr. Mayfield said, the tidal surge, which is expected to be up to 16 feet above sea level at downtown Mobile, could be the most destructive force.

"I just pray people heeded the advice of local officials and got out," he said.

Louisiana, Mississippi, Alabama and Florida declared states of emergency. Curfews were ordered in several cities, including New Orleans.

Storm Is the Strongest to Hit the Region in 35 Years

Mobile said the city had had a long lucky streak, recalling how Hurricane Opal did a last-minute u-turn in 1995 that took it to the east.

But luck had run out, Mr. Dow said. "We're not going to dodge this one," he said. "I woke up this morning praying it had turned, but it was still there, like a bloodhound."

Blackouts spread along the coast during the night as power lines fell and transformers sparked and popped, endangering anyone who violated the curfews issued as the storm intensified.

Around 10 p.m. central time, persistent hurricane force winds began to strike the region. Torrential rains of inches or more were predicted as waiting bands of clouds spread inland.

In Mobile, police and fire patrols were dispatched to areas of damage around. Mayor Michael C. Dow of

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Louder Voice From Edwards Firm Reaction Wanted to Cheney's Attacks

By RANDAL C. ARCHIBOLD and ADAM WAGGONER

POWERS, Ohio, Sept. 15 — Don Innes had a question for Senator John Kerry when the senator called in to Mr. Innes's morning televised radio program on Wednesday.

"Where's Edwards?" Mr. Innes demanded, referring to Mr. Kerry's running mate, Senator John Edwards. "I wondered if he was still on the ticket. We haven't heard from him."

Mr. Kerry assured Mr. Innes — the broadcasting personality who long ago endorsed Mr. Kerry — that Mr. Edwards was campaigning hard. But Mr. Innes is not the only person who is asking that question these days.

At a time when Vice President Dick Cheney has been mocking and punning Mr. Kerry across the country, revealing in the traditional fighting role of a vice-presidential nominee, Mr. Edwards has adopted a decidedly less belligerent and lower-profile stance as he campaigns through communities like this small town in southeast Ohio. Only in the last few days, with criticism peeling and Democrats, has he become louder in talking on the administration.

Mr. Kerry's advisers said Mr. Edwards was doing what they wanted, making attacks on President Bush and Mr. Cheney with the soft and smiling campaigner style that became his hallmark during the Democratic primary battle — and which drew Mr. Kerry to him in the first place.

Mr. Edwards, in a brief interview in his bus by the side of the road near here on Wednesday, disputed the suggestion that he had kept a low profile or not energetically taken on Mr. Bush or Mr. Cheney.

"When George Bush or Dick Cheney have said something that is outrageous — and they've done that a number of times — I responded strongly and quickly," he said. "When they've led about John Kerry, I've responded strongly and quickly."

But with Mr. Kerry under such piercing assault from Mr. Bush and

WASHINGTON, Sept. 15 — A classified National Intelligence Estimate prepared for President Bush in late July spells out a dark assessment of prospects for Iraq, government officials said Wednesday.

The estimate outlines three possibilities for Iraq through the end of 2006, with the worst case being developments that could lead to civil war, the officials said. The most favorable outcome described is an Iraq whose stability would remain tenuous in political, economic and security terms.

"There's a significant amount of pessimism," said one government official who has read the document, which runs about 80 pages. The officials declined to discuss the key judgments — comes carefully with the statements of intelligence analysts' conclusions — included in the document.

The intelligence estimate, the first on Iraq since October 2002, was prepared by the National Intelligence Council and was approved by the National Foreign Intelligence Board under John E. McLaughlin, the acting director of central intelligence. Such estimates can be requested by the White House or Congress, but this one was initiated by the intelligence council under George J. Tenet, who stepped down as director of central intelligence on July 9, the government officials said.

As described by the officials, the pessimistic tone of the new estimate stands in contrast to recent statements by Bush administration officials, including comments on Wednesday by Scott McClellan, the White House spokesman, who asserted that Iraq was being made.

"You know, every step of the way in Iraq there have been pessimists and hand-wringers who said it can't be done," Mr. McClellan said at a news briefing. "And every step of the way, the Iraqi leadership and the Iraqi people have proven them wrong because they are determined to have a free and peaceful future."

