

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STEVEN AFTERGGOOD)	
)	
Plaintiff,)	
)	
v.)	Case No. 01-2524 (RMU)
)	
CENTRAL INTELLIGENCE AGENCY)	
)	
Defendant.)	
)	

**PLAINTIFF'S MOTION TO STRIKE THE
DECLARATION OF JOHN E. MCLAUGHLIN**

Pursuant to Rule 12(f) of the Federal Rules of Civil Procedure, plaintiff *pro se* Steven Aftergood respectfully moves the Court to strike from the record the Declaration of John E. McLaughlin on grounds that it presents material false statements intended to support an erroneous and insufficient defense. A proposed order consistent with this motion is attached.

Introduction

This is a Freedom of Information Act proceeding in which the plaintiff seeks disclosure of certain historical intelligence budget information from 1947 through 1970. Plaintiff filed a motion for summary judgment on July 21, 2004. Defendant answered and filed a cross-motion on September 15, 2004.¹ Defendant relies on the September 14, 2004 Declaration of Acting Director of Central Intelligence (ADCI) John E. McLaughlin. Plaintiff hereby moves to strike

¹ Plaintiff's reply and answer to Defendant's cross-motion will be filed separately as scheduled on or before September 29, 2004.

that Declaration.

It is plaintiff's contention that Mr. McLaughlin has falsely denied the well-established fact that intelligence budget information has previously been disclosed so as to conceal the defect in his argument that such disclosures would tend to reveal a protected intelligence method.

Material False Statements

ADCI McLaughlin's Declaration presents a distorted and misleading account which fails to acknowledge that intelligence budget information has been disclosed in the past without adverse consequences. Thus, he states at paragraph 13 (emphasis added):

[...] Since 1947, Congress has provided funding for the various intelligence programs of the United States through separate appropriations acts enacted for several departments and agencies. The aggregate intelligence budgets and the total CIA budgets have never been publicly identified, both to protect the classified nature of the intelligence programs themselves and to protect the classified intelligence methods used to transfer funds to and between intelligence agencies. [...]

The first sentence above is true. The second is false. Aggregate intelligence budgets have been publicly identified in the past. Total CIA budgets have also been publicly identified.

Evidence that the ADCI's sworn statements to the contrary are false is presented below.

1. Aggregate intelligence budgets have been publicly identified.

It is a matter of record in this proceeding that aggregate intelligence budgets have been publicly identified. See Plaintiff's Statement of Material Facts as to Which There is No Genuine

Dispute, July 20, 2004, Fact No. 2 (citing Aftergood Decl., at ¶ 4), which remains uncontroverted.

The ADCI has misrepresented this material fact by falsely claiming under oath that such disclosures “never” occurred.²

2. Total CIA budgets have been publicly identified.

It is also an uncontroverted matter of record in this proceeding that CIA budget figures have been publicly identified. Thus, in an 11 May 1954 letter from CIA Comptroller E.R. Saunders, it states:

“The Agency’s budget for Fiscal Year 1955 amounts to a total of 335 million....”

The provenance of this letter and its public availability were described under oath by Prof. David Barrett in his Declaration filed with Plaintiff’s Motion for Summary Judgment on July 20, 2004.

The letter was previously included as Attachment 2 to the Barrett Declaration, and is included here for convenience as Exhibit 1.

Again, the Acting DCI has misrepresented under oath a material fact that is already on the record.

² Defendant may reply that this false categorical statement is to be understood only with reference to Congress, which unlike the executive branch has not disclosed aggregate intelligence budget figures. But the Declarant’s intent to obfuscate is evident in paragraph 12, where ADCI McLaughlin states artfully that the Executive Branch “has not publicly disclosed its annual budget requests....” (Emphasis added). This is willfully misleading since disclosure of annual budget requests is not at issue in this proceeding. Mr. McLaughlin has deliberately omitted the material fact that aggregate intelligence budget information *has* been disclosed by the Executive Branch without adverse consequences.

3. The ADCI's misstatements of fact are materially false.

Why does it matter if the ADCI denies the fact that aggregate intelligence budgets and total CIA budgets have previously been disclosed? The reason it matters, and what makes his denial a deceitful act and a material false statement, is that these past disclosures serve to refute Mr. McLaughlin's central argument, which appears at the end of his declaration:

Disclosure of intelligence budget information could assist in finding the locations of secret intelligence appropriations and thus defeat these congressionally approved clandestine funding mechanisms. (McLaughlin Declaration, ¶ 21).

