

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

FILED  
MAR 1 - 1976  
JAMES F. BAVER  
CLERK

.....  
HAROLD WEISBERG,

Plaintiff,

v.

Civil Action No. 75-1448

GENERAL SERVICES ADMINIS-  
TRATION,

Defendant  
.....

MOTION TO COMPEL ANSWERS TO INTERROGATORIES

Comes now the plaintiff and moves the Court for an order requiring the defendant to file answers to interrogatories 11, 12, 15, 16, and 17. Said interrogatories were served on the defendant by mail on October 28, 1975, but in the answers to interrogatories sworn to by the Archivist of the United States, Dr. James B. Rhoads, on November 24, 1975, Dr. Rhoads specifically refused to answer these five interrogatories.

Pursuant to Rule 37(a)(4) of the Federal Rules of Civil Procedure, plaintiff further moves the Court to award plaintiff the reasonable expenses, including attorney's fees, incurred in obtaining said order.

A Memorandum of Points and Authorities is attached hereto.

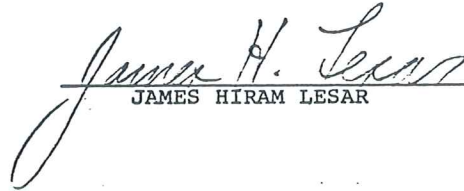
JAMES HIRAM LESAR  
1231 Fourth Street, S. W.  
Washington, D. C. 20024

Attorney for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that I have this 1st day of March, 1976,  
mailed a copy of the foregoing Motion to Compel Answers to Inter-  
rogatories to Assistant United States Attorney Michael J. Ryan,  
Room 3421, United States Courthouse, Washington, D. C. 20001.

  
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JAMES HIRAM LESAR

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MEMORANDUM OF POINTS AND AUTHORITIES

On October 28, 1975, plaintiff served twenty-five interrogatories on the defendant. The answers to these interrogatories, sworn to by the Archivist of the United States, Dr. James B. Rhoads, on November 24, 1975, were mailed to plaintiff's counsel on January 9, 1976.

Dr. Rhoads refused to answer five of the twenty-five interrogatories addressed to the defendant. Two of these interrogatories are objected to on the grounds that they are not relevant to the subject matter of the complaint. These two interrogatories read as follows:

11. List the names of all persons who have been given copies of or who have had access to the June 23, 1964, executive session transcript and state:

a. The date on which each person listed was given a copy of or had access to this transcript;

b. The employer of each person listed;

12. List the names of all persons who have been given copies of or who have had access to the January 21, 1964, executive session transcript and state:

- a. The date on which each person listed was given a copy of or had access to this transcript;
- b. The employer of each person listed;
- c. Whether the copy or access given to each person listed included pages 63-73 of this transcript.

These two interrogatories address the credibility of the government's claim that the June 23rd transcript and pages 63-73 of the January 21st transcript are properly classified and justifiably suppressed under the authority of exemption (b)(1). For example, if the June 23rd transcript and pages 63-73 of the January 21st transcript have been made available to persons who were not authorized to have access to security classified documents, this argues strongly that their alleged classification is fraudulent and there can be no justification for withholding them from plaintiff Weisberg. The listing of all persons who have had access to these documents may also result in the identification of persons who are properly able to give affidavits, testimony, or depositions concerning the classified status of these transcripts.

Two interrogatories are objected to on the grounds that the information requested is privileged. These two interrogatories are:

16. Did any of the United States Attorneys representing the defendant examine either the January 21st or the June 23rd transcript before October 8, 1975. If the answer is yes, which ones, and on what dates?

17. Has any attorney for the Department of Justice or the Central Intelligence Agency ever read or examined the January 21st or June 23rd transcripts? State the names of any who have



and the dates on which they read or examined the transcripts.

The defendant asserts that the information sought by these two interrogatories is privileged but fails to state the grounds on which this claim is made. Presumably the reference is to the privilege against disclosure of attorney-client communications. But the information which plaintiff seeks is neither an attorney-client communication nor the work product of an attorney. In fact, since there were at least four declassification reviews of Warren Commission executive session transcripts before this suit was instituted, most of the information sought by these interrogatories may predate the attorney-client relationship.

