

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William H. Alsup, Judge

AMERICAN SMALL BUSINESS)	
LEAGUE,)	
)	
Plaintiff,)	
)	
VS.)	NO. C 14-02166 WHA
)	
DEPARTMENT OF DEFENSE,)	
)	
Defendant.)	
_____)	

San Francisco, California
Thursday, November 6, 2014

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

LAW OFFICE OF ROBERT E. BELSHAW
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BY: ROBERT E. BELSHAW, ATTORNEY AT LAW

For Defendant:

UNITED STATES DEPARTMENT OF JUSTICE
Office of the United States Attorney
450 Golden Gate Avenue
San Francisco, California 94102
BY: ABRAHAM A. SIMMONS, ASST. U.S. ATTORNEY

Reported By: Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR
Official Reporter

1 Thursday - November 6, 2014

8:10 a.m.

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

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4 **THE COURT:** Let's call the Small Business case first.

5 **THE CLERK:** Okay, Your Honor.

6 It's 14-2166, American Small Business League versus
7 Department of Defense.

8 **THE COURT:** All right. Welcome. Appearances.

9 **MR. SIMMONS:** Good morning, Your Honor. Abraham
10 Simmons for the federal defendant, Department of Defense.

11 **THE COURT:** Okay.

12 **MR. BELSHAW:** Good morning, Your Honor. Robert
13 Belshaw for the plaintiff, American Small Business League.

14 **THE COURT:** Okay.

15 **MR. SIMMONS:** Your Honor, we received your order, and
16 we've been talking about what needs to happen in this case.

17 The difficulty in this case is allowing the submitter of
18 the document sufficient notice about what's about to happen;
19 and that is, perhaps, review to which the Government does not
20 object and to review of the affidavit and the decisions made by
21 the Government.

22 What we have hopefully agreed to here is to just allow a
23 process to take place that would have taken place during the
24 administrative proceedings whereby we create the Vaughn index
25 with the help of the submitter, and then get a response from

1 Mr. Belshaw as to whether or not --

2 **THE COURT:** I don't want to do that. I want to see
3 the document. I want you to highlight the parts that are --
4 I'm going to look at it in camera. I want you to highlight the
5 parts that are supposedly confidential and not just -- it's got
6 to be more than just confidential. It's got to be like a trade
7 secret, something that qualifies under the statute; and then
8 have a declaration that explains in detail with something other
9 than blather why that should be withheld. Then I'll review
10 that item by item, and then everything in that document will be
11 made public with the exception of something that shouldn't be
12 turned over.

13 **The purpose of the Freedom of Information Act is so the**
14 **public can see how our government works. Congress passed this**
15 **law to make the small businesses have access to some of these**
16 **projects, and here is the United States covering it up.**

17 So maybe this little exception applies; and then, okay, if
18 it does, I'm going to say it applies. I've got to follow the
19 law. But this blanket approach where they put in some
20 blather-like declaration about how it's going to hurt them, no,
21 that's not good enough. It's got to be a lot more specific
22 than that. So I'm going to give you a brand new opportunity.

23 So the document is going to be submitted under seal. I
24 don't care about the Vaughn index. I don't want -- I don't
25 need any more indexes. I want to see the document, and then I

1 want it highlighted with a declaration keyed into every single
2 highlighted passage and explain why that specific information
3 fits within the statutory exemption.

4 Now, that's what I want to do. You can now try to talk me
5 out of that. Go ahead, Mr. Simmons.

6 **MR. SIMMONS:** My concern is that the submitter of the
7 document -- what we have here is a document submitted by a
8 proposed contractor.

9 **THE COURT:** The submitter is just a -- is just some
10 company that has got a lot of business from the United States
11 Government and is refusing to explain how they comply with the
12 Small Business Act.

13 **MR. SIMMONS:** That's right.

14 **THE COURT:** When you say "submitter," let's be clear,
15 this is a company extracting dollars, Defense dollars, from the
16 taxpayers of our country. Okay?

17 **MR. SIMMONS:** Absolutely. And if there is --

18 **THE COURT:** They're profiting. They're profiteers.

19 **MR. SIMMONS:** Assuming that's correct --

20 **THE COURT:** Yes.

21 **MR. SIMMONS:** -- they're the ones who are going to
22 have the dog in the fight.

23 **THE COURT:** Yeah, that's correct.

24 **MR. SIMMONS:** So the Government may step aside and
25 allow this all to occur. All I'm concerned about is sufficient

1 notice and opportunity for them to intervene if they would
2 like.

3 **THE COURT:** Well, I'm giving them -- I'm giving you
4 and them that opportunity. So the document should be submitted
5 in the form that I said one week from today. Is that good
6 enough, or do you need more time than that?

7 **MR. SIMMONS:** We were actually going to just ask for
8 two.

9 **THE COURT:** All right. I'll give you two weeks. Two
10 weeks from today that should be submitted with that
11 declaration. And then I'll make a ruling, and you'll either
12 get it or you don't. I don't know whether you get it or not.
13 We've got to wait and see.

14 **MR. BELSHAW:** Well, on that point, Your Honor, a
15 procedural question.

16 **THE COURT:** Yeah.

17 **MR. BELSHAW:** The law developing regarding commercial
18 secrets, and I think -- I assume that's what they're going to
19 be claiming here, is somewhat complex and somewhat fresh.

20 **THE COURT:** Submit a brief then. If you want to
21 submit a better brief, go ahead.

22 **MR. BELSHAW:** That would be terrific. If I could get
23 the Court's determination --

24 **THE COURT:** When do you want -- you submit that in two
25 weeks as well.

1 **MR. BELSHAW:** Sure. I can do that.

2 **THE COURT:** When do you want to submit it?

3 **MR. BELSHAW:** Well, my concern is that I will not know
4 which specific facts that the -- which specific portions of the
5 information that the submitter wants withheld, nor will I know
6 the Court's determination regarding that. I would prefer --

7 **THE COURT:** What am I supposed to do? I can't let you
8 look at it in advance and see it.

9 **MR. BELSHAW:** No. If I could get your determination,
10 though, and then brief from that point.

11 **THE COURT:** No.

12 **MR. BELSHAW:** In other words, if it was a tentative.

13 **THE COURT:** I'm going to make a decision and move on
14 to the next case. You submit your brief in two weeks. You get
15 10 pages to say whatever you want to say, and I'm going to look
16 at everything and make a decision.

17 **MR. BELSHAW:** I can do that, Your Honor.

18 **THE COURT:** Then you can argue -- I don't know.

19 All right. I'm sympathetic to the idea that the public
20 should be able to see what the Government's got in its files;
21 but if Congress says you don't get it, then you're not going to
22 get it.

23 On the other hand, if Congress says you're entitled to it,
24 you are going to get it; but we're not going to just have a
25 generalized commercial blather by the company that's profiting

1 from the taxpayers of the United States and refusing to explain
2 how they comply with the law that Congress passed.

3 We're going to -- so I'm going to look hard at this.

4 **MR. BELSHAW:** Yes, Your Honor.

5 **THE COURT:** All right. Anything you want to say more?

6 **MR. BELSHAW:** We ask no more than that, Your Honor.

7 **THE COURT:** All right. Well, that's what you're going
8 to get, and I'll see your submissions in two weeks. Thank you
9 very much.

10 **MR. BELSHAW:** Thank you.

11 **MR. SIMMONS:** Thank you, Your Honor.

12 (Proceedings adjourned at 8:16 a.m.)

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Thursday, December 4, 2014



Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR
U.S. Court Reporter