

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,)
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 Plaintiff,)
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 v.) Civil Action No. 75-1448
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 GENERAL SERVICES ADMINISTRATION,)
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 Defendant.)
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DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION
FOR RECONSIDERATION, CLARIFICATION, AND IN
CAMERA INSPECTION OF TRANSCRIPTS WITH AID OF
PLAINTIFF'S SECURITY CLASSIFICATION EXPERT

In opposition to plaintiff's motion for reconsideration, clarification, and in camera inspection of transcripts with aid of plaintiff security classification expert, defendant, by his attorney, the United States Attorney for the District of Columbia, respectfully asserts as follows:

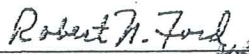
On March 10, 1977, the Court entered summary judgment for defendant in this Freedom of Information Act action, finding that one of the three Warren Commission Transcripts was exempt under 5 U.S.C. 552(b)(5) and the other two were exempt under 5 U.S.C. 552(b)(3). Plaintiff has filed a motion for reconsideration of this order, in which he seeks additional findings of fact as well as an in camera inspection of the latter two transcripts with the assistance of plaintiff's own security classification expert to determine whether those transcripts were properly classifiable pursuant to Executive Order 11652. At the outset, defendant submits that plaintiff has raised no substantially new points in his motion which warrant the Court's reconsideration of its March 10, 1977 order, but rather seeks to relitigate his


case by way of said motion. Further, while plaintiff recognizes that the Court granted summary judgment for defendant as to the January 21, 1964 and June 23, 1964 transcripts on the basis of Exemption 3 of the FOIA, plaintiff maintains in the instant motion that there can be no valid exemption 3 claim in this case unless there has also been a determination that said information is properly classified pursuant to Executive Order 11652, i.e., in effect, also exempt under Exemption 1 of the FOIA, 5 U.S.C. 552(b)(1). Defendant submits that this argument is simply without merit and clearly is no basis for in camera inspection of these transcripts or a re-examination of the decision in this case. Despite the statement in the affidavit of plaintiff's chosen security classification expert, there is no basis in the FOIA itself for thus making the application of one exemption of the FOIA contingent upon the application of another exemption. Moreover, defendant asserts that the record in this case is replete with affidavits and interrogatory answers by defendant which provide an adequate basis for determining that the documents in this case are exempt under 5 U.S.C. 552(b)(5) and (3). Finally, in the case cited by plaintiff, Weissman v. CIA, No. 76-1566 (D.C. Cir. January 6, 1977), our Court of Appeals sustained the discretionary decision of the trial judge to refuse an in camera inspection, acknowledged the Congress' intent to give the Government the opportunity to establish by means of testimony or detailed affidavits that the documents are clearly exempt from disclosure, and upheld the application of exemptions, inter alia, 5 U.S.C. 552(b)(1) and (3). The Court also noted the reluctance of Congress and the Courts to require in camera inspection (Slip op., at 10), and defendant submits that it is clear that Congress did not intend for this seldom-used procedure to be

conducted in the presence of a representative of the plaintiff.
To do so would be to compromise the very classification which
defendant seeks to protect.

Accordingly, for the foregoing reasons, defendant respect-
fully requests the Court to deny plaintiff's motion for reconsideration
and in camera inspection.



EARL J. SILBERT *WR*
United States Attorney


ROBERT N. FORD *WR*
Assistant United States Attorney


MICHAEL J. RYAN
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing defendant's
opposition to plaintiff's motion for reconsideration, clarification,
and in camera inspection of transcripts with aid of plaintiff's
security classification expert has been made upon plaintiff
by mailing a copy thereof to counsel for plaintiff, James J. Lesar,
Esquire, 1231 Fourth Street, S.W., Washington, D.C., 20024, on
this 18th day of April, 1977.


MICHAEL J. RYAN
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U.S. Courthouse
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(202) 426-7375

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

GENERAL SERVICES ADMINISTRATION,

Defendant.

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Civil Action No. 75-1448

O R D E R

Upon consideration of plaintiff's motion for reconsideration, clarification, and in camera inspection of transcripts with aid of plaintiff's security classification expert, defendant's opposition thereto, and the entire record herein, it is by the Court this ____ day of _____, 1977

ORDERED that plaintiff's said motion be and the same hereby is denied.

UNITED STATES DISTRICT JUDGE