

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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: :  
HAROLD WEISBERG, : :  
 : :  
Plaintiff, : :  
 : :  
v. : :  
 : :  
Civil Action No. 75-1448  
 : :  
GENERAL SERVICES ADMINISTRA- : :  
TION, : :  
 : :  
Defendant : :  
.....

Civil Action No. 75-1448

FILED  
MAR 2 1976  
JAMES F. BAVEY  
CLERK

MOTION FOR AN ORDER ALLOWING PLAINTIFF  
TO TAPE-RECORD DEPOSITIONS

Comes now the plaintiff and pursuant to Rule 34(b)(4) of the Federal Rules of Civil Procedure moves the Court for an order allowing him to record depositions taken in this cause by other than stenographic means; namely, by tape-recording them.

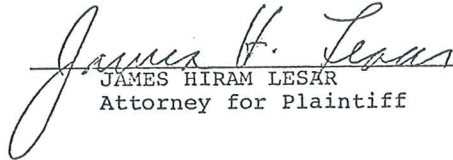
A Memorandum of Points and Authorities is attached hereto.

Respectfully submitted,

*James H. Lesar*  
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JAMES HIRAM LESAR  
1231 Fourth Street, S. W.  
Washington, D. C. 20024  
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 2nd day of March, 1976, mailed a copy of the foregoing Motion for an Order Allowing Plaintiff to Tape-Record Depositions to Assistant United States Attorney Michael J. Ryan, Room 3421, United States Courthouse, Washington, D. C. 20001.

  
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JAMES HIRAM LESAR  
Attorney for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

In Schaffer v. Kissinger, 505 F. 2d 389 (C.A.D.C. 1974),  
decided before the Freedom of Information Act was amended by  
Public Law 93-502, the United States Court of Appeals for the  
District of Columbia held:

There may be no judicial examina-  
tion concerning the reasons and motives  
for an executive security classification.  
Mink, supra. However, the burden is on  
the agency to demonstrate to the court  
that the documents withheld under the claim  
of §552(b)(1) exemption were properly  
classified pursuant to executive order. In  
that regard, it was the responsibility of  
the court below to determine whether the  
Red Cross reports were in fact classified  
"confidential" and whether that classifi-  
cation, including the timing thereof, was  
in accordance with Executive Order 11652 as  
claimed by appellee. Schaffer, at 391.

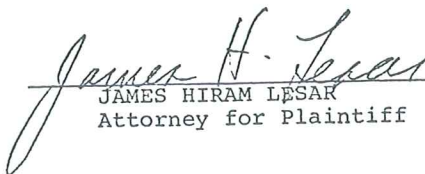
The amended Freedom of Information Act goes even further and  
requires that where the government invokes exemption (b)(1) it has  
the burden of demonstrating that the records sought are (A) "spe-  
cifically authorized under criteria established by an Executive  
order to be kept secret in the interest of national defense or

foreign policy" and (B) "are in fact properly classified pursuant to such Executive order."

Plaintiff intends to demonstrate that the June 23, 1964, executive session transcript and pages 63-73 of the January 21, 1964, executive session transcript were never properly classified under Executive Order 10501 or 11652. In order to accomplish this, plaintiff needs to take depositions of the following persons: Dr. James B. Rhoads, Archivist of the United States; Mr. Charles A. Briggs, Chief of the Services Staff, Directorate of Operations, Central Intelligence Agency; Mr. Steven Garfinkel, Counsel, Office of the General Counsel, General Services Administration; Dr. Marion Johnson, Specialist, Warren Commission Records, National Archives and Records Service; Mr. William Brown, Executive Director, Classification Bureau; Mr. Arthur Dooley, Central Intelligence Agency; and Martin Richman, Fredericka Pass, and Mary Eastwood, Office of Legal Counsel, Department of Justice.

Because plaintiff cannot afford to pay to have a stenographer record the testimony at these depositions, he asks that he be allowed to tape-record them. This procedure is authorized by Rule 30(b)(4) of the Federal Rules of Civil Procedure as interpreted by the United States Court of Appeals for the District of Columbia in Colonial Times, Inc. v. Gasch, 509 F. 2 517 (C.A.C.C. 1975).

Plaintiff suggests that two tape-recorders be used at each of these depositions and that one tape of each deposition be filed directly with the Court and the other retained by plaintiff, who would then have a transcript of it typed up if he wished to introduce it in evidence.

  
JAMES HIRAM LESAR  
Attorney for Plaintiff

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ORDER

Upon consideration of plaintiff's motion for an order allow-  
ing depositions taken in this cause to be recorded by means of  
tape-recordings, the memorandum of points and authorities in  
support thereof, and the entire record herein, it is by the Court  
this \_\_\_\_\_ day of \_\_\_\_\_, 1976,

ORDERED, that the plaintiff's motion be and, it hereby is,  
granted; and it is

further ORDERED, that two tape-recordings shall be made of  
each such deposition and one shall be filed with the Court im-  
mediately after taking of the deposition.

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UNITED STATES DISTRICT COURT