This is demonstrably false, if the fact of prior intelligence budget disclosures is admitted.

Thus, disclosure of the FY 1997 and FY 1998 intelligence budget totals did not lead to or assist in disclosure of the locations of secret intelligence appropriations for agencies such as CIA, NRO, NSA or NIMA.

More to the point, the disclosure of CIA budget totals did not and could not assist in finding the locations of secret intelligence appropriations. It is not possible to "work backwards" from the budget total to the secret locations. To see why, consider the FY 1955 CIA budget total that was disclosed in Exhibit 1, for example, and the various budget locations where the money was concealed that year, which were also disclosed in the chart on the final page of Exhibit 1. There is no analytical path that leads from the former to the latter.

The main reason such a feat is not possible is because there are too many variables, i.e.

too many budget locations where money might be hidden.³

To use an analogy from basic algebra: A single multi-variable equation does not have a unique solution. If all that we are told is that $a + b + c = 1000$, then the variables a , b , and c may have an infinite number of values. This is not a question of expertise: neither a schoolchild nor a professional mathematician could solve the problem.

Likewise, out of the hundreds or thousands of line items in the defense budget, it would be impossible to identify by deduction the specific locations and particular amounts of money appropriated for the CIA by disclosing the CIA budget total. It does not depend on analytical prowess. It is simply not possible, and defendant will not be able to show otherwise.

A second reason that it is practically impossible to accomplish the analysis that Mr. McLaughlin warns against is that a complete and fully detailed government budget for the years 1947 through 1970 is not readily available. Remarkably, even the CIA says it does not have an accurate account of its own 1965 budget! (McLaughlin Decl., ¶ 7, fn. 1.) If it is impractical to *reconstruct* the budget of half a century ago, then that is another reason it is impossible to *deconstruct* it so as to identify concealed expenditures.

In sum, the key point is this: By willfully obscuring the fact of past disclosures of intelligence budget information, ADCI McLaughlin has attempted to evade exposure of the logical flaw in his argument. I suggest that this renders his Declaration “insufficient” for

³ Moreover, the budget locations may vary from year to year. Thus, compare Attachment 1 in the Barrett Declaration, which lists a different set of concealed budget locations for FY 1953.

purposes of Rule 12(f).

Plaintiff's Interests Are Harmed by the ADCI's Misrepresentations

The Acting DCI's misleading statements under oath damage plaintiff's interests by creating a distorted record.

The ADCI's false statements, if permitted on the record and then bolstered by the judicial deference to which agency heads are normally entitled, threaten to spawn a parallel universe of erroneous but legally binding "facts" and arguments.

Conclusion

If CIA affidavits are to be preferentially accorded "substantial weight and due consideration," as per *Fitzgibbon v. Central Intelligence Agency*, 911 F.2d 755, 762, then they should be held to a reasonable standard of factual accuracy and integrity.

The ADCI's Declaration does not meet such a standard, as explained above. Plaintiff therefore respectfully requests that it be stricken from the record.

STEVEN AFTERGOOD
Plaintiff *pro se*

(202)454-4691

September 22, 2004

SECRET

DUPLICATE

11 May 1954

Mr. Gordon A. Nease
Professional Staff Member
Senate Appropriation Committee
Washington, D. C.

Dear Mr. Nease:

Reference is made to our recent conversations relative to the Agency's budget requirements for fiscal year 1955.

Some information full copy

The Agency's budget for fiscal year 1955 amounts to a total of 335 million which includes 225 million for normal operations and a contingency reserve of 110 million for unforeseen emergencies and/or projects which were not planned but because of circumstances which develop during the fiscal year it is considered desirable to initiate. As you know, no funds are withdrawn from this reserve without the specific approval of the Bureau of the Budget.

There is attached for your information a letter addressed to the Director, Bureau of the Budget, from Mr. Taber, Chairman, House Appropriations Committee, with an attachment showing the various adjustments made in the several appropriations which include funds for the Agency. It will be noted that the Committee approved new funds in the amount of 185 million and granted authority to carry over into fiscal year 1955, 150 million of prior year funds which, according to agreement, would have expired. This in effect allowed the Committee to show a cut in appropriations of 150 million.

