

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GRANT F. SMITH,	.	
	.	
Plaintiff,	.	
	.	CA No. 15-0224 (TSC)
v.	.	
	.	
CENTRAL INTELLIGENCE AGENCY,	.	Washington, D.C.
	.	Wednesday, September 2, 2015
Defendant.	.	11:20 a.m.
.	

TRANSCRIPT OF STATUS HEARING
BEFORE THE HONORABLE TANYA S. CHUTKAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:	GRANT F. SMITH, Pro Se 4101 Davis Place, NW No. 2 Washington, DC 20007 (202) 342-7325
For the Defendant:	ZACHARY J. COREY, ESQ. ELIZABETH SHAPIRO, ESQ. U.S. Department of Justice Civil Division, Federal Programs 20 Massachusetts Avenue, NW Washington, DC 20002 (202) 616-0042
Court Reporter:	BRYAN A. WAYNE, RPR, CRR Official Court Reporter U.S. Courthouse, Room 4704-A 333 Constitution Avenue, NW Washington, DC 20001 (202) 354-3186

Proceedings reported by stenotype shorthand.
Transcript produced by computer-aided transcription.

1 P R O C E E D I N G S

2 THE DEPUTY CLERK: Your Honor, this is civil case
3 15-244, Grant Smith versus Central Intelligence Agency.
4 Grant Smith appearing pro se, Zachary Corey and Elizabeth
5 Shapiro appearing for the defendant.

6 THE COURT: Good morning, everyone. I apologize for
7 the wait. I was actually ready; I didn't realize the case was
8 ready. So I apologize for that.

9 Okay. We are here for a status conference. I've looked at
10 the parties' joint status report. Now, although this case was
11 only filed in February of 2015, according to the plaintiff
12 anyway, these FOIA requests have been pending for almost 2,000
13 days.

14 So I'm concerned of the pace. I understand that when
15 there are documents that involve intelligence and security
16 issues, there have to be several layers of very serious review.
17 I understand that the agency proposes that it produce -- it
18 anticipates producing additional responsive documents within
19 30 days and proposes filing a third joint status report on or
20 before September 30 to resolve any remaining issues.

21 Plaintiff wants no more than 15 days to produce all
22 remaining documents, and I believe some of this is motivated
23 by the vote that's upcoming on the Iran nuclear deal. And the
24 plaintiff also wants the Court to immediately begin a parallel
25 in camera review of unredacted files to determine their

1 applicability.

2 So I'll say at the outset that I'm not inclined to begin a
3 parallel in camera review. I don't think that's necessary at
4 this stage. I will note also that it appears that Congress
5 actually has until September 17 to reject this deal, and it only
6 returns to session on the 8th. So I think there's a little more
7 time, but I do understand that plaintiff has research it wants
8 to do and reports it wants to write, and this has been pending a
9 long time.

10 Let me ask you, counsel for the government, what's your
11 timeline here?

12 MR. COREY: Your Honor, we produced the documents on
13 Monday.

14 THE COURT: Oh, you did?

15 MR. COREY: Yes, Your Honor.

16 THE COURT: So you let me go through all this?

17 (Laughter)

18 I realize you didn't want to stop me.

19 Okay. Well, Mr. Smith. So as Emily Litella used to say,
20 "never mind."

21 MR. SMITH: Judge, can I talk a little bit about what
22 was produced?

23 THE COURT: Sure.

24 MR. SMITH: As you said, we've been after this since
25 2010.

1 THE COURT: Don't you have another case before me?

2 MR. SMITH: Yes.

3 THE COURT: I thought so.

4 MR. SMITH: It was one document.

5 THE COURT: It was the report.

6 MR. SMITH: DOD report, exactly. It was wonderful;
7 they released it. Nothing like this case.

8 THE COURT: Okay.

9 MR. SMITH: So I just wanted to stress, there are two
10 other factors involved here. One is the half billion-dollar
11 cleanup of the alleged smuggling site in Pennsylvania, which is
12 news, over which there are continual meetings. The others, of
13 course, context about regional proliferation. And we're talking
14 about 50 year-old, in some cases, files.

15 Our expectation going into this was that, given its been
16 documented, there are thousands of files about this, that we
17 would see a fairly large production.

18 Instead, we've gotten 130 pages of documents which appear
19 to respond to the question posed by the Nuclear Regulatory
20 Commissioner Victor Gilinsky in the Wall Street Journal:
21 Why did the CIA think there was a diversion? Why did two high
22 officials go public about it? Why has this been, as it says in
23 some of the documents, a perennial issue?

24 So, at this point I'm disappointed by the scope of the
25 search for responsive documents, the overredaction of the

1 documents that have been produced, the references within those
2 documents signalling that there are highly secret files which
3 they didn't even share during the FBI investigation.

