TX WS1229-1980-0002 Walt Andrus

BARFIELD & ROSS

An Association of Attorneys

3410 MOUNT VERNON
HOUSTON, TEXAS 77006
TELEPHONE 713-225-9257

October 21, 1986

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
P 171 397 679

Betty Cash
6831 Grasselli Road, Apt.D
Fairfield, Alabama 35064

Bill Shed
2927 Broadway
Houston, Texas 77017

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
P 171 397 680

John Schuessler
P.O. Box 58485
Houston, Texas 77258-8485

Vicki Lundrum
Rt. 1, Box 124
Dayton, Texas 77535

Re: Civil Action H-84-348, Betty Cash et al
vs. United States of America

Dear Friends:

I was sorry to hear that the Defendants Motion to Dismiss the case was granted by Judge Ross Sterling. Sixty days has elapsed since that time and by operation of law the case will be dismissed and unappealable on Tuesday, October 21, 1986. Although I had some people who were willing to work on the appeal, they could not do so without a Five Thousand ($5,000.00) Dollar retainer fee. Additionally and unfortunatley, we could not be assured that an appeal would be succesful.

I know that everyone worked very hard and diligently to get the support and the information that we needed. I'm afraid it came to late. I was never allowed to be substituted as the attorney of record for Peter Gersten. And as a result of that I could only attempt to keep us in court.

If, however, I can help anyone with any other matters, please do not hesitate to contact me. I remain

Very truly yours,

Rhonda

Rhonda S. Ross

RSR/mw

CASH-LANDRUM CASE DISMISSED

by John F. Schuessler, MUFON Deputy Director.

On December 29, 1980, Betty Cash, Vickie Landrum and Colby Landrum encountered an unusual flying object and a large number of twin-rotor helicopters along a deserted road northeast of Houston, Texas. As the result of that encounter their lives were changed forever. They sustained life threatening injuries and have undergone long periods of suffering.

They were advised by the military legal authorities at Bergstrom Air Force Base in Austin, Texas to file a claim against the United States government for the injuries they sustained. They did file the claim, which was later rejected. The appeal was also rejected. They were then told to sue the United States Government in Federal Court. Again, they followed instructions and filed a civil action in the United States District Court, Southern District of Texas, Houston, Texas.

Their contention was that they had been wronged, physically injured, while driving on a public thoroughfare. The United States Government was at fault because their injuries were sustained while they were in close proximity of the military helicopters and the large glowing object, later called a UFO for lack of a better term.

The United States District Court Docket Call was set for September 3, 1985. Frank Conforti, Assistant United States Attorney, requested dismissal or a summary judgement in favor of

the United States. The attorney for Cash and Landrum replied that the United States was not entitled to a dismissal or a summary judgement. Judge Ross Sterling did not make a decision on Mr. Conforti's request. Therefore, the case did not go to trial.

Nearly one year later, on August 21, 1986, Judge Ross Sterling dismissed the case on the basis of expert testimony submitted by Mr. Conforti. The experts addressed the issue of whether or not the United States owned and operated a device as described by Cash and Landrum and sidestepped the issue of military helicopters. The claims of the experts are summarized below.

Robert W. Sommer, Chief of the NASA Aircraft Management Office, avowed that "no object as described by the plaintiffs was, at any time, owned or operated, or was in the inventory or under the control of NASA." He did say that NASA did have one twin-rotor helicoper, but it was in a hangar in California on the date of the incident.

Colonel William E. Krebs, Chief, Tactical Aeronautical Systems Division, Office of the Deputy Chief of Staff for Systems, Air Force Systems Command, United States Air Force, has been involved in development, testing and evaluation of all United States Air Force craft capable of flight. He said "no such craft was owned, operated, or is in the inventory of the United States Air Force..." Further, he said "I have never seen nor heard of any such craft..... being associated with the military service." While he did not address all twin-rotor helicopters, he did declare that the CH-47 was not in the

inventory of the United States Air Force.

Vice Admiral Robert F. Schoultz, United States Navy, Deputy Chief of Naval Operations, said "no aircraft matching the description given (by Cash and Landrum) was owned or operated by the United States Navy." He did not address the twin-rotor helicopter issue.

Richard L. Ballard, Acting Chief, Aviation Systems Division, Office of the Deputy Chief of Staff for Research, Development, and Acquisition, United States Army, said "I have compared the description of the object.....with my knowledge of the inventory of all Army craft capable of flight. No such craft was owned, operated, or in the inventory of the United States Army..." Further, he said "I have never seen nor heard of any such craft described.....as being associated with the military service." He ignored the twin-rotor helicopter issue.

Judge Ross Sterling considered the expert testimony to be sufficient reason to dismiss the case. That means he will not meet Betty Cash, Vickie and Colby Landrum, and he will not hear the evidence they wanted their attorneys to present.

The case is closed! Unless.....

####

U.S. Department of Justice

United States Attorney
Southern District of Texas

12000 Federal Building and U.S. Courthouse
515 Rusk Avenue
Houston, Texas 77002

Post Office Box 61129
Houston, Texas 77208

March 18, 1985

Peter A. Gersten, Esq.
27 North Broadway
Tarrytown, NY 10591

RE: Cash, Landrum et al v. United States of America
Civil Action No. H-84-848

Dear Mr. Gersten:

Attached please find the answers I just received from the U. S. Army on your Interrogatories. As you will recall from the Affidavits with my Motion for Summary Judgments, the CH-47 was not in the inventory of the U. S. Air Force, hence the U. S. Army is the point of reference for information concerning that aircraft. As the response indicates, obtaining the names of personnel cannot be reasonably accomplished. All information which could reasonably be provided has been so provided, and further answer is objected to.

With respect to my Motion for Summary Judgment, I would like to know if you are planning to reply in the near future. I would like to ask the Court to set the motion for consideration, but I also want to provide you adequate time to prepare your response. Please advise.

Finally with respect to the Interrogatories and Request for Production I sent on January 18, 1985, do you have an estimate of how long you will need to get the information from your clients and send it to me? In light of your patience and consideration to me in this same situation, I certainly want to be equally patient and considerate. I would appreciate it if you could provide as quickly as possible the answers to questions #3, 4, and 5, plus the medical authorizations so that I can proceed with that time-consuming task of acquiring, and plowing through, the medical files.

I would also like to discuss with you soon the question of when and where I can depose the three plaintiffs. If you can inquire on that and let me know what dates are acceptable I would be appreciative.

Sincerely,

DANIEL K. HEDGES
United States Attorney

By: Frank A. Conforti
FRANK A. CONFORTI
Assistant United States Attorney

FAC:jhp

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

BETTY CASH, VICKI LANDRUM, INDIVIDUALLY AND AS GUARDIAN AD LITEM OF COLBY LANDRUM Plaintiffs v. UNITED STATES OF AMERICA Defendant	)	Civil Action No H-84-348

ANSWER OF DEFENDANT TO
PLAINTIFFS' INTERROGATORIES

QUESTION NO. 1: What is a "CH-47" helicopter.

ANSWER NO. 1: The CH-47 is a tandem rotor, twin engine, medium cargo and troop transport helicopter.

QUESTION NO. 2: Identify the manufacturer(s) of CH-47 helicopters.

ANSWER NO. 2: The CH-47 is manufactured by the Boeing-Vertol Co., a division of Boeing Aircraft Co., and with different model designations, by Agusta of Italy.

QUESTION NO. 3: State the number of CH-47 helicopters in operation in December 1980.

ANSWER NO. 3: There were 450 CH-47 helicopters fielded in December 1980. An unknown, but certainly smaller, number were "in operation."

QUESTION NO. 4: State the distribution and location of all CH-47 helicopters in operation in December 1980.

ANSWER NO. 4: CH-47 Aircraft were distributed at the following locations in December 1980:

Grand Prairie, TX
Stockton, CA
Harrisburg, PA
Hunter, AAF, GA
Paine Field, WA
Olathe, KS
Ft. Meade, MD
Edwards AFB, GA
Ft. Campbell, KY
Ft. Sill, OK
Ft. Lewis, WA

Ft. Rucker, AL

Ft. Eustis, VA

Ft. Wainwright, AK

Ft. Carson, CO

Barbers Point, HI

Ft. Bragg, NC

Europe

Korea

Ft. Hood, TX

QUESTION NO. 5: State the performance capability of CH-47 helicopters including, but not limited to, range and fuel capacity.

ANSWER NO.5: Performance data for the "A" model CH-47 is shown below:

Maximum Gross Weight = 33,000 lbs.

Airspeed Limits = 110 to 130 knots indicated airspeed depending on gross weight.

Altitude Limits = 9,200 ft to 11,900 ft density altitude depending on gross weight, and a maximum of 15,000 ft pressure altitude under all conditions.

Maximum Sea State for Water Landings = Sea State 2.

Maximum External (Cargo Hook) Load = 16,000 lbs.

Maximum Hoist Load = 600 lbs.

Standard Day Sea Level Fuel Consumption at 24,000 lbs. gross weight and 130 knots true airspeed (best range airspeed) is 1950 lbs. per hour. Fuel capacity is 567 gallons, or 3,685 lbs. Max range = approximately 250 miles.

QUESTION NO. 6: State the number of personnel required to operate a CH-47 helicopter, and the duty and responsibility of each.

ANSWER NO. 6: Minimum crew requirement under normal conditions is a pilot, copilot, and flight engineer.

a. The pilot is responsible for all aspects of mission planning, preflight inspection, and operation of the helicopter. He assigns duties to other crewmembers as required.

b. The copilot must be familiar with the pilot's duties and the duties of other crewmembers so that these tasks can be performed in the absence of a full crew. The copilot assists the pilot as directed.

c. The flight engineer performs all duties as assigned by the pilot in addition to specific tasks relating to maintaining, servicing, inspecting, loading, and securing the helicopter.

QUESTION NO. 7: Identify all personnel qualified to operate CH-47 helicopters prior to January 1981.

ANSWER NO. 7: OBJECTION: The question is extremely vague and would be oppressive, unduly burdensome and expensive to answer. As indicated in the above Answer to Question 2, the CH-47 is manufactured by private

contractors. The United States does not require those firms or their other customers to inform the United States what persons they consider qualified or are otherwise allowed the operate CH-47's.

VAGUENESS: The question seeks a list of people "qualified" to operate CH-47 helicopters prior to January 1981 including their full name, residence address; and military affiliation, if any, to include military title and/or position. The question does not define what "qualified" entails, whether it is intended to mean, for example; "capable of"; trained to"; "certified by some body/institution to" or something else. The question does not specify if plaintiff considers a person "qualified" when, for example, once "qualified", in the sense of meeting some articulated standard, that person by lapse of time or otherwise no longer meets that standard. The question does not state what residence address and military affiliation is requested, e.g. present, as of January 1981, as the date of the incident complained of, as of the date when initially "qualified", the date of when no longer "qualified", as of the date of entry into the service, as of the date of departure from the service, or otherwise.

OPPRESSIVE, UNDULY BURDENSOME, and EXPENSIVE NATURE OF THE QUESTION: The first prototype of the CH-47 flew as early as 1961. While there must have been persons/pilots who were "qualified" to operate the CH-47 even before it first flew because it is doubtful that manufacturers or the United States would have selected an unqualified pilot for the first flight, at a minimum the Question seeks a list of persons "qualified" to operate a CH-47 at anytime over a (20) twenty year period. The extreme overbreadth of this question can hardly be calculated to lead to the discovery of any admissible evidence. The unduly oppressive, burdensome, and expensive nature of the search that would be required to provide such a list is described below.

The Army maintains no single record, computerized or otherwise, that contains the information possibly sought by this Question. Some or all of the information may be available by an exhaustive search of a number of different sources. The Army could compile a list of persons specifically trained (See above as to some problems caused by the vagueness of the Question) to pilot CH-47 helicopters by searching the National

Personnel Records Center in St. Louis, Missouri and the National Personnel Records Center in Washington, D.C. Each year Fort Rucker, Alabama, transfers a number of boxes of records to one of these facilities for storage. For the years at issue, 1961-1981, those transfers have already been accomplished. Among those boxes transfered each year, one will contain, among other information, lists of those persons who were graduated from the pilot training program for CH-47 helicopters. Normally there are approximately 12 classes of 10 pilot graduated each year. Therefore, the names of approximately 120 pilots will be listed on a number of different documents within the box. The number of pilots trained per year may have been significantly higher during the years in which CH-47 helicopters were employed in Southeast Asia.

Accordingly, there would appear to be a minimum of 2000-3000 pilots who have been trained by the Army to fly CH-47's. Having searched for and found the number of lists contained in the appropriate box for each of the years in question, 1961-1981, it would be possible to compile a list of those trained. However,

that list will not contain the other information sought by plaintiffs, residence and military affiliation.

