

FILED

MAR - 4 2003

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**JEFFREY STERLING
13455 Farmcrest Court, #721
Herndon, Virginia 22171

Plaintiff,

v.

CENTRAL INTELLIGENCE AGENCY
Washington, D.C. 20505

Defendant.

*
CASE NUMBER 1:03CV00603

JUDGE: Emmet G. Sullivan

DECK TYPE: Administrative Agency Review

DATE STAMP: 03/04/2003
4COMPLAINT

Plaintiff Jeffrey Sterling brings this action against defendant Central Intelligence Agency for injunctive and declaratory relief pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, the Administrative Procedure Act, 5 U.S.C. § 701 et seq., the All Writs Act, 28 U.S.C. § 1651, the Central Intelligence Agency's internal regulations and the First Amendment to the Constitution of the United States. The Central Intelligence Agency has unlawfully imposed a prior restraint upon Jeff Sterling by infringing on his right to publish his memoirs.

JURISDICTION

1. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 702 and 28 U.S.C. § 1331.

VENUE

2. Venue is appropriate in the District under 5 U.S.C. § 703 and 28 U.S.C. § 1391.

PARTIES

3. Plaintiff Jeffrey Sterling was formerly employed by the Central Intelligence Agency as an Operations Officer. He is required by virtue of a secrecy agreement to submit all writings for prepublication review. He is a citizen of the United States and resides in the Commonwealth of Virginia.

GOVERNMENT
EXHIBIT
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1:10CR485

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Date Filed: 03-04-03

By: NANCY MAYER WHITTINGTON, CLERK

Michael Darby 8-29-06

4. Defendant Central Intelligence Agency ("CIA") is an agency as defined by 5 U.S.C. § 701. Its actions have prevented Sterling from publishing portions of his manuscript.

FACTS

5. Sterling was formerly employed by the CIA as an Operations Officer from 1993-2001.

6. In early 2002, Sterling submitted, pursuant to one or more secrecy agreements, several chapters of and a proposal for his memoirs to the CIA's Office of Prepublication Review ("PRB") for prepublication review. The CIA is required to issue decisions regarding submissions within thirty days of receipt of the document.

7. In April 2002, Sterling and his counsel, Mark S. Zaid, Esq., attended a meeting with PRB officials to discuss CIA concerns regarding some of the contents of Sterling's memoirs. Mr. Zaid presently holds a SECRET level clearance from the Department of Justice, and has what is called limited security approval to SECRET level information at the CIA and Defense Intelligence Agency. As part of his representation of Sterling, he has been approved by the CIA to have access to certain classified information including the memoirs in question. As a result of this meeting, the parties mutually agreed upon certain modifications to the manuscript and an understanding on how to draft the document so as to avoid future classification concerns.

8. In or around October 2002, Sterling submitted additional chapters of his memoirs for classification review. He followed the guidelines presented to him at the April 2002 meeting and the draft was written consistent with prior CIA classification decisions. Although the CIA PRB initially informed Sterling that it would issue its final decision within the thirty-day required time frame, the CIA PRB notified Sterling in late November 2002, that additional concerns had arisen with respect to contents of the manuscript.

9. Upon information and belief, the CIA's Office of General Counsel ("OGC") and other CIA policy offices became involved in the PRB declassification review of Sterling's manuscript. The specific involvement of OGC, in particular, was unusual for manuscript reviews due to the authority provided to the PRB, which has its own attorney, to resolve classification reviews. Indeed, in this particular case, OGC became involved solely to ensure the CIA retained a litigation advantage in a pending unrelated discrimination lawsuit - Sterling v. Tenet et al. 01 Civ. 8073 (S.D.N.Y.), brought by Sterling against the CIA. Thus, information that would otherwise have been cleared by the PRB as unclassified in Sterling's manuscript was ordered to be considered classified so that the CIA's position would be consistent with its litigation strategy in the other lawsuit.

10. By letter dated December 2, 2002, the CIA notified Sterling of its initial decisions regarding his October submission and informed him that certain information within his manuscript was considered classified. Some of the CIA's new decisions conflicted with its prior classification decisions.

11. By letter dated January 3, 2003, the CIA notified Sterling of additional decisions regarding his October submission. Sterling was not only notified that the CIA considered certain information in his manuscript to be classified, which also conflicted with earlier decisions, but the CIA informed Sterling that he should add information into the manuscript that was blatantly false. Upon information and belief, the CIA instructed Sterling to knowingly include false information within his manuscript solely to maintain a litigation advantage against Sterling in the unrelated discrimination lawsuit.