President Bush, who was briefed on the new intelligence estimate, has not significantly changed the tenor of his public remarks on the war's course over the summer, consistently emphasizing progress while acknowledging the difficulties.

Mr. Bush's opponent, Senator John Kerry, criticized the administration's optimistic public position on Iraq on Wednesday and questioned whether it would be possible to hold

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INSIDE



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from Abu Ghraib since January,
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THE RECONSTRUCTION

U.S. Intelligence Shows Pessimism on Iraq

Continued From Page A1

elections there in January.

"I think it is very difficult to see today how you're going to distribute ballots in places like Falluja, and Ramadi and Najaf and other parts of the country, without having established the security," Mr. Kerry said in a call-in phone call to Don Imus, the radio talk show host. "I know that the people who are supposed to run that election believe that they need a longer period of time and greater security before they can even begin to do it, and they just can't do it at this point in time. So I'm not sure the president is being honest with the American people about that situation either at this point."

The situation in Iraq prompted harsh comments from Republicans and Democrats at a hearing into the shift of spending from reconstruction to security. Senator Richard G. Lugar of Indiana, chairman of the Foreign Relations Committee, called it "exasperating for anybody look at this from any vantage point," and Senator Chuck Hagel, Republican of Nebraska, said of the overall lack of spending: "It's beyond pitiful, it's beyond embarrassing. It is now in the zone of dangerous."

A spokesman for the Central Intelligence Agency declined to comment on any new intelligence estimate.

All the officials who described the assessment said they had read the document or had been briefed on its findings. The officials included both critics and supporters of the administration's policies in Iraq. But they insisted they not be identified by name, agency or branch of government because the document remained highly classified.

The new estimate revisits issues raised by the intelligence council in less formal assessments in January 2003, the officials said. Those documents remain classified, but one of them warned that the building of democracy in Iraq would be a long, difficult and turbulent prospect that could include internal conflict, a government official said.

The new estimate by the National

Intelligence Council was approved at a meeting in July by Mr. McLaughlin and the heads of the other intelligence agencies, the officials said.

Its pessimistic conclusions were reached even before the recent worsening of the security situation in Iraq, which has included a sharp increase in attacks on American troops and in deaths of Iraqi civilians as well as resistance fighters. Like the new National Intelligence Estimate, the assessments completed in January 2003 were prepared by the National Intelligence Council, which is led by Robert Hutchings and reports to the director of central intelligence. The council is charged with reflecting the consensus of the intelligence agencies. The January 2003 as-

sessments were not formal National Intelligence Estimates, however, which means they were probably not formally approved by the intelligence chiefs.

Recent attacks add to a gloomy earlier analysis.

The new estimate is the first on Iraq since the one completed in October 2002 on Iraq's illicit weapons program. A review by the Senate Intelligence Committee that was completed in July has found that document to have been deeply flawed.

The criticism over the document has left the C.I.A. and other agencies wary of being wrong again in judgments about Iraq.

Declassified versions of the October 2002 document included dissents from some intelligence agencies on some crucial questions, including the issue of whether Iraq was reconstituting its nuclear program. The government officials who described the new estimate on the prospects for Iraq would not say if it had included significant dissents.

On Wednesday night, Sean McCor-

mack, a spokesman for the National Security Council, confirmed the existence of the intelligence estimate, but he declined to discuss its contents in detail because they were classified. But he said the document "makes clear why it is so important to stand with the Iraqi people as they face these challenges."

Mr. McCormack said that in describing "different possible scenarios for Iraq's political and economic future over the course of 18 months," the document had made clear that "Iraq's future will be determined by a number of different factors, include the nation's economic progress, the effectiveness of Iraq's political structure, and security and stability."

He added: "In the past, including before the war to liberate Iraq, there were many different scenarios that were possible, including the outbreak of civil war. It hasn't happened. The Iraqi people continue to defy the predictions of pundits and others."

Separate from the new estimate, Republicans on the Senate Foreign Relations Committee issued other warnings on Wednesday about the American campaign in Iraq, saying the administration's request to divert more than \$3 billion to security from the \$18.4 billion aid package of last November was a sign of trouble.

