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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG)
)
Plaintiff,)
)
v.) Civil Action No. 77-1997
)
CENTRAL INTELLIGENCE)
AGENCY, et al.,)
)
Defendants.)

Washington, D. C.
September 13, 1978

The above-entitled matter came on for motion for
summary judgment before THE HONORABLE JOHN LEWIS SMITH, JR.,
United States District Judge, at 10:10 a.m.

APPEARANCES:

On behalf of the Plaintiff:

JAMES LESAR, ESQ.

On behalf of the Defendants:

MISS JOANN DOLAN
MISS LAUMIE ZIEBELL

DAWN T. COPELAND
OFFICIAL COURT REPORTER

P R O C E E D I N G S

THE DEPUTY CLERK: Civil Action No. 77-1997.

Weisberg v. CIA.

Mr. Lesar, Miss Dolan and Miss Ziebell.

MISS DOLAN: Good morning, Your Honor.

THE COURT: Good morning.

MISS DOLAN: Your Honor, before I begin, I would like to direct the Court's attention to the case of Hayden v. NSA, which I cited in both of my papers and which was recently reported in 452 F. Supp. 247.

Your Honor, the record of this Freedom of Information Act application adequately covers the bases upon which the defendants have moved for summary judgment.

Indeed, the record has tripled the volume of the documents involved in the case.

The defendants have addressed in numerous affidavits each document located pursuant to the plaintiff's Freedom of Information Act request pertaining to Martin Luther King and James Earl Ray including those documents referred to originating at agencies other than the party defendants in this litigation.

Of the total of 485 documents, 230 are CIA documents and 20 documents referred to non-party agencies, were released to plaintiff in their entirety.

One hundred four CIA documents and three referred

1 documents were released subject to deletions taken under the
2 Freedom of Information Act.

3 A mere 31 CIA documents and 27 NSA documents were
4 denied in their entirety.

5 There are in addition 62 copies -- 62 documents of
6 which copies were located -- there were 62 FBI documents,
7 classified FBI documents that were located in CIA files.

8 Those documents were referred to the FBI with a
9 direct response to the plaintiff.

10 However, as those documents are classified, the CIA
11 has no authority under the executive order 10652 to make any
12 disposition of those documents, to alter the classification or
13 to release them.

14 Therefore, it is defendants' position that those 62
15 documents are not at issue in this litigation.

16 The documents at issue in this litigation have been
17 fully scrutinized to afford the maximum disclosure to the
18 plaintiff.

19 This Court may only review the withholding of the
20 165 documents that have been withheld in whole or in part.

21 Despite the Government's concern for maximum dis-
22 closure, the nature of these documents are such, highly
23 sensitive national security information and highly personal
24 information about third parties, and that has been deleted
25 pursuant to exemptions 1, 3 and 6 of the Freedom of Information

1 Act. In addition, at the request of the non-party agencies,
2 three documents have been withheld pursuant to the -- minor
3 portions of three documents have been withheld pursuant to
4 exemptions B-7-C and B-7-D.

5 It is apparent that the majority of the information
6 withheld for national security reasons is because release would
7 reveal sensitive intelligence information concerning U.S.
8 capabilities in collecting intelligence information.

9 Such information in the CIA files pertains to intelli-
10 gence sources, to arrangements abroad, to intelligence methods
11 employed in the CIA and in the case of the NSA it pertains
12 to communications, intelligence techniques.

13 In each case the information protected by the defen-
14 dants has consistently been recognized as being information
15 protected by statute and is therefore exempt under B-3.

16 That information is protected in the case of NSA
17 by Public Law 8636 and in the case of CIA by 50 USC 403-D and
18 -G.

19 In addition, this intelligence information is for
20 obvious reasons, in many instances, classified as indicated
21 by the affidavits filed in this court. All classified infor-
22 mation has been duly reviewed by duly authorized classified
23 officers who have attested on the record that they have deter-
24 mined that each document or each portion withheld pursuant
25 to exemption 1 is classified pursuant to Executive Order 10652

1 and bears the appropriate markings required by the Executive.
2 Order, requires continued classification and requires that
3 classification because release could reasonably be expected
4 to at least harm the national security of this Government.