FIRST CAUSE OF ACTION
(FIRST AMENDMENT - RIGHT TO PUBLISH -
CLASSIFICATION CHALLENGE)

12. Sterling repeats and realleges the allegations contained in paragraphs 1 through 11 above, inclusive.

13. Sterling properly submitted, pursuant to one or more secrecy agreements, his draft memoirs.

14. The CIA has identified classification concerns in the manuscript and denied Sterling the right to publish certain information within his draft memoirs.

15. The CIA has failed to show that Sterling's First Amendment right to publish is outweighed by the government's interest in efficiently carrying out its mission by minimizing harms that are real, not merely conjecture.

16. The CIA has failed to demonstrate the existence of substantial government interests that would enable it to prohibit the publication of certain information within Sterling's memoirs. Moreover, they have imposed unreasonable restrictions on Sterling's activities that are protected by the First Amendment.

17. The CIA's restrictions imposed upon Sterling have been unduly vague and were not narrowly confined to avoid infringement of his First Amendment rights. They have unnecessarily restricted speech that does not serve to protect any substantial government interest.

18. Most importantly, the CIA has failed to produce explanations with reasonable specificity that demonstrate a logical connection between the information to be deleted and the reasons for classification. The reasons for classification are neither rational or plausible. In fact, some or all of the decisions were made solely for the CIA to gain a litigation advantage against Sterling in another lawsuit. Thus, they cannot support the CIA's attempt to censor Sterling's memoirs.

19. Because the CIA has impermissibly infringed upon Sterling's right to publish the information contained within his manuscript, they have violated Sterling's First Amendment rights. Thus, Sterling has suffered actual adverse and harmful effects, including, but not limited to, possible civil or criminal penalties, a delay in being able to report in a timely fashion on credible news stories, and/or lost or jeopardized present or future financial opportunities, which impairs his ability to serve the public.

WHEREFORE, plaintiff Jeffrey Sterling requests that the Court award him the following relief:

- (1) Issue a permanent injunction to block the CIA from restraining the publication of portions of his memoirs;
- (2) Enjoin the CIA from initiating civil or criminal proceedings against Sterling for future publication of any information within his memoirs;
- (3) Declare that Sterling possesses a First Amendment right to publish the information within his memoirs;
- (4) Declare that the CIA violated the Administrative Procedure Act and its internal regulations governing prepublication review;
- (5) Award Sterling the costs of the action and reasonable attorney fees under the Equal Access to Justice Act or any other applicable law; and
- (6) grant such other relief as the Court may deem just and proper.

Date: March 4, 2003

Respectfully submitted,



Mark S. Zaid, Esq. 440532
Krieger & Zaid, PLLC
1133 21st Street, N.W., Suite 800
Washington, D.C. 20036
(202) 223-9050

Attorney For Plaintiff

CLERK'S OFFICE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIACO-932
Rev. 4/96NOTICE OF DESIGNATION OF RELATED CIVIL CASES PENDING
IN THIS OR ANY OTHER UNITED STATES COURT**FILED**Civil Action No. **03 0603**
(To be supplied by the Clerk)

MAR - 4 2003

NOTICE TO PARTIES:

Pursuant to Rule 405(b)(2), you are required to complete this form at the time of filing any civil action which is related to any pending cases or which involves the same parties or issues to the same subject matter of any dismissed related cases. This form must be prepared in sufficient quantity to provide one copy for the Clerk's records, one copy for the Judge to whom the cases is assigned and one copy for each defendant, so that you must prepare 3 copies for a one defendant case, 4 copies for a two defendant case, etc.

NOTICE TO DEFENDANT:

Rule 405(b)(2) of this Court requires that you serve upon the plaintiff and file with your first responsive pleading or motion any objection you have to the related case designation.

NOTICE TO ALL COUNSEL

Rule 405(b)(3) of this Court requires that as soon as an attorney for a party becomes aware of the existence of a related case or cases, such attorney shall immediately notify, in writing, the Judges on whose calendars the cases appear and shall serve such notice on counsel for all other parties.

The plaintiff, defendant or counsel must complete the following:

1. RELATIONSHIP OF NEW CASE TO PENDING RELATED CASE(S).

A new case is deemed related to a case pending in this or another U.S. Court if the new case: [Check appropriate box(es) below.]

