

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

FILED JAN 7 1977  
JAMES J. BAVEY  
CLERK

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

MOTION TO COMPEL ANSWERS TO INTERROGATORIES

Comes now the plaintiff, by and through his counsel, and moves the Court for an order requiring the General Services Administration to file answers to plaintiff's interrogatories 64-67, 69, 87, 92-94, 98, 102, 187, 196, and 200-210 within ten days of the date of said order.

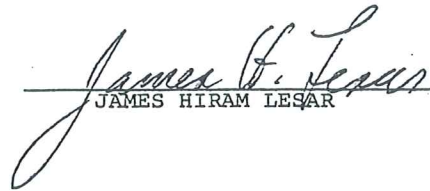
Plaintiff also moves the Court for an order requiring the Central Intelligence Agency to file, within ten days of the date of said order, an affidavit which specifically responds to plaintiff's interrogatories 68, 70-77, 78(c), 80, 81(a)-(c) and (f), 84, 87, 92, 93(b), 94, 100, 101, 104-106, 108, 110-112, 116, 119-186, and 190-191.

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 fees, incurred in obtaining said order.

*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 7th day of January, 1977, delivered a copy of the foregoing Motion to Compel Answers to Interrogatories to the office of Mr. Michael Ryan, Assistant United States Attorney, 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 July 28, 1976, plaintiff filed his third set of interrogatories on the defendant. On October 15, 1976, the defendant not having answered or objected to the interrogatories within the time provided by Rule 33 of the Federal Rules of Civil Procedure, plaintiff filed a motion to compel answers. Not until November 12, 1976, just prior to a scheduled November 18 hearing before the United States Magistrate on this motion, did defendant finally serve answers to approximately twenty percent of the 150 numbered interrogatories submitted by plaintiff.

Many of the interrogatories not answered by the defendant General Services Administration were addressed to the Central Intelligence Agency. Although the District Court ordered at a May 25, 1976, hearing that the Central Intelligence Agency would either respond to appropriate interrogatories or else this case would go to trial, plaintiff's interrogatories were not initially responded to by that agency.

As a result of the conference with the United States Magistrate held on November 18, the Central Intelligence Agency was given until November 30 to respond in affidavit form to interrogatories it was supposed to have answered by September 1, 1976.

On November 24, 1976, counsel for plaintiff phoned defendant's attorney and was informed that the Central Intelligence Agency would respond to approximately half of plaintiff's third set of interrogatories, but not to the rest.

The Central Intelligence Agency requested a 60 days extension of the time in which it must respond to plaintiff's interrogatories. The Magistrate granted an extension of 30 days and on January 3, 1977, the defendant served on plaintiff by mail an affidavit of Mr. Charles A. Briggs of the Central Intelligence Agency which purported to respond to 29 of plaintiff's 150 interrogatories.

In short, both the General Services Administration and the Central Intelligence Agency are stonewalling the discovery which the Court ordered on May 25, 1976.

Both the General Services Administration and the Central Intelligence Agency object to a large number of interrogatories on the ground that they are not relevant to the present suit because they relate to the transcript of the January 27, 1964, Warren Commission executive session transcript. The January 27 executive session transcript was made public in June, 1974, as the result of a previous Freedom of Information lawsuit by this plaintiff, Civil Action 2052-73.

While the January 27 transcript is not the subject of this suit, it is clearly related to issues which are present in this action. For example, defendant maintains that the Warren Commission executive session transcripts were classified pursuant to Executive order 10501 and has submitted sworn affidavits to that



effect by Dr. James B. Rhoads, the Archivist, and Mr. J. Lee Rankin, General Counsel for the Warren Commission. Plaintiff asserts this is false. Plaintiff seeks to impeach the credibility of these affiants by compelling the GSA and the CIA to answer questions relating to the classifiability of the January 27 transcript and the determinations that it was to be kept classified. Matters that affect the credibility of a deponent or that might be used at trial in impeaching or cross-examining a witness may be inquired into on discovery. Broadway v. Ninety-Sixth St. Realty Co. v. Loew's, Inc., 21 FRD 347 (S.D. N.Y. 1958); Da Silva v. Moore McCormack Lines, Inc., 47 FRD 364 (E.D. Pa. 1969); United States v. 364.82 Acres of Land, More or Less, In The County of Mariposa, State of California, 38 FRD (N.D. Calif. 1965).

The importance of this discovery to plaintiff's case is enhanced by the fact that the legislative history to the Amended Freedom of Information Act expressly states that where the government invokes exemption 1 to prevent the disclosure of a record, the district court "will accord substantial weight to an agency's affidavit concerning the details of the classified status of the disputed record." H.R. Rep. No. 1380, 93d Cong., 2d Sess. (1974).

In this case the only affidavits submitted in support of the claim that the June 23 and January 21 transcripts are presently classified "Confidential" is that of Mr. Charles Briggs of the Central Intelligence Agency. Because the January 27 transcript is now public and its text makes it patently clear that there never was any basis for classifying it, plaintiff seeks to ascertain what role Mr. Briggs or other officials of the Central Intelligence Agency played in wrongfully classifying or suppressing it.

In addition, plaintiff seeks to ascertain Mr. Briggs' competency by having him indicate any portions of the January 27 transcript

which were properly classified under Executive order. Because the January 27 transcript has been made public, this affords a rare opportunity to test the veracity and judgmental reliability of an affiant who is invoking national defense or foreign policy as a justification for continuing the suppression of documents which are now nearly thirteen years old. Unless plaintiff is allowed to test the credibility of the classifier of the transcripts at issue in this suit, then there is the risk, in this case a certainty, that the Court will be the victim of a fraud like the one which this defendant pulled in maintaining that the January 27 transcript was classified Top Secret under Executive order 10501 when, in fact, there was never any basis for classifying that transcript.

