

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

MARK A. ALLEN, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No. 78-1743  
 )  
 CENTRAL INTELLIGENCE AGENCY, )  
 et al., )  
 )  
 Defendants. )  
 )

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OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION

The issues raised in this Freedom of Information Act (FOIA) action have been the subject of considerable scrutiny and debate by both parties and by the Court. The record in this action supports the Court's Opinion and Order of 12 January 1979, granting summary judgment for the defendants. The issue in this case involves the question of access to one government document under provisions of the FOIA. The document has been dealt with in earlier litigation in this court, over the same issue. In that instance, Fensterwald v. CIA, Civil Action No. 75-897, D.D.C. 1978., the document was determined to be properly exempt from release. Plaintiff argues that since the Court's initial partial summary judgment in favor of the defendant in Fensterwald v. CIA, supra, was ultimately vacated and the suit dismissed with prejudice, that the Court's findings in that case cannot act as a bar to further litigation. The principle of res judicata, however, has neither been suggested by the defendant nor applied by the Court. Plaintiff has not been barred from litigation. To the extent that this Court's earlier finding regarding the propriety of CIA's exercise of the FOIA exemptions on its docu-

ments relating to the investigation of the assassination of President Kennedy, which encompassed CIA Document No. 509-803, influenced this Court's determination in this litigation, the principle of stare decisis was properly observed. The effect of the Court's final disposition of the Fensterwald v. CIA, supra, did not moot the Court's findings regarding the FOIA determinations.<sup>1/</sup>

Clearly, however, the Court's determination regarding the propriety of CIA's FOIA determination regarding Document No. 509-803 is not entirely dependent on the determination in Fensterwald v. CIA, supra. The affidavit of Mr. Owen (Exhibit 1) shows that the document was rereviewed by the appropriate officer under the new Executive Order 12065 on National Security Information and that Mr. Owen, who is authorized, pursuant to the provisions of Executive Order 12065, to classify government documents up through the level of TOP SECRET, has determined that the document is currently and properly classified and consequently exempt from release.

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<sup>1/</sup> In Fensterwald v. CIA, supra, the plaintiff moved voluntarily for dismissal with prejudice and to "relieve the Government from the duty of complying with its order of 12 July 1978." (Exhibit 4) The sole ground Mr. Fensterwald offered to explain his voluntary motion was his professed desire to relieve the Government from the burden of having to supplement the record in accordance with the 12 July 1978 Order. The vacate order was issued on nonsubstantive grounds and hardly vitiates the sound legal reasoning of Judge Sirica's Memorandum in dismissing the major issues in the litigation prior to the plaintiff's voluntary motion for dismissal of the remainder. Indeed it would be frivolous to suggest that the Court's sound reasoning could be so undermined by a plaintiff who, in the face of a contrary opinion and judgment rendered, voluntarily withdraws from the case. The effect of the Order was vacated; the underlying reasoning remains sound.

Nothing raised in plaintiff's motion or supporting papers supports a contrary ruling to that of the Court on January 12, 1979. For that reason, defendants respectfully suggest that plaintiff's Motion for Reconsideration should be denied.

Respectfully submitted,

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EARL J. SILBERT  
United States Attorney

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ROYCE C. LAMBERTH  
Assistant United States Attorney



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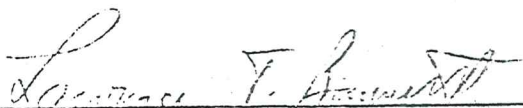
LAWRENCE T. BENNETT  
Assistant United States Attorney

Of Counsel:

Launie Ziebell  
Assistant General Counsel  
Office of General Counsel  
Central Intelligence Agency

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing Opposition To Plaintiff's Motion For Reconsideration has been made upon plaintiff pro se by mailing a copy thereof to him, Mark A. Allen, 102 Shamrock Road #16, Charlottesville, Virginia 22903 on this 7th day of February, 1979.

  
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