To identify a residence address and a military affiliation for those U.S. Army personnel on the list it would be necessary to conduct a further 3 part search.

First, the list of thousands of pilots could be compared to a computerized list of those persons still on active duty. The records of those identified as still being on active duty could then be screened, probably by computer, and some residence address and military affiliation extracted. To get an accurate current residence address would require further individual screening of records and direct contact with the person.

Second, having deleted from the list of all trained pilots the names of those pilots still on active duty, the remainder could be compared to a computerized list of those receiving retirement pay. A residential address could then be extracted for those receiving retired pay.

Third, having deleted an unknown number of names of active duty persons and persons receiving retirement pay, a search, by hand without computer assistance, would be required. This search would involve manually locating the individual personnel record of each person stored at either the National Personnel Records Center in St. Louis, Missouri or the Reserve Component Personnel Administration Center, also in St. Louis Missouri. Upon manually locating the records each record would need to be reviewed to extract a residence address and military affiliation.

Although plaintiffs may have offered to limit the scope of these searches to those pilots stationed in the general vicinity of the alleged incident, that limitation does not restrict the nature of the search required. That limitation actually adds more steps to the search process because once a person is identified as having been trained to operate CH-47's an additional search would then be required to determine if that person had been assigned in the particular geographic area.

QUESTION NO. 8: State the flight plans for all CH-47 helicopters on December 28-31, 1980.

ANSWER NO. 8: Flight plans are destroyed after 30 days. Flight plans for 28-31 December 1980 are not available.

QUESTION NO. 9: State whether the maintenance records of all CH-47 helicopters in operation and use in December 28-31, 1980 are available.

ANSWER NO. 9: Maintenance records for 28-31 December 1980 are not available. All maintenance records are destroyed after 6 months.

QUESTION NO. 10: State whether the medial records for all personnel qualified to operate CH-47 helicopters prior to January, 1981 are available.

ANSWER NO. 10: Unknown at this time. See answer to Question 7.

QUESTION NO. 11: State whether any of the following agencies of the defendant have any information, knowledge, or documents concerning the incident referred to in plaintiffs' amended complaint:

a. Department of Energy's Nevada Operations Office.

b. Air Force Inspection and Safety Center (AFISC).

c. The Army agency responsible for avaition safety.

d. Aerospace Rescue and Recovery Service (ARRS).

e. Secretary of Defense.

f. Joint Chiefs of Staff.

g. National Military Command Center (NMCC)

h. Rapid Deployment Force (RDF).

i. Air Force Intelligence.

j. Army Intelligence.

k. Air Force Office of Legislative Liaison.

l. Air Force Inspector General.

m. Army Inspector General.

ANSWER NO. 11: c. No

j. No

m. Yes

QUESTION NO. 12: If the answer to question "11" is yes, identify any and all documents, and state the nature and substance of any knowledge.

ANSWER NO. 12: The Department of the Army Inspector General has records relating to his inquiry into whether the Army, Army National Guard, or Army Reserve helicopters were involved in the incident alleged by plaintiffs.

QUESTION NO. 13: State whether any agency of the defendant conducted an investigation into the incident of December 30, 1980.

ANSWER NO. 13: Yes

QUESTION NO.14: If the answer to question "13" is yes, identify each agency.

ANSWER NO. 14: United States Army

QUESTION NO. 15: If the answer to question "13" is yes, state whether any documents, tape recordings, notes, photographs, scientific reports and other materials exist.

ANSWER NO. 15: Yes

FRANK A. CONFORTI
Assistant United States Attorney

W. Anderson

P.O. Box 58485
Houston, TX 77258-8485
2 January 1986

Mr. Larry W. Bryant
3518 Martha Custis Drive
Alexandria, VA 22302

Dear Mr. Bryant:

I received your petition for Redress of Official Abuse of Authority and want you to know I am sorry you have gotten crosswise with your employer - the Federal government. I hope you can resolve the issues and continue your employment. Twenty-seven years is a major investment in any job.

It would appear you are out-of-line in expecting the military services to advertise in their own publications, requesting the members of the armed forces to commit treason by releasing sensitive or classified information to you for money. This is akin to what the Russians are doing in their spying activities and the result is exposure, capture, and persecution of the people releasing information. You were bound to get attention and pressure from this approach.

I am personally concerned about your approach in that Mrs. Cash and Mrs. Landrum have filed a UFO-related-injury damage suit against the United States Government. They have acted on the suggestion of Senators Bentsen and Tower (ex) by filing a claim for the injuries they sustained. When the claim was denied by the Department of Defense, they were told, via their attorney, that they could proceed with the suit, which they did. They were very obviously harmed during the UFO/helicopter incident on 29 December 1980 and are seeking legal recourse. <u>At no time have they ever requested, suggested, or demanded any illegal activities on their behalf.</u> Eventhough harmed during what appears to be a military maneuver, they still strongly support the U.S. Government and have done everything legally and above board in seeking recourse for their injuries.

Your suggested advertisement in the military publications was done without their knowledge or approval. They would not want people to commit treason against the government and they would not want you to put your career on the line in such an activity. They are very good and honest people and they will feel badly if you do lose your job over this ad. I'm sure they would tell you to cease and desist immediately before you get hurt in this thing.

I have a further concern. The ad mentions that $1,000 will be paid for the right information - the identity of the organizations responsible for the helicopter flights. Who is supplying that money? What will they gain from the receipt of

the information? What will happen to the information once it is received? The ad mentions a forensic panel that will review the information once it is received. Who is on that panel? What is their qualifications? Some earlier funded work on the Cash-Landrum case was useless, because it was done by an individual that liked to talk on the telephone, not find "real" answers. This damages the case instead of helping it.

I can understand your frustration in not being able to get all the answers in these cases, or the release of information you feel is resident in some file somewhere. However, I don't see how you can expect the government to advertise against themselves in this case, while they are involved in litigation; or after it is over for that matter. As a citizen you have lots of other channels to request information (i.e. newspapers, speeches, private investigations, etc.) without hurting your job or taking on the whole U.S. Government.

I personally do not want to be party to illegal or unethical practices and I am sure Mrs. Cash and Mrs. Landrum feel the same way. We all want them to receive what they deserve and a lot of people are trying to help them. I am sure they will eventually win.

Sincerely yours,

John F. Schuessler

Copies to:
Mrs. Cash
Mrs. Landrum
MUFON
Attorneys

CAUS Washington Report

December 1985

Published by Citizens Against UFO Secrecy (CAUS)
(Washington, D.C. Office:
3518 Martha Custis Drive
Alexandria, VA 22302 - U.S.A.
Telephone: (703) 931-3341)

QUOTE OF THE QUARTER: "The Government prevents /its/ employees from discussing UFO sightings except to the 'proper' authorities." -- Journalist Mort Young, in his 1967 book UFO: Top Secret

Pentagon Retaliates Against Army Employee's Pursuit of Crashed-Saucer Records . . .

. . . No, the above headline isn't quoted from USA Today, but it, or a variation thereof, might soon be gracing the pages of that and other newspapers.

Yes, after two years of fretting over how best to deal with UFOlogical gadfly Larry W. Bryant, his employer, the Office of the Army Chief of Public Affairs (where Bryant since January 1981 has been serving as Associate Editor of the Army News Service), finally has decided on the customary method: "the Fitzgerald treatment" (referring, of course, to renowned Air Force cost-overrun whistleblower A. Ernest Fitzgerald). The treatment goes like this:

Follow the letter of the employee's written performance standards (a set of employee-supervisor-agreed-upon factors showing the quality and quantity of work performance expected of the employee throughout the year-long supervisory rating period). Start seizing on any detectable weakness -- such as minor errors of omission/commission, documenting the circumstances. In that "building a case" process, start orally chipping away at the employee's sense of self-worth and professional competence; assign him an inordinate number of senseless or mundane projects, and subject his resulting work product to several hypercritical reviewers, who are preselected to deliver the planned verdict on the work's acceptability. Use this eventual supervisory record of out-of-context events, innuendo, unsubstantiated charges, and half-truths toward entering a formal rating of "unsatisfactory" at the end of the rating period. Continually hold this threat of imminent demotion or dismissal over the employee's head, lowering or raising it as the supervisor deems necessary. Use any evidence of the employee's predictable low morale to show he's no longer a team player, and hence is adversely affecting the overall productivity of his work section.

In time the hapless, "Fitzgeralded" victim of reprisal has a choice between two actions: flight or fight.

Bryant, after a near-flight back in July 1985, now has chosen to stand his ground and to fight this gross abuse of authority.

On Nov. 14, 1985, he filed a petition with the Special Counsel's office of the U. S. Merit Systems Protection Board in Washington, D.C. That Board, of course, has the charter and power to put a stop to Federal-agency reprisals against so-called whistleblowers.

Does Bryant consider himself a whistleblower? Well, indirectly, yes -- considering his recent efforts in placing advertisements in various military post/base newspapers to solicit the testimony of whistleblowers in the Cosmic Watergate -- such as the one below, published (after some urging) in the Fort Dix, N.J., Post on March 8, 1985:

Bryant's submission of that ad simply was too much for officialdom -- starting with Dix's Public Affairs Officer, Lt. Col. Norman K. Otis, who publishes the weekly Post, and who chose to track down Bryant's employer. (Note: thus far, the base newspaper at McGuire AFB, N.J., has refused to print a similar ad, aimed at the USAF readership.)

BLOW THE WHISTLE ON THE DIX - McGUIRE UFO CONNECTION

Where is he now? -- Army "Sgt. Anon." the military policeman who, back in 1978, pursued (and shot dead) a disembarked occupant of a nighttime UFO seen maneuvering near Fort Dix and McGuire AFB. Where are the autopsy report and other records of this incident? If you, or someone you know, can furnish us answers to those questions, contact us immediately so that we can use your evidence/testimony in compelling the Government's full accountability under the U.S. Freedom of Information Act.

Write: CAUS 3518 Martha Custis Dr., Alexandria, Va 22302.

By questioning, through Army command channels, whether Bryant was trying to use his official capacity to compel the ad's publication, Otis succeeded in inspiring the wrath of one Col. Douglas H. Rogers, who heads the OCPA Command Information Division at the Pentagon.

Rogers used the Otis insinuation as a lever of intimidation, suggesting to Bryant that it might be prudent to construct some name other than Larry W. Bryant in any further ad submissions.

Only slightly daunted by that confrontation, Bryant proceeded like a wounded bull toward this red flag now being waved before him. His next charge proved crippling. It was the following advertisement, sent on March 20, 1985, to the Fort Rucker, Ala., post newspaper, the Flier:

$1,000 OFFER FOR SPECIAL UFO EVIDENCE

For use in the UFO-related-injury damage suit of Cash-Landrum Vs. United States, we're prepared to pay $1,000 for your verifiable evidence/testimony leading to the identity and testimony of the organization(s) and aviators associated with the score or so tandem-rotor helicopters seen maneuvering around the huge, radiant UFO on the night of Dec. 29, 1980, near Dayton, Texas. Contact us immediately to help end the government coverup and stonewalling on its role in that incident. All evidence submitted will be evaluated by a forensic panel of UFO researchers, after which you'll be notified if you qualify for the $1,000. Write: CAUS, 3518 Martha Custis Dr., Alexandria, VA 22302.

When the Flier's printer returned Bryant's prepayment check with no explanation, Bryant wrote a follow-up letter to Rucker's Public Affairs Officer, seeking an explanation for the ad's rejection. He waited for more than two months for a reply. Receiving none, he wrote a complaint letter to Rucker's Inspector General. That letter produced this response of June 18, 1985, from the Public Affairs Officer, Lt. Col. Lawrence R. Retta:

"I stopped the ad from being placed in the Flier because it implies legal action is ongoing. Your ad refers to the injury damage suit of Cash-Landrum Vs. United States. The post Staff Judge Advocate's Office agrees with my decision. If litigation has been completed I will allow the ad to be published."

It was about this time that one of Bryant's superiors -- Print Media Branch chief Maj. Mark A. Brzozowski -- called him in for a performance-counseling session. Out of that came the major's formal warning letter setting forth Bryant's alleged shortcomings and threatening to lead to an end-of-year performance rating of "unsatisfactory." (Bryant's previous three annual ratings were "exceptional." Throughout the current rating period, Bryant's immediate supervisor, ARNEWS chief Capt. Thomas G. Surface, has chosen to give Bryant high marks on the routine "Supervisory Rating Sheet" that accompanied a number of application forms for job vacancies of interest to Bryant.)