"Although we recognize these funds must not be spent unwisely," the committee chairman, Mr. Lugar said, "the slow pace of reconstruction spending means that we are failing to fully take advantage of one of our most potent tools to influence the direction of Iraq."

Less than \$1 billion has been spent so far. The committee's ranking Democrat, Senator Joseph R. Biden Jr. of Delaware, one of the harshest critics of the Iraq policies, was far more outspoken. "The president has frequently described Iraq as, quote, 'the central front of the war on terror,'" Mr. Biden went on. "Well by that definition, success in Iraq is a key standard by which to measure the war on terror. And by that measure, I think the war on terror is in trouble."

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Ms. Rubaie
of 100 peo-

Exhibit B

The National Security Archive

The George Washington University
Gelman Library, Suite 701
2130 H Street, N.W.
Washington, D.C. 20037

Phone: 202/994-7000
Fax: 202/994-7005
nsarchive@gwu.edu
www.nsarchive.org

VIA FACSIMILE AND U.S. MAIL

October 4, 2004

Scott A. Koch
Information and Privacy Coordinator
Central Intelligence Agency
Washington, D.C. 20505

RE: FOIA Request No. 20041039CIA129

Dear Mr. Koch,

I am writing because ten business days have passed since I filed my September 16, 2004 request for expedited processing of a Freedom of Information Act (FOIA) request for the National Intelligence Estimate (NIE) concerning Iraq that is described in the New York Times front page of September 16, 2004 (attached). In that time, there have been developments that further support the need for expedited processing and release of the 2004 NIE on Iraq. This letter is submitted as an addendum to my letter dated September 16, 2004.

First, the substance of the NIE has been officially acknowledged and released into the public domain through official CIA channels, including the unclassified comments of CIA National Intelligence Officer for the Near East and South Asia Paul R. Pillar that were delivered on or about September 21, 2004 at a meeting on the West Coast. Mr. Pillar, a senior official in the Agency, presented an Agency-approved text concerning the situation in Iraq in his official capacity as a National Intelligence Officer for the CIA. His statements, which reveal the main themes in the NIE, are official disclosures of the substance of the NIE and thus support the release. Moreover, the Agency has previously released portions, including the key findings, of the October 2002 CIA intelligence estimate about Iraq's weapons of mass destruction "NIE 2002-16HC, October 2002, Iraq's Continuing Programs for Weapons of Mass Destruction," and an unclassified summary of that document (which was released in October 2002). Similarly, here, the Agency should be able to quickly review and release the key findings, table of contents, and other segregable portions of the 2004 NIE on Iraq without any harm to sources or methods.

In addition, as I articulated in my initial request, this document falls under President George W. Bush's August 27, 2004 Executive Order which required the intelligence community's "records and reports related to terrorism information be produced with multiple versions at an unclassified level and at varying degrees of classification," and in "unclassified versions for distribution wherever possible." Since this National Intelligence Estimate contains information regarding terrorist activities in Iraq, threats to American soldiers, civilians and future terrorist threats, the President's order requires the CIA to release an unclassified copy of this document.

An Independent non-governmental research institute and library located at the George Washington University, the Archive collects and publishes declassified documents obtained through the Freedom of Information Act. Publication royalties and tax deductible contributions through The National Security Archive Fund, Inc. underwrite the Archive's Budget.

Second, as to the request for expedited treatment, I wish to draw the Agency's attention to the compelling urgency to inform the public concerning actual or alleged Federal Government activity that would be served by prompt release of the NIE. The strong public concern about the situation in Iraq and the likely outcome of the war in Iraq is evidenced in part by the overwhelming media interest in the document. A News Search on www.google.com for current news stories concerning the NIE collected more than 1,300 news articles (as of October 1, 2004). The decision of a government to prosecute a military campaign is clearly of the highest public interest, and the coverage generated about the NIE demonstrates that my FOIA request for the document meets the FOIA's and the CIA's standards for expedited processing.

This compelling need and public urgency is also evidenced by the request of several members of the Senate Intelligence Committee who have reviewed the NIE asking the CIA and President George W. Bush to disclose a copy of the NIE. They state that the analysis "can play a critical role as the Congress grapples with the difficult issues surrounding America's involvement in Iraq. To facilitate that role, ... the substance of [the NIE] should be made public in some fashion as soon as possible." September 23, 2004 Letter to Mr. John McLaughlin (attached).

