

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No. 75-1448  
 )  
 GENERAL SERVICE )  
 ADMINISTRATION, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

MOTION FOR RECONSIDERATION OF THE  
COURT'S RULING ON PLAINTIFF'S  
MOTION FOR RECONSIDERATION

On July 14, 1980, this Court filed its Order denying attorneys' fees and other litigation costs to the plaintiff. This order came after litigation over plaintiff's fees application had gone on for over a year during which defendant vigorously contended that plaintiff had not prevailed because the release of the two transcripts at issue while the case was on appeal was for reasons unrelated to the litigation. See, Defendant's Opposition to Plaintiff's Motion for An Award of Attorneys Fees, filed August 10, 1979; transcript of hearing on October 17, 1979, filed May 15, 1980; Notice of Filing the Affidavit and the actual Affidavit of Robert E. Owen, filed December 3, 1979; Response to Plaintiff's Notice of Filing on January 15, 1980, filed January 31, 1980. After reviewing the entire record which included plaintiff's voluminous and unnecessarily redundant submissions as well as the defendant's opposition, the Court agreed with the defendant and found that the release of the two transcripts at issue was unrelated to this litigation. See, Order, filed July 14, 1980.

On July 24, 1980, plaintiff asked the Court to reconsider its July 14, 1980 order denying attorneys fees. No grounds for reconsideration other than those previously advanced in plaintiff's

submissions were set forth in plaintiff's motion. \*/ Plaintiff's motion was served by mail on July 24, 1980, but not received by the undersigned until the middle of the following week, the week of July 28 - August 1, 1980. The undersigned began preparation of a one line response to plaintiff's motion \*\*/ but never carried through with getting it typed or filed due to inadvertence and neglect -- during that same week the undersigned was interviewing over thirteen witnesses for the jury trial in Manville v. ACTION, Civil Action No. 79-1103, which began the following Monday, August 4, 1980 and continued for eight days; negotiating a \$12,000 settlement in Campbell v. United States, Civil Action No. 79-1639, which was finally resolved in Judge Curran's chambers on July 31, 1980; and working on the lengthy dispositive motion which was submitted together with eight affidavits for which this Court set an August 1, 1980 deadline in Leo Winter Associates, Inc. v. Department of Health and Human Services, Civil Action No. 80-1335. Because of inadvertence, the undersigned failed to submit an opposition to the plaintiff's motion during the week described and thereafter during the next two weeks when the Manville case was being tried to a jury. \*\*\*/

Without the defendant's opposition, the Court may have been misled to believe that the government was abdicating its previously adhered to position that plaintiff had not prevailed.

\*/ For example, plaintiff in its Motion for Reconsideration argues that this Circuit's decision in Ray v. Turner, 587 F.2d 1187 (D.C. Cir. 1978), precipitated the release of the two transcripts. Plaintiff first advanced this argument in his reply, filed September 12, 1979, to the government's opposition to attorneys fees. Plaintiff sought discovery on the issue and defendant claimed the discovery was unwarranted. See, Defendant's Memorandum filed September 24, 1979. Ray v. Turner merely refined the way in which the CIA had to justify the withholding of information. Even if the affidavits submitted in this case did not comply with the Ray dictates, the proper course would have been for the CIA to submit additional affidavits with more detail. Nothing in Ray suggests the CIA improperly withheld documents in this case.

\*\*/ The response, had it been typed and filed, would have been "defendant opposes plaintiff's motion for reconsideration which raises no new arguments for the reasons previously stated in the opposition to plaintiff's motion for attorneys' fees which is on file."

\*\*\*/ The undersigned was out of the office from August 22, 1980 to September 2, 1980.

On September 3, 1980, the Court granted plaintiff's motion to reconsider and vacated its Orders of July 14, 1980 and October 17, 1979 which (1) denied attorneys fees and (2) prohibited discovery. The Court indicated that it was issuing the order because of plaintiff's motion and defendant's failure to oppose it.

The defendant regrets any inconvenience caused by this motion for the Court or plaintiff's counsel, but respectfully requests that the Court consider vacating its September 3, 1980 order for the following reasons. First, the defendant's longstanding position on the merits that plaintiff has not prevailed has not changed. The record fully supports without contradiction that the release of the two transcripts to the plaintiff was unrelated to this litigation. Second, this Court's well-reasoned rulings on October 17, 1979 and July 14, 1980 are correct and should not be vacated. Third, plaintiff advances no new arguments and presents no new facts in its motion for reconsideration which in any way impugn or undermine the Court's finding in its July 14, 1980 order that the two transcripts disclosed were disclosed for reasons unrelated to this litigation, if anything the plaintiff's affidavit is designed to mislead the Court.