5 That surely has been deemed by this Circuit, by
6 this District Court, to be an adequate showing that the proper
7 procedures in the classification have been followed.

8 Moreover, the detailed description by both defendants
9 also demonstrates that there is no doubt as to the validity
10 of the substance -- the classification and the substance of
11 these documents.

12 Finally, with regard to CIA privacy claims under
13 exemption 6, a review of the documents we have attached to
14 the record indicates that the CIA has scrupulously withheld
15 material under exemption 6 where the release of that informa-
16 tion would be embarrassing to individuals.

17 It is not claiming privacy for every individual
18 listed in its file. It is evident in going through the docu-
19 ments that in cases in which the information contained in the
20 documents or the context of the documents illustrates that the
21 information is in the public record, or that the information
22 would not be of an embarrassment to the individual, that infor-
23 mation has been released.

24 In other cases, the CIA was compelled to protect
25 the privacy of individuals in its files and we feel it is

1 in the public interest as well to protect that privacy.

2 In conclusion, the defendants are confident that the
3 exemptions claimed in this action are legally justified and
4 in addition, the defendants are further confident that all
5 relevant issues have been thoroughly addressed in the pleadings
6 filed with this Court.

7 However, in light of recent decisions that have been
8 filed in this Circuit the defendants would like to have the
9 opportunity to supplement the record with some additional
10 information and clarification that may assist the Court in
11 deciding these legal issues.

12 In addition, Your Honor, if Your Honor feels that
13 it is necessary the NSA would be prepared to file an in
14 camera affidavit if you feel supplementation is required.
15 However, we are confident on the record before you now and on
16 the basis of such supplementation that you would have no
17 problem in finding that the withholdings in this case are fully
18 justified under the Freedom of Information Act.

19 THE COURT: How long would you want to file the
20 supplemental information?

21 MISS DOLAN: I would think three days if that is
22 possible.

23 Thank you.

24 MR. LESAR: Good morning, Your Honor, Jim Lesar for
25 Mr. Weisberg.

1 Your Honor, the issue before the Court, the primary
2 issue on the motion for summary judgment, is whether or not
3 there are material facts in dispute.

4 This Circuit has recently handed down decisions
5 which I think are very important on that issue which reflect
6 a much deeper concern by the Court of Appeals over the way in
7 which Freedom of Information cases have sometimes been handled
8 in the District Court.

9 I wish to call the Court's attention in particular
10 to the decision which the Court of Appeals handed down on
11 May 9th, 1978 in the case of National Association of Government
12 Employees v. Campbell, et al., on page 9 of the slip opinion
13 the Court said, "Summary judgment is unavailable if it depends
14 upon any fact that the record leaves susceptible to dispute.
15 Facts not conclusively demonstrated but essential to the
16 movant's claim are not established merely by opponent's silence,
17 but rather the movant must shoulder the burden of showing
18 affirmatively the absence of any meaningful factual issue.
19 That responsibility may not be relieved through adjudication
20 since the Court's function is limited to ascertaining whether
21 any factual issue pertinent to the controversy exists --"

22 THE COURT: What were the facts in the National
23 Association case?

24 MR. LESAR: Well, that case -- Actually, it was about
25 four cases and they dealt with a lawsuit seeking certain data

1 pertaining to insurance agreements between federal agencies
2 and Government employees, and it was an attempt to get at that
3 data.

4 The Government filed affidavits which raised certain
5 factual issues about whether or not these documents fit within
6 exemption 4 which deals with confidential and financial infor-
7 mation.

8 The District Court awarded summary judgment in favor
9 of the plaintiffs, the FOI plaintiffs, and determined the
10 facts, as it were, simply on the record against the Government
11 in the face of the Government's affidavits which raised what
12 the Court of Appeals felt was an issue of material fact.