- ☐ (a) relates to common property
- ☒ (b) involves common issues of fact
- ☐ (c) grows out of the same event or transaction
- ☐ (d) involves the validity or infringement of the same patent
- ☐ (e) is filed by the same pro se litigant

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Date Filed: **03-04-03**By: **NANCY MAYER WHITTINGTON, CLERK**By: **Michael Darby 8-2**2. RELATIONSHIP OF NEW CASE TO DISMISSED RELATED CASE(S)

A new case is deemed related to a case dismissed, with or without prejudice, in this or any other U.S. Court, if the new case involves the same parties and same subject matter.

Check box if new case is related to a dismissed case: ☐

3. NAME THE UNITED STATES COURT IN WHICH THE RELATED CASE IS FILED (IF OTHER THAN THIS COURT):4. CAPTION AND CASE NUMBER OF RELATED CASE(S). IF MORE ROOM IS NEEDED PLEASE USE OTHER SIDE.

Danny Stillman

v. Department of Defense et al.

C.A. No. **01-1342 (E65)**DATE **3-4-03**

Signature of Plaintiff/Defendant (or counsel)

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Central Intelligence Agency



Washington, D.C. 20505

25 August 2003

Mr. Jeffrey Sterling
13455 Farmcrest Court, #721
Herndon, VA 20171

Dear Mr. Sterling:

In conjunction with the preparation of a motion for summary judgment in response to the lawsuit that you have brought challenging the Publication Review Board's review of your manuscript, the Board has identified additional information in your manuscript that, in accordance with the terms of your secrecy agreement, is inappropriate for disclosure in the public domain and must be revised or deleted prior to publication. This information was inadvertently overlooked in our prior review. To reiterate, these are changes in addition to ones we have conveyed to you earlier.

Book Proposal, Page 7

line 5

Delete the fourth through seventh words in the line. If you have provided a copy of the Book Proposal to anyone, you must inform the Board, undertake to retrieve it and replace it with a Book Proposal ~~redacted~~ consistent with this additional guidance.

line 13

Delete the last three words in the line.

Chapter 8, Page 2

line 21

Delete the second word in this line. You may wish to substitute "assignments" or "jobs."

Chapter 8, Page 6

lines 10 - 13

Delete the last 16 words in line 10, all of lines 11 and 12, and the first eight words of line 13.

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Mr. Jeffrey Sterling

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line 15

Delete the third through seventh words in the line.

lines 16 – 17

Delete the last six words in line 16 and the first word in line 17. You may wish to substitute the phrase "Northern Europe."

lines 17 – 18

Delete the twelfth word in line 17 and the fourteenth word in line 18. You may wish to substitute a word like "job" in both places.

line 22

Delete the ninth word in the line.

Chapter 8, Page 10

line 1

Delete the third through sixth words in the line.

Chapter 8, Page 12

line 6

Delete the sixth word in the line.

line 9

Initially the Board had deleted the entire reference to your cover job. On further review, we have determined that you may refer to your job as it currently appears in line 9, Chapter 8, page 12, provided you still delete the first five and the eleventh, twelfth and thirteenth words in the line.

line 11

Delete the ninth word in the line.

line 17

Delete the first four words in the line. You may substitute the phrase "the supervisor for my work in Germany."

lines 18 – 21

Delete the last eleven words, all of lines 19-20, and the first five words of line 21.

line 21

Delete words nine to eleven. You may wish to substitute the words "in his hotel room."

Chapter 8, Page 13

line 6

Delete the eleventh through the fifteenth words in this line.

line 10

Delete the fifth, sixth and seventh words in the line.

line 11

Delete the second through the fifth words.

lines 15 – 17

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Mr. Jeffrey Sterling

Page 3

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Delete the last two words in line 15, all of line 16, and the first two words in line 17.
line 18
Delete the eleventh word in the line.

Chapter 8, Page 14

lines 2 – 3

Delete the last ten words in line 2 and the first seven words in line 3.

line 5

Delete the thirteenth, fourteenth and fifteenth words in the line.

line 8

Delete the fourth word in the line. You may wish to substitute the word "Agency."

lines 8 – 9

Delete the last ten words in line 8 and the first four words in line 9.

