

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

APR 09 1999

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

JUDICIAL WATCH, INC.,
Plaintiff,
v.
UNITED STATES DEPARTMENT
OF COMMERCE,
Defendant.

Civil Action 95-133 (RCL)

ORDER


Upon consideration of nonparty John Huang's motion to reconsider, filed January 7, 1999, the opposition thereto, the reply, and the record in this case, and for the reasons set forth in the memorandum opinion issued this date, it is hereby

ORDERED that the motion for reconsideration is GRANTED; and, upon reconsideration, it is further

ORDERED that this Court's order of October 31, 1996 is hereby VACATED; and it is further

ORDERED that the deposition by oral examination of Mr. Huang shall resume as scheduled by Magistrate Judge Facciola.

SO ORDERED.



Royce C. Lamberth
United States District Judge

DATE: 4-9-99

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v.
UNITED STATES DEPARTMENT
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Defendant.

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MEMORANDUM OPINION

This matter comes before the Court on nonparty John Huang's motion to reconsider portions of this Court's decisions issued December 22, 1998. The Court will grant the motion for reconsideration. Upon reconsideration, the Court will nevertheless permit the deposition of Mr. Huang to continue as scheduled by the Magistrate Judge.

I. FACTUAL BACKGROUND

As detailed in the Court's memorandum opinions dated December 22, 1998, the circumstances surrounding the first deposition of nonparty John Huang constituted a brazen display of disregard and disrespect for the courts. To avoid service of a subpoena, Mr. Huang went into hiding with the aid of friends, family, and even his attorney, who represented that he was not within the Court's jurisdiction although it is now clear that he was in the Washington, D.C. area the entire time. Only after the United States Marshals were called into action and this Court demanded cooperation from Huang's then-employer, the Democratic

National Committee, did Huang resurface and accept plaintiff's subpoena.

When Huang was finally deposed, although subject to a subpoena duces tecum, he appeared without a single document. Subsequent revelations gave this Court reason to wonder how Mr. Huang could have possessed no documents responsive to plaintiff's subpoena. The Court also found reason to question the veracity of Mr. Huang's deposition testimony.

II. MOTION TO RECONSIDER

Mr. Huang now moves for reconsideration of the Court's December 1998 credibility findings and of the Court's decision to permit plaintiff to resume the deposition partially terminated¹ in 1996. Mr. Huang correctly observes that the Court's December 1998 decision was reached without adequate opportunity for argument from him as a nonparty, because plaintiff's request to continue the deposition was raised in the context of a request for a status conference that was not served on nonparties. For that reason, the Court will grant Mr. Huang's motion and reconsider its December decision insofar as it relates to him.

Upon reconsideration, the Court declines to substantially revise its December credibility findings. Although Mr. Huang's motion to reconsider has raised some legitimate questions as to

¹On October 31, 1996, the Court ordered that the oral examination of Mr. Huang be terminated, and that further examination be by written questions. As discussed below, that order will be vacated by today's decision.

whether the Court's credibility findings were overstated in specific instances, he has presented no evidence that would persuade this Court that its central determinations were inaccurate. If Mr. Huang did not receive "the benefit of the doubt" in the Court's December rulings, it is no one's fault but Mr. Huang's. His behavior prior to accepting the subpoena was so egregious that the Court must take every representation he makes with a grain of salt.

In any event, Mr. Huang's objections to the Court's December credibility determinations have little effect on the Court's decision to permit the plaintiff to resume his deposition. Mr. Huang's failure to produce even a single document for his October 1996 deposition, seen with the benefit of hindsight and in light of the extraordinary record of this case both in general and as it pertains to Mr. Huang specifically, is enough to persuade the Court that the October 31, 1996 protective order should be vacated and the deposition continued. In particular, the plaintiff should be allowed to question Mr. Huang about relevant portions of the desk calendar maintained by his secretary at the DOC. This calendar was not produced to plaintiff at the October 1996 deposition, and questions concerning it may reasonably be expected to lead to admissible evidence which plaintiff has had no previous adequate opportunity to explore.

The Court also notes that plaintiff has uncovered a substantial amount of information since Mr. Huang's October 1996 deposition, and even persuaded this Court that the defendant

engaged in a striking pattern of misconduct, including the unlawful destruction and removal of documents. Given Mr. Huang's conceded involvement in a wide range of affairs as Principal Deputy Assistant Secretary at the DOC and his now-well-established participation in improper campaign finance activities, plaintiff is entitled to explore the issues of this case with him again, armed with the information acquired since the October 1996 deposition.