13 The Court very strongly, repeatedly, emphasized that
14 at that stage of the litigation, the role of the Court was
15 simply to determine whether or not issues of material fact are
16 in dispute and not to resolve the issues in that stage of the
17 litigation.

18 It also called attention to the fact that particularly
19 in cases where the resolution of the facts depend upon the
20 credibility of expert witnesses, special caution is called for
21 by the District Court and that, of course, is the situation
22 that we have here. We have expert witnesses not subjected to
23 cross-examination and asserting their conclusions where the
24 adversary has no opportunity to test the validity of those
25 conclusions.

1 Now, it is obvious that there are factual issues in
2 dispute here and the most obvious of them is the question about
3 the nature of the search, whether or not a thorough search
4 was made. It has become quite apparent from the supplementary
5 affidavits that have been filed and put into the record by the
6 defendant -- by the Central Intelligence Agency in particular,
7 that they have interpreted or misrepresented the request by
8 Mr. Weisberg and particularly with respect to item 6 of that
9 request.

10 Item 6 requested all analyses, commentaries, reports
11 or investigations on or in any way pertaining to any public
12 materials on the assassination of Dr. Martin Luther King, Jr.
13 or the authors of said materials.

14 Now, the CIA has admitted in their supplementary
15 affidavits that they did not conduct any search for materials
16 or the authors in the assassination of Dr. King.

17 Their pretext for not doing this beggars the imagina-
18 tion. They say that we didn't provide them with the names of
19 the authors of the books--as if the greatest intelligence
20 agency of the United States was unable to and did not know who
21 has written the books on the assassination of Dr. King, and
22 as if they had not known that Dr. Weisberg had written a book
23 on the assassination of Dr. King.

24 This is typical of the many sorts of examples of
25 bad faith, that has been in our dealings with the Central

1 Intelligence Agency, and which are reflected in the record.

2 In fact, it is quite clear and plaintiff has put into
3 the record evidence that the CIA does have records on the
4 authors of books on Dr. King's assassination. Those records
5 have not been provided and in fact it is now apparent that no
6 search was made for them.

7 A second factual issue in dispute would concern the
8 status of the 62 or the 64 referrals that have been made to
9 the FBI.

10 The Government has now taken the position that those
11 are not now properly the subject of this case. I think it is
12 an absurd position. In many other cases that I have been
13 involved in the referrals by the agency sued to another agency,
14 has always been treated as part of the cases and again it is
15 indicative of the agency in not proceeding in good faith and
16 trying to invent pretextual reasons for not producing the
17 documents.

18 The Freedom of Information Act is quite clear. The
19 suit is against the agency which has the possession of the
20 documents. The CIA unquestionably has possession of these
21 documents.

22 Of course, if it is necessary to do so, we could
23 amend the complaint to include the FBI as part of the suit
24 and then that would resolve that question. I really don't
25 think that there is any reason to do so.

1 There is also a question as to whether or not the
2 documents are properly classified. We don't know. All we
3 have is the CIA's word for it and their word is increasingly
4 being subjected to the closest scrutiny by the United States
5 Court of Appeals.

6 I think it is quite obvious why and that is because
7 it is becoming obvious to the Court of Appeals that time and
8 again the affidavits submitted by the CIA are not accurate
9 and do not reflect the facts.

10 The defendants in this case relied very heavily on
11 the Goland decision. That is Goland v. CIA and the issue there
12 deals with the search made by the CIA and if you read the deci-
13 sion in Ray v. Turner, which the defendants filed with the
14 Court yesterday, you find out that one week after the Court
15 of Appeals had decided the case in favor of the CIA, the CIA
16 suddenly admitted to the Court and to the appellants in the
17 case that for six months they had known of the existence of
18 321 documents which they had withheld from the judicial process
19 but which were possibly relevant to the scope of the plaintiff's
20 request.

21 So you have this issue come up again and again. The
22 intelligence agencies all use words with meanings they have
23 attached to them that are peculiar to the rest of us and
24 which again misrepresent the situation.