Chapter 8, Page 15

lines 11 – 12

Delete the last five words in line 11 and first five words in line 12. A phrase like "of not being allowed the opportunity to do what I was trained for" would address the Board's concern.

lines 13 – 14

Delete the thirteenth, fourteenth and fifteenth words in line 13 and the same phrase in line 14.

lines 18 – 19

Delete the last word in line 18 and the first two words in line 19. You may wish to substitute the phrase "the supervisor for my work in Germany."

Chapter 8, Page 17

line 22

Delete the tenth through fourteenth words in the line. You may wish to substitute the phrase "the supervisor for my work in Germany."

Chapter 8, Page 18

line 1

Delete the eighth word in the line. You may wish to substitute the word "the supervisor for my work in Germany."

Chapter 9, Page 10

line 15

Delete the twelfth word in the line. You may wish to substitute the word "target."

line 17

Mr. Jeffrey Sterling

Page 4

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The Board had initially sought the deletion of third, fourth and fifth words in the line. Upon further review and to be consistent with earlier modifications, you need to delete only the fourth word in the line.

line 18

Delete the ninth and tenth words.

Chapter 9, Page 11

line 20

Delete the sixth word in the line. You may wish to substitute the word "target."

Chapter 9, Page 12

line 2

Delete the fifteenth word in the line. You may wish to substitute the phrase "this target."

Chapter 9, Page 13

line 12

Delete the fourth and fifth words in the line. You may wish to substitute the phrase "operational targets."

line 18

Delete the fourteenth word in the line. You may wish to substitute the phrase "operational target."

line 19

Delete the third through eighth words in the line.

Chapter 9, Page 14

line 22

Delete the fourth and fifth words in the line.

Chapter 9, Page 17

line 4

Delete ninth word in the line. Substituting the word "there" would address the Boards concerns.

line 10

Delete the tenth word in the line.

line 10

Delete the last word in the line.

line 12

Delete the seventh word in the line. Substituting the word "there" would address the Board's concern.

Copies of the edited pages with redactions are enclosed for your records.

PRB00023

Mr. Jeffrey Sterling

Page 5

25 August 2003

After making the changes the Board requires, you must resubmit the manuscript for final Agency review. In lieu of resubmitting the entire manuscript, you may return only the affected pages. You are reminded of your Secrecy Agreement obligations not to disclose the manuscript to anyone who is not authorized by the Agency to have access to it until it has been approved for release by the Agency.

If you add material to or change the manuscript the Board has reviewed, you must submit these additions or changes to us before giving them to your publisher or anyone else. Please mark or otherwise indicate the new material clearly so that we can expedite our review. Additional items ~~that require submission include but are not limited to~~ photographs, photograph captions, illustrations, diagrams, tables, maps, or charts.

You must submit any additional galley proofs of the final manuscript as it will appear in book form so the Board can verify that the published version is the approved version. Your responsibility as the author is to ensure that the publisher releases only the Board-approved version. We will work promptly to complete this final review but please ensure that the publishing schedule permits adequate time for the Board to complete its work. The Board gives galley reviews high priority because it knows that authors and publishers have firm deadlines.

The Board encourages you to include the following disclaimer: "This material has been reviewed by the CIA. That review neither constitutes CIA authentication of information nor implies CIA endorsement of the author's views."

Please do not hesitate to contact me if you have any questions or if we can be of assistance.

Sincerely,



Paul-Noel Chretien, J.D.
Chairman, Publications Review Board

PRB00024

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JEFFREY STERLING,

Plaintiff,

v.

CENTRAL INTELLIGENCE AGENCY,

Defendant.

Civil Action No. 1:03CV00603

Hon. Thomas Penfield Jackson

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Fed. R. Civ. P. 41(a)(1), Plaintiff Jeffrey Sterling and Defendant Central Intelligence Agency hereby jointly stipulate to the dismissal of this action with prejudice, including all claims of Plaintiff against Defendant in the above-captioned case, with each party bearing its own legal fees and costs and without any obligation to pay any of the fees and costs of the other party.

Respectfully submitted

PETER D. KEISLER
Assistant Attorney General, Civil Division

KENNETH L. WAINSTEIN
United States Attorney

VINCENT M. GARVEY
Deputy Branch Director

**ECF
DOCUMENT**

I hereby attest and certify that this is a printed copy of a document which was electronically filed with the United States District Court for the District of Columbia.

Date Filed: 7-30-04

NANCY MAYER-WHITTINGTON, CLERK

By: Michael Darby 8-29-06

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COUNSEL FOR DEFENDANT CIA

Dated: July 30, 2004