CIA regulations for granting expedited treatment to a FOIA request (32 CFR Sec. 1900.34) state that expedited processing should be granted "when the request is made by a person primarily engaged in disseminating information and the information is relevant to a subject of public urgency concerning an actual or alleged Federal government activity." The National Security Archive, as an established member of the news media, is an organization that is primarily engaged in disseminating information to the public. As noted above, the information sought by this FOIA request is pertinent to an urgent public debate concerning the actions of the U.S. government in Iraq, the future conditions in Iraq, and U.S. government involvement in the region. It is difficult to imagine an issue of greater national concern than the state of affairs facing the United States in the current conflict in Iraq. This NIE is central to the public debate on the realities in Iraq and is an essential element in an informed public discourse on Iraq that will serve to hold U.S. officials accountable for their decisions. Such accountability and informed public debate are fundamental principles of the Freedom of Information Act.

I certify that the statements in this addendum and my original September 16, 2004 FOIA request are true and correct to the best of my knowledge and belief.

If you have any questions or concerns you can reach me at (202) 994-7068 or at tblanton@gwu.edu

Sincerely,



Thomas S. Blanton
Executive Director

The National Security Archive

The George Washington University
Gelman Library, Suite 701
2130 H Street, N.W.
Washington, D.C. 20037

16 September 2004

Phone: 202/994-7000
Fax: 202/994-7005
nsarchiv@gwu.edu
www.nsarchive.org

Scott A. Koch
Information and Privacy Coordinator
Central Intelligence Agency
Washington D.C. 20505

FOIA Request
By fax: Request for expedited review
Archive #20041039CIA129

Dear Mr. Koch,

Pursuant to the Freedom of Information Act (FOIA), I hereby request a copy of the **National Intelligence Estimate (NIE) prepared in July 2004 on Iraq**. According to the front page of today's *New York Times* (copy attached), this NIE is the first formal intelligence estimate on the situation in Iraq since October 2002. Described as approximately 50 pages long, the document was prepared by the National Intelligence Council and was approved by the National Foreign Intelligence Board under John E. McLaughlin, the acting Director of Central Intelligence.

As the FOIA requires, please release all reasonably segregable non-exempt portions of this document. To permit me to make an informed decision whether or not to file an administrative appeal of any denied material, please describe any withheld material and explain the basis for your exemption claims.

Further, **I request that you grant expedited processing**. This request clearly meets the statutory criteria for expedition under the FOIA [5 USC 552 (a)(E)] since there exists a "compelling need" to review this document because the information is sought "by a person primarily engaged in disseminating information" and is "urgen[tly][needed] to inform the public concerning actual or alleged Federal Government activity." The front-page treatment of the existence of this document, the front-page treatment on a daily basis of its subject (conditions in Iraq and the future of Iraq), the intense public interest in Iraq as a matter of policy debate, the concerns of the families of the over 100,000 American servicemen and servicewomen in Iraq today – all demonstrate the compelling need for expedited review and release of this document.

In addition, this document is covered by President Bush's executive order, issued on August 27, 2004, for "strengthening the sharing of terrorism information to protect Americans." President Bush's order requires that the intelligence community's "records and reports related to terrorism information to be produced with multiple versions at an unclassified level and at varying degrees of classification," in "unclassified versions for distribution wherever possible," and "to be shared free of originator controls," among other provisions (posted at www.whitehouse.gov/news/releases/2004/08/20040827-4.html). Since this NIE contains extensive terrorism information about conditions in Iraq, threats to Americans, and future threats, the President's order requires the CIA to undertake declassification review of the NIE and prepare an unclassified version of it.

As CIA has long recognized, the National Security Archive qualifies for waiver of search and review fees as a representative of the news media. This request is made as part of a scholarly and news research project and not for commercial use. I look forward to receiving your response within the ten-day statutory time limit for expedited review.

Sincerely,



Thomas S. Blanton
Executive Director

FROM THE NEW YORK TIMES

SEPT. 16, 2004



Sept. 15, 2004. A lone car tried to navigate a flooded waterfront road at the southwest corner of Mobile Bay.