WHAT PRICE DISSENT?

"How," asks Bryant in his petition to the Merit Systems Protection Board, "can an exceptionally rated employee suddenly zoom to persona non grata in the space of several months? What terrible, unpardonable sin have I committed that would warrant such official wrath as I've continued to experience in ever-escalating increments? The answer: nothing, except my insistence on exercising my First Amendment rights."

Feeling that it was time to retreat to the brier patch, Bryant, in early July, met with Rogers to announce the decision to drop the ad campaign and to withdraw from participation in the planned CAUS FOIA lawsuit for compelling the public release of the government's crashed-saucer records.

For the next several months, there seemed to be in the office an atmosphere of mutual relief that Bryant finally was coming to his senses and returning to the UFOlogical closet. Brzozowski had moved on to a new job, and Surface was expected to do the same in November -- but not, as it turns out, before his completing the hatchet job on Bryant. By his counseling letter to Bryant on Nov. 6, Surface has dutifully carried out Rogers' final solution to the Bryant Problem. With that quantum leap in the escalating harassment, Bryant had no choice but to "go public" -- and the rest will make legal and UFOlogical history.

In his petition's concluding remarks, Bryant noted:

> "I of course don't relish being the 'A. Ernest Fitzgerald of the Army,' or the 'Karen Silkwood of the Pentagon' (an appellation I've inferred from Rogers' first confrontation with me back in 1983, when he reminded me of the mysterious demise of two C.I.A. agents) -- or the 'Sakharov of the United States.' Indeed, I wish to regard myself as neither hero nor martyr, but merely as a citizen convinced that this gross abuse of authority must be dealt with swiftly and decisively -- even if the resolution process cause me further distraction and discomfort. And I hope that from this petition you can readily comprehend the kind of mentality I've been up against. It goes like this: In government, there's only one thing worse than a whistleblower, and that's a person who, like Larry W. Bryant, insists on soliciting the testimony of whistleblowers."

RESUMING THE UFO (NEWS) PAPER CHASE

Now that the confrontation has turned from softball to hardball, what will Bryant be doing while his case makes the rounds toward eventual resolution? "For one thing," he said, "I'm renewing my effort to compel the Public Affairs Officer at Peterson AFB, Colo., to run my ad that he arbitrarily rejected several months ago. This ad, incidentally, already has been printed in the base newspaper at Bolling AFB, Washington, D.C." The ad happens to be based on the continuing research of Cincinnati resident Leonard H. Stringfield, whose published monograph on UFO crash-retrieval case histories serves as a basis for most of the ads Bryant has been creating.

When the Peterson officials ignored Bryant's appeal to withdraw their rejection, he proceeded to use the U. S. Freedom of Information Act to ferret whatever documentation might shed further light on this act of censorship. Once again, he was stymied -- this time by Peterson's assertion that to release the six records showing how the officials arrived at their censorship decision would reveal the Air Force's "predecisional deliberative process." Bryant, of course, filed an appeal of that denial, to no avail. Then he requested that the withheld records be released under terms of the U. S. Privacy Act, on the basis of his belief that "these records affect the status of my privacy as regards the identity of my employer" (referring to Peterson's Inspector General's earlier admission that he knew Bryant was an Army employee). That request now denied, and the

denial sustained on appeal, Bryant intends to file suit in Federal District Court to overturn the denial -- especially since he feels the requested records might have a direct bearing on the Army's conduct toward Bryant's UFO-research activities.

Here's how the Peterson/Bolling ad reads:

> BLOW THE WHISTLE ON MILITARY MEDICINE'S UFO COVERUP
>
> If you were one of "Dr. Anon.'s" colleagues/assistants during his autopsy of a crewmember retrieved from a crash-landed "flying saucer" some 30 years ago, we need your corroborative testimony to add to the evidence we've gathered thus far in our FOIA quest for the records of that autopsy. If you can lead us to the current whereabouts of the relevant photos, medical drawings, and clinical reports, we'll be able to file suit to compel their immediate, full release. The public has a right to know about these humanoid visitors, and the Government has the duty to tell. Now, at last, you can do your part to make that principle work. Write: CAUS . . . .

Some of Bryant's other unfinished business includes recent events at Headquarters, U. S. Army Military District of Washington, whose Public Affairs Office publishes the Pentagon's weekly Army newspaper, the Pentagram. In the past, whenever the Bolling Beam newspaper ran any of Bryant's UFO ads, they also automatically appeared that week in the Pentagram and the nearby Walter Reed Army Medical Center's paper (the Stripe) -- all three printed by the same commercial firm in Alexandria. But when Rogers learned of this practice (from a conversation with Bryant), he apparently instructed the MDW/Reed officials to cease running the ads -- since the latest two that subsequently ran in the Beam failed to appear in the Pentagram/Stripe. Realizing the intervention, Bryant, when he submitted the following ad in June (only to withdraw it, under pressure, in July), reminded the papers' printer of his obligation to run it in all three papers. The printing firm's ad saleswoman told Bryant that from now on all his proposed ads had to be screened for acceptability by both the Air Force and Army Public Affairs officials concerned:

> BREAKTHROUGH ON THE DIX-MCGUIRE UFO CONNECTION
>
> Thanks to the conscience pangs of one of the principals involved, we now have a document confirming some of the events surrounding the slaying of a UFO occupant back in Jan. 1978 near Fort Dix/McGuire AFB, N.J. As we seek additional evidence on the incident -- such as the autopsy report and all intelligence evaluations -- we invite the testimony of other whistleblowers so we can compel a full Congressional inquiry. The public has a right to know all the details of this and of other hard-core UFO cases -- and the government has the duty to tell. Write: CAUS . . . .

WHAT YOU CAN DO

If you're as angry as we are over this blatant effort to muzzle Bryant (and, indirectly, CAUS), we suggest you so notify your congressmen/senators. Send them a copy of this report, and ask them to have the appropriate Congressional committees look immediately into the matter and furnish you a full report of their findings.

In the meantime, circulate copies of this report to your friends, neighbors, and local news media. Enlist their support toward reform. And try to donate what you can to the Larry W. Bryant Defense Fund, in care of the American Civil Liberties Union of Virginia (112-A North 7th Street, Richmond, VA 23219).

SAN ANTONIO, (TX) LIGHT
SEPTEMBER 4, 1985
CREDIT: MUFON

UFO case may land in court

Trio seeking $20 million after allegedly seeing craft

HOUSTON (AP) — Three people who contend that the sighting of an UFO caused them medical problems may get their day in court if a federal judge decides their $20 million lawsuit against the government should be set for trial.

U.S. District Judge Ross Sterling met with attorneys for both sides Tuesday and said he will decide if the case will go to trial or be dismissed.

The government filed a motion that the lawsuit be dismissed, said Assistant U.S. Attorney Frank Conforti.

According to the suit, Betty Cash, 57; Vickie Landrum, 62, of Dayton; and Landrum's 12-year-old grandson, Colby Landrum, thought they were entering another dimension the night of Dec. 29, 1980.

They reported they saw a diamond-shaped object floating in the sky in front of their car.

The trio stopped along a lonely stretch of FM 1485 near Huffman and got out to view the UFO. They say their initial curiosity turned to terror when flames started spewing from the bottom of the UFO and heat began radiating from the hovering object.

Cash, who now lives in Birmingham, Ala., said she watched the object outside the car for about 10 minutes while the other two retreated. The object then headed north accompanied by about 23 military-type helicopters, the plaintiffs said.

The three contend the sighting triggered medical problems and have asked for $20 million in damages from the United States. They charge the government was negligent for letting the alleged experimental aerial device fly over a public road.

The medical problems started immediately, Vickie Landrum said, including blisters, hair loss, dizziness, and headaches. To this day, Landrum says, she cannot go outside in the sun.

"Even if I ride in a car during the day, I suffer the consequences," she said.

Her grandson, who lives with her, is ultrasensitive to the sun, she said.

September 3, 1985, Tuesday, PM cycle

SECTION: Domestic News

LENGTH: 294 words

HEADLINE: Three suing government over UFO radiation

DATELINE: HOUSTON

KEYWORD: Ufo

BODY:

A judge will review written arguments before deciding whether to dismiss a $20 million lawsuit filed by two women who claim the government failed to warn them about a UFO they claim emitted dangerous radiation.

U.S. District Judge Ross Sterling said Tuesday he would consider arguments filed by Betty Cash and Vickie Landrum in response to a government motion to dismiss their suit.

The women and Landrum's son, Colby, say they encountered the large diamond-shaped object Dec. 29, 1980, floating in the sky in front of their car on a farm road near Huffman, northeast of Houston.

The three left the car for a better look, but Landrum and her son say they retreated to the vehicle, where they huddled listening to beeping noises coming from the craft. Cash remained outside, and the object flew off accompanied by about 23 military-type helicopters, the three claim.

Landrum says the alleged experimental craft emitted radiation, causing all three to suffer a series of illnesses following the encounter -- including

blisters, hair loss, dizziness, headaches and sensitivity to sunlight.

''I've waited four years and suffered no end,'' said Landrum, who now lives in Dayton, about 35 miles northeast of Houston.

Cash has been hospitalized with cancer and may not be able to travel to Houston from Birmingham, Ala., if the case goes to trial.

Sterling did not indicate when he would rule.

The government claims it cannot be proved the government had control of the UFO.

''They didn't say this UFO was owned or controlled by the United States,'' said Assistant U.S. Attorney Frank Conforti. ''You can't hold the government liable for actions it doesn't control.''

The suit claims the government was negligent for letting the craft fly over a public road.

July 3, 1986
P.O. Box 388
Milford, Mi.
48042

John Schuessler
P.O. Box 58485
Houston, Tx. 77258-8485

Dear Mr. Schuessler,

Your presentation June 28 at the Michigan MUFON conference struck a resonate chord of interest in me regarding the nature and sequence of legal reasoning that has gone into the Cash-Landrum case. I regret that I did not introduce myself to you personally, which I had intended to do the final day. Consequently, I am writing to present my thoughts on this.

Clearly, a logical dilemma exist in the circumstances of this case. I want to resummarize what I heard Saturday evening in terms of this logical paradox, and then to suggest a different legal course than what you are pursuing, currently.

Simply stated, the dilemma for your side is that all investigations -- the military's, your own, and those of independent sources -- have been unable to produce substantial, direct evidence linking any specific military unit or U.S. government agency to this specific incident. Considering the amount of effort already expended to uncover such evidence, rather than to continue to petition the court for further investigation, it may prove more worthwhile to assume that no more direct evidence will be forthcoming from the government, either because (1) it doesn't exist, or (2) it is being withheld for national security purposes. Nor is the uncovering of such evidence necessary to the interests of Cash-Landrum, if one reasons along the lines that Peter Gersten already proposed (after all ordinary channels of investigation were exhausted)--the burden for establishing such direct evidence does not fall upon the plaintiffs. My concern is that by requesting further access to government records, your side does assume that the only way for the plaintiffs to receive relief is for them to establish negligence on the part of a specific government unit for the specific incident itself. This ignores the government's side of the logical dilemma.

The government cannot explain the circumstances of the incident, nor establish that Cash-Landrum did not experience radiation burns and other harm from an unidentified "experiemental craft" accompanied by unidentified helicopters in the alleged incident. Clearly, the evidence in the case does not suggest that the alleged circumstances of the incident were hoaxed in any way. The government cannot deny that what Cash-Landrum claimed happen to them, did not in fact occur.

For the court to resolve this logical dilemma, requires a legal argument not focussed on proving or disproving negligence in the specifics of this case. Rather, the court must be made to consider whether, in a society which deems it necessary for purposes of national security, to conduct secret government operations involving craft which cannot be identified via normal channels of investigation (information) available to its citizenry, does not that society have a liability or responsibility

for any injury sustained by individual citizens resulting from unexplained circumstances involving unidentified craft? Given that the U.S. Government is the sole authorized body possessing a national security prerogative in the continental U.S. territory were the incident occurred, a broadly defined responsibility commensurate to that prerogative may be legally established as a result.

Sincerely,

Brian M. Morrissey

P.S. In line with the above, it does not seem appropriate to follow the policy (unwritten?) of suing for millions of dollars. I would encourage you only to simply seek expenses, which I am sure are high enough.

There are no guarantees, of course, that the court will set a new precedent based on a broad definition of government responsibility for the conduct of national security affairs. In this, you & I would have to trust in the process.