The General Services Administration has objected to interrogatories 92 and 93 on the grounds that they are irrelevant. The Central Intelligence Agency claims to have answered interrogatory 92, but has not. It also claims that interrogatory 93 was answered satisfactorily by the General Services Administration, which, however, refused to answer it at all. These interrogatories seek to learn whether the CIA informed the defendant that the fact that Yuri Ivanovich Nosenko was the subject of the June 23, 1964, executive session transcript. They are relevant to this lawsuit because the credibility of all the CIA's assertions of an exemption 1 claim in this case is suspect if the CIA did make such false representations to the defendant or its counsel.

Interrogatory 94 seeks to learn the basis for the exemption 5 claim which the defendant has made for the June 23 transcript and pages 63-73 of the January 21 transcript by inquiring what policies were discussed by the Warren Commission in those transcripts and whether the Warren Commission advised anyone with respect to any such policies. The General Services Administration has objected

to this interrogatory on the ground that "it seeks the disclosure of information which the defendant seeks to protect pursuant to exemption (b) (5) and other exemptions of the Freedom of Information Act in the instant action." However, plaintiff has not asked for the substance or nature of the advice allegedly given at the January 21 and June 23 Warren Commission executive sessions. Plaintiff has merely asked what policy issues were discussed and who was given the advice. Thus, this interrogatory does not inquire into matters within the ambit of exemption 5. Plaintiff seeks only to determine whether the assertion that these transcripts are protected by exemption 5 is credible in light of the surrounding circumstances. Plaintiff has asserted that the purpose of the Warren Commission was to ascertain and evaluate facts, not to set policy. If this is correct, then exemption 5 would not apply to transcripts of Warren Commission executive sessions. The burden is on the defendant to establish a basis for invoking exemption 5 by showing that a policy was discussed and advice given as a result. Without affirmative answers to the two parts of this interrogatory, the exemption 5 claim must fail.

The General Services Administration has objected to interrogatory 102 on the ground that it is not relevant because it relates to two executive session transcripts which are now public. Plaintiff contends that it is relevant because the answer will show that there is no basis for invoking exemption 5 with respect to the transcripts sought in this action but not having applied it to other Warren Commission executive session transcripts which have been disclosed in the past. Even assuming that an exemption 5 claim ever existed with regard to any Warren Commission executive session transcripts, unless the defendant can properly distinguish between those transcripts previously released and the ones at



issue in this suit, then the exemption 5 claim has been waived.

Defendant General Services Administration has objected to interrogatories 201-210. These interrogatories are relevant because they attack the credibility of those who have sworn out affidavits in support of defendant's attempt to continue suppressing the records which are the subject of this lawsuit. Plaintiff contends that answers to these interrogatories will establish bias and discrimination against him by the General Services Administration and the Central Intelligence Agency and that this gives motive to the efforts of these agencies to continue withholding documents from him even though no basis for the withholding exists under the Freedom of Information Act. Moreover, the defendant has waived any objection to answering this series of interrogatories by stating in answer to interrogatory No. 199 that it has not discriminated against plaintiff in what it has made available to him under the Freedom of Information Act.

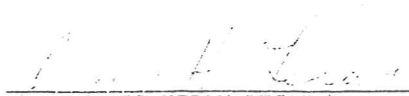
In light of the above, plaintiff contends that the General Services Administration should be compelled to answer interrogatories 64-67, 69, 87, 92-94, 98, 102, 187, 196, and 200-210; and that the Central Intelligence Agency should be compelled to submit an affidavit which specifically responds to plaintiff's interrogatories 68, 70-77, 78(c), 80, 81(a)-(c) and (f), 84, 87, 92, 93(b), 94, 100, 101, 104-106, 108, 110-112, 116, 119, 186, and 190-191.

Plaintiff again calls attention to the delay in responding to his interrogatories, the refusal to answer most interrogatories, and the evasive and incomplete or inadequate answers to many of them, and requests that satisfactory responses be compelled immediately. If plaintiff's interrogatories are not to be answered satisfactorily and promptly, then plaintiff requests sanctions in the form of striking from the record the affidavits submitted by



Dr. Rhoads, Mr. J. Lee Rankin, and Mr. Charles A. Briggs. Or, alternatively, that this case proceed to trial as soon as is practicable.

Respectfully submitted,

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

Attorney for Plaintiff

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O R D E R

Upon consideration of plaintiff's motion to compel the General Services Administration and the Central Intelligence Agency to answer certain of his third set of interrogatories, and the entire record herein, it is by the Court this \_\_\_\_\_ day of January, 1977, hereby

ORDERED, that within ten days of the date of this order defendant General Services Administration shall serve upon the plaintiff verified answers to plaintiff's interrogatories 64-67, 69, 87, 92-94, 98, 102, 187, 196, and 200-210; and it is further

ORDERED, that within ten days of the date of this order the Central Intelligence Agency shall serve upon plaintiff an affidavit which specifically responds to plaintiff's interrogatories 84, 87, 92, 93(b), 94, 100, 101, 104-106, 108, 110-112, 116, 119-186, and 190-191; and 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 fees in connection herewith.

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UNITED STATES DISTRICT COURT