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REPLY BRIEF FOR APPELLANT

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

D.C. Cir. No. 14-5230

JEFFERSON MORLEY,

Appellant,

v.

CENTRAL INTELLIGENCE AGENCY,

Appellee

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Dated: July 30, 2015

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GLOSSARY

ARRB	Assassination Records Review Board
Church Committee	Senate Select Committee to Study Government Operations with Respect to Intelligence Activities
CIA	Central Intelligence Agency
DRE	Directorio Revolucionario Estudantil or Cuban Student Directorate
FOIA	Freedom of Information Act
FPCC	Fair Play for Cuba Committee
HSCA	House Select Committee on Assassinations
JFK Records Act	President John F. Kennedy Assassination Records Collection Act of 1992
NARA	National Archives and Records Administration or National Archives
Warren Commission	President's Commission of the Assassination of President John F. Kennedy

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On Appeal from the United States District Court for the District of Columbia, the Hon. Richard J. Leon, Judge

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REPLY BRIEF FOR APPELLANT

SUMMARY OF ARGUMENT

At issue in this Freedom of Information Act ("FOIA") case is whether the plaintiff-appellant Jefferson Morley ("Morley") is entitled to an award of attorney's fees and costs. Entitlement to an award of fees is governed by a District Court's consideration of at least four factors. In the prior appeal,

Morley v. C.I.A., 719 F.3d 689, 690 (D.C. Cir. 2013)("Morley 2013"), this Court ordered the District Court to apply the four factor test "in a manner consistent with Davy v. C.I.A., 550 F.3d 1155 (D.C. Cir. 2008)('Davy')." It noted that in Davy it had "elaborated on one of the four factors, the public benefit factor." Id. It took pains to note the similarity between the Davy and Morley cases, pointing out that "'records about individuals allegedly involved in President Kennedy's assassination[] serve[] a public benefit.'" Morley 2013, at 690, quoting Davy, at 1159.

Davy specified that the "public benefit" analysis "requires consideration of both (1) the effect of the litigation for which fees are requested and (2) the potential public value of the information sought. Morley 2013, at 690 (emphasis added)(quoting Davy, at 1159. The Court further drew special attention to the fact that Davy said that "the standard for entitlement to attorney fees does not 'disqualify plaintiffs who obtain information that, while arguably not of immediate public interest, nevertheless enables further research ultimately of great value and interest, such as here the public understanding of a Presidential assassina-tion.'" Morley 2013 at 690, quoting Davy at 1162, n.3.

Judge Leon carefully noted these instructions. See Morley 2014, slip op. at 5. JA 803. He then proceeds to misinterpret or disregard them in an

analysis that is replete with errors of law, errors of fact, and omissions of facts.

Davy spent nearly a full page discussing the first "public benefit" element, "the effect of the litigation for which fees are requested." It concluded that the District Court had not abused his discretion in finding that "'Davy's FOIA request and subsequent litigation were intended to compel disclosure of information relating to the activities of a government agency (the CIA) in relation to a significant historical event,' and thus that this factor favors Davy. There can be little question that this factor favors Davy." Davy, at 1159 (quoting but not citing Davy v. C.I.A., 496 F.Supp.2d 36, 38 (D.D.C.2007)("Davy 2007"). By contrast, in Morley 2014 the District Court does not analyze the "impact on litigation" in this case in light of Davy. It ignores it except to assert that "consideration of our Circuit's elaboration of the public benefit factor in Davy does not . . . alter my original conclusion that 'this litigation has yielded little, if any, public *benefit*. . . .'" Morley 2014, slip op. at 5, JA 807, quoting Morley v. C.I.A., 828 F.Supp. 2d 257, 261 (D.D.C. 2011) ("Morley 2011"). However, the fruit of Morley's litigation was the same as in Davy's litigation"—the production of newly disclosed information after nothing had been released prior to the filing of the lawsuit and/or court orders. The District Court's

failure to attribute public benefit from this success in litigation was an abuse of discretion.

The second element of the public benefit analysis prescribed by Davy concerned the potential public value of the information sought. The District Court misinterpreted "potential public value," equating it with what he perceived as the actual truth about the new information Morley adduced. Davy instead, focused not on the "truth" of the documents he described but on the fact that it was "'new information bearing on the controversy over former [District Attorney Jim] Garrison's contention that the CIA was involved in the assassination plot.'" Davy at 59, quoting Davy Decl. ¶2.