May God be with you.

kwed
am 1580

Seguin Broadcasting Company, Inc.
P.O. Drawer 1600
Seguin, Texas 78155

(U-F-O SUIT)

(HOUSTON) -- THE U-S ATTORNEY'S OFFICE HAS ASKED A HOUSTON FEDERAL JUDGE TO DISMISS A 20 (M) MILLION DOLLAR LAWSUIT FILED AGAINST THE GOVERNMENT. THREE PLAINTIFFS ALLEGE THEY HAVE SUFFERED MEDICAL PROBLEMS SINCE SEEING AN UNIDENTIFIED FLYING OBJECT HOVERING OVER SOUTHEAST TEXAS IN DECEMBER OF 1980. THE LAWSUIT CLAIMS THE U-F-O WAS AN EXPERIMENTAL AIRCRAFT THAT SHOULD NOT HAVE BEEN ALLOWED TO FLY OVER A PUBLIC ROAD.

JANE for WALT ANDRUS

AP-DN-09-04-85 0627CDT

RRRRUR

Texas

'UFO' spotters may get wish

■ HOUSTON

Three people who contend the sighting of a UFO caused medical problems may get their day in court if a federal judge decides their $20 million lawsuit against the government should be tried.

U.S. District Judge Ross Sterling said Tuesday he will decide if the case will go to trial or be dismissed.

The three say the government was negligent for letting an alleged experimental device fly over a public road near Huffman.

Airliner makes emergency landing

■ ABILENE

An American Airlines jet carrying 177 passengers and a crew of 13 made an emergency landing at Dyess AFB Tuesday when a warning light came on indicating an engine fire.

American Airlines spokesman John Hotard said the airliner's captain landed at Dyess because it was the nearest airport. Flight 436 was flying from El Paso to Dallas-Fort Worth International Airport.

CLIF W. DRUMMOND
. . . to be White's aide

UT system official to be White aide

■ AUSTIN

Gov. Mark White said Tuesday that Clif W. Drummond, an executive in the University of Texas system and former aide to U.S. Rep. J.J. "Jake" Pickle, will be his executive assistant.

Drummond, 42, a native of Hamlin, replaces Jim Turner.

Drummond, who was UT student body president in 1967, held senior research management positions at the University of Texas from 1974 to 1977 and from 1982 to the present.

SAN ANTONIO, (TX) LIGHT
SEPTEMBER 4, 1985
CREDIT: MUFON

UFO case may land in court

Trio seeking $20 million after allegedly seeing craft

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They reported they saw a diamond-shaped object floating in the sky in front of their car.

The trio stopped along a lonely stretch of FM 1485 near Huffman and got out to view the UFO. They say their initial curiosity turned to terror when flames started spewing from the bottom of the UFO and heat began radiating from the hovering object.

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Her grandson, who lives with her, is ultrasensitive to the sun, she said.

PHO

MUFON

MUTUAL UFO NETWOR
The Scientific Investigation of Unidentified Flying Objects

WALTER H. ANDRUS, JR.
International Director

103
Seguin,

kwed
am 1580

Seguin Broadcasting Company, Inc.
P.O. Drawer 1600
Seguin, Texas 78155

(U-F-O SUIT)
(HOUSTON) -- THE U-S ATTORNEY'S OFFICE HAS ASKED A HOUSTON FEDERAL JUDGE TO DISMISS A 20 (M) MILLION DOLLAR LAWSUIT FILED AGAINST THE GOVERNMENT. THREE PLAINTIFFS ALLEGE THEY HAVE SUFFERED MEDICAL PROBLEMS SINCE SEEING AN UNIDENTIFIED FLYING OBJECT HOVERING OVER SOUTHEAST TEXAS IN DECEMBER OF 1980. THE LAWSUIT CLAIMS THE U-F-O WAS AN EXPERIMENTAL AIRCRAFT THAT SHOULD NOT HAVE BEEN ALLOWED TO FLY OVER A PUBLIC ROAD.

AP-DN-09-04-85 0627CDT

JANE for WALT ANDRUS

RRRRRIP

CITIZENS AGAINST UFO SECRECY

2528 Belmont Avenue, Ardmore, Pennsylvania 19003

February 21, 1982

Mutual UFO Network (MUFON)
103 Oldtowne Road
Seguin, Texas 78155

Gentlemen:

The "UFO Update" column in the February 1982 issue of OMNI magazine states that John Schuessler, a MUFON member, has investigated the UFO incident involving Betty Cash, which occurred on December 29, 1980. The article further states that Mr. Schuessler has located one of the pilots involved in the alleged helicopter pursuit of the UFO.

We have been loking into this incident and have submitted numerous requests under the Freedom of Information Act (FOIA) to various military organizations in the Texas area, but have not, as yet, been furnished any documentation on the incident. Indeed, every military organization we have contacted denies they had any involvement.

Since the OMNI article states that Mr. Schuessler has located a pilot who admits to having been one of those involved in the helicopter pursuit, we would like to get in touch with Mr. Schuessler for more details. Specifically, we would like to know to which military organization this pilot was assigned or during the time period in question. With this information, a productive FOIA request could be submitted to the appropriate military unit.

If you would be kind enough to furnish me with Mr. Schuessler's address, I could write to him. Or, if he would like, he may reach me at area code 215/649-4683.

Any assistance you might be able to offer would be greatly appreciated.

Sincerely,

ROBERT TODD
Director of Research

Read 2-24-82

RETURN THIS TO WALT

(H)(914) 739-6955

January 29, 1985

Peter A. Gersten
27 North Broadway
Tarrytown, NY 10591

Dear Peter:

This letter acknowledges receipt of the copy of the Civil Action No. H-84-348 dated January 17, 1985 by the U.S. District Court, Southern Division of Texas, Houston, Texas received on January 28, 1985 on the Betty Cash et al Plaintiffs versus the United States of America.

Since the Defendant has made the motion to dismiss and/or for Summary Judgement, this means "back to the drawing board." The testimony provided by Robert W. Sommer, NASA Headquarters, is so weak as to be meaningless. The statement of William E. Krebs, Colonel U.S.A.F. as testimony, is equally unsatisfactory, except to add to the file. The same goes for Robert F. Schoultz, Vice Admiral, U.S.N. and Richard L. Ballard, ODSCRDA. Personally, I have never read such "hogwash," except in prior cases before the Freedom of Information Act was enacted.

I am not aware of the evidence that you have previously presented to the court when this case was filed or in response to their other delaying tactics. Thank you very much for sharing this information with me (January 17, 1985 documents). Peter, please do not become discouraged with this government "batter," because you have seen it in hundreds of other prior cases. This is probably the most significant case to come before the U.S. Court, outside of the F.O.I.A. suits.

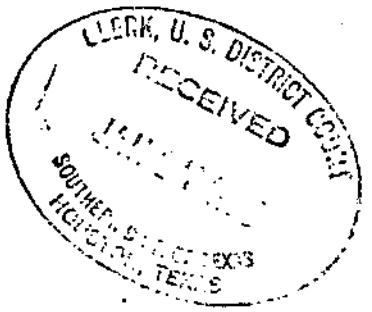
Sincerely yours,

Walt

Walter H. Andrus Jr.

cc: John F. Schuessler
Deputy Director, MUFON

WHA:vc



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BETTY CASH et al	§	
	§	
Plaintiffs,	§	
	§	
v.	§	CIVIL ACTION NO. H-84-348
	§	
UNITED STATES OF AMERICA	§	
	§	
Defendant.	§	

DEFENDANT'S MOTION TO DISMISS AND/OR
FOR SUMMARY JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the defendant herein, in the United States of America, by and through Daniel K. Hedges, United States Attorney for the Southern District of Texas, and would move this Court, pursuant to Rules 12(b)(1) and (6), Federal Rules of Civil Procedure, for an Order dismissing this action on the grounds that this Court lacks subject matter jurisdiction over such action and that plaintiffs have failed to state a claim upon which relief can be granted against the defendant United States of America.

In the alternative, the defendant respectfully moves this Court, pursuant to Rule 56, Federal Rules of Civil Procedure, for an Order granting Summary Judgment in favor of the defendant United States of America on the ground that, there being no genuine issue as to any material fact, defendant is entitled to judgment as a matter of law.

In support of this motion, the defendant respectfully submits to the Court its Memorandum In Support of Defendant's Motion to Dismiss and/or for Summary Judgment, together with the affidavits filed therewith.

Respectfully submitted,

DANIEL K. HEDGES
United States Attorney

By: Frank A. Conforti

FRANK A. CONFORTI
Assistant United States Attorney
Attorney in Charge for Defendant
P.O. Box 61129
Houston, Texas 77208
(713) 229-2630

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BETTY CASH et al	§	
	§	
Plaintiffs,	§	
	§	
v.	§	CIVIL ACTION NO. H-84-348
	§	
UNITED STATES OF AMERICA	§	
	§	
Defendant.	§	

MEMORANDUM IN SUPPORT OF DEFENDANT'S
MOTION TO DISMISS AND/OR FOR SUMMARY JUDGMENT

I. Statement of The Case

Plaintiffs, Betty Cash, Vicki Landrum, and Colby Landrum (through his guardian ad litem Vicki Landrum) bring this action pursuant to 28 U.S.C. §1346(b) and 28 U.S.C. §§2671-2680 seeking money damages for alleged injuries resulting from their alleged encounter with a "UFO" on December 29, 1980.

In the Complaint plaintiffs allege that the United States owned and operated an "experimental aerial device of a hazardous nature". The entity is also identified in the Complaint as "a large unconventional aerial object." In a More Definite Statement filed by plaintiffs, the object is called a "UFO". In that same pleading a description of the object or "UFO" is provided. Plaintiffs imply, though it is nowhere asserted, that the United States owned and operated the "UFO". Plaintiffs do allege that the United States was negligent in that it allowed the "UFO" to fly over a public road and come in contact with the plaintiffs. Plaintiffs also allege that the United States failed to warn the plaintiffs of the "UFO".

Filed herewith are the sworn affidavits of Robert W. Sommer, NASA; Colonel William E. Krebs, USAF; Vice Admiral Robert F. Schoultz, USN; and Richard L. Ballard, Office of the Deputy Chief of Staff for Research, Development, and Acquisition, USA. The affidavits establish that the "UFO" allegedly seen by plaintiffs, and which it is alleged was the proximate cause of their asserted injuries, is not, and was not, owned, operated, or in the aircraft inventories of the United States of America nor was such an object under the control of the United States of America or its employees.

On the basis of those affidavits, the United States moves this Court for an Order dismissing the Complaint of plaintiffs with prejudice, or, in the alternative, finding that there exists no genuine issue of material fact, for summary judgment in favor of the defendant.

II. Statement of the Facts as Alleged

The following constitutes the facts as alleged by plaintiffs.

At approximately 9:00 p.m. on December 29, 1980, plaintiffs were driving on FM 1485 approximately seven (7) miles outside of New Caney, Texas.

Plaintiffs observed the "UFO" which was emitting a glow, and red and orange flames from its bottom. The "UFO" was the size of a standard city water tank, and is described by Vicki Landrum as oblong with rounded top and a point at the bottom, and by Colby Landrum as diamond-shaped.

The "UFO" hovered at treetop level of 60-80 feet over the roadway. It emitted a "beep-beep" sound and plaintiffs felt intense heat at a distance of 135 feet.

The "UFO" was not observed to have any markings, numbers, symbols, logos, or other designators. No other sensory observations (sounds, smells, visual aspects, etc.) were made by the plaintiffs.

As a result of the heat emanating from the "UFO" the inside of plaintiff's vehicle became very hot. Plaintiffs then exited their vehicle and observed the object for several minutes before re-entering the vehicle. All during this time they allegedly experienced intense and excruciating heat from the "UFO".

The "UFO" then ascended, and plaintiff observed it surrounded by "many military appearing helicopters". Plaintiffs assert that several helicopters were double rotary CH-47 type. Plaintiffs conclude that the helicopters were "escorting and/or safeguarding" the object.

On December 27, 1982 plaintiffs filed their administration claims for a total of $20 million in damages. On May 23, 1983 the claims were denied. Reconsideration was sought, and denied on September 2, 1983. On January 18, 1984 the plaintiffs filed this action.

III. Issues

Whether the complaint filed by plaintiffs, even when viewed in a light most favorable to plaintiffs, fails to state a claim against the United States upon which relief can be granted.

Whether the claim of plaintiffs is barred under the

discretionary function exception to the Federal Tort Claims Act. See 28 U.S.C. §2680(a).

Whether there exists no genuine issue of material fact in this action and the United States is therefore entitled to judgment as a matter of law.