4 So just to move ahead a little bit and give a broader
5 perspective, what the government's released now after 50 years
6 is extremely limited. We referenced in Exhibit 14 that there
7 is a folder at the National Archives which states that the
8 Attorney General at one time "completed review of thousands of
9 CIA documents."

10 We know that there are parallel memos issued by Director
11 Helms in the '60s, which are mostly unredacted, which occurred
12 at the same time frame as a release that they've given us now,
13 which is entirely redacted.

14 So we feel that there really hasn't been a substantive
15 release which would help us, again, with news reporting and
16 diffusing information about the context of regional proliferation
17 and this issue of a massive cleanup of the alleged smuggling site.

18 THE COURT: All right. As always in these kinds of
19 cases, I try to avoid getting into the merits and the details of
20 the story. My review is limited to the adequacy of the search
21 of the documents.

22 So are you saying that you believe that the CIA hasn't
23 searched adequately, or that they have withheld more documents
24 than they are entitled to under the law, or that the exemptions
25 have not been properly asserted?

1 MR. SMITH: Yes.

2 THE COURT: To all three.

3 MR. SMITH: All three. Particularly the breadth,
4 again, given the -- at least at one time fairly recently there
5 were thousands, not pages, thousands of files on this issue.
6 The overredaction, which we've already proven in the exhibits,
7 other agencies' declassification authorities have no problem
8 releasing this information. It's only the CIA that is overly
9 concerned about paintbrush redactions.

10 THE COURT: They are in the business of keeping
11 secrets. So let me hear from you, Mr. Corey, about -- I'm
12 sorry, Mr. Smith. Before you leave, what is it that you're
13 asking the Court to do at this stage? You want a briefing
14 schedule?

15 MR. SMITH: Well, right. We are going to, obviously,
16 challenge the breadth; we're going to challenge the redactions
17 that have been made to the documents released; we wish to
18 present evidence that, in particular, some of the memos that
19 answer the questions are overly redacted.

20 I mean, you'll see it yourself if you get a chance to look
21 at the release, but we're going to challenge all of this, yes.

22 THE COURT: All right.

23 MR. SMITH. Thank you.

24 MR. COREY: Your Honor, the CIA conducted an extensive
25 litigation review of these documents in the search, and they've

1 produced all responsive documents and made redactions after
2 numerous levels of review that they deemed appropriate.

3 I guess what we're asking for would be 30 days to negotiate
4 with plaintiff and see if we can narrow down the scope of some
5 of these issues before summary judgment briefing.

6 THE COURT: Do you, Mr. Smith, think that -- I mean,
7 obviously you're working with some time constraints here, but
8 I can't do anything about those.

9 Do you think you can achieve anything if the Court gives
10 you 30 days to try and resolve some of the issues? Do you think
11 those are amenable to resolution through meet-and-confer?

12 MR. SMITH: It's possible. We've had discussions
13 about the fact that if they release the right contents and
14 they're doing fewer redactions than, say, the ISCAP has done
15 in similar documents, then maybe we can resolve it, yes.

16 THE COURT: Well, it seems to me there's no harm in
17 doing that, because if we set a briefing schedule today, the
18 potential for relief isn't there, and there's going to be
19 briefing, and there's not going to be the possibility of seeing
20 any more documents.

21 If I wait for 30 days while the parties meet and confer
22 and try to get some more documents released, or confer over the
23 redactions or the withholdings, then at least that gives you a
24 possibility of getting additional documents. Then at the end of
25 that period, if you still are not satisfied with the agency's

1 production, I would ask the parties to submit a joint briefing
2 schedule.

3 MR. SMITH: That sounds good. I mean, I think,
4 particularly with some -- we just only reviewed all of this.

5 THE COURT: Right.

6 MR. SMITH: Some more time would be warranted.

7 THE COURT: All right. Is that agreeable, Mr. Corey?

8 MR. COREY: Sounds good to me, Your Honor.

9 THE COURT: So I'm going to give the parties 30 days
10 to meet and confer to see if they can narrow some of the
11 objections, just to see if we can work out some of the issues
12 that Mr. Smith has identified.

13 If, at the end of those 30 days, both parties have done
14 all they can, then I would ask for a joint proposed briefing
15 schedule, which I will enter. If the parties need a status
16 conference before then, after then, or want to set a status
17 conference, all you have to do is let the Court know.

18 MR. COREY: Yes, Your Honor.

19 THE COURT: All right. And if there are any issues
20 in the meantime, as with discovery issues, usually with
21 discovery issues my procedure is to contact chambers jointly
22 and we schedule a call. If there are any issues that come up
23 between now and 30 days, we can do the same thing, schedule a
24 call. All right? Thank you all.

25 (Proceedings adjourned at 11:31 a.m.)

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CERTIFICATE

I, BRYAN A. WAYNE, Official Court Reporter, certify that the foregoing pages are a correct transcript from the record of proceedings in the above-entitled matter.

BRYAN A. WAYNE