Plaintiff's approach in his current affidavit, dated July 21, 1980, is to direct the Court's attention to totally irrelevant issues. \*/ Plaintiff stated under oath that he only gets information

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\*/ Plaintiff would have this Court take as true certain statements based on hearsay in his various affidavits because the CIA has not refuted them in opposing plaintiff's submissions. See e.g. ¶9. The CIA's failure to utilize its limited resources to respond to hearsay statements in plaintiff's affidavits which are irrelevant and immaterial to the attorneys fees issue is no indication of agreement.

For example, plaintiff complains that he is singled out by the CIA: that others receive information within the scope of his requests but that the CIA treats him differently and refuses to give him the same information. Weisberg Aff. ¶9. First, the agency believes the statement is unfounded. Second, plaintiff's statement about what others may have received is based either on his unsubstantiated belief or on what he has read (double or triple hearsay) or on what he has been told. The issue plaintiff raises, however, has no relation to the release of the two transcripts in the instant case. Consequently, the CIA has not used its resources to show that plaintiff has not been singled out; to disprove plaintiff's unsubstantiated belief. General allegations of agency bad faith in other instances -- either hypothetical or actual -- will not undermine the veracity of the agency's affidavits. Baez v. Department of Justice, App. Docket No. 79-1881 (August 25, 1980), Slip Op. at 9.

from the CIA "under compulsion" after bringing suit. Weisberg Aff. ¶4. Even if true, that statement has no bearing on the attorneys fees issue in this case. Moreover, the statement is untrue. Plaintiff conveniently overlooks the thousands of pages which he obtained from the CIA without bringing suit in connection with requests for information relating to the Kennedy assassination and certain drug experiments. \*/

Plaintiff also suggests in his affidavit that if the CIA declassifies information in a particular year it has an obligation to go back through all prior FOIA requests received and determine whether anyone has requested the information and if so, to provide it. Consequently, plaintiff complains that information declassified by the CIA in the fall of 1978 for the House Select Committee on Assassinations, other than the two transcripts provided plaintiff, may have been the subject of one or more unidentified requests for information which plaintiff made to the CIA over the past "decade," and the CIA has not responded. Weisberg Aff. ¶2. Plaintiff's conception of the CIA's legal obligations under FOIA is incorrect as well as unworkable. It is, however, unnecessary and irrelevant to argue the legal obligation of the CIA with respect to any of plaintiff's other unidentified requests in connection with this case and plaintiff's application for attorneys fees.

For the foregoing reasons, the defendant respectfully requests the Court to vacate its September 3, 1980 order.

Respectfully submitted,

*Charles F. C. Ruff*  
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CHARLES F. C. RUFF  
United States Attorney

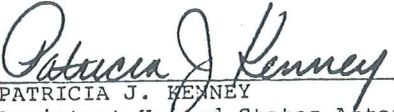
*Royce C. Lamberth*  
\_\_\_\_\_  
ROYCE C. LAMBERTH  
Assistant United States Attorney

*Patricia J. Kenney*  
\_\_\_\_\_  
PATRICIA J. KENNEY  
Assistant United States Attorney

\*/ The CIA has indicated that plaintiff's current unpaid bill for duplication at the agency is over \$1400.

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing Motion for Reconsideration of the Court's Ruling on Plaintiff's Motion for Reconsideration has been made upon plaintiff by mailing a copy thereof to plaintiff's counsel, James H. Lesar, Esquire, 910 16th Street, NW., #600, Washington, D. C. 20006, on this 11th day of September, 1980.

  
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O R D E R

UPON CONSIDERATION of Defendant's Motion for Reconsideration of the Court's Ruling on Plaintiff's Motion for Reconsideration and the entire record, it is by the Court this        day of September, 1980

ORDERED that defendant's motion be, and hereby is, GRANTED; and it is

FURTHER ORDERED that this Court's Order of September 3, 1980 is VACATED; and it is

FURTHER ORDERED that this Court's Orders of July 14, 1980 and October 19, 1979 be, and hereby are, REINSTATED; and in effect as they were prior to September 3, 1980.

UNITED STATES DISTRICT JUDGE