IV. Preliminary Statement

For the purpose of determining a motion to dismiss, the facts alleged in the complaint will be accepted as true, Davis v Davis 526 F.2d 1286 (5th Circuit 1976), and considered in the light most favorable to plaintiff. Crawford v. City of Houston, 386 F.Supp. 187 (S.D. Texas 1974). However, resolution of the motion to dismiss in no way indicates the pre-disposition by the Court of any issue of contested fact, nor a forecast of the outcome of the case. Davis, supra and Crawford, supra.

By presenting and arguing this motion, therefore, the United States is not admitting, for any purpose other than this motion, the truth or veracity of any of plaintiff's allegations and/or factual assertions which have been denied by the defendant in the records and pleadings filed in this action or which remain unsubstantiated by evidence offered.

V. Argument and Authorities

Plaintiff brings this action under the Federal Tort Claims Act, 28 U.S.C. §1346(b) and 28 U.S.C. §§2671-2680. Under the Federal Tort Claims Act the question of liability is determined by reference to the law of the state in which the alleged tortious conduct of the defendant, in this case--negligence, occurred. U.S. v. Muniz, 374 U.S. 150, 153 (1963). Accordingly,

the determination of whether the United States was negligent herein must turn upon the prerequisites for a negligence action in Texas. Under Texas law, a plaintiff must prove the existence of a legal duty owed to him by the defendant in order to establish tort liability. Saucedo v. Phillips Petroleum Company, 670 F.2d 634, 636 (5th Cir. 1982), quoting from Abalos v. Oil Dev. Co. of Texas, 544 S.W. 2d 701 (Texas 1976) and Coleman v. Hudson Gas and Oil Corporation, 455 S.W. 2d 701 (Texas 1970). In the absence of such a legal duty, or of injury from its breach, there can be no actionable negligence and hence no legal liability. See Group Life & Health Ins. Co. v Brown, 611 S.W. 2d 476 (Tex. Civ. App. -- Tyler 1980, no writ hist.); McGregor Milling & Grain Co. v. Russo, 243 S.W. 2d 852, 855 (Tex. Civ. App. -- Waco 1951, writ ref. n.r.e) See also Rodriguez v Dipp, 546 S.W. 2d 655, 658 (Tex. Civ. App. -- El Paso 1977, writ ref. n.r.e). The existence of a defendant's duty is a matter of law, distinct from factual matters of breach and consequences. Saucedo, supra; Welch v. Heat Research Corp., 644 F.2d 487 (5th Cir. 1981); Gray v. Baker & Taylor Drilling Co., 602 S.W. 2d 64 (Tex. Civ. App. - Amarillo 1980, writ ref'd n.r.e); Jackson v. Associated Developers of Lubbock, 581 S.W. 2d 208 (Tex. Civ. App. - Amarillo 1979, writ ref'd n.r.e); Frontier Theatres, Inc. v. Brown, 362 S.W. 2d 360 (Tex. Civ. App. - El Paso 1962), rev'd on other grounds, 369 S.W. 2d 299 (Texas 1963).

The position of the defendant, United States of America is that plaintiffs have not shown, and cannot show, the existence of a legal duty owed to them by the defendant. Hence, plaintiffs

have failed to state a cause of action under the Federal Tort Claims Act for which recovery may be granted.

A. Defendant Is Not the Owner of the "UFO", Nor Was the "UFO" in the Custody, Care, or Control of Defendant

As the affidavits attached hereto make clear, the United States neither owned, operated, nor controlled the alleged "UFO". As such, it is axiomatic that no legal duty may result which is attributable to the United States. Nor may actions or omissions, if any, of employees of the United States result in liability. Absent a legally recognized duty, no breach would result. See Smith v United States, 688 F.2d 476, 477 (7th Cir. 1982) Wilcox v Carina Maritime Corp, 586 F.Supp. 1475 (D.C. Tx. 1984).

The Restatement of Torts (Second) at §315 states that a special relationship must exist between the person who causes a harm and the person sought to be held liable or there is no duty to control the conduct of the actor. See also Bergmann v United States, 689 F.2d 789, 796 (8th Cir. 1982). The rule in Texas is the same. See Otis Engineering v Clark, 668 S.W. 2d 307 (9183). Here, it is not a person, but an object defined as a "UFO" by plaintiffs, which allegedly caused the harm. No relationship between the United States and the "UFO" is asserted by plaintiff. Nowhere in the complaint is it asserted that the government owned or operated the "UFO" or controlled its activities in any manner. Indeed, the affidavits attached to this Motion conclusively establish that such a relationship simply did not, and does not, exist.

In the absence of such a relationship, no duty may arise.

Absent such a duty, no claim for relief under Texas law, as required by 28 U.S.C. §1346(b) and 28 U.S.C. §2671-2680, can be stated and the action should be dismissed under FRCP Rule 12(b)(6).

B. The Plaintiffs Are Barred By the Discretionary Function Exception at 28 U.S.C. §2680(a)

Assuming, arguendo, that the United States owned, operated, or otherwise controlled, the "UFO", plaintiffs assert that the government negligently permitted the "experimental aerial device" to fly over a public road and failed to warn plaintiffs that the "experimental aerial device" was clearly hazardous in nature. (Complaint, paragraphs 5 and 6).

Assuming the truth of all plaintiffs' allegations as to the clearly hazardous nature of the "UFO" and as to their own actions, plaintiff's admissions would establish assumption of the risk.[1/] However, a complete bar to any action by plaintiffs, and a bar which is clearly amenable to determination at this juncture, lies in the plaintiff's own allegations and admissions as to this event. With respect to the alleged hazardous nature of the object, it is settled law that the United States may not be held strictly liable for undertaking an ultrahazardous activity. Laird v. Nelms, 406 U.S. 797, at 803, 92 S.Ct. 1899

1/ While the absolute defense of assumption of the risk has been abolished in Texas, the doctrine retains its viability as to the consideration of a party's appreciation of the risk, and the weighing of this factor in the scale of comparative negligence. See Maxey v. Freightliner Corp., 665 F.2d 1367 (5th Cir. 1982). See also Abalos v. Oil Development Co. of Texas, 544 S.W. 2d 627 (Texas 1976); Farley v. M.M. Cattle Co., 529 S.W. 2d 751 (Texas 1975).

(1972), citing Dalehite v. United States, 346 U.S. 15, at 44-5, 73 S.Ct. 956 (1953).

The holdings in Laird and Dalehite themselves grow out of an exception under the Federal Tort Claims Act to liability for claims:

> ". . .based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused." 28 U.S.C. §2680(a).

The question of whether conduct, which must have been by a federal employee, falls under the discretionary function exception is a matter to be decided under federal, rather than state, law. See United States v. Muniz, 374 U.S. 150, 83 S.Ct. 1850 (1963).

Nor can the plaintiffs prevail on a theory that in conducting a discretionary function the government's discretion was abused. The discretionary function exception also applies when an official abuses the discretion, even if malice is alleged. DePass v. United States, 479 F.Supp. 373 (D.C. Md. 1979; Relco Inc. v. Consumer Product Safety Commission, 391 F.Supp. 841 (D.C. Tx. 1975).

Military supersonic flights constitute a discretionary function exception. Abraham v United States, 465 F.2d 881, 883 (5th Cir. 1972) and cases cited therein. Further, the decision to undertake experimental flights has been recognized as the exercise of a discretionary function. William v. United States,

218 F.2d 473, 475 (5th Cir. 1955).[2/] In this case, plaintiffs have themselves admitted that the "aerial device" in issue was "experimental". Subsequent decisions by the Fifth Circuit seemed to narrow the exception. See Moyer v. Martin Marietta Corp, 481 F.2d 585 (5th Cir. 1973); Piggott v. United States, 451 F.2d 574 (5th Cir. 1971). While retaining the discretionary character of the overall decisions to embark on aircraft testing and rocket test-firing, respectively, the Court seemed reluctant to draw such findings with respect to the actual carrying out of the policies by lower-level employees.

Due to the growing number of cased stressing this operational level distinction, the Supreme Court, in a recent decision, examined for the second time the discretionary function exception. United States v. S.A. Empressa de Viacao Aerea Rio Grandense (Varig Airlines) et al, ____ U.S. ____, 104 S.Ct. 2755 (1984). The Supreme Court reaffirmed its decision in Dalehite v. United States, 346 U.S. 15, 73 S.Ct. 956 (1953). The Court pointed out that it would be impossible to define with precision the limits of the discretionary function exception. It did, however, isolate several factors to be used in the analysis of actions by the government to determine whether they fall within the exception. Varig, supra, at 2765. Initially, the Court

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2/ The Fifth Circuit, in Williams, held that an inference by the District Court that a particular flight was of an experimental nature was error, but the Court did not dispute that undertaking experimental flights was a discretionary function. Since plaintiff's pleadings admit the experimental nature of this particular flight, it may be accepted as such.

noted that the nature and quality of the challenged acts must be examined. The Court held that the rank or status of the acting employee does not affect the nature of a challenged action. Second, the Court noted that the exercise of discretion in deciding whether, or how, to regulate conduct of private individuals is clearly within the exception. id. The Court's conclusion that the rank of the acting employee does not change the discretionary nature of a decision is a clear reaffirmation of the decision in Dalehite and an equally clear refutation of the planning level/operational level dichotomy that some Circuits (including the Fifth) had drifted toward.

The conduct complained of here, as asserted by plaintiffs themselves, involves decisions and determinations relating to whether, where, when, and how to proceed with developmental experiments involving aircraft. Such activities plainly involve policy, judgment and decision such as to carry them within the orbit of the discretionary-function exception. See Dalehite, 346 U.S. at 36, 73 S.Ct. at 968. That the implementation of these decisions is carried out by subordinates does not change the nature of the acts or change the extent of the exception. Id; Varig Airlines, supra, at 2765.

Mundane decisions such as where to place a Post Office and when to operate it, whether and how to widen a river channel, and whether and how to conduct a highway project have been determined to be covered by 28 U.S.C. §2680(a). See Doe v. United States, 718 F.2d 1039, 1042 (11th Cir. 1983); Payne v. United States, 730 F.2d 1434, 1436 (11th Cir. 1984); Daniel v. United States, 426

F.2d 281, 282 (5th Cir. 1970). Actions of the nature alleged here by plaintiffs are also within the exception.

Based on the above, the United States would urge dismissal of this action on the basis that any actions taken or omissions of the government fall within the discretionary function exception in 28 U.S.C. §2680(a), that hence this Honorable Court lacks subject matter jurisdiction, and that as a result a dismissal under FRCP Rule 12(b)(1) is appropriate.

C. The Alleged Failure to Warn Is Not Sufficient to State a Claim Upon Which Recovery May Be Predicated

An alternative interpretation of plaintiff's allegations, and one which is consistent with the affidavits submitted in this case, is that the incident did not concern testing of an "experimental aerial device", but that the object was a "UFO" as asserted by plaintiffs. As pointed out supra, in such case the lack of ownership or control by the United States should result in a finding of no duty, and hence no liability.

Even if a limited duty of some sort were found to exist, however, there would still be a bar to plaintiffs' claim. In Grunnet v. United States, 730 F.2d 573 (9th Cir. 1984) the Court examined the government's alleged failure to warn an individual of the dangers posed by the activities in Jonestown, Guyana. The Court pointed out (p.576) that generally there is no affirmative duty to control the conduct of another under California law. The same holds true in Texas jurisprudence. See Otis Engineering v. Clark, 668 S.W. 2d 307 (Tx. 1983). As a result, the Court, while not denying that a decision not to warn was itself within the discretionary function exception, held that failure to warn of

danger in a foreign land would not be actionable for failure to state a claim.

The descriptive term used by plaintiffs themselves for the object in this case is "UFO", and the definition of that term is "unidentified flying object"[3/] The term is, by definition, applicable to an object which is not known or identifiable. Hence, defendants could not have known whether any danger existed or from whence such danger could spring. When evaluating the reasonableness of actions taken by a party in an emergency, Texas law requires that the emergency nature of the situation must be considered. Pavlides v. Galveston Yacht Basin, Inc., 727 F.2d 330 (5th Cir. 1984). Faced with the situation of an unknown object, a governmental determination not to issue a warning, and potentially cause a panic with the known dangers arising from a panic, simply would not constitute negligence in any event. As an additional matter, while the decision not to warn in Grunnet might be argued not to be a discretionary function, it seems clear that such a decision here, under the facts as recited by plaintiffs thereselves, does fall within the exception.