The District Court now concedes that the four documents adduced by Morley "convey newly-released information not already in the public domain." Morley 2014 slip op. at 9. JA 807. He asserts, however, that "nothing other than pure speculation connects any of it to the Kennedy assassination." Id. But this misrepresents and ignores many salient, undisputed facts. The District Court relied on the CIA's unsworn statements about the meaning of newly released records. His finding rests on the "testimony" of the CIA's counsel.

The District Court rejected Morley's characterization of the Career Intelligence Medal that Joannides was given soon after his retirement as

having any bearing on the Kennedy assassination controversy. Id. This ignores the language of the citation, which praises Joannides for his performance of "diverse assignments of increasing responsibility at Headquarters, the domestic field and overseas." See Career Intelligence Medal at JA 662. The District Court does not dispute that Joannides' service in Miami in 1962-64 was his only assignment in the "domestic field," and that Joannides liaison duties with the House Select Committee on Assassinations were the culmination of his responsibilities at Headquarters. So the undisputed facts obtained via this litigation corroborate Morley's contention that "since the medal was given for the entirety of Joannides career, it has to reflect the approval of his conduct as it related to the JFK assassination issues he dealt with in 1963-64 and 1978." 8th Morley Decl. ¶ 4. The District Court ignores other relevant circumstances which reflect on the potential public benefit of the disclosures obtained by Morley. It does not mention, for example widespread media interest in the results of the litigation which shed new light on Joannides' conduct in obstructing a congressional investigation into the JFK assassination.

Indeed, Judge Leon expressly excluded from his consideration circumstances that were of the greatest relevance and importance to the inquiry he was supposed to undertake into the potential public value of the informa-

tion unearthed by Morley,saying, "I do not pass judgment on the importance of Joannides's relationship with Oswald, the Kennedy assassination, or the Warren Commission." Morley 2013, slip op. at 10. JA 808. Judge Leon's tunnel vision approach to the circum-stances surrounding the documents at issue disobeyed this Court's instructions and an abuse of discretion.

The District Court found that the CIA was correct in contending that the newly released travel records which Morley cited as relating to the JFK assassination disclosed only that New Orleans was Joannides "home leave residence" and "shed no light on where Joannides was on any particular date." Slip op. at 8, JA 806, citing Reply to Def's Opp. at 14, see Plaintiff's Mot., Attachments 1-2. However, "Joannides and his family lived in Miami from 1962-64, according to CIA records and interviews [of former colleagues]. Joannides residence on 65th in Southwest Miami was listed in the 1963 Miami phone book." Pl's Reply to Opp. [Doc. 140], Exhibit 1, a printout from JFK Facts, "CIA admits undercover officer lived in New Orleans." by Jefferson Morley. What is clear is that the new information provided in the travel forms establishes a previously unknown close connection between Joannides and New Orleans which is unexplained by any other evidence, such as the presence of relatives. The District Court erred in adopting the CIA's un-sworn interpretations of the travel forms and

disregarding Morley's evidence that Joannides maintained a residence in New Orleans at a time when Oswald was involved in DRE activities there.

An obvious test of public benefit is the extent of news media coverage. The CIA concedes that this is a relevant factor but tries to downplay it, describing the news coverage as "modest" and unconnected to the documents at issue. See Brief for Appellees at 17. Judge Leon adopted this view. But both points are refuted at length by Morley's discussion of this point. See Brief for Appellant at 30-35. The media coverage from 30 news organizations across the country, as well as England and Canada, would be more accurately described as deep and substantial. All of these news organizations referred to information obtained by Morley under this litigation and eight of them, including the New York Times, the country's leading newspaper of record, published a photograph of Joannides obtained by Morley.

With respect to the second, third and fourth factors, the District Court failed to analyze them in light of the extensive discussion in Davy. Davy had ruled that Judge Leon had abused his discretion with respect to all three factors. Although the considerations which led Davy to find an abuse of discretion in evaluating these facts were essentially the same as in this case,

Judge Leon simply made a conclusory assertion ratifying his previous holdings. Once again, he abused his discretion in so doing.