As indicated above the Agency divided its appropriation request into two categories, namely a regular appropriation of 225 million and a contingency reserve fund of 110 million, the latter to be used if unforeseen and unusual demands are made upon the Agency. It is the desire of the Agency to secure approval of both the Senate and House Appropriation Committees to have the contingency reserve fund designated as a "No-Year" fund. The Bureau of the Budget and the General Accounting Office have agreed to recognize the fund as "No-Year" providing both Committees approve. During fiscal years 1953 and 1954 there were appropriated to the Agency in appropriation "Aircraft and Related Procurement" the sums of 92 million and 58 million respectively, making a total of 150 million available until expended. These funds are still available in unobligated balances of these two fiscal years.

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Exhibit 1 (4 pages)

If the contingency reserve fund were approved as a "No-Year" fund, the Agency would then have to make a request for only that portion of the reserve actually used each year. No funds have been withdrawn from the reserve during fiscal years 1953 and 1954.

The Chairman of the House Appropriations Committee indicated, in a letter of 27 April 1954 to the Director of the Bureau of the Budget, that Committee's approval to carry-over 150 million into the fiscal 1955. In discussing the matter with Mr. Sprankle, Assistant Clerk of the Committee, we were advised that the House Appropriations Committee had approved the Agency's request for a "No-Year" contingency reserve fund but that it would be necessary to issue a new letter each year containing the carry-over provisions.

If the Senate Appropriations Committee agrees with the Agency's proposal for a "No-Year" reserve fund, it is suggested that a letter similar to the attached draft be approved.

Very truly yours,

E. R. Saunders
E. R. SAUNDERS

CIA Comptroller

Attachments (2)

S E C R E T

DUPLICATE

C
O
P
Y

April 27, 1954

Honorable Rowland R. Hughes, Director
Bureau of the Budget
Washington, D. C.

Dear Mr. Director:

Enclosed herewith is a table indicating Committee action on the 1955 budget estimates relating to the Central Intelligence Agency.

It is the intent of the Committee that not more than \$150,000,000 of prior year funds will be carried into the fiscal year 1955.

Very sincerely yours,

/s/ John Taber

Chairman.

Enc. 1

cc: Central Intelligence Agency
Department of Defense

S E C R E T

<u>Annual Operating Expenses, 1955</u>	<u>Budget Estimate</u>	<u>Committee Recommendation</u>
<u>Appropriation</u>		
<u>Army</u>		
Maintenance and Operations, Army		
Project 2712 Classified Project.....	33,000,000	\$25,000,000
Project 3121 Commercial Transportation...	28,000,000	- -
Total, Army.....	<u>61,000,000</u>	<u>25,000,000</u>
<u>Navy</u>		
Service-side Operations, Navy		
Activity 10 Contingencies of the Navy....	33,000,000	30,000,000
Ships and Facilities, Navy		
Activity 1 Maintenance and Operation of the Active Fleet.....	45,000,000	- -
Ordnance and Facilities, Navy		
Activity 1 Procurement of Ordnance and Ammunition.....	30,000,000	- -
Total, Navy.....	<u>108,000,000</u>	<u>30,000,000</u>
<u>Air Force</u>		
Contingencies, Air Force		
Project 731, Classified project.....	23,000,000	20,000,000
Military Personnel Requirements, Air Force		
Project 550 Subsistence.....	33,000,000	- -
Aircraft and Related Procurement, Air Force		
Project 120 Aircraft Component Spares and Spare Parts.....	- -	110,000,000
Total, Air Force.....	<u>56,000,000</u>	<u>130,000,000</u>
Sub-total.....	225,000,000	185,000,000
<u>Add</u>		
Prior year funds available from Aircraft Procurement, Air Force.....	- -	40,000,000
Total Annual Operating Expenses	<u>225,000,000</u>	<u>225,000,000</u>
<u>Reserve Funds</u>		
Aircraft and Related Procurement, Air Force.....		
Project 120, Aircraft Component Spares and Spare Parts.....	110,000,000	- -
Prior year funds available:		
Aircraft Procurement.....	- -	110,000,000
Grand Total, funds available	<u>335,000,000</u>	<u>335,000,000</u>

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