25 This is apparent from the case of Marks v. Central

1 Intelligence Agency, case 77-1225, again, which the Government
2 filed with the Court yesterday.

3 I call to the Court's attention page 1, footnote 4
4 of that decision in which Chief Judge Wright, who was concurring
5 in part and dissenting in part noted that the CIA had originally
6 withheld portions of a document under exemption 7-E that deals
7 with investigative techniques and procedures and ultimately,
8 however, after the case was in court, they released -- I guess
9 quoting from the footnote, the agency formerly described a
10 portion now released as "Information which is a product of a
11 national security and intelligence investigation which if
12 released or described in any manner would disclose the intelli-
13 gence method of investigative technique utilized."

14 That is cited and what it turned out was what he is
15 talking about of secret techniques and procedures were in fact
16 photographs taken of Mr. Marks on the street outside of a
17 restaurant. That is what it boiled down to.

18 Judge Wright noted that at least on their face such
19 photographs do not qualify as the kind of investigative
20 techniques and procedures that Congress intended to be protected
21 from disclosure.

22 Now, we have the same kind of issue in this case
23 with respect to intelligence sources and methods.

24 The Government in -- in the Ray v. Turner case, Judge
25 Wright noted, and I think it is very significant that on page

1 46 of his concurring opinion, he notes that there is a distinc-
2 tion between 50 USC 403(b) (3), 50 USC 403(b) (g), both of which
3 Courts have previously held to be exemption 3 statute and
4 he says that while -- Reading from the opinion on page 46 of
5 the concurring opinion by Judge Wright, while "Particular
6 types of matters listed in 403(g) (e.g. names, official titles,
7 salaries) are fairly specific. Section 403-B-3's language
8 of protecting intelligence sources and methods is potentially
9 quite expansive. To fulfill Congress' intent to close the
10 loophole created in Robertson, courts must be particularly
11 careful when scrutinizing claims of exemptions based on such
12 expansive terms. The de novo determination that releasing
13 contested material could in fact reasonably be expected to
14 expose intelligence sources or methods, it is thus essential"--
15 "when an agency seeks to rely on Section 403-B-3."

16 Then he drops down to footnote 39 and says, "A
17 court may determine, for example, that the terms intelligence
18 sources and methods, like the terms of investigative techniques
19 and procedures in exemption 7-E, should not be interpreted to
20 include routine techniques and procedures already wellknown
21 to the public."

22 We have made this point repeatedly throughout this
23 case in Mr. Weisberg's affidavit that there is no statement
24 in the affidavits that the information which is being withheld
25 is not already public and our past experience indicates that

1 the agency in fact does claim secrecy and claims the protection
2 of this provision of the law, when in fact the information is
3 already public.

4 So under these circumstances I think the way to
5 proceed, and I think there is abundant support for this in
6 the recent opinions of the Court of Appeals, that is to permit
7 the plaintiff to undertake some discovery and then if need
8 be for the Court to examine the materials in camera with the
9 aid of a classification expert suggested by plaintiff.

10 We do have a classification expert in mind that we --
11 who we think would be of great assistance in this matter if
12 that issue should be reached.

13 We think that first discovery is needed.

14 Finally, with respect to exemption 6, the Court of
15 Appeals in the -- I am sorry. My memory fails me at the
16 moment, and I don't see a note on it, and I don't know if it
17 was the Court of Appeals or Judge Wright, but one or the other
18 indicated that the CIA -- the CIA's claim of exemption 6 in
19 that case might be overbroad, and I think that is the situation
20 here.

21 We need to take some discovery to determine just
22 what interpretation the CIA places on exemption 6. At present
23 there are no facts that would justify this Court in assuming
24 that the CIA has carried its burden properly, concluded the
25 material withheld is exempt under exemption 6.

1 For example, there are not statements in the affi-
2 davits. They just say that they conclude there will be harm
3 done to certain individuals if their names are released but
4 there are no facts that can provide for this Court the basis
5 of determining the degree of damage.