Assuming, arguendo, that the plaintiffs were correct in their assertion that the object they may have seen was a "UFO", what could be more of a discretionary function that a decision by the United States and its armed services on whether and how to react? It must be recalled that plaintiffs themselves concluded

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3/ Random House Dictionary of the English Language, unabridged edition. (1979)

that military aircraft were escorting and surrounding the "UFO". If, as must be done in a motion such as this, the pleadings of plaintiffs are accepted as true (solely for consideration of this motion), then plaintiffs themselves have made the government's case for application of the discretionary function exception. As the Court in Sellfors v United States, 697 F.2d 1362, 1368 (11th Cir. 1983) noted, the weighing of governmental interests and deciding in favor of the less antagonistic approach clearly constitutes the type of discretion reflected in the history of the FTCA.

VI. Conclusion

In any event, whether for plaintiff's failure to state a claim becuase the United States had no duty to warn in the case, the reasonableness of a decision not to warn, or the discretionary nature of the decision not to warn and the actions taken by the United States, the complaint in this matter should be dismissed.

Respectfully submitted,

DANIEL K. HEDGES
United States Attorney

By: Frank A. Conforti

FRANK A. CONFORTI
Assistant United States Attorney
Attorney in Charge for Defendant
P.O. Box 61129
Houston, Texas 77208
(713) 229-2630

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Betty Cash, Vicki Landrum Individually and as Guardian Ad Litem of Colby Landrum, Plaintiffs, vs. United States of America, Defendant.	)	Civil Action No. H-84-348

AFFIDAVIT

I, Robert W. Sommer, upon oath, declare and affirm as follows:

1. I am the National Aeronautics and Space Administration (NASA) Deputy Director, Aircraft Management Office. On or about December 29, 1980, I was the Chief of NASA's Aircraft Office.

2. In December 1980, I served as the senior point of contact at NASA Headquarters with NASA centers, government agencies, and non-governmental organizations on matters concerning NASA aircrafts.

3. I have reviewed the documents entitled "Amended Complaint" which, in pertinent part, speaks of an alleged

EXHIBIT 1

"military CH-47 double rotary type helicopters and an experimental aerial device of a hazardous nature," observed by plaintiffs on December 29, 1980, "approximately 9:00 p.m. on FM Road 1485, 7 miles outside of New Caney, Texas;" and "More Definite Statement" which defines the "experimental aerial device" or "object" as an "UFO" and describes the object as follows: "x x x appeared to be extremely bright, had red and orange flames emanating from its bottom, and was surrounded by a glow . . . oblong with a rounded top and a point at the bottom . . . diamond shaped . . . the size of a standard city water tank."

4. I declare that no "object" as described by plaintiffs was, at any time, owned or operated, or was in the inventory or under the control of NASA. I further declare that on December 29, 1980, NASA had under its control one (1) CH-47 helicopter, stationed at the NASA Ames Research Center, Moffett Field, California; on and about December 29, 1980, that helicopter was not flown but remained in the hangar in California and no where near or at the place as alleged in the "Amended Complaint."

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

Robert W. Sommer

Robert W. Sommer
Deputy Director
Aircraft Management Office
NASA Headquarters
Washington, DC 20546

Sworn to and subscribed before me this 13th day of August, 1984.

Anita R. Karnes

Notary Public
District of Columbia

My commission expires: 1-1-85.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BETTY CASH, VICKI LANDRUM, Individually and as Guardian Ad Litem of COLBY LANDRUM, Plaintiffs v UNITED STATES OF AMERICA, Defendant.	)	Civil Action No. H-84-348

DECLARATION

In accordance with 28 USC section 1746, the following unsworn declaration is made pertaining to the above captioned case:

I am the Chief, Tactical Aeronautical Systems Division, Office of the Deputy Chief of Staff for Systems, Air Force Systems Command, United States Air Force, and have held this position since May 1982. In the above position I am and have been involved in the Air Force programs for the research, development, testing and evaluation of all United States Air Force craft capable of flight.

I have reviewed the document entitled "More Definite Statement" in the above captioned case. That document is incorporated herein and attached hereto as Exhibit A. I have compared the description of the object in Exhibit A with my knowledge of the inventory of all United States Air Force craft capable of flight. No such craft was owned, operated, or in the inventory of the United States Air Force on or about December 29, 1980. Further, I have never seen nor heard of any such craft described in Exhibit A as being associated with the military service.

EXHIBIT 2

I also declare that the CH-47 Helicopter was not in the inventory of the United States Air Force on or about December 29, 1980.

I declare under penalty of perjury that the foregoing is true and correct. Executed on 31 May 1984.

William E. Krebs

WILLIAM E. KREBS, Colonel, USAF
Chief, Tactical Aeronautical
Systems Division
DCS Systems, Air Force Systems
Command

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BETTY CASH, VICKI LANDRUM, INDIVIDUALLY AND AS GUARDIAN AD LITEM OF COLBY LANDRUM Plaintiffs, v. UNITED STATES OF AMERICA, Defendant.	)	CIVIL ACTION NO. H-84-348

AFFIDAVIT OF VICE ADMIRAL ROBERT F. SCHOULTZ, USN

AFFIANT, being first duly sworn, states upon his oath as follows to wit;

THAT, I am Vice Admiral Robert F. Schoultz, United States Navy, Deputy Chief of Naval Operations (Air Warfare).

THAT, in this position I am responsible for the supervision of all naval aviation programs, planning, and requirements and the management of aviation-related activities at the service headquarters level for the United States Navy.

THAT, I have knowledge of all aircraft types owned and operated by the United States Navy and their characteristics.

THAT, I have reviewed a document, entitled "MORE DEFINITE STATEMENT", submitted by plaintiffs in this action and attached to and incorporated in this affidavit as Exhibit A.

EXHIBIT 3

THAT, I have compared the object described in Exhibit A with my knowledge of aircraft owned and operated by the United States Navy.

THAT, no aircraft matching the description given in Exhibit A was owned or operated by the United States Navy on December 29, 1980, and no such aircraft is currently owned or operated by the United States Navy.

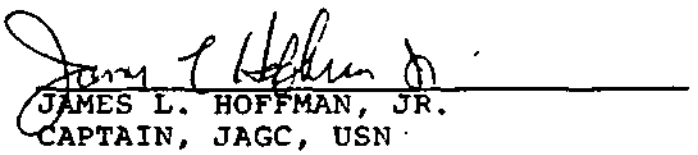
THAT, I have been a naval aviator for 39 years and I have never heard of, seen, or flown any aircraft matching the description given in a Exhibit A.

FURTHER AFFIANT sayeth not.

ROBERT F. SCHOULTZ
VADM, USN

I, James L. Hoffman, Jr., the undersigned officer, do hereby certify that the foregoing instrument was subscribed and sworn to before me this 7th day of May, 1984, by Vice Admiral Robert F. Schoultz, United States Navy, who is known to me to be a member of the United States Navy on active duty. And I do further certify that I am at the date of this certificate a commissioned officer of the grade, branch of service, and organization stated below in the active service of the United

States Navy, that by statute no seal is required on this certificate, and same is executed in my capacity as a Judge Advocate under authority granted to me by Art.136, UCMJ; 10 USC 936.



JAMES L. HOFFMAN, JR.
CAPTAIN, JAGC, USN
Office of the Chief
Of Naval Operations

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BETTY CASH, VICKI LANDRUM, Individually and as Guardian Ad Litem of COLBY LANDRUM, Plaintiffs,	)	
v.	)	Civil Action No.
UNITED STATES OF AMERICA, Defendant.	)	H-84-348

DECLARATION

In accordance with 28 U.S.C. section 1746 the following unsworn declaration is made pertaining to the above captioned case:

I am the Acting Chief, Aviation Systems Division, Office of the Deputy Chief of Staff for Research, Development, and Acquisition, United States Army. Prior to assuming that position this month I was the Deputy Chief, Aviation Systems Division, Office of the Deputy Chief of Staff for Research, Development, and Acquisition, United States Army and had held that position since 1974. I am also an aeronautical engineer having received a Master of Science degree in aeronautical engineering. In the above positions I am and have been responsible for the research, development, testing, and evaluation of

EXHIBIT 4

all Army craft capable of flight and for the Army's aviation procurement appropriation. In these capacities I am and have been familiar with all Army craft capable of flight since 1974.

I have reviewed the document entitled "More Definite Statement" in the above captioned case. That document is incorporated herein and attached hereto as Exhibit A. I have compared the description of the object in Exhibit A with my knowledge of the inventory of all Army craft capable of flight. No such craft was owned, operated, or in the inventory of the United States Army on or about December 29, 1980. Further, I have never seen nor heard of any such craft described in Exhibit A as being associated with the military service.

I declare under penalty of perjury that the foregoing is true and correct. Executed on 19 April 1984.

Richard L Ballard

RICHARD L. BALLARD
Acting Chief, Aviation
Systems Division
ODCSRDA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BETTY CASH et al	§	
	§	
Plaintiffs,	§	
	§	
v.	§	CIVIL ACTION NO. H-84-348
	§	
UNITED STATES OF AMERICA	§	
	§	
Defendant.	§	

ORDER

CAME ON this day the Motion to Dismiss and/or for Summary Judgment filed by the United States in this matter and the Court, having considered the Motion and the accompanying Memorandum, and having determined that the Motion is well taken,

IT IS HEREBY ORDERED that the above noted cause of action be, and it hereby is , DISMISSED.

DONE at Houston, Texas, this ____ day of _____, 1985.

_____
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

BETTY CASH, VICKI LANDRUM, INDIVIDUALLY
AND AS GUARDIAN AD LITEM OF
COLBY LANDRUM

Plaintiffs,

v.

UNITED STATES OF AMERICA

Defendant.

Amended Complaint

Civil Action, File Number H-84-348

FIRST COUNT

1. This action arises under the Federal Tort Claims Act, 28 USC 1346 (b) , 2671 et seq., as hereinafter more fully appears. Before this action was instituted, the claims set forth herein was presented to the Department of the Air Force on December 20, 1982. Final denial of these claims, by the Department of the Air Force, was issued on September 2, 1983 and this suit was commenced within six months of said denial.

2. Plaintiff Betty Cash resides at 209 48th Street, Birmingham, Alabama. Plaintiff Vicki Landrum is the grandmother of Colby Landrum and both plaintiffs reside at 506 West Clayton, Dayton, Texas within the Jurisdiction of this Court.

3. During all times herein-after mentioned, defendant owned and operated military CH-47 double rotary type helicopters and an experimental aerial device of a hazardous nature.

4. On the evening of December 29, 1980 plaintiff Betty Cash was driving an automobile with two passengers, plaintiffs Vicki and Colby Landrum. At approximately 9:00 pm on FM Road 1485, 7 miles outside of New Caney, Texas, plaintiffs observed a large unconventional aerial object which was emitting a glow and flames. Plaintiff Betty Cash was forced to stop her automobile when the aerial object blocked the road. The plaintiffs exited the automobile and observed the object as it hovered at treetop level approximately 135 feet from them. The plaintiffs experienced intense and excruciating heat emanating from the object. After several minutes plaintiffs returned to the vehicle and the aerial object ascended. Plaintiffs then observed the object together with many military appearing helicopters, including several CH 47s double rotary type. The helicopters appeared to be escorting and/or safeguarding the object.

5. At all times hereinbefore mentioned defendant did not use proper care and skill in failing to warn or protect plaintiffs from said experimental aerial device which was clearly hazardous in nature.

6. At all times hereinbefore mentioned, defendant negligently, carelessly, and recklessly allowed said experimental aerial device to fly over a publicly used road and come in contact with plaintiffs.

7. Solely by reason of defendant's carelessnes and negligence as aforesaid, plaintiff Betty Cash experienced the following symptoms and injuries: Erythema, acute photophthalmia, impaired vision, dystrophic changes in the nails, stomach pains, nausea,

vomiting, diarrhea, anorexia, loss of energy, lethergy, scarring and loss of pigmentation, excessive hair loss and hair regrowth of a different texture and cancer and removal of right breast. The extent of permanent disability is unknown at this time and the plaintiff's condition is subject to deterioration. The plaintiff has suffered and continues to suffer great pain of body and mind and incurred expenses for medical attention and hospitalization in the sum of TEN MILLION ($10,000,000.00) DOLLARS.

8. The aforesaid injuries were caused soley by the defendant, its agents, servants or employees and without any negligence on the part of the plaintiff contribuing thereto.

9. If the defendant were a private person, it would be liable to the plaintiff in accordance with the law of Texas.

WHEREFORE plaintiff Betty Cash demands judgement against defendant, in the sum of TEN MILLION ($10,000,000.00) DOLLARS and costs.

SECOND COUNT

10. Plaintiff Vicki Landrum repeats and realleges each and all of the allegations contained in paragraphs 1 through 6 as well as those contained in paragraph 9 of the First Count of this complaint with like effect as if herein fully repeated.

