FOR THE DISTRICT OF COLUMBIA

MARK A. ALLEN
Plaintiff

v.

CENTRAL INTELLIGENCE AGENCY, et. al.
STANSFIELD TURNER
Defendants

Civil Action No. 78-1743

MOTION FOR RECONSIDERATION

1. Pursuant to Rule 52(b) of the Federal Rules of Civil Procedure plaintiff moves that the Court amend its judgment to deny defendants' motion to dismiss. Plaintiff puts forward the following reasons:

2. The Court's Order of January 12, 1979 cites as binding precedent Judge Sirica's decision in Fensterwald v. C.I.A., Civil Action No.75-0897 (D.D.C. 1978). This decision was vacated. The weight of authority is that vacated orders cannot have res judicata effect. In De Nofo v. Finch, 436 F. 2d 737 3d Cir. 1971) the District Court held for the plaintiff De Nofo then later vacated this judgment. The Court of Appeals in a per curiam opinion, rejected petitioner's claim that the original decision was res judicata, noting particularly that the order had been vacated. Corpus Juris Secundum notes with respect to this issue: "When a judgment has been reversed on appeal or vacated or set aside by the court which rendered it, it is deprived of its conclusive character and thereafter it no longer stands as a bar to a further suit on the same cause of action ..." 50 C.J.S. Judgments §625(1947). Similarly Corpus Juris Secundum states "A judgment is of no force whatsoever as an estoppel after it has been effectually vacated or annulled, or where it has been ...vacated or set aside on motion." 50 C.J.S. Judgments §702(1947).

3. The Court also places great weight on the affidavits of C.I.A. officials Robert Owen and Charles Briggs, who maintain that the document at issue is properly classified "Secret" pursuant to Executive Order 12065. Both officials have shown in the past that their document evaluations relating to the assassination of President Kennedy are not completely trustworthy. As noted in plaintiff's Affidavit Opposing Motion to Dismiss, paragraph 11, Mr. Owen in a previous Freedom of Information suit submitted an affidavit maintaining that certain material was properly withheld under the (b)(1) and (b)(3) exemptions. In fact this material had been released to the public five years earlier with CIA approval and had appeared in two books as well as a magazine article.

4. Affiant Charles Briggs has likewise shown his document evaluations to be suspect based on past Freedom of Information cases. In Weisberg v. General Services Administration, Civil Action No. 75-1448 (D.D.C.) Mr. Briggs submitted an affidavit in December, 1976 statin g that certain pages of two Warren Commission Executive Transcripts were properly withheld from public disclosure.

Exhibits Omitted

(Exhibit 1) In October, 1978, however, the C.I.A. voluntarily released these withheld pages, revealing the spuriousness of Mr. Briggs' claims. Mr. Briggs maintained that the release of these pages would "compromise currently active intelligence sources and methods". If in fact this was actually the case, the C.I.A. certainly would never have voluntarily released these pages. (Exhibits 2 and 3) The Court is invited to examine these released pages and decide whether the justification for withholding this material set out in Mr. Briggs affidavit has any merit whatsoever.

5. In summary, the past performances of Mr. Owen and Mr. Briggs show that their document evaluations are not completely reliable and this Court should not grant so drastic a form of relief as a motion to dismiss based primarily on their affidavits.

6. Accordingly plaintiff moves that the Court's Order of January 12, 1979 be amended to deny defendants' motion to dismiss.

Dated: January 24, 1979
Charlottesville, Virginia

Respectfully Submitted,

Mark A. Allen

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing Motion for Reconsideration, with Exhibits 1, 2, 3, has been made upon the defendants by mailing a copy thereof to their attorney, Lawrence T. Bennett, at the U.S. District Courthouse, 3d and Constitution Ave., N.W., Washington, D.C., 20001, Room 3438-B, on this 24th day of January, 1979.

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