6 Under exemption 6 the Court has to engage in a
7 balancing test and so the Court needs to know what kind of
8 harm would come and are they talking about facts so severe
9 that would ruin a man's reputation or are they simply talking
10 about something very minor like the fact that his name was
11 in a CIA document.

12 Those are the kinds of things that we need discovery
13 to determine.

14 Now, counsel for the Government has indicated that
15 it wants to file some supplementary, I gather, affidavits or
16 materials of one kind or another.

17 Mr. Weisberg has worked very hard over the weekend
18 and yesterday and the day before to finish up an affidavit
19 which we think will be of assistance to the Court and we will
20 be filing that either later this afternoon or tomorrow.

21 I think that about concludes it but there are a
22 couple of other points that I would like to make.

23 The Government's reply brief alluded to a misstate-
24 ment in Mr. Weisberg's affidavit regarding an affidavit by
25 Mr. -- I believe it is Mr. Briggs of the CIA. In fact, Mr.

1 Briggs had not submitted an affidavit.

2 As I told the Government counsel after I had received
3 the reply brief, we have become aware that that was a misstate-
4 ment of fact and Mr. Weisberg had executed an affidavit
5 correcting that fact.

6 He gave the affidavit to me some time very shortly
7 after the Government's reply brief was filed and I have lost
8 it. I can't find it. I have searched and searched and I
9 cannot find it, but sooner or later it will turn up. The
10 affidavit was made, though.

11 The Government is correct that that was a mistake
12 and I do want to correct for the record.

13 There is one other factual issue that I forgot
14 to mention that relates to the \$500 deposit which Mr. Weisberg
15 made to the CIA and which they have never refunded in spite
16 of the fact it is apparent now and their affidavits admit
17 that the cost in this case would not begin to approach \$500.

18 The CIA claims that he owes them money for another
19 Freedom of Information Act case. Again, that is not a full
20 and accurate representation of the proceedings between the
21 two.

22 Mr. Weisberg had in fact offered to pay that. He
23 had made a request for a waiver of the cost in that case
24 and that related to documents on the CIA so-called mind-
25 bending activities.

1 Those documents had been withheld from Mr. Weisberg
2 until after they had been made available to other persons. He
3 then requested them and they chose to treat that as a new
4 request and they never acted on his appeal for a waiver to
5 the fees in that case, and they have not responded to a letter
6 in which he offered them alternative ways to proceed with
7 respect to the fees in that case.

8 The fact is that they requested a \$500 deposit, the
9 costs come nowhere near that and he is entitled to that money
10 back.

11 I think unless the Court has questions, that
12 concludes my presentation.

13 THE COURT: I have no questions. Is there anything
14 further?

15 MISS DOLAN: Yes. I would like to start with the
16 last point and the question of the \$500 fee that was paid.
17 Mr. Weisberg was informed in March of this year that that money
18 either would be applied to the amount he owes in another
19 administrative matter or it may be refunded to him. It was
20 completely his choice, and I am informed that there has been
21 no record of response to his pressing that matter and so it
22 is completely Mr. Weisberg's choice, whether he wants the
23 money applied to that other matter or whether he wants the
24 money refunded.

25 MR. LESAR: Your Honor, if that is the case, we

1 will take the refund right now.

2 MISS DOLAN: Well, I don't have the money with me,
3 but we will make the necessary arrangements.

4 THE COURT: All right.

5 MISS DOLAN: A few other points plaintiff has raised,
6 in the case of NAG v. Campbell, that case isn't cited in our
7 briefs. I read it some time ago. I feel there are distin-
8 guishing points in it. If my recollection serves me right,
9 I believe discovery was sought -- I believe it was the
10 Government that was proceeding in that case. The facts might
11 be a bit different and I would like to review it before
12 responding to it.

13 Mr. Weisberg -- Mr. Lesar has raised a question as
14 to why the CIA was unable to retrieve documents pertaining
15 to publications written about the assassinations.

