

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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Civil Action No. 74-1054

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STEPHEN M. AUG,  
v. Plaintiff,

NATIONAL RAILROAD PASSENGER CORPORATION,  
Defendant.

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AFFIDAVITS OF  
LARRY P. ELLSWORTH  
and  
ALAN B. MORRISON

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LARRY P. ELLSWORTH  
ALAN B. MORRISON

Counsel for Plaintiff

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

STEPHEN M. AUG, )  
Plaintiff, )  
v. )  
NATIONAL RAILROAD PASSENGER ) Civil Action No. 74-1054  
CORPORATION, )  
Defendant. )

AFFIDAVIT OF LARRY P. ELLSWORTH

Washington, D.C.) ss.

Larry P. Ellsworth, being duly sworn, deposes and says:

1. I have been the principal counsel in the above-captioned case since its inception.
2. I am a member of the bar of the District of Columbia Court of Appeals, as well as the bars of this Court, the United States Court of Appeals for the District of Columbia Circuit, and the Supreme Court of the United States.
3. I received my juris doctor degree in 1972 from the Harvard Law School and a graduate degree (LL.M.) in administrative law from the Georgetown Law Center in 1973. While at Georgetown, I participated in the clinical program of the Institute for Public Interest Representation. My undergraduate education was completed at Michigan State University in 1969.
4. From 1973 until 1975, I was with the Freedom of Information Clearinghouse, a project of the Center for the Study of Responsive Law. The Center is a non-profit, tax-exempt organization, and the work of the Clearinghouse is supported by foundation grants. The principal work of the Clearinghouse is the litigation of cases under the Freedom of

Information Act and the Federal Advisory Committee Act. Clearinghouse attorneys generally accept cases on the basis of a determination that judicial resolution will help develop the law so as to aid other citizens or that disclosure of the particular information sought will benefit a significant sector of the public. The staff of the Clearinghouse also responds to requests for information and advice about the FOIA and other access laws from scores of citizens each month. Congressional testimony by Clearinghouse attorneys played an important part in the development of the 1974 amendments to the FOIA.

5. Since the fall of 1975, I have been with the Public Citizen Litigation Group, a non-profit, tax-exempt corporation which handles a wide variety of litigation matters, primarily in the Federal courts. Expert advice by myself and other attorneys at the Litigation Group played a significant role in the development of the 1976 amendments to the FOIA. While I have worked on such matters as a challenge to the non-competitive sale of an Air Force plant to a large defense contractor, the ban of a color additive from use in food, drugs and cosmetics, and a challenge to provisions of the election laws allowing one house of Congress to veto regulations of an independent agency, much of my work continues to entail litigation under the Freedom of Information Act.

6. I have served as counsel in more than thirty Freedom of Information Act cases, and, to the best of my knowledge, I have litigated more Freedom of Information Act cases than any other attorney in private practice.

7. I was elected in 1976 to a two-year term on the Steering Committee for the Administrative Law Division of the

District of Columbia Bar Association (Unified), and as Chairperson of the Division. From mid-1975 to mid-1976, I was the Chairperson of the District of Columbia Bar's Committee on Access to Government Information, and prior to that time I served as the Committee's Vice-Chairperson (1974-1975).

8. I am a frequent lecturer on the FOIA at seminars, conferences, classes and training programs conducted by government agencies, bar associations, law schools, journalistic groups, and civic organizations. Additionally, I have advised Federal, State and foreign governments concerning public access laws.

9. I was a contributing author to the handbook entitled "Litigation Under the Amended Freedom of Information Act" (1976), and I have written various articles on Information Act matters, including, Amended Exemption 7 of the Freedom of Information Act, 25 Am. U.L. Rev. 37 (1975).

10. I am informed and believe that law firms in Washington, D.C. having primarily Federal practices bill in the range of \$75 to \$150 per hour for partners and in the range of \$40 or \$50 for beginning associates to \$75 or \$85 per hour, depending on the firm, for senior associates. These rates would generally be increased for an attorney having special expertise in the area involved.

11. I believe that based on my experience and expertise, particularly in FOIA matters, I am entitled to reimbursement at the base rate of \$65 per hour for my work performed in this case.

12. Since February, 1975, when the Freedom of Information Act attorneys' fee provision took effect, I have kept time records

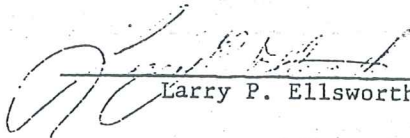


of my work on cases in litigation. Those records reflect that I have since then expended 260 1/2 hours working on this case, including the writing of numerous pleadings and correspondence, and the conducting of discussion with affiants, defendant's counsel, and plaintiff. These hours include my time expended on the issue of costs.