The Court would also take the opportunity on reconsideration of the December decision to clarify one issue. In its December 1998 memoranda opinions, the Court somewhat inartfully referred to the continued deposition of Mr. Huang as a "redeposition," not foreseeing at the time that an issue might arise in which the distinction between a continued deposition and a redeposition would be significant. Upon review of the plaintiff's June 1997 pleading, plaintiff's request is clear: "Plaintiff respectfully requests the Court to permit it to continue the depositions of Jude Kearney and John Huang. Kearney and Huang were first deposed in October, 1996, and evidence developed subsequently indicates that their previous testimony was untrue or incomplete in material aspects." Plaintiff's Request for a Status Conference, filed June 4, 1997, at 7. Thus, to the extent the Court analyzed plaintiff's request as a request for a second deposition under Federal Rules of Civil Procedure 30 and 26, the Court inadvertently misconstrued the request.

The appropriate analysis is whether the Court should permit

plaintiff to continue Huang's deposition by oral examination. After temporarily suspending the October 1996 deposition, the Court granted in part Huang's motion to terminate the deposition on October 31, 1996, stating that the deposition could continue by written examination. The Court expressly based its decision on Mr. Huang's "profession of such limited knowledge of the Commerce Department's search for responsive documents under FOIA." October 31, 1996 Order. Needless to say, subsequent revelations have shown that basis to be a faulty one, and the Court will now vacate the October 31, 1996 order partially granting Huang's motion to terminate his deposition. In addition to the written questions permitted under the October 31, 1996 order, plaintiff will be permitted to continue the oral examination of Mr. Huang as set forth above.

Finally, although the issue is not (yet) squarely before the Court, it is apparent from other filings in this case that Mr. Huang questions whether this Court retains jurisdiction over him in light of his current residence in the Central District of California, suggesting that a second deposition under Rules 30 and 26 might more appropriately be taken in California. However, the Court has now clarified that it is permitting the October 1996 deposition by oral examination to continue, rather than ordering a new deposition. The Court therefore holds that it retains jurisdiction over Mr. Huang's deposition. Although the Court could find no caselaw directly on point, it would be an unusual result indeed if a deponent could remove himself from the

authority of a valid subpoena simply by changing his residence while his deposition was suspended by order of the court. Of course, the length of time between the October 1996 deposition and its continuation on April 13, 1999 is an unusual circumstance, and the fact that the Court until today had limited any further examination to written questions would lessen the deponent's expectation of a need to reappear for oral examination. The Court therefore is conscious of the legitimate interest in avoiding undue inconvenience to nonparties, and has carefully considered the competing interests in this case. The fact remains, however, that the resumption of Mr. Huang's deposition by oral examination has been necessitated primarily by Mr. Huang's own actions in failing to produce responsive documents in 1996 and in giving testimony that the Court has found dubious in various respects. Under the circumstances, the continued deposition of Mr. Huang in this jurisdiction will impose no undue burden on him, and the Court therefore finds no reason to relinquish its continued jurisdiction over Mr. Huang.²

Furthermore, because Mr. Huang's deposition before this Court will be continued here, economy of time and money weigh in favor of allowing plaintiff to address all relevant issues (both those left over from the suspended 1996 deposition and those discovered since that time) at one deposition. In this regard,

²It would also be a poor use of judicial resources to necessitate the involvement of another district court judge in California in this long litigation, which has a history of misconduct by DOC employees and former employees.

the subpoena served by plaintiff on March 22, 1999 will be considered supplemental to the October 1996 subpoena and will carry the full force of the 1996 subpoena. While the March 22, 1999 subpoena does not appear to go beyond the requests contained in the 1996 subpoena, to the extent that the 1999 subpoena requests documents obtained subsequent to the October 1996 deposition or information outside the scope of the 1996 subpoena, Mr. Huang will be bound to produce responsive information to the same extent as if it had been requested in October 1996. All those involved will be best served by concluding Mr. Huang's involvement in this case as quickly and efficiently as possible.

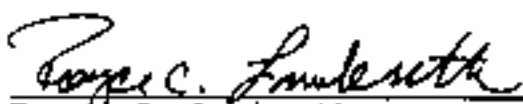
III. CONCLUSION

Mr. Huang's motion to reconsider is granted, and upon reconsideration the Court will order that his deposition by oral examination shall resume as scheduled by Magistrate Judge Facciola. In the interest of fairness, if nonparty John Huang continues to feel that this Court's credibility findings in its December 1998 decisions were in error, the Court will entertain an appropriate motion after Mr. Huang's resumed deposition is completed. Plaintiff's request for fees and costs is denied.

Today's decision on reconsideration should adequately clarify that the deposition currently scheduled for April 13, 1999 is a resumption of Mr. Huang's October 1996 deposition and that, consequently, this Court retains full jurisdictional power over Mr. Huang pursuant to the subpoena issued in October 1996.

Although Mr. Huang is of course entitled to raise whatever nonfrivolous legal arguments he pleases, the Court reminds him that the memory of his October 1996 shenanigans has not faded, and a repeat performance will not be tolerated.

A separate order will issue this date.



Royce C. Lamberth
United States District Judge

DATE: 4-9-99