16 The affidavit filed in August of this year, I
17 believe, explains that those documents were not retrievable
18 by name of Martin Luther King or James Earl Ray and therefore
19 unless they can give some indication as to how to retrieve
20 documents indexed in their files according to the authors'
21 names, they could not retrieve it pursuant to this request
22 which was held to pertain to Martin Luther King and James
23 Earl Ray.

24 Moreover, to suggest that the CIA was responsible
25 for researching what had been written on the subject from

1 sources all over this country, the world, and their burden
2 is to research their records and therefore, that material did
3 not turn up in response to this request.

4 On the question of referrals, plaintiff's counsel
5 is correct. In many instances we do track documents referred
6 to other agencies and in this case we have tracked all un-
7 classified documents and have filed supplemental affidavits
8 from six agencies whose documents were located in CIA files.

9 Classified documents are different, Your Honor.
10 Copies were in Central Intelligence Agency files but they have
11 no control over the disposition of those documents.

12 If the events develop that the FBI justifies the
13 classification of those documents and if for some reason this
14 Court was not satisfied with that and ultimately a release
15 was ordered, the Central Intelligence Agency still would not
16 have the authority to release those documents because they
17 are classified by the FBI.

18 Therefore, unless the FBI is a party, we do not see
19 how those documents can be given this Court's jurisdiction.

20 As to the suggestion that he would amend his
21 complaint at this stage to include the FBI, he did that at
22 the complaint stage, then perhaps he realized that classified
23 NSA documents could not be released unless they were a party
24 defendant.

25 At this stage we are very close to summary judgment

1 and I think it would be inappropriate to amend the proceeding
2 in that regard.

3 On the question of classification, Your Honor, it
4 appears that the plaintiff's only attack to the classification
5 is an attack on the credibility of the witnesses in this case.
6 We feel that we have already established adequately the proper
7 procedures that we followed and I addressed those remarks
8 earlier.

9 As to the question of whether they are classified
10 in nature, I think it would be evident that this type of
11 information would be classifiable.

12 There is nothing to refute the veracity of the
13 affiants in this case other than the allegations of plaintiff
14 and unless Your Honor has questions as to the contents of
15 those documents, I don't think there is any question of
16 classification here.

17 I think plaintiff's argument as to our position of
18 intelligence sources was interesting, but why he feels dis-
19 covery by a classification expert would resolve this exemption
20 3 issue, we do not understand.

21 We feel that if the record is not clear at this
22 point, our supplemental affidavit should more than adequately
23 resolve that matter.

24 Finally, as to his comment on exemption 6, as
25 I stated earlier we have not claimed exemption 6 for every

1 instance in which a name appears. We feel that our index
2 explains why that particular information would be harmful to
3 the individual whose privacy is protected.

4 Thank you.

5 THE COURT: Mr. Lesar.

6 MR. LESAR: Your Honor, just a couple of brief
7 comments.

8 First, my client has given me a note informing me
9 that I misspoke myself when I addressed the question of his
10 missing affidavit. I said that he had executed the affidavit
11 after the Government had filed its reply brief. He says he
12 believes it was before the Government had filed its reply
13 brief and he is correct. I now recall that. It was imme-
14 diately after I had filed my opposition that we became aware
15 of it and corrected it.

16 On the question of the FBI referrals, it is a very
17 simple problem.

18 I don't think that until rather recently that I
19 was even aware that any documents had been referred to the
20 FBI. Certainly, I don't recall at any time during the admini-
21 strative process in the two years prior -- the approximate
22 two years prior to the institution of this suit -- excuse me,
23 I guess it was about a year. The request was in June of
24 1976 and we filed suit in 1977 and so there was a period of
25 a year or so when there was some administrative matters and

1 at no time do I recall any reference being made to referrals
2 to the FBI and so how could I bring suit against the FBI
3 without in fact knowing the referrals had been made. It just
4 strikes me as a frivolous issue.