ARGUMENT

I. THE DISTRICT COURT ABUSED ITS DISCRETION IN DENYING MORLEY AN AWARD OF ATTORNEY'S FEES

A. The Legal Standard for Abuse of Discretion

In Eley v. District of Columbia, D.C. Cir. No. 13-7196 (July 10, 2015), this Court recently set forth the standard for abuse of discretion in federal fee shifting statutes cases. It stated:

> We review the District Court's fee award for abuse of discretion, King v. Palmer, 950 F. 2d 771, 785 (D.C. Cir. 1991)(en banc), and will not upset its hourly rate determination absent clear misapplication of legal principles, arbitrary fact finding, or unprincipled disregard for the record." Kattan ex rel. Thomas v. Dist. of Columbia, 995 F.2d 274, 278 (D.C. Cir. 1993), as amended (June 30, 1993).

As will be demonstrated below, the District Court has abused its discretion under each of these three grounds.

B. The District Court Violated This Court's Mandate

On August 14, 2013, this Court issued its Mandate vacating the judgment of the District Court which Morley had appealed from and remanded the case to the District Court to apply the four factor standard "in

a manner consistent with Davy, in accordance with the opinion of the court filed herein this date." The Mandate was duly filed in the District Court on August 20, 2013. Doc. 132.

The District Court did not follow the mandate. Rather than using the "potential public value" test as set forth in Davy to make its analysis of the public benefit factor, it proceeded to construct an analysis inconsistent with those instructions. It all but ignored the "effect on litigation" element of the public benefit factor and gave it no discernible weight. Although the "potential public value" standard prescribed by Davy is broader than the "truth" of the contents of a particular newly disclosed information being analyzed for evaluation under the public benefit factor, the District Court restricted the scope of its analysis to an effort to diminish or distract from the potential benefit of Morley's new information, it accepted interpretations of that evidence which were not supported by sworn declarations but relied on the "testimony" of the CIA's counsel.

In fact, the District Court excluded from consideration circumstances that were directly relevant to the potential public value of the new information. He expressly stated: "In concluding that this litigation has benefited the public only slightly, if at all, I do not pass judgment on the importance of Joannides's relationship with Oswald, the Kennedy assassination, or the

Warren Commission." But, for reasons that will be set forth in detail in the sections that follow, these are some of the matters the District Court was required to undertake in compliance with this Court's instructions.

C. Factor 1: The Public Benefit Factor

Davy specified that the "public benefit" analysis "requires consideration of both (1) the effect of the litigation for which fees are requested and (2) the potential public value of the information sought. Morley 2013, 719 F.3d at 690, quoting Davy, 550 F.2d at 1159 (emphasis added by appellant). Davy separately analyzed these two elements in some detail. The District Court did not. Following Davy, appellant now does so, too.

1. Element 1: Effect on Litigation

The District Court avoided any discussion of the first element of the public benefit analysis prescribed by Davy. It does refer to "litigation" in the context of "public benefit" when it conclusorily asserts that "consideration of our Circuit's elaboration of the public benefit factor in Davy does not, however, alter my original conclusion that 'this litigation has yielded little, if any, public *benefit*. . . .'" Slip op. at 5, JA 807, quoting Morley v. C.I.A., 828 F.Supp. 2d 257, 261 (D.D.C. 2011) ("Morley 2011"). The same thought is expressed in almost the same language near the end of his opinion

when Judge Leon's speaks of "concluding that this litigation has benefitted the public only slightly, if at all. . . ." Id. at 10. Neither of these conclusory assertions seems to include any consideration of effect on litigation element.

This is an erroneous approach to the public benefit analysis which this Court required the District Court to undertake. A finding that information was obtained as a result of the litigation is a necessary predicate to a finding that the public benefitted sufficiently to merit an award of attorney fees. An inquiry into the second element, the "potential public value" of the information, is superfluous unless the first element has been met. Given the importance of a finding that information was released because of the litigation, it becomes difficult to weigh the overall public benefit factor as negligible, but that is exactly what the District Court did here.

In Davy, Judge Leon had found that "'Davy's FOIA request and subsequent litigation were intended to compel disclosure of information relating to the activities of a government agency (the CIA) in relation to a significant historical event,' and thus that this factor favors Davy. There can be little doubt that this factor favors Davy." Davy, 550 F.3d at 1159, quoting Davy v. C.I.A., 496 F.Supp.2d 36, 38 (D.D.C. 2007)("Davy 2007"). Davy found that Judge Leon had not abused his discretion because the facts favorably supported both elements of the "public benefit" analysis.