Ferocious Hurricane Punishes the Gulf Coast

BY ANDREW C. REVKIN
MOBILE, Ala., Sept. 15 — Hurricane Ivan pummeled and paralyzed communities from New Orleans to Panama City, Fla., on Wednesday as it surged toward the broad bay here with a ferocity not seen along the Gulf Coast since Hurricane Camille struck to the west in 1969.

By evening giant waves, measured at 83 feet by automated buoys off shore, were rumbling onto the barrier beaches and islands south of this city of 135,000.

"It's going to be extreme damage," said Mark Mayfield, the director of the National Hurricane Center in Miami, saying all indications were that the center of the storm would arrive about 3 a.m. with peak winds of 135 miles an hour, putting the storm in Category 4 of the five-step Saffir-Simpson scale of hurricane damage potential.

For this storm in this region of bays and shallow bays, Mr. Mayfield said, the tidal surge, which is expected to be up to 16 feet above sea level at dawn on Wednesday, could be the most destructive force.

"I just pray people heeded the advice of local officials and got out," he said.

Louisiana, Mississippi, Alabama and Florida declared states of emergency. Curfews were ordered in several cities, including New Orleans

Storm Is the Strongest to Hit the Region in 35 Years

Mobile said the city had had a long lucky streak, recalling how Hurricane Opal did a last-minute u-turn in 1995 that took it to the east.

But Jack had run out. Mr. Doug said, "I've got to get out of here. I'm praying it had turned, but it was still there, like a tidal wave."

Blackouts spread along the coast during the night as power lines fell and transformers sparked and popped, endangering anyone who violated the curfew issued as the storm intensified.

Around 10 p.m. central time, persistent hurricane-force winds began to rattle the region. Torrential rains of 14 inches or more were predicted as winds of miles inland.

In Mobile, police and fire patrols

overwhelming swarms of the hurricane demolished homes and businesses and killed two people, bringing the death toll to 70.

Several of the twisters came ashore as towering waterspouts, said Ruth Sasser, a spokeswoman for the Bay County Sheriff's Department. One person died in Panama City Beach and another in a rural area called Alabama.

At the Mobile County emergency operations center, summer night a water-overflowing drain pipe for miles around. Mayor Michael C. Dew of

Continued on Page A17

Louder Voice From Edwards

Firm Reaction Wanted to Cheney's Attacks

BY RANDAL C. ARCHBOLD and ADAM NACOURNEY
POMEROY, Ohio, Sept. 15 — Don Inmus had a question for Senator John Kerry when the senator called in to Mr. Inmus's morning televised radio program on Wednesday.

"Where's Edwards?" Mr. Inmus demanded, referring to Mr. Kerry's running mate, Senator John Edwards. "I wondered if he was still on the ticket. We haven't heard from him."

Mr. Kerry assured Mr. Inmus — the broadcasting personality who long ago endorsed Mr. Kerry — that Mr. Edwards was campaigning hard. But Mr. Inmus is not the only person who is asking that question these days.

At a time when Vice President Dick Cheney has been mocking and punning Mr. Kerry across the country, revealing in the traditional nominee, Mr. Edwards has adopted a decidedly less belligerent and lower-profile stance as he campaigns through communities like this small town in southeast Ohio. Only in the last few days, with criticism persisting among Democrats, has he become louder in talking on the campaign trail.

Mr. Kerry's advisers said Mr. Edwards was doing what they wanted, and Mr. Cheney with the soft and snubbing campaign style that became his hallmark during the Democratic primary battle — and which drew Mr. Kerry to him in the first place.

Mr. Edwards, in a brief interview in his bus by the side of the road near here on Wednesday, disputed the suggestion that he had kept a low profile or not energetically taken on Mr. Bush or Mr. Cheney.

"When George Bush or Dick Cheney have said something that is outrageous — and they've done that a number of times — I responded strongly and quickly," he said.

"When they've lied about John Kerry, I've responded strongly and quickly."