11. As a result of the above mentioned incident, plaintiff Vicki Landrum, experienced the following symptoms and injuries: Photophthalmia, greatly diminished vision, stomach pains, diarrhea, anorexia, ulceration of the arms, scarring and loss of pigmentation, anychomadesis, hair loss and regrowth of a different texture. The extent of permanent disability is unknown at this time and the plaintiff's condition is subject to deterioration.

The plaintiff has suffered and continues to suffer great pain of body and mind and has incurred expenses for medical attention and hospitalization in the sum of FIVE MILLION ($5,000,000.00) DOLLARS.

12. The aforesaid injuries were caused solely by the defendant, its agents, servants, or employees, and without any negligence on the part of the plaintiff contributing thereto.

WHEREFORE Plaintiff Vicki Landrum demands judgement against defendant in the sum of FIVE MILLION ($5,000,000,00) DOLLARS, and costs.

THIRD COUNT

3. Plaintiff Colby Landrum repeats and realleges each and all of the allegations contained in paragraphs 1 through 6 as well as those contained in paragraph 9 of the First Count of this Complaint with like effect as if herein fully repeated.

14. As a result of the above mentioned incident plaintiff Colby Landrum experienced the following symptoms and injuries: erythema, eyes swollen and watery, progressive deterioration of vision, stomach pains, diarrhea, anorexia, weight loss, and an increase in tooth decay. At the time of the incident, the plaintiff became terrified and hysterical. He suffered from nightmares for several weeks thereafter and continues to display extreme anxiety and fear at the sight of helicopters. The extent of permanent disability in unknown at this time and the plaintiff's condition is subject to deterioration. The plaintiff has suffered and continues to suffer great pain of body and of mind exacarbated by his age, and has incurred expenses for medical attention and hospitalization in the sum of FIVE MILLION ($5,000,000.00) DOLLARS.

15. The aforesaid injuries were caused solely by the defendant, its agents, servants, or employees, and without any negligence on the part of the plaintiff contributing thereto.

WHEREFORE Plaintiff Vicki Landrum as Guardian ad litem for plaintiff Colby Landrum demands judgement against defendant in the sum of FIVE MILLION ($5,000,000.00) DOLLARS and costs.

Signed: _____

PETER A. GERSTEN, ESQ.
Attorney in Charge
27 North Broadway
Tarrytown, N.Y. 10591
(914) 631-1100

WILLIAM C. SHEAD, ESQ
2927 Broadway Boulevard
Houston, Texas 77017
(713) 649-8944

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BETTY CASH, VICKI LANDRUM
and COLBY LANDRUM

v.

UNITED STATES OF AMERICA

CIVIL ACTION H-84-348

ORDER

Came on for consideration Plaintiff's unopposed motion for continuance of the trial setting in this case, and the Court having considered same, it is ORDERED that the motion is GRANTED.

It is further ORDERED that this case is reset for Docket Call on September 3, 1985, at 11:00 a.m., to be called for trial in its numerical order.

DONE at Houston, Texas, this 31st day of January, 1985.

United States District Judge

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE
WASHINGTON, D.C. 20324

2 SEP 1983

Mr. Peter A. Gersten
Gagliardi, Torres and Gersten
27 North Broadway
Tarrytown, NY 10591

Re: Appeal of Personal Injury Claims of Betty Cash, Vicki Landrum and Colby Landrum

Dear Mr. Gersten

The appeals of your clients' claims for personal injuries allegedly caused by an overflight of an unidentified flying object and unidentified helicopters on 29 December 1980 have been considered under 10 U.S.C. 2733 and are denied.

The reason for this decision is that the facts as alleged by the claimants fail to establish that their injuries were caused in any way by the United States Government or any of its agencies or instrumentalities. You should not consider the acceptance and subsequent denial of this claim as an admission of the truth of any facts alleged by your clients. Our investigation has revealed no evidence of involvement by any military personnel, equipment or aircraft in this alleged incident. The arguments you presented to establish liability of the government are not supported by any case or statutory law.

This is the final administrative action that can be taken on your clients' claims. This denial also satisfies the administrative filing requirements of the Federal Tort Claims Act. Based on this denial, your clients have the right to file suit against the government in an appropriate United States District Court not later than six months from the date of the mailing of this letter of denial.

Sincerely

Charles M. Stewart

CHARLES M. STEWART, Colonel, USAF
Director of Civil Law
Office of The Judge Advocate General

AIR FORCE ANNIVERSARY
READY THEN READY NOW

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE
WASHINGTON, D.C. 20324

2 SEP 1983

Mr. Peter A. Gersten
Gagliardi, Torres and Gersten
27 North Broadway
Tarrytown, NY 10591

Re: Appeal of Personal Injury Claims of Betty Cash, Vicki Landrum and Colby Landrum

Dear Mr. Gersten

The appeals of your clients' claims for personal injuries allegedly caused by an overflight of an unidentified flying object and unidentified helicopters on 29 December 1980 have been considered under 10 U.S.C. 2733 and are denied.

The reason for this decision is that the facts as alleged by the claimants fail to establish that their injuries were caused in any way by the United States Government or any of its agencies or instrumentalities. You should not consider the acceptance and subsequent denial of this claim as an admission of the truth of any facts alleged by your clients. Our investigation has revealed no evidence of involvement by any military personnel, equipment or aircraft in this alleged incident. The arguments you presented to establish liability of the government are not supported by any case or statutory law.

This is the final administrative action that can be taken on your clients' claims. This denial also satisfies the administrative filing requirements of the Federal Tort Claims Act. Based on this denial, your clients have the right to file suit against the government in an appropriate United States District Court not later than six months from the date of the mailing of this letter of denial.

Sincerely

Charles M. Stewart

CHARLES M. STEWART, Colonel, USAF
Director of Civil Law
Office of The Judge Advocate General

50th United States AIR FORCE ANNIVERSARY
READY THEN READY NOW

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE
WASHINGTON, D.C. 20324

28 MAY 1983

Mr. Peter A. Gersten
Attorney at Law
191 E. 161st St.
Bronx, NY 10451

Re: Personal Injury Claims of Betty Cash, Vickie Landrum and Colby Landrum

Dear Mr. Gersten

Your clients' claims for personal injury allegedly caused by an overflight of an unidentified flying object and unidentified helicopters on 29 Dec 80, have been considered under the provisions of the Military Claims Act, 10 U.S.C. 2733, and are denied.

The reason for this decision is that the attendant facts fail to establish that the unidentified flying object or helicopters were owned or operated by the United States government or any agency or instrumentality thereof.

If your clients are dissatisfied with this decision, they have the right to appeal to higher authority within the Air Force within 60 days of the date of mailing of this letter. No particular form is necessary. However, the appeal should state the basis thereof and should indicate any additional evidence they have to further substantiate the claim. Any appeal should be addressed to HQ USAF/JACC, 1900 Half Street, S.W., Washington, D.C. 20324.

Sincerely

R. R. SEMPLE, Colonel, USAF
Chief, Claims & Tort Litigation Staff
Office of The Judge Advocate General

AIR FORCE ANNIVERSARY
READY THEN READY NOW

GAGLIARDI, TORRES & GERSTEN
ATTORNEYS AT LAW
27 NORTH BROADWAY
TARRYTOWN, N.Y. 10591
(914) 631-1100

JAMES A. GAGLIARDI
MICHAEL TORRES
PETER A. GERSTEN

ANDRUS

June 10, 1983

Jim & Coral Lorenzen
Aerial Phenomena Research Organization
3910 East Kliendale Road
Tucson, Arizona 85716

Dear Jim & Coral:

I am enclosing a copy of the government's denial of the Cash / Landrum claim. It indicates that the UFO and helicopters were not owned or operated by the government.

In speaking to Dick Ruhl several weeks ago, he mentioned that your have an informant at AFB who told you that the UFO was a government device. Dick also stated that you definitely knew that the government was lying about the UFO and helicopters not being theirs.

I can understand the government suppressing information that could save lives and help alleviate needless suffering, but the withholding of crucial evidence by a UFO organization is inexcusable.

I have sixty days in which to file an appeal on behalf of Cash / Landrum. APRO's position on this incident has always been that the UFO is a government device. I now have reason to believe that your position is based on evidence rather than speculation. I would suggest that you voluntarily provide me with this information so we can put an end to this trajedy. You should be advised that I will pursue every possible legal remedy to obtain this evidence.

Very truly yours,

Peter A. Gersten

PETER A. GERSTEN

cc: Betty Cash
Vicki Landrum
John Schuessler

PAG/gm

GAGLIARDI, TORRES & GERSTEN
ATTORNEYS AT LAW
87 NORTH BROADWAY
TARRYTOWN, N.Y. 10591
(914) 631-1100

JAMES A. GAGLIARDI
MICHAEL TORRES
PETER A. GERSTEN

ANDREWS

June 10, 1983

William Moore
P.O. Box 1845
Prescott, Arizona 86302

Dear Bill:

Enclosed is a denial of the Cash / Landrum claim on the grounds that the UFO and helicopters were neither owned nor operated by any government agency. I have 60 days to file an appeal.

The time for grieving is over; it is now time for producing. Where is the independent evaluation and analysis' you promised.

I promise you that unless you voluntarily provide me with this evidence, I will pursue every possible legal remedy necessary to obtain it.

Very truly yours,

Peter A. Gersten

PETER A. GERSTEN

cc: Betty Cash
Vicki Landrum
John Schuessler

PAG/gm

W. Andrus

P.O. Box 58485
Houston, TX 77258-8485
7 April 1984

Peter Gersten
Gagliardi, Torres & Gersten
27 North Broadway
Tarrytown, N.Y. 10591

Dear Peter:

Vickie Landrum and I went out to the Crosby area and met with Rosalie Semour and her daughter Michelle. They told us about the large number of helicopters that came over their home on December 29, 1980. They said they came in "from all directions" and that is what Betty and Vickie said originally. The claimed one helicopter hovered over a tree some 200 feet from their house. Michelle described it as a long green thing, not the type of helicopter that has a bubble on the front for the crew.

They pointed in the direction of where the incident occurred and said there was a glow in that direction like something had crashed or a wreck had occurred. They watched for 15 minutes and returned to the house. They described some copters as having large lights that shined down towards the ground.

Mr. Marvin Semour pinpointed the date, because it was the one night he had worked during that period. He is of the opinion it was a major military operation of some kind.

Mrs. Semour said she would testify in court if asked, but wants no other publicity. She doesn't want to be identified to other UFO researchers or to the press.

I will type up a full report of this in a few days.

I want to comment on the sounds heard during the sighting. Betty, Vickie and Colby have maintained they heard a blast like a flame thrower every time the flames came down from the object. At the same time they heard the intermittent beeping. Under hypnosis, Vickie recalled an odor like lighter fluid while the object hovered over the road. We ascertained it was not lighter fluid, because she was using a butane lighter during that period. The helicopters made the usual, but very loud sounds that usually accompany low flying helicopters.

Sincerely yours,

John F. Schuessler

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BETTY CASH et al	§	
	§	
Plaintiffs	§	
	§	
	§	CIVIL ACTION NO. H-84-3488
v.	§	
	§	
UNITED STATES OF AMERICA	§	
	§	
Defendants		

FIRST REQUEST FOR PRODUCTION OF DOCUMENTS OF PLAINTIFF, BETTY CASH et al ADDRESSED TO DEFENDANT

Pursuant to Rule 34 of the Federal Rules of Civil Procedure Plaintiff, Betty Cash hereby requests that Defendant, United States of America produce the documents requested below for the inspection and copying at the offices of Barfield and Ross, 3410 Mount Vernon, Houston, Texas 77006 within thirty (30) days after service of this Request or at such other time and place as agreed upon by the parties in writing.