Davy held that "[b]ecause nothing in the record indicates that Davy would have received the information without filing suit, the district court's consideration of the value of the information sought necessarily entailed consideration of the value of the litigation that led to that disclosure of that information." Davy at 1159. Davy found that "[n]othing in the record indicates that the releases, which occurred only after the May 4, 2001 order of the district court, were not a fruit of Davy's litigation; despite Davy's second FOIA request, the agency did not turn over any documents to him until he filed suit." Id.

Exactly the same is true in this case. The CIA did not initially respond to Morley's request but tried to shunt it off onto another agency, National Archives and Records Administration ("NARA"), which did not have all the records on Joannides that the CIA did and did not even have all the JFK assassination-related records that the CIA had. Suit was filed on December 16, 2003. On September 2, 2004, the District Court entered an order providing that the CIA would have until December 2004 "to complete its processing of Morley's FOIA case request. . . ." Doc. 22. By letter dated December 22, 2004, the CIA released three documents in their entirety and 112 in part. JA 81. Two FBI referral documents were released subsequently. All of these releases were the fruit of Morley's litigation.

Because the District Court upheld the CIA invocation of its GLOMAR defense refusing to confirm or deny the existence of operational records and JFK assassination-related records allegedly transferred from the CIA to NARA, Morley appealed. Morley was successful on appeal in getting this Court to remand the case to District Court with instructions that "[o]n remand, the district court shall direct the court to search its operational files and the files released to NARA . . . ." Morley v. C.I.A., 508 F.3d 1108, 1129 (D.C. Cir. 2007)("Morley 2007").

On April 28, 2008, the CIA notified Morley that as ordered by this Court it had searched the JFK-related records that it claimed it had previously transferred to NARA and that this search had located 113 records totaling 1,040 pages responsive to Morley's requests. The CIA stated that it was releasing 88 of these documents in full and 25 in part. These records were, of course, released as a direct result of this litigation and this Court's remand order.

On August 6, 2008, the CIA released 29 documents in full and 264 in part from CIA operational files that had been searched pursuant to this Court's 2007 remand decision. All of these records were released as a result of this litigation, clearly establishing a public benefit favoring Morley.

2. Element 2: The Potential Public Value

This Court also remanded this case to District Court for Judge Leon to analyze, in light of this Court's discussion in Davy of "the potential public value of the information sought." Davy at 1159. On remand, the District Court misconstrued the meaning of this term. The phrase inherently suggests that the "value" or "truth" of the document obtained is not by and of itself a total or sufficient measure of the benefit to the public that acquisition of such information may provide. A document cannot be considered in isolation from other circumstances which make it possible to assess its potential meaning for the public. "Public value" indicates that considerations other than the mere "face value" of a document may play a role in evaluating "public benefit." This is enhanced by the very deliberate choice of the adjective "potential" in front of "public value." Thus, this phrase conveys a much broader array of concerns that may figure into an assessment of the "public benefit" factor than if consideration of the content of a document is divorced from relevant circumstances.

Here, the District Court, focused myopically on what it perceived to be the "truth" of the information extractable from the documents themselves. The District Court focused single-mindedly on what it perceived was the true significance of the documents at issue. Indeed, he expressly excluded from his consideration circumstances that were of the greatest relevance and

importance to the inquiry he was supposed to undertake into the potential public value of the information unearthed by Morley. He declared: "In concluding that this litigation has benefited the public only slightly, if at all, I do not pass judgment on the importance of Joannides's relationship with Oswald, the Kennedy assassination, or the Warren Commission." Morley 2013, at 10. JA 808.[1]

But the importance of Joannides' relationship to the excluded subjects was obviously quite important. With respect to Joannides relationship with Oswald, the record reflects that Oswald was involved with the Fair Play for Cuban Committee ("FPCC"), an organization ostensibly created to support Cuba and its Prime Minister, Fidel Castro. Joannides was also case officer for the CIA funded Cuban exile organization, the Directorio Revolucionario Estudantil ("DRE"), a lavishly funded anti-Castro Cuban exile organization. Prior to the assassination of President Kennedy, Oswald was engaged in activities involving the DRE. Those activities placed DRE in the position of being able, immediately after Oswald's arrest, to break the news to the world's press that Oswald was a pro-Castro Marxist who had defected to the Soviet Union after a stint in the Marine Corps.

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[1] Interestingly, one subject Judge Leon did not expressly exclude from considering the importance of was Joannides relationship with the HSCA, whose efforts to investigate the assassination Joannides undermined. He fails to give it the attention it deserves, or any attention at all.

