

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE READER'S DIGEST ASSOCIATION, INC., :
 :
 Plaintiff, :
 :
 -against- : 79 Civ. 4812(RJW)
 :
 FEDERAL BUREAU OF INVESTIGATION, :
 WILLIAM WEBSTER, Director, Federal Bureau :
 of Investigation, CENTRAL INTELLIGENCE :
 AGENCY, WILLIAM J. CASEY, Director, Central :
 Intelligence Agency, DEPARTMENT OF JUSTICE, :
 and WILLIAM FRENCH SMITH, Attorney General :
 of the United States, :
 :
 Defendants. :
 :

Defendants Federal Bureau of Investigation ("FBI"), Department of Justice ("DOJ"), and Central Intelligence Agency ("CIA") move, pursuant to Rule 59(e), Fed. R. Civ. P., for an order vacating the Court's opinion and order, dated October 19, 1981, denying these defendants' motion for summary judgment. For the reasons hereinafter stated, defendants' motion is denied.

Insofar as the FBI and the DOJ seek relief from the Court's October 19 opinion and order because "the FBI's document count has not been called into question," the Court observes that the affidavits submitted by the FBI, unlike those submitted by the CIA, were not organized in a fashion that permitted the Court to check the accuracy of the agency's document count. In any event, the Court, when it read the FBI's original affidavits, which are considerably less detailed than those submitted by the CIA, was not inclined to

find that these affidavits, standing alone, warranted summary judgment in favor of the FBI and the DOJ. The Court thus rejects the argument proffered by the FBI and the DOJ for vacating the Court's October 19 opinion and order.

Insofar as the CIA seeks relief from the Court's October 19 opinion and order on the basis of the affidavit of Louis J. Dube, which affidavit explains the causes for the CIA's prolonged inability to identify the number of documents at issue in this litigation, the Court rejects the CIA's argument because this affidavit has not restored the Court's confidence in the competence of the CIA to prepare affidavits that accurately summarize the substance of the documents. If anything, the series of "mistakes," "oversights," and "inadvertancies" described in this affidavit only reinforces the "serious doubts" that the Court's October 19 opinion and order expressed regarding the ability of the CIA to prepare proper justificatory affidavits.

Finally, insofar as the FBI, the DOJ, and the CIA all seek relief from that part of the Court's October 19 opinion and order that purportedly "directed the remaining defendants to submit affidavits that individually review each of the documents in question," see Defendants' Memorandum in Support of Motion Pursuant to F. R. Civ. P. 59, at 2, the Court observes that its October 19 opinion and order contained no such directive. Rather, the Court merely refused to award the FBI, the DOJ, and the CIA summary judgment on the basis of the affidavits then before it, and ordered plaintiff and these defendants to confer regarding the future course of this litigation. While the Court expressed an unwillingness to grant summary judgment on the basis of affidavits that do not review the documents individually, it expressed

no unwillingness to grant summary judgment on the basis of an in camera review of the documents themselves. Thus, the Court has made no order that either requires the FBI, the DOJ, and the CIA to submit document-by-document justificatory affidavits or precludes the FBI, the DOJ, and the CIA from seeking summary judgment subsequent to the Court's in camera review of all the documents or even of a random sampling of the documents. While the Court is doubtful that it would be inclined to grant summary judgment on the basis of a random sampling of the documents, it is not prepared to prejudge the issue.

Accordingly, the FBI-DOJ-CIA motion, pursuant to Rule 59(e), Fed. R. Civ. P., for an order vacating the Court's October 19 opinion and order is hereby denied. Plaintiff and the three agencies that remain defendants in this action are to confer regarding the future course of this litigation and are to report their views on this subject in a letter to the Court. This letter is to be submitted not later than thirty (30) days after the date of this decision.

It is so ordered.

Dated: New York, New York
March 22, 1982



U.S.D.J.