But with Mr. Kerry under such blistering assault from Mr. Bush and

Continued on Page A17

SHOWS PESSIMISM ON IRAQ'S FUTURE

AN ASSESSMENT FOR BUSH

Civil War Called Possible — Tone Differs From Public Statements

BY DOUGLAS JETH
WASHINGTON, Sept. 15 — A classified National Intelligence Estimate prepared for President Bush in late July spells out a dark assessment of prospects for Iraq, government officials said Wednesday.

The estimate outlines three possibilities for Iraq through the end of 2005, with the worst case being deployment of a civil war to civil war, the officials said. The most favorable outcome described is an Iraq whose stability would remain tenuous in political, economic and security terms.

"There's a significant amount of pessimism," said one government official who has read the document, which runs about 50 pages. The officials declined to discuss the key judgments — concise, generally written statements of intelligence analysts' conclusions — included in the document.

The intelligence estimate, the first on Iraq since October 2002, was prepared by the National Intelligence Council and was approved by the National Foreign Intelligence Board under John E. McLaughlin, the acting director of central intelligence. Such estimates can be requested by the White House or Congress, but this one was initiated by the intelligence council under George J. Tenet, who stepped down as director of central intelligence on July 9, the government officials said.

As described by the officials, the pessimistic tone of the new estimate stands in contrast to recent statements by Bush administration officials, including comments on Wednesday by Scott McClellan, the White House spokesman, who asserted that Iraq's progress was being made.

"You know, every step of the way in Iraq there have been pessimists and hand-wringers who've said it can't be done," Mr. McClellan said at a news briefing. "And every step of the way, the Iraqi leadership and the Iraqi people have proven them wrong because they are determined to have a free and peaceful future."

President Bush, who has hailed the new intelligence estimate, has not significantly changed the tenor of his public remarks on the war's course over the summer, consistently emphasizing progress while acknowledging the difficulties.

Mr. Bush's opponent, Senator John Kerry, criticized the administration's optimistic public position on Iraq on Wednesday and questioned whether it would be possible to hold

INSIDE



was the time required to process prisoners, which used to take 120 from Abu Ghraib since January, when American officials first dis- and-white printout to the prisoner and another copy to the relatives.

THE RECONSTRUCTION

U.S. Intelligence Shows Pessimism on Iraq

Continued From Page A1

elections there in January. "I think it is very difficult to see today how you're going to distribute ballots in places like Falluja, and Ramadi and Najaf and other parts of the country, without having established the security," Mr. Kerry said in a call-in phone call to Don Imus, the radio talk show host. "I know that the people who are supposed to run that election believe that they need a longer period of time and greater security before they can even begin to do it, and they just can't do it at this point in time. So I'm not sure the president is being honest with the American people about that situation either at this point."

The situation in Iraq prompted harsh comments from Republicans and Democrats at a hearing into the shift of spending from reconstruction to security. Senator Richard G. Lugar of Indiana, chairman of the Foreign Relations Committee, called it "exasperating for anybody look at this from any vantage point," and Senator Chuck Hagel, Republican of Nebraska, said of the overall lack of spending: "It's beyond pitiful, it's beyond embarrassing. It is now in the zone of dangerous."

A spokesman for the Central Intelligence Agency declined to comment on any new intelligence estimate.

All the officials who described the assessment said they had read the document or had been briefed on its findings. The officials included both critics and supporters of the administration's policies in Iraq. But they insisted they not be identified by name, agency or branch of government because the document remained highly classified.

The new estimate revisits issues raised by the intelligence council in less formal assessments in January 2003, the officials said. Those documents remain classified, but one of them warned that the building of democracy in Iraq would be a long, difficult and turbulent prospect that could include internal conflict, a government official said.

The new estimate by the National

Intelligence Council was approved at a meeting in July by Mr. McLaughlin and the heads of the other intelligence agencies, the officials said.

Its pessimistic conclusions were reached even before the recent worsening of the security situation in Iraq, which has included a sharp increase in attacks on American troops and in deaths of Iraqi civilians as well as resistance fighters. Like the new National Intelligence Estimate, the assessments completed in January 2003 were prepared by the National Intelligence Council, which is led by Robert Hutchings and reports to the director of central intelligence. The council is charged with reflecting the consensus of the intelligence agencies. The January 2003 as-

Recent attacks add to a gloomy earlier analysis.

assessments were not formal National Intelligence Estimates, however, which means they were probably not formally approved by the intelligence chiefs.