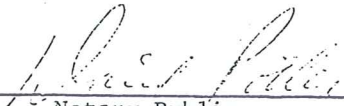
13. I have studied the pleadings in this case for the period from July, 1974, when the complaint was filed, until February, 1975, when I began to keep daily time records, and have reconstructed the time records for that period. Those records reflect that I expended 38 hours working on this case during that period, and I believe this to be a conservative figure. I probably spent more time than that on this case during that period.

14. In view of the foregoing, my base fees in this case amount to \$19,402.50.

15. The litigation of this case has involved \$13 in taxable costs as follows: filing fee, \$10; marshals' fee, \$3.

  
Larry P. Ellsworth

Sworn and subscribed to before me this 11 day of April, 1977.

  
Notary Public

My commission expires: Oct 25 1977

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STEPHEN M. AUG, )  
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NATIONAL RAILROAD PASSENGER )  
CORPORATION, )  
Defendant. )

Civil Action No. 74-1054

AFFIDAVIT OF ALAN B. MORRISON

Washington, D.C. ) ss.

Alan B. Morrison, being duly sworn, deposes and says:

1. I have been one of the counsel for the plaintiff in the above-captioned action since its inception.
2. I am a member of the Bars of the State of New York and of the District of Columbia and am admitted to practice in the United States District Courts for the Southern District of New York, Eastern District of New York, and the District of Columbia. I am also admitted to practice in the Supreme Court of the United States and the United States Courts of Appeals for the District of Columbia Circuit, Second Circuit, Third Circuit, and Fourth Circuit.
3. Following my graduation from Yale College in 1959, I served for four years as an officer in the United States Navy, and upon my completion of that service I entered Harvard Law School from which I graduated magna cum laude in 1966.
4. After taking the New York Bar Examination, I was an associate at the law firm of Cleary, Gottlieb, Steen and Hamilton in New York City for approximately 20 months during which time I worked on a variety of litigation and other matters.

In May 1968, I joined the Office of the United States Attorney for the Southern District of New York in the Civil Division and continued in that office until February 1972. During the last two years of that time, I was the Assistant Chief of the Civil Division and as such was responsible for supervising the work of between twenty and thirty lawyers in all varieties of litigation representing the interests of the United States. In addition to my supervisory responsibilities, I handled a large number of cases in the District Court and the Court of Appeals. The most significant case, which involved a major portion of my time for almost two years, was a trial and subsequent appeal in a tax refund case against United States Steel Corporation in which an excess of two hundred and fifty million dollars, including interest, was at issue. At that time it was the largest single tax case in the history of the United States, and I believe that that is still the case.

5. In February 1972, I moved to Washington, D.C. to accept a position as Director of Litigation for Public Citizen, a public interest organization founded by Mr. Ralph Nader. Since that time our group has grown, and there are now under my supervision eight other lawyers including the attorneys working for the Freedom of Information Clearinghouse. Our extensive case load involves litigation, primarily in the Federal courts, against Federal, State and private parties. A significant number of the cases are handled by me personally, and I also supervise the work of the remaining lawyers in the office. An indication of the significance of the work in which we are involved is the fact that the United States Supreme Court heard three of our cases during the 1974 term, including Goldfarb v.

Virginia State Bar, 421 U.S. 773 (1975), and two of our cases during the 1975 term.

6. In 1975 I was elected to a three-year term on the Board of Governors of the District of Columbia Bar.

7. I am informed and believe that law firms in Washington, D.C. having primarily Federal practices bill in the range of \$75 to \$150 per hour for partners and in the range or \$40 to \$85 per hour for associates.

8. During the past two years, I have received court awarded fees in three stockholder derivative cases at rates exceeding \$90 per hour, and in Goldfarb, supra, I requested and was awarded a fee of \$50,000 from a settlement fund of \$200,000, at an hourly rate of about \$70.

9. I believe that, based upon my professional experience, I am entitled to be reimbursed at the rate of \$90 per hour for my work performed in this case.

10. I have examined the records in this case and have determined that I have spent 30 hours on supervising, planning and reviewing the litigation strategy and pleadings of Mr. Ellsworth, the principal counsel in this case. Therefore, my fees in this case amount to \$2,700.00.

Alan B. Morrison  
Alan B. Morrison

Sworn and subscribed to before me this 11<sup>th</sup> day of April, 1977.

[Signature]  
Notary Public

My commission expires: 6-1-1977