In Weisberg v. United States General Services Administration, Civil Action No. 2052-73, a suit in which this plaintiff sought and ultimately obtained disclosure of the January 27, 1964, Warren Commission executive session transcript, interrogatories seeking the same information with regard to the January 27 transcript were addressed to this same defendant. In that case this defendant did not object to answering these interrogatories.

In the suit for the January 27 transcript, the defendant sought to continue its suppression of that transcript by claiming that it was exempt from disclosure as an investigatory file compiled for law enforcement purposes and was also properly classified "Top Secret" under Executive Order 10501. The answers to these interrogatories helped establish that these claims were fraudulent. They established, for example, that no law enforcement official had ever seen the January 27 transcript until at least three years after the Warren Commission went out of existence and that three attorneys from the Department of Justice's Office of Legal Counsel had been allowed to examine the transcript without being required to show their security clearances.

When the January 27 transcript was finally disclosed in toto in 1974, nine years after Congressman Gerald Ford had in effect "declassified" parts of it on his own hook and published them for profit in his book, Portrait of the Assassin, its content showed that there had never been any basis for classifying it under any executive order. The Exemption 1 claim was a fraud.

Assuming, arguendo, that the information sought by interrogatories 16 and 17 is within the ambit of attorney-client privilege, it is settled that the privilege does not extend to situations where it is invoked to conceal or commit a fraud. Gebhard v. United Rys. Co., 220 S.W. 677 (Mo. Sup. 1920). To prevent a recurrence of the fraud perpetrated in the suit for the January 27 transcript, the defendant should be required to answer these interrogatories.

Dr. Rhoads also refused to answer interrogatory 15, which reads as follows:

15. Is Yuri Ivanovich Nosenko the subject of the June 23, 1964, executive session transcript?

In response to this interrogatory, Dr. Rhoads stated: "Defendant objects to this interrogatory on the grounds that it seeks the disclosure of information which the defendant maintains is security classified and which the defendant seeks to protect on this and other bases in the instant action."

Notwithstanding this response, the September 27, 1975, issue The New Republic quotes from a letter by Miss Jane Smith, director, Civil Archives Division of the National Archives, as follows:

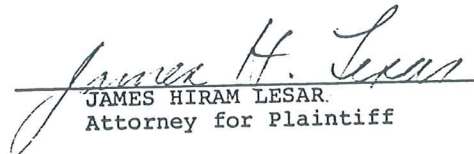
. . . The transcript of the executive session of June 23, 1964, is withheld from research under 5 USC 552(b)(1) as amended, "matters that are . . . specifically authorized under criteria estab-

lished by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order.' In response to a previous request for access, the transcript was reviewed by the Central Intelligence Agency because it relates to Yuri Nosenko, the Soviet defector. (The New Republic, September 27, 1975, issue, p. 11)

It is clear from this that the defendant is triffling with the Court in refusing to answer this interrogatory. The defendant has already identified Nosenko as the subject of this transcript in correspondence with another requestor. All that remains is for the defendant to state under oath whether or not that response was accurate and truthful.

The identification of Nosenko as the subject of the January 27 transcript is important because it will enable plaintiff to provide the court with evidence that the transcript was not properly classified "Top Secret" on the basis of Nosenko's identity or the Warren Commission's discussion of him. In addition, this will also allow plaintiff to provide the court with documents relating to Nosenko which were originally "classified" without any proper basis.

For these reasons the defendant should be compelled to answer the five interrogatories to which no response has been made.

  
JAMES HIRAM LESAR  
Attorney for Plaintiff

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O R D E R

This cause having come on to be heard on motion of the plaintiff for an order compelling the defendant to answer interrogatories 11, 12, 15, 16, and 17 of the set of interrogatories which he served on the defendant by mail on October 28, 1975, and the Court having heard the argument of counsel and being fully advised, it is hereby

ORDERED, that the defendant serve within 10 days after service of this order verified answers to said interrogatories.

It is further ORDERED, that the defendant pay plaintiff \$\_\_\_\_\_ as the reasonable expenses incurred in obtaining this order, and pay \$\_\_\_\_\_ in addition to plaintiff for attorney's fees in connection herewith.

Dated: \_\_\_\_\_

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE