UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RAYMING CHANG *et al.*, **Plaintiffs,** **v.** **THE UNITED STATES OF AMERICA *et al.*,** **Defendants.**	**Civil No. 02-2010 (EGS/JMF)**

ORDER

Currently pending and ready for resolution is Defendants' Emergency Motion to Strike from the Public Docket Correspondence from the Fraternal Order of Police, Metropolitan Police Department, Dated August 31, 2011 [#827].

On August 31, 2011, Kristopher K. Baumann, Chairman, Fraternal Order of Police, Metropolitan Police Department, wrote a letter to the Honorable Emmet G. Sullivan, the presiding judge in this case. Mr. Baumann told Judge Sullivan about a conversation he had with a police officer concerning two cases, which Mr. Baumann used in the caption of his letter: 1) Rayming Chang v. United States (Docket No. 02-201[*sic*]) and 2) Jeffrey Barham v. District of Columbia (Docket No. 02-2283). On September 16, 2011, Judge Sullivan wrote on the letter "Let This Be Filed." and dated it "9/16/11." Later that day, however, the letter was sealed by the Court, thereby making it unavailable to the public. On September 26, 2011, Judge Sullivan stated that the Court would provide the correspondence "to the Special Master directly, without posting it on the docket at this time." Minute Order of 9/26/11. Before the document was

removed from the public docket, however, the contents of the letter were viewed by several members of the press and later described in at least two newspaper articles.[1] Additionally, in one of the documents at issue, Baumann wrote to the Inspector General of the District of Columbia and attached to his letter a memorandum from a police officer named John Strader, which is another document at issue. Baumann apparently sent a copy of his letter to the Inspector General, along with a copy of the memorandum from Strader to Mary Cheh, a member of the Council of the District of Columbia. Now, even though the horse already left the barn, the District seeks to have the letter suppressed so that it is not returned to the public file.

To understand the basis of the District's claim that the document should not be returned to the public docket, I have to begin by describing the letter and its enclosures specifically, as follows:

1. Letter of August 31, 2011, as described above.
2. Attachment 1: A letter dated August 30, 2011, from Mr. Baumann to Charles J. Willoughby, Inspector General of the District of Columbia.
3. Washington Post Article, The Crime Scene, "Did D.C. police destroy evidence in Pershing Park case", Attachment to Number 2.
4. Washington Post Article, The Crime Scene, "Pershing Park evidence search referred to federal authorities", Attachment to Number 2.
5. The Blog of Legal Times, August 10, 2010, "D.C. Officials May Face Criminal Referral, Judge Warns." Attachment to Number 2.
6. Signed Statement of Officer Strader, Attachment to Number 2.

[1] See http://www.washingtonpost.com/blogs/mike-debonis/post/the-pershing-park-running-resume--found-and-lost/2011/09/23/gIQAd3W5qK_blog.html (last visited Oct. 19, 2011); http://washingtonexaminer.com/local/dc/2011/09/feds-must-find-missing-evidence-pershing-park-case (last visited Oct. 19, 2011).

First, newspaper articles and blog posts (*i.e.* numbers 2-5) that have already been published and disseminated cannot possibly be subject to any form of suppression simply because they are attached to a letter to a judge. Any claim of "privilege" as to these matters is unsupportable. Second, the letters from Baumann to the Inspector General and to Judge Sullivan are not privileged either. There is no privilege between the author of these letters and his correspondents. Thus, any claims that these documents are privileged are meritless. They must be restored to the public docket forthwith.

That leaves only the statement of Officer Strader. The only portion of the statement that could possibly be privileged is the officer's recounting of a meeting he had with Terry Ryan, General Counsel of the Metropolitan Police Department. For the attorney-client privilege to apply, however, there must be the relationship between a person who is seeking legal services or legal advice and the attorney from whom he seeks such guidance or services. Upjohn Co. v. United States, 449 U.S. 383, 389 (1981) ("[The attorney-client privilege's] purpose is to encourage full and frank communication *between attorneys and their clients* and thereby promote broader public interests in the observance of law and administration of justice.") (emphasis added). As Officer Strader indicates in his statement at page 3, he was summoned to Ryan's office because Ryan was investigating the loss of a document, the now famous (or infamous) Running Resume. By interviewing Officer Strader, Ryan may well have been providing legal services to his employer, the Metropolitan Police Department. But, he certainly was not talking to Officer Strader because Strader was seeking either legal services or advice from Ryan. I am certain that if I asked Ryan he would tell me that by no stretch of the imagination does he consider himself the personal attorney of every member of the Metropolitan Police Department

and that his professional relationship as a lawyer is with the Department and not with each of its members. Indeed, and ironically, Officer Strader ends his statement by indicating that, after he spoke to Ryan, he "contacted the FOP so [that he] could get representation." Surely, neither Officer Strader nor Ryan ever thought for a moment that Ryan was providing legal representation to Strader during the interview.

Furthermore, if there was an attorney-client privilege, it was Strader's,[2] and he of course chose to disclose his conversation with Ryan to Baumann. The District cannot possibly be arguing that it has a right to claim a "privilege" that Officer Strader so freely surrendered.

Since the District's claim as to the Strader statement is meritless, the entire letter must be forthwith returned to the public docket. I say "forthwith" because the courts of the United States do not conduct *their own* business; they conduct the business of the people of the United States, who have every right to know what transpires in those courts. The judiciary therefore acknowledges the profound public interest in judicial proceedings by permitting the sealing of judicial records only upon a demanding showing. Washington Post v. Robinson, 935 F.2d 282, 287 (D.C. Cir. 1991). Here, none has been made.

For the reasons stated herein, it is, therefore, hereby,

ORDERED that Defendants' Emergency Motion to Strike from the Public Docket Correspondence from the Fraternal Order of Police, Metropolitan Police Department, Dated August 31, 2011 [#827] is **DENIED.** It is further, hereby,

ORDERED that docket entry [#826] be unsealed.

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[2] In re Grand Jury Proceedings, 73 F.R.D. 647, 652 (M.D. Fla. 1977); Edna Selan Epstein, THE ATTORNEY-CLIENT PRIVILEGE AND THE WORK-PRODUCT DOCTRINE 24 (2007).

SO ORDERED.

Digitally signed by John M. Facciola
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Date: 2011.10.20 16:33:57 -04'00

JOHN M. FACCIOLA
UNITED STATES MAGISTRATE JUDGE