

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, :  
 :  
 Plaintiff :  
 :  
 v. : CIVIL ACTION 75-1448  
 :  
 GENERAL SERVICES ADMINISTRATION, :  
 :  
 Defendant : **FILED**

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MAY 12 1978

MEMORANDUM

JAMES F. DAVEY, CLERK

This is an action under the Freedom of Information Act, as amended, 5 U.S.C. §552 et seq. (the "FOIA"), in which plaintiff seeks in part or whole transcripts of certain executive sessions of the Warren Commission. On March 10, 1977, this Court granted summary judgment in favor of the defendant, holding that the documents in issue were exempt from disclosure on the basis of 5 U.S.C. §552 (b) (5) and (b) (3). Plaintiff subsequently moved for reconsideration with respect to the Court's exemption 3 ruling. On June 7, 1977, the Court denied plaintiff's motion for reconsideration, repeating that the January 21, 1964, and June 23, 1964, transcripts were properly withheld under 5 U.S.C. §552(b) (3), and clarifying that the basis for nondisclosure was pursuant to the National Security Act of 1947, as amended, 50 U.S.C. §403(d). Plaintiff thereafter appealed to the United States Court of Appeals for the District of Columbia. While plaintiff's appeal has been pending, certain alleged new evidence became available to plaintiff which had not been presented to this Court. Accordingly, the Court of Appeals directed plaintiff to file,

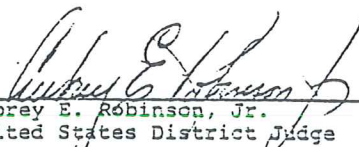
APPENDIX P  
Civil Action No. 77-1997

and plaintiff has filed, a motion for a new trial on the basis of this evidence. This Court has examined plaintiff's motion and the memorandum and exhibits in support of the motion, the opposition to the motion, and the entire record in this case, and concludes that no newly discovered evidence, fraud or misrepresentation warrants a new trial herein.

The transcripts in question contain information relating to Soviet defector Yuri Ivanovich Nosenko. The Government has objected to disclosing such information on the grounds that any disclosure would compromise the intelligence sources and methods of the Central Intelligence Agency. In granting defendant summary judgment, the Court found that the agency had met its burden of demonstrating that release of the information in issue could be reasonably expected to lead to unauthorized disclosures of intelligence sources and methods. See Weissman v. Central Intelligence Agency, 565 F.2d 692 (D.C. Cir. 1977); Phillippi v. Central Intelligence Agency, 546 F.2d 1009 (D.C. Cir. 1976). Plaintiff's motion for new trial is based largely on information which has appeared in recent books and newspaper publications and which, plaintiff argues, undermines the Government claims with respect to the personal security and safety of Nosenko and the security of the data which Nosenko provided to the Central Intelligence Agency. However, the Court finds that the information concerning Nosenko which has appeared subsequent to this Court's granting of summary judgment in favor of defendant in no way vitiates the application of exemption 3 to the transcripts in issue. Whatever appeared in the Barron and Epstein books and in various news accounts, however accurate the information contained therein

is, and wherever that information came from, has no bearing on this Court's central inquiry under 5 U.S.C. §552(b)(3) and 50 U.S.C. §403(d) whether disclosure of the Warren Commission transcripts would compromise CIA sources and methods. The Court is satisfied that the Government has established a threat to intelligence sources and methods, and is not persuaded to the contrary by the "new evidence" which plaintiff has adduced.

Nor does the Court find any "disinformation campaign" or discrimination against plaintiff by government agencies relating to plaintiff's FOIA requests which would warrant disclosure of the documents contested herein. The Court is persuaded that exemption 3 has been properly invoked and the transcripts properly withheld, and concludes that plaintiff's motion for a new trial must be denied.

  
Aubrey E. Robinson, Jr.  
United States District Judge

DATE:

May 12, 1978