One of the huge public revelations subsequent to the issuance of the Warren Report in 1964 was the fact that the CIA had not informed the Warren Commission about the assassination plots against Fidel Castro. This necessarily made Joannides' knowledge of the activities of the DRE (and Oswald), a matter of much greater interest to the public. This public interest is further enhanced by Joannides role as liaison to the HSCA and his efforts to undermine this congressional investigation into the assassination of President Kennedy.

Judge Leon's decision is flawed because it failed to take these circumstances into consideration in making his determination that the records Morley obtained resulted in no public benefit.

But Judge Leon also erred in interpreting the meaning of the documents at issue. The CIA and Judge Leon now concede what they formerly denied, that the documents Morley obtained are newly-released. As Judge Leon found, the four documents adduced by Morley "convey newly-released information not already in the public domain." Morley 2014 at 9. JA 807. He asserts, however, that "nothing other than pure speculation connects any of it to the Kennedy assassination." Id. But this misrepresents and ignores many salient, undisputed facts.

a. Joannides Career Intelligence Medal

The District Court rejected Morley's characterization of the Career Intelligence Medal that Joannides was given soon after his retirement as having any bearing on the Kennedy assassination controversy. Id. This ignores the language of the citation itself, which praises Joannides for his performance of "diverse assignments of increasing responsibility at Headquarters, the domestic field and overseas." See Career Intelligence Medal at JA 662. The District Court does not dispute that Joannides' service in Miami in 1962-64 was his only assignment in the "domestic field," and that Joannides liaison duties with the House Select Committee on Assassinations were the culmination of his responsibilities at Headquarters. So the undisputed facts obtained via this litigation corroborate Morley's contention that "since the medal was given for the entirety of Joannides career, it has to reflect the approval of his conduct as it related to the JFK assassination issues he dealt with in 1963-64 and 1978." 8th Morley Decl. ¶ 4. JA 658. The District Court ignores other relevant circumstances which reflect on the potential public benefit of the disclosures obtained by Morley. It does not mention, for example widespread media interest in the results of the litigation which shed new light on Joannides' conduct in obstructing a congressional investigation into the JFK assassination.

b. Travel Records

The District Court found that the CIA was correct in contending that the newly released travel records which Morley cited as relating to the JFK assassination disclosed only that New Orleans was Joannides "home leave residence" and "shed no light on where Joannides was on any particular date." Morley 2013, slip op. at 8, JA 806, citing Def's Opp. at 14, and see Plaintiff's Mot., Attachments 1-2. However, "Joannides and his family lived in Miami from 1962-64, according to CIA records and interviews [of former colleagues]. Joannides residence on 65th in Southwest Miami was listed in the 1963 Miami phone book." Pl's Reply to Def's Opp. Doc. 140, Exhibit 1, a printout from JFK Facts, "CIA admits undercover officer lived in New Orleans." by Jefferson Morley.

What is clear is that the new information provided in the travel forms establishes a previously unknown close connection between Joannides and New Orleans which is unexplained by any other evidence, such as the presence of relatives. The District Court erred in adopting the CIA's un-sworn interpretations of the travel forms and disregarding Morley's evidence that Joannides maintained a residence in New Orleans at a time when Oswald was involved in DRE activities there. See Reply to Opp., Doc. 140, at 23.

In a very recent decision in Hall v. F.B.I., Civil Action No. 04-0814, Judge Royce Lamberth dealt with the public benefit factor in considering an interim award of attorney's fees in a case in which the plaintiffs had sought records on missing POWs in Southeast Asia. Judge Royce Lamberth found that "information regarding missing POW/MIAs is exactly the kind of information that interests thee public." Id., slip op. at 7. Applying the potential public value test, he ruled that "[d]isclosure of this information has the potential to shed light on the extent, nature, intensity and duration of the government's efforts to locate POW/MIAs and the degree to which the CIA has accurately informed the public about its search efforts and the information it possesses." Id.

This represents the kind of "potential public benefit that Judge Leon failed to make.

c. Other Records

In a footnote the District Court dismissed peremptorily some other evidence of new information obtained by Morley which benefited the public. He notes that Morley "contends that the public learned about documents withheld properly under FOIA." Morley 2014, slip op. at 10, n.7. He rejects this contention on the ground that, as he had previously stated, "these documents were properly withheld under FOIA." Id. at 10, citing Morley v.