The new estimate is the first on Iraq since the one completed in October 2002 on Iraq's illicit weapons program. A review by the Senate Intelligence Committee that was completed in July has found that document to have been deeply flawed.

The criticism over the document has left the C.I.A. and other agencies wary of being wrong again in judgments about Iraq.

Declassified versions of the October 2002 document included dissents from some intelligence agencies on some crucial questions, including the issue of whether Iraq was reconstituting its nuclear program. The government officials who described the new estimate on the prospects for Iraq would not say if it had included significant dissents.

On Wednesday night, Sean McCor-

mack, a spokesman for the National Security Council, confirmed the existence of the intelligence estimate, but he declined to discuss its contents in detail because they were classified. But he said the document "makes clear why it is so important to stand with the Iraqi people as they face these challenges."

Mr. McCormack said that in describing "different possible scenarios for Iraq's political and economic future over the course of 18 months," the document had made clear that "Iraq's future will be determined by a number of different factors, include the nation's economic progress, the effectiveness of Iraq's political structure, and security and stability."

He added: "In the past, including before the war to liberate Iraq, there were many different scenarios that were possible, including the outbreak of civil war. It hasn't happened. The Iraqi people continue to defy the predictions of pundits and others."

Separate from the new estimate, Republicans on the Senate Foreign Relations Committee issued other warnings on Wednesday about the American campaign in Iraq, saying the administration's request to divert more than \$3 billion to security from the \$18.4 billion aid package of last November was a sign of trouble.

"Although we recognize these funds must not be spent unwisely," the committee chairman, Mr. Lugar said, "the slow pace of reconstruction spending means that we are failing to fully take advantage of one of our most potent tools to influence the direction of Iraq."

Less than \$1 billion has been spent so far.

The committee's ranking Democrat, Senator Joseph R. Biden Jr. of Delaware, one of the harshest critics of the Iraq policies, was far more outspoken. "The president has frequently described Iraq as, quote, 'the central front of the war on terror,'" Mr. Biden went on. "Well by that definition, success in Iraq is a key standard by which to measure the war on terror. And by that measure, I think the war on terror is in trouble."

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United States Senate

WASHINGTON, DC 20510-4802

September 23, 2004

The Honorable John McLaughlin
Acting Director of Central Intelligence
Central Intelligence Agency
Washington, D.C. 20505

Dear Mr. Director:

Earlier this month the Senate Select Committee on Intelligence received a copy of the recent National Intelligence Estimate (NIE) on Iraq. We found this intelligence estimate to be a thorough, thoughtful and frank assessment of the challenges we face in bringing stability to Iraq.

The assessment places the current turmoil in an historical context and projects the likeliest scenarios for the next eighteen months. This kind of strategic analysis not only informs policymakers, but also can play a critical role as the Congress grapples with the difficult issues surrounding America's involvement in Iraq. To facilitate that role, we believe that the substance of this assessment should be made public in some fashion as soon as possible.

We understand that much of the NIE is classified and sensitive. We believe, however, that an unclassified version can and should be prepared. Senior Administration officials already have discussed and characterized the NIE publicly. Any public discussion of such an important intelligence assessment should be balanced, and informed to the greatest extent possible by the document itself.

We have known for some time that the challenges facing us in Iraq are enormous. As we search for the right course, this analysis, while pessimistic, gives us a much needed framework for our discussions. The importance of this issue for our country's security demands that the public debate be built on a foundation of facts. An unclassified version of this assessment will significantly improve the quality of that debate.

The Honorable John McLaughlin
September 23, 2004
Page Two

We request that an unclassified version of this document be provided to the Congress by October 1, 2004. Thank you for your prompt attention to this matter.