I. DEFINITIONS AND INSTRUCTIONS:

1. "Document" and "documents" shall be used in their broadest sense and shall mean and include all written, printed, typed, recorded, or graphic matter of any kind and description, both originals and copies, and all attachments and appendices thereto. Without limiting the foregoing, the terms "document" and "documents" shall include all agreements, contracts, communications, correspondence, letters, telegrams, telegrams, telexes, messages, memoranda, records, reports,

books, summaries, or other records of personal conversations, minutes or summaries or other records of meetings and conferences, summaries or other records of negotiations, other summaries, diaries, diary entries, calendars, appointment books, time records, instructions, work assignments, visitor records, forecasts, statistical data, statistical statements, financial statements, work sheets, work papers, drafts, graphs, maps, plats, charts, drawings, tables, accounts, analytical records, consultants' reports, appraisals, bulletins, brochures, pamphlets, circulars, trade letters, press releases, notes, notice, marginal notations, notebooks, telephone bills or records, bills, statements, records of obligation and expenditure, lists, journals, advertising, recommendations, files, printouts, compilations, tabulations, purchase orders, receipts, sell orders, confirmations, checks, cancelled checks, letters of credit envelopes or folders or similar containers, vouchers, analyses, studies, surveys, transcripts of hearings, transcripts or testimony, expense reports, transparencies, microfilm, microfiche, articles, speeches, tape or disc recordings, sound recordings, video recordings, film, tape, photographs, slides, punch cards, programs, data compilations from which information can be obtained (including matter used in data processing), and other printed, written, handwritten,

typewritten, recorded, stenographic, computer-generated, computer-stored, or electronically stored matter, however and by whomever produced, prepared, reproduced, disseminated, or made. The terms "document" and "documents" shall include all copies of documents by whatever means made, except that where a documents is identified or produced, identical copies thereof which do not contain any markings, additions, or deletions different from the original need not be separately produced. "Document" and "documents" means and includes all matter within the foregoing description that is in the possession, control or custody of the plaintiff or in the possession, control or custody of any attorney for the plaintiff.

2. Unless otherwise indicated, the documents requested are those prepared or received by you from January 1, 1980 to the date the documents requested are produced, or which relate to that period of time.

3. With respect to any document which you claim is covered by any privilege, please identify the author and all recipients, the date of the document and give a brief description of the nature and subject matter of the document and the grounds on which you claims the document is privileged.

4. The facilities from which the requested information refers in the following requests are Ft. Hood, Ft. Sill, Ft. Polk and any Navy vessels capable of carrying and launching CH-47 helicopters in the Gulf of Mexico on the dates noted.

EXHIBIT A

1. Names and addresses of any and all temporary duty officers and/or other officers assigned by and other means, at the above listed facilities for December 27, 28, 29, 30, and 31 of 1980.

2. All personal flight records for the officers listed in response No. 1 for the dates as noted above.

3. Copies of any documents that would reflect orders, plans or assignments for pilots of CH47 helicopters to tow, ferry, and/or escort any large object through the air in December of 1980.

4. Serial numbers by type and model of all helicopters, of any type, assigned to the posts listed above or on temporary duty to the post listed above, or loaned to post listed above for the period of November 1, 1980 to March 1, 1981.

5. For each of the helicopters whose serial numbers were provided in response to the above request provide the material readiness reports.

6. Provide accountings from each of the posts listed above for fuel requested and/or supplied to the helicopters whose serial numbers were provided in request for production No. 5 above during the period from December 15, 1980 through December 31, 1980.

7. Provide lists of all serial numbers of all helicopters that were used to airlift or escort any objects from the posts listed above during the period from December 1, 1980 through December 31, 1980.

8. Provide the names and addresses of all enlisted men from the above listed facilities who flew any type of helicopter from December 27, 1980 through December 31, 1980.

9. Provide construction modification documents for the last ten (10) years for all underground facilities at Fort Hood, including the former Gray Army Airfield.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BETTY CASH et al	§	
	§	
Plaintiffs,	§	
	§	
	§	CIVIL ACTION NO. H-84-3488
	§	
v.	§	
	§	
UNITED STATES OF AMERICA	§	
	§	
Defendants		

PLAINTIFF'S RESPONSE TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S FIRST AMENDED MOTION TO CONTINUE DEFENDANT'S MOTION TO DISMISS

COMES NOW, BETTY CASH, et al, and files this their Response to Defendant's Opposition to Plaintiff's First Amended Motion to Continue Defendant's Motion to Dismiss and would show the Court as follows:

1. Plaintiffs BETTY CASH, VICKI LANDRUM and COLBY LANDRUM have been seriously injured by radiation.

2. There is nothing and there has been nothing natural in the area of FM Road 1485, 7 miles outside New Caney, Texas that would cause such severe and debilitating injuries.

3. One set of interrogatories has been filed with little information discovered. Those questions were propounded by Plaintiff's first attorney and it is agreed that the questions in that first and set were overbroad. New Interrogatories and a Request

for Production have been drafted with special attention paid to the area of the United States in which the incident in question occurred. Special attention has also been paid to the type of documents to be produced. When the requested information is produced it will indicate that the Plaintiffs have stated a viable cause of action upon which relief may be granted and that the military operations in question did in fact occur under the direction of the United States of America on December 29, 1980.

4. Discovery will allow the Plaintiffs to prove that Plaintiffs' claims are not barred by the discretionary function exception to the Federal Tort Claims Act and that the Government's conduct constituted as failure to exercise due care at the operational level.

5. The evidence will show that Plaintiffs have stated a claim upon which relief can be granted.

6. A dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure is on the merits and is accorded a res judicata effect. For this reason, dismissal under this section is generally disfavored by the courts. De La Cruz v. Tormey (CA9th, 1978) 582 F2d 45, cert denied (1979), 441 US 965, 99 S Ct 2416, 60 L ed2d 1072. See also United States v. City of Redwood City (CA9th, 1981) 640 F2d 963 (dismissal under Rule 12(b)(6) is proper only in extraordinary cases).

7. The burden of demonstrating that no claim has been stated is upon the Movant. See Johnsrud v. Carter (CA3d, 1980) 620 F2d 29.

In determining the motion, the court must presume all factual allegations of the complaint to be true and all reasonable inferences are made in favor of the non-moving party. Miree v. DeKalb County, Georgia (1977) 433 US 25,97 S Ct 2490, 53 L. ed2d 557; Kugler v. Helfant (1975) 421 US 117, 95 S Ct 1524, 44 L ed2d 15. However, legal conclusions, deductions or opinions couched as factual allegations are not given a presumption of truthfulness. See Briscoe v. LaHue (CA7th, 1981) 663 F2d 713, aff'd (1983) 193 S. Ct. 1108, 75 L ed2d, 96.

8. Generally, the allegations of a complaint are to be liberally construed. Sinclair v. Kleindienst (CA DC, 1983) 711 F2d 291 (complaints must be read liberally, and detailed pleading is not required). See also Schlesinger Investment Partnership v. Fluor Corp. (CA2d, 1982) 671 F2d 739 (the dismissal with prejudice of a complaint without leave to replead or conduct discovery contradicted the liberal federal policy in pleading and discovery). After thus construing the complaint the court should deny a motion to dismiss for failure to state a claim "unless it appears beyond doubt that the Plaintiff can prove no set of facts in support of his claim which would entitle him to relief". Conley v. Gibson (1957) 355 US 41, 45-46, 78 S Ct 99, 102, 2 L ed2d 80 (footnote omitted). In Scheuer v. Rhodes (1974) 416 US 232, 94 S. Ct 1683, 40 L. ed2d 90, the Supreme Court stated:

> When a federal court reviews the sufficiency of a complaint, before the reception of any evidence either by affidavit or admissions, its task is necessarily a limited one. The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to

> support the claims. Indeed it may appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test. Moreover, it is well established that, in passing on a motion to dismiss, whether on the ground of lack of jurisdiction over the subject matter or for failure to state a cause of action, the allegations of the complaint should be construed favorably to the pleader. 416 U.S. at 236.

9. In making this determination, the likelihood that plaintiff will prevail is immaterial. Boudeloche v. Grow Chemical Coatings Corp. (CA5th, 1984) 728 F2d 759 (as long as the pleadings were sufficient, dismissal was inappropriate even if it appeared almost certain to the district court that the facts alleged could not be proved to support the legal claim); United States v. City of Redwood City supra (even if pleadings indicated that recovery was very remote, dismissal was improper in a negligance action); De La Cruz v. Torney supra (the pleader's chance of success on the merits is not at issue in a Rule 12(b)(6) motion), as is the fact that the requested relief is inappropriate, or the legal theories have been miscategorized.

10. Defendant's statement that the Plaintiff is attempting to confuse the legal issues at bar is without merit. Plaintiffs are aggressively moving toward obtaining evidence that will conclusively show that Plaintiffs' injuries are a result of the negligence of the United States and that will overcome the government's immunity defense.

WHEREFORE, the Plaintiffs, BETTY CASH, VICKI LANDRUM, and COLBY LANDRUM respectfully request that the Court enter its Order granting an extension of time to conduct discovery.

Respectfully submitted,

Bill Shead
2927 Broadway Boulevard
Houston, Texas 77017
(713) 649-8944
TBA#

Rhonda S. Ross - Co-counsel
3410 Mount Vernon
Houston, Texas 77006
(713) 225-9257
TBA # 17299600

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served on counsel for Defendant, by forwarding same to him by certified mail, return receipt requested, at the above-stated address, on this the 25 day of April, 1986.

Bill Shead

II. DOCUMENT TO BE PRODUCED

See Exhibit "A".

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served on counsel for Defendant, by forwarding same to him by certified mail, return receipt requested, at the above-stated address, on this 25 day of April, 1986.

Bill Shead

Bill Shead

Respectfully submitted,

Bill Shead

Bill Shead
2927 Broadway Boulevard
Houston, Texas 77017
(713) 649-8944

Rhonda S. Ross

Rhonda S. Ross
3410 Mount Vernon
Houston, Texas 77006
(713) 225-9257
TBA# 17299600

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

BETTY CASH, ET. AL., Plaintiffs,	)	
vs.	)	CIVIL ACTION NO. H-84-348
UNITED STATES OF AMERICA, Defendant.	)	

MOTION FOR PROTECTIVE ORDER CONCERNING FIRST REQUEST FOR PRODUCTION

COMES NOW the defendant, United States of America, and moves for the entry of a protective order in this matter, and would show the Court as follows:

1. Much of the information requested is duplicative of the Interrogatories already answered in this case. Those Interrogatories were answered in several installments, the last being March 18, 1985 at which time various objections were made on the basis of vagueness, overbreadth, and undue burden. Those objections are reurged at this time.

2. On January 17, 1985 the United States submitted a Motion to Dismiss and/or for Summary Judgment. Following a review of the pleadings, this Court on September 3, 1985 heard oral argument of the parties. At that time the Court stated that an Order of Dismissal might be forthcoming. In light of the pendency of this dispositive motion, on purely legal grounds, the continuation of protracted "fishing expeditions" every time the plaintiff's obtain new counsel is unduly burdensome and constitutes sheer harassment of defendant.

3. Plaintiffs have previously sought, without success, leave of this Court to re-commence discovery in this case. Defendants object to the dilatory tactics and unconscionable conduct of plaintiffs in attempting once again to cloud the purely legal issues upon which this case rests. Where as here, the case is so obviously barred by operation of law, for defendant to incur the expense of duplicitious and burdensome discovery, for the second time, is simply not justified.

WHEREFORE, defendant moves for entry of a protective order staying all discovery pending the Court's decision on the Motion to Dismiss and/or for Summary Judgment filed January 17, 1985.

Respectfully submitted,

HENRY K. ONCKEN
United States Attorney

By: Frank A. Conforti

FRANK A. CONFORTI
Assistant United States Attorney
Attorney for Defendant
Post Office Box 61129
Houston, Texas 77208
(713) 229-2630

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for Protective Order Concerning First Request for Production was mailed to Peter A. Gersten, 895 Sheridan Avenue, Bronx, New York 10451, Rhonda S. Ross, 3410 Mount Vernon, Houston, Texas 77006 and William C. Shead, 2927 Broadway Boulevard, Houston, Texas 77017 on this the 14 day of May, 1986.

Frank A. Conforti

FRANK A. CONFORTI
Assistant United States Attorney

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

BETTY CASH, ET. AL.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	CIVIL ACTION NO. H-84-348
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

PROTECTIVE ORDER

CAME ON this day the Motion for Protective Order filed by the United States and the Court, having considered the Motion and accompanying Memorandum, and the subsequent pleadings of the parties,

It is hereby ORDERED that all discovery in the above noted cause of action is STAYED pending a ruling on the Motion to Dismiss and/or for Summary Judgment pursuant to Federal Rules of Civil Procedure Rules 12(b)(1), 12(b)(6) and 56.

DONE at Houston, Texas, this _____ day of _____, 1986.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

BETTY CASH, ET. AL.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	CIVIL ACTION NO. H-84-348
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

ORDER OF DISMISSAL

CAME ON this day the Motion to Dismiss and/or for Summary Judgment filed by the United States and the Court, having considered the Motion and accompanying Memorandum, and the subsequent pleadings of the parties,

It is hereby ORDERED that the above noted cause of action is DISMISSED pursuant to Federal Rules of Civil Procedure Rule 12(b)(1), Rule 12(b)(6) and Rule 56.

DONE at Houston, Texas this _____ day of _____, 1986.

UNITED STATES DISTRICT JUDGE