U.S.C.I.A., 699 F.Supp.2d 244, 252-259 (D.D.C. 2010)("Morley 2010"). The documents were withheld. But the fact that a very large number—295 documents—had been withheld in their entirety, was revealed. The FOIA applies to both records and information. Morley's lawsuit obtained this very important information, and the District Court's disregard of the widespread media coverage was an abuse of discretion.

d. News Media Coverage

An obvious test of public benefit is the extent of news media coverage. The CIA concedes that this is a relevant factor but tries to downplay it, describing the news coverage as "modest" and unconnected to the documents at issue. See Brief for Appellee at 17. The District Court adopted this view. He confined his treatment of the issue to two sentences in a footnote in which he dismissed any public benefit because, he said, Morley had failed "to tie that coverage to any of the newly released documents rather than those that were already available to the public." Morley 2013, slip op. at 10, n.7. JA 808. But both points are refuted at length by Morley's discussion of this point. See Brief for Appellant at 30-35.

The media coverage from 30 news organizations across the country, as well as England and Canada, would be more accurately described as deep and substantial. All of these news organizations referred to information

obtained by Morley under this litigation and eight of them, including the New York Times, the country's leading newspaper of record, published a photograph of Joannides obtained by the plaintiff in its digital version.

The District Court's claim that the news media coverage is not tied to Morley's evidence of newly released information is contradicted by the record. Morley called the District Court's attention to the fact that a photograph of Joannides receiving his medal was published in the digital version of an October 16, 2009 story published in the New York Times. The District Court states in a footnote that his review of the record "does not reveal any filing of the photograph with this Court, only that the citation and a record of the ceremony that notes a photographer was present." Morley 2014, slip op. at 8, n.6. But neither the CIA nor the District Judge has disputed the fact that Morley obtained the photograph and The New York Times and other publications have run it.

In Clemente v. F.B.I., 741 F.Supp. 64, 77 (D.D.C. 2010), Judge Paul Friedman granted the plaintiff a public interest fee waiver based on a single story in the New York Times dealing with the subject matter of Ms. Clemente's FOIA request. The test for a public interest fee waiver is similar, if not identical, to the test for awarding attorney fees based on the public benefit factor. What was sufficient media attention for a court to

award a public interest fee waiver in Clemente has been many times more sufficient in Morley.

D. Second, Third and Fourth Factors

With respect to the second, third and fourth factors, the District Court failed to analyze them in light of the extensive discussion concerning them in Davy. Davy had ruled that Judge Leon had abused his discretion with respect to all three factors. Although the considerations which led Davy to find an abuse of discretion in evaluating these facts were essentially the same as in this case, Judge Leon simply made a conclusory assertion ratifying his previous holdings. Once again, he abused his discretion in so doing.

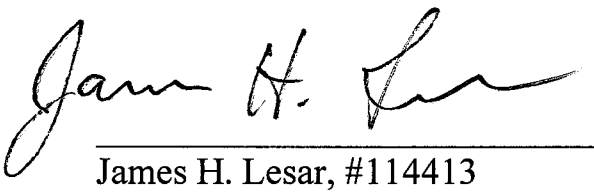
With respect to the second, third and fourth factors, the CIA says that "the District Court correctly noted that this Court did not indicate any infirmities with the District Court's original analysis." Brief for Appellees at 16, citing Morley 2014, slip op. at 3, 10, JA 606. Neither did this Court approve the District Court's rulings on those points. Indeed, the fact that this Court remanded with instructions to apply the four factor test suggests the Court perceived a need for Judge Leon to take a fresh look at these three factors, too. This is so particularly in light of the fact that there are great similarities between the Davy case and this case. regarding these factors.

The Davy Court had reversed Judge Leon's negative evaluation of those factors. Despite this, Judge Leon did not make a new analysis.

CONCLUSION

For the reasons set forth above, the District Court's decision denying Morley attorney fees should be denied. Morley should be allowed to submit an application directly to this Court to allow it to approve in whatever degree it believes warranted, the amount of attorney fees and costs incurred in this case.

Respectfully submitted



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Dated: July 30, 2015

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of July, 2015, I caused a copy of the foregoing Reply Brief for Appellant to be served by the Court's ECF system on counsel for Appellee.

JAMES H. LESAR

CERETIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION

I hereby certify that the foregoing brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and contains 4908 words.

JAMES H. LESAR