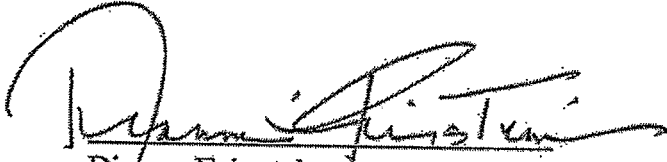
Sincerely,



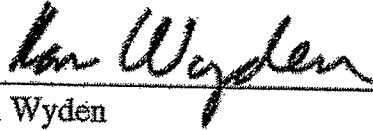
John D. Rockefeller IV



Carl Levin



Dianne Feinstein



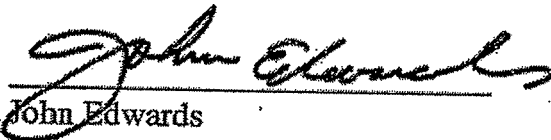
Ron Wyden



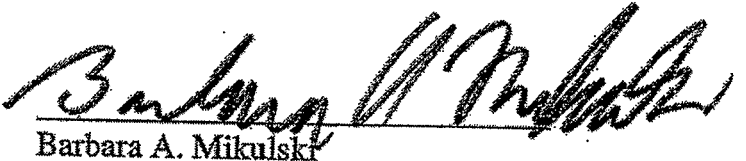
Richard J. Durbin



Evan Bayh



John Edwards



Barbara A. Mikulski

Exhibit C



Washington, D.C. 20505

28 September 2004

Mr. Thomas S. Blanton
Executive Director
The National Security Archive
Gelman Library, Suite 701
2130 H. Street, N.W.
Washington, D.C. 20037

Reference: F-2004-02123

Dear Mr. Blanton:

We have received your 16 September 2004 Freedom of Information Act (FOIA) request (Archive No. 20041039CIA129) for a copy of **"the National Intelligence Estimate (NIE) prepared on July 2004 on Iraq."** You state that the *New York Times* indicates that this 50 page NIE is the first formal intelligence estimate on the situation in Iraq since October 2002. We assigned your request the number referenced above for identification purposes. Please refer to this number in future correspondence.

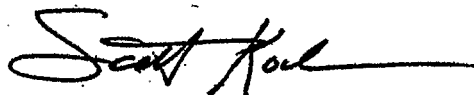
Based on the National Security Archive's agreement to pay copying costs as a requester in the "representative of the news media" fee category, we have accepted your request. It will be processed in accordance with the FOIA, 5 U.S.C. § 552, as amended, and the CIA Information Act, 50 U.S.C. § 431. Our search will be for the document noted above in existence as of and through the date of this acceptance letter.

With regard to your request for expedited processing, I must inform you that all requests are handled in the order received on a "first-in, first-out" basis. Exceptions to this rule will be made only when a compelling need is established to the satisfaction of the Agency. A "compelling need" is deemed to exist: 1) When the matter involves an imminent threat to the life or physical

safety of an individual; or 2) When the request is made by a person primarily engaged in disseminating information (i.e., a representative of the news media) and the information is relevant to a subject of public urgency concerning an actual or alleged Federal government activity. Since your request does not demonstrate a "compelling need" as defined above, we must decline your request to expedite processing.

The heavy volume of FOIA requests received by the Agency has created delays in processing. Since we cannot respond within the 20 working days stipulated by the FOIA, you have the right to consider this a denial and may appeal to the Agency Release Panel. It would seem more reasonable, however, to have us continue processing your request and respond to you as soon as we can. You can appeal any denial of records at that time. Unless we hear from you otherwise, we will assume that you agree, and we will proceed on this basis.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Koch", with a long horizontal flourish extending to the right.

Scott Koch
Information and Privacy Coordinator

Exhibit D

Central Intelligence Agency



Washington, D.C. 20505

6 October 2004

Mr. Thomas S. Blanton
Executive Director
The National Security Archive
Gelman Library, Suite 701
2130 H. Street, N.W.
Washington, D.C. 20037

Reference: F-2004-02123

Dear Mr. Blanton:

We have received your 4 October 2004 addendum to your Freedom of Information Act (FOIA) request (Archive No. 20041039CIA129) for a copy of "the National Intelligence Estimate (NIE) prepared on July 2004 on Iraq."

As mentioned in our telephone response to Ms. Meredith Fuchs of your staff this day, we mailed our reply to your initial letter on 28 September 2004. We accepted your request, but denied it expedited treatment using our normal criteria in reaching this decision. However, your request is in process, and we hope to have an early response to you in the near future.

Sincerely,

A handwritten signature in black ink that reads "Scott Koch".

Scott Koch
Information and Privacy Coordinator