5 I want to raise what I really think is a central
6 issue, in order for this Court to find for the Government
7 and to grant them summary judgment the Court has to accept as
8 true the Government's affidavit.

9 Now, the problem is, and I think our affidavits
10 demonstrate, that there have been many cases where the affi-
11 davits submitted by the Government have proved either not to
12 be true or not to be accurate.

13 There is a particularly graphic example of this and
14 I would like to relate that to the Court because I know the
15 Government in its reply brief made an attempt to blacken Mr.
16 Weisberg and myself by saying that we made these charges
17 because we disbelieve in the honesty of Government officials,
18 but that is a canard. There is absolutely no basis for that.

19 In fact the example I am going to give will show
20 that where we did disbelieve in Government's affidavits in a
21 particularly crucial matter, we were proven right.

22 In the suit that Mr. Weisberg brought originally
23 back in 1970, then it was rebrought after exemption 7 was
24 amended in 1974, the Government submitted an affidavit to
25 the Court stating that no neutron activation analysis had

1 been performed on Specimen Q-15 in the assassination of President
2 Kennedy.

3 Judge Pratt accepted the Government's affidavit
4 on that point and threw us out of Court. We took it to the
5 Court of Appeals which found that the issues being raised by
6 Mr. Weisberg were of interest to the nation and remanded it
7 for discovery including depositions or possibly live testimony
8 from former FBI agents who actually conducted the test.

9 When we took these depositions, Your Honor, we
10 established that in fact the neutron activation tests on
11 Specimen Q-15 had been performed and so the Government's
12 affidavits were false and the discovery proved it so.

13 This is not just a matter of my opinion or Mr.
14 Weisberg's opinion. It is a finding of fact made by Judge
15 Pratt in the case of Weisberg v. The Department of Justice
16 and it is reported at 438 F. Supp. 492, p. 503.

17 That, I think, is the perfect example for the need
18 for the Court to exercise caution in accepting the Government's
19 affidavit and for our need for discovery.

20 Thank you, Your Honor.

21 MISS DOLAN: May I reply?

22 THE COURT: Very briefly, yes.

23 MISS DOLAN: On that last point, Your Honor, that
24 case was against the FBI. It should not have any relevance
25 here as against the CIA.

1 On the question of the referrals, it is true that
2 the documents of the FBI were turned up during the latter
3 processing of the documents and not the processing that
4 occurred in 1976, therefore, the referrals were very late and
5 plaintiff knew it.

6 However, the affidavit of Martin Wood of the FBI
7 clarified for this Court that plaintiff has contemporaneous
8 requests of the FBI and therefore, we do not feel that he has
9 been prejudiced by the late referrals in this case.

10 Finally, I believe -- I believe some point during
11 plaintiff's argument he suggested that he would like to have
12 an in camera expert on his behalf. The Government would
13 vigorously oppose that if we ever got to that stage in this
14 case.

15 Thank you.

16 THE COURT: I will consider the matter further and
17 advise counsel at a later time.

18 With reference to the Government's request, you will
19 have 20 days to file any supplemental memorandum. That will
20 be on or before October 3rd.

21 If you desire, you can have the same right to file
22 anything you desire during that period of time.

23 MR. LESAR: May I make an inquiry?

24 THE COURT: Yes.

25 MR. LESAR: Will the supplemental material be

1 affidavits and exhibits or will it include, for example, a
2 brief on the most recent Court of Appeals case?

3 It may be helpful to the Court if we do brief the
4 impact of the two recent decisions on this case.

5 THE COURT: You may do so if you so desire.

6 MISS DOLAN: Our intention was to file an affidavit
7 but I assume that either of us can file a supplemental brief.

8 THE COURT: That is right.

9 (Whereupon, the hearing was concluded.)

10
11 CERTIFICATE OF REPORTER

12 It is hereby certified by the undersigned reporter
13 that the foregoing transcript is the official record of the
14 above-entitled matter.

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17 OFFICIAL REPORTER
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