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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

JOHN DAVIS : DOCKET NO. CA 88-130  
: (TPJ)  
V. : Washington, D.C.  
: August 24, 1993  
DEPARTMENT OF JUSTICE : 9:30 A.M.  
: X

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE THOMAS P. JACKSON  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: JAMES H. LESAR, ESQ.

For the Defendant: SUSAN A. NELLOR, ESQ.

Court Reporter: MARILYN G. YOUNG  
Official Court Reporter  
Room 4800-G, U.S. Courthouse  
Washington, D.C. 20001

Proceedings reported by computerized stenography;  
transcript produced by computer.

Attachment F C.A. 04-0814

1 THE CLERK: Civil Action 88-130, Davis versus  
2 Department of Justice. Mr. Lesar for the plaintiffs;  
3 Susan Nellor for the defendant.

4 MR. LESAR: Good morning, your Honor.

5 THE COURT: Good morning. Miss Nellor, I have  
6 to view what Mr. Lesar has filed as nothing short of  
7 heroic.

8 MS. NELLOR: That's one way to put it, your  
9 Honor.

10 THE COURT: Would you want to respond to it?

11 MS. NELLOR: Your Honor, there are two possible  
12 ways to handle it. One would be give us an  
13 opportunity, say, two weeks to thirty days since counsel  
14 is on vacation at the moment so I don't have anybody to  
15 contact to look at it to see what we want to do with it.

16 Perhaps the better way to do it would simply be  
17 to remand the matter back to the agency to process it and  
18 determine what they -- to let them look at this material  
19 and see if it's adequate.

20 THE COURT: What would be the agency's  
21 disposition on that?

22 MS. NELLOR: Well, if it is adequate they would  
23 process the tapes then, in other words, and release  
24 whatever should be released.

25 THE COURT: My problem is how do they determine

1 in reprocessing, how do they determine what information  
2 is information which has in effect been heard by the  
3 public?

4 MS. NELLOR: Well, what the plaintiff has given  
5 us are two exhibit lists that appear -- that say that  
6 tapes from 1 through 162 were admitted into evidence.

7 THE COURT: Yes.

8 MS. NELLOR: I assume that's what you are  
9 suggesting. Now, if that's the case, if that's an  
10 authentic document and it is simply a matter of having  
11 the FBI check the records if that is authentic and if  
12 that is in fact what was admitted and they compare that  
13 to the play list and they don't have any problems with  
14 that, then it would be a matter of processing it. I  
15 don't know what problems would arise from that because  
16 they need to go through that transcript and see if there  
17 is anything in there to suggest to the contrary or if  
18 there is any other documents that they have, for example,  
19 on the play list or the exhibit list itself that shows  
20 something was not admitted or rejected and then not  
21 disclosed those, I don't know, but it's a matter of they  
22 have to take what the plaintiff has given them which was,  
23 the Court said was his burden to show and process then  
24 those records and so in that context it seems we would,  
25 the Court would save some time if it were just to be

1 remanded to the agency and allow them to go through that  
2 process.

3 MR. LESAR: I have no objections to that.

4 THE COURT: Well, that's more or less what you  
5 are asking for, isn't it?

6 MR. LESAR: Yes, yes.

7 THE COURT: How would you phrase the order?

8 MS. NELLOR: Just an order remanding it to the  
9 agency.

10 THE COURT: To do what?

11 MS. NELLOR: To process, to process the records  
12 in light of the plaintiff's submission. Now, if we have  
13 a problem with it we can come back to the Court.

14 THE COURT: Okay.

15 MS. NELLOR: And if the Court would like I can  
16 confer with counsel and we can prepare an order for the  
17 Court's signature.

18 THE COURT: Well, if you are happy with the  
19 language you have just suggested to me we will enter it  
20 today and maybe I ought to bring you back then in sixty  
21 days. Would that be a sufficient period of time?

22 MR. LESAR: That would be sufficient.

23 MS. NELLOR: That would be fine, your Honor,  
24 and if there is a problem prior to that we will so inform  
25 the Court.

1 THE COURT: All right. I could think of only  
2 one other FOIA requester who has exhibited the tenacity  
3 of Mr. Lesar's client in the eleven years that I have  
4 been here.

5 All right, I will do that and we will bring you  
6 back in sixty days and see where we are then.

7 MS. NELLOR: That's fine, your Honor.

8 THE CLERK: October 25 is a Monday, your  
9 Honor.

10 MR. LESAR: That's all right with me.

11 MS. NELLOR: Fine with me, your Honor.

12 THE COURT: October 25th at 9:30.

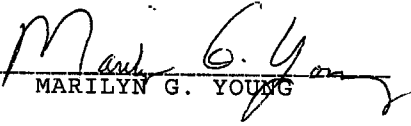
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C E R T I F I C A T E

I, Marilyn G. Young, Official Court Reporter for the United States District Court, do hereby certify that the foregoing proceedings in the above-entitled cause was taken by me at the time and place as stated; that it was taken by me in shorthand (Stenotype) and thereafter transcribed by computer under my supervision and control; that the foregoing pages contain a true and correct transcription of said proceedings to the best of my ability and understanding.

I further certify that I am not of counsel nor related to any of the parties to this cause and that I am in no wise interested in the result of said cause.

  
MARILYN G. YOUNG