

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,)
)
 Plaintiff,)
)
 v.) Civil Action No. 75-1996
)
 DEPARTMENT OF JUSTICE,)
)
 Defendant.)

DEFENDANT DEPARTMENT OF JUSTICE'S MEMORANDUM
IN OPPOSITION TO PLAINTIFF'S "MOTION UNDER VAUGHN V. ROSEN"

Plaintiff seeks an order requiring a Vaughn v. Rosen index with respect to records of the Department of Justice and threatens to apply for a writ of mandamus in the Court of Appeals if this request is not granted (p.3, Affidavit of James H. Lesar).

On May 17, 1976, plaintiff filed in this case what he called a "Motion under Vaughn v. Rosen" with a memorandum and affidavit in support. This motion requested, as does the similar motion filed on February 7, 1980, an "inventory of records" and "justification of the withholding of records" within thirty days by the Department of Justice in response to his FOIA request. Plaintiff apparently believed then, as he does now, that the Department of Justice was not acting in good faith in supplying him with documents.

Several weeks after the thirty days specified in the 1976 motion had expired, plaintiff filed a "Motion for Certification of Compliance" which asked the Department of Justice to certify under oath that it had complied with plaintiff's FOIA request. Essentially, this was identical to the "Motion under Vaughn v. Rosen" that had been filed on May 17, 1976 and superceded that motion.

On August 9, 1976, Assistant United States Attorney John R. Dugan filed his Response to that Motion for Certification of Compliance. He attached affidavits from a number of Justice Department officials to the Response. (Exhibit A).

These affidavits testify to the extent of the Justice Department's search of records pursuant to plaintiffs' FOIA request and indicate that the only component of the Department of Justice that maintained such records (except for the FBI) was the Civil Rights Division. (See p.2, Affidavit of Michael E. Shaheen and p.2, Affidavit of Stephan Horn). As Mr. Horn explained in his sworn statement of July 13, 1976:

To the best of my knowledge and belief, obtained during the performance of my assigned duties, the above list of materials comprise all of the documents pertinent to Mr. Weisberg's Freedom Of Information request. I am in possession of no information, direct or indirect, to lead me to believe that there are any other pertinent documents in the possession of the Civil Rights Division or any other Division of the Department of Justice.

The other Justice Department officials who supplied affidavits in 1976 concurred with Mr. Horn. A trial judge, of course, may rely on such affidavits and accord them "substantial weight" in determining whether an agency has completed a proper search. Goland v. CIA, 607 F.2d 339, 352 (D.C. Cir. 1978). This reliance is particularly appropriate where such affidavits have not been challenged for over three years.

In 1980, it is probable impossible to reconstruct the methods used to conduct the 1976 search of Department of Justice records. In the context of this case, defendant believes that requiring either such a reconstruction or a new search would be unreasonably burdensome and beyond the requirements envisioned by Congress.


The second portion of plaintiffs' motion would require the immediate filing of a Vaughn v. Rosen index of the documents provided by the Department of Justice. It must be remembered that a motion for summary judgment as to the "scope

of the search" issue is currently before the court. Also, the question of whether a "sample index" ^{*/} should be employed as to all documents in the case is under consideration. For these reasons, defendant believes that plaintiffs' request for a Vaughn v. Rosen index is premature and should be denied at this time.

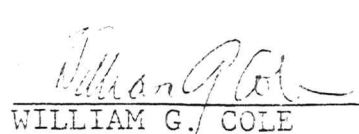
Respectfully submitted,

ALICE DANIEL
Assistant Attorney General

CHARLES F. C. RUFF
United States Attorney



VINCENT M. GARVEY



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^{*/} Such a "sampling" method for use in large, complex cases was specifically approved in Vaughn v. Rosen (Vaughn II) 383 F. Supp. 1049 (D.D.C. 1974), aff'd 523 F.2d 1136 (1975).

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ORDER

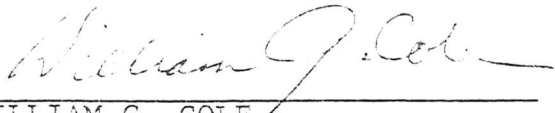
Upon consideration of plaintiff's "Motion under Vaughn v. Rosen to Require an Inventory and a Detailed Justification Itemization and Indexing by Specified Components of the Department of Justice", the papers filed in support thereof and in opposition thereto, and the entire record herein, it is, this _____ day of _____, 1980, hereby ORDERED, that plaintiff's motion be, and hereby is denied.

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum
In Opposition To Plaintiffs' "Motion Under Vaughn v. Rosen was
mailed, postage prepaid, this 22 day of February,
1980, to:

James H. Lesar, Esq.
910 16th Street, N.W.
Suite 600
Washington, D. C. 20006


WILLIAM G. COLE