UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

GENERAL SERVICES ADMINISTRATION,

Defendant

Civil Action No. 75-1448

OBJECTION TO
~~APPEAL FROM~~ MAGISTRATE'S
ORDER AND DEMAND FOR TRIAL

On January 14, 1977, United States Magistrate Jean Dwyer ordered, sua sponte, "that plaintiff be given until February 1, 1977, to file a motion to compel under Rule 1-9A of the Rules of this Court, and the Government is given until February 16, 1977, to respond thereto." The order also provides that: "A further hearing will be conducted at 2:00 p.m. on February 18, 1977." (See Exhibit 1)

Pursuant to Rule 3-9(a)(3) of the Rules of this Court, plaintiff ~~appeals from~~ objects to the Magistrate's order. Plaintiff further demands that this case proceed to trial as soon as possible.

This is a Freedom of Information Act suit for two entire Warren Commission transcripts and eleven pages of a third. Even by defendant's own admission, plaintiff's initial request for two of these transcripts goes back at least to 1968, and the third to 1971.

Over the years plaintiff repeated his requests for the disclosure of these and other Warren Commission executive session transcripts many times. On March 12, 1975, plaintiff made request under the 1974 Freedom of Information Act for the transcripts at issue in this suit. On September 4, 1975, he filed a suit for them.

On October 28, 1975, plaintiff initiated discovery by filing his first set of interrogatories. When no answer had been made a month after the answers were due, on December 29, 1975, plaintiff filed a motion to compel answers. When answers were finally served on plaintiff, some had been objected to, so a further motion to compel was filed on March 1, 1976. Subsequently, on May 25, 1976, this Court ordered the defendant to answer some of the interrogatories to which it had filed objections.

On March 2, 1976, plaintiff filed a motion for leave to take depositions by tape-recording. At the hearing on May 25, 1976, this Court rejected that motion but firmly stated its resolve "to get the record developed in this case and dispose of it as expeditiously and as fairly as we can . . ." The Court stated that if the factual was not adequately developed by means of interrogatories, then the case would proceed to trial with the anteroom filled with the witnesses plaintiff had sought to depose.

When plaintiff's counsel indicated that on the basis of his prior experiences it was not going to be all that easy, the Court suggested that the Government attorney, Mr. Ryan, "has enough work to do not to play games in this case." (See Exhibit 2, May 25, 1976 hearing transcript, pp. 17-21)

Unfortunately, what has transpired is exactly what counsel for plaintiff foresaw. On July 28, 1976, plaintiff filed his

third set of interrogatories, many of them directed at the Central Intelligence Agency. In September, the answers to these interrogatories not having been timely filed, plaintiff's counsel reminded counsel for the defendant that they were overdue. This producing no response, on October 15, 1976, plaintiff filed yet another motion to compel.

Subsequently, plaintiff received a notice that the motion to compel would be heard before the United States Magistrate on November 18, 1976. On that date it developed that mysteriously, and not in conformity with the provisions of Rule 3-9(a)(1) of the Rules of this Court, the case had been referred to the Magistrate not by the judge to whom it was assigned but by Judge Bryant.

Shortly before the November 18 hearing, defendant General Services Administration finally served, nearly three months late, answers to approximately 20 percent of the 150 numbered interrogatories submitted by plaintiff. And although this Court had ordered at the May 25, 1976, hearing that the Central Intelligence Agency would either respond to appropriate or the case would go to trial, the Central Intelligence Agency did not respond to any of plaintiff's interrogatories. Instead, as plaintiff had warned the Court would happen, defendant General Services Administration objected to interrogatories addressed to the Central Intelligence Agency on the grounds that the CIA did not have to respond under Rule 33 because it was not a party to the lawsuit.

At the November 18 conference with the Magistrate, defendant General Services Administration was given until November 30, 1976, to obtain answers or objections to plaintiff's interrogatories from the Central Intelligence Agency. The Central Intelligence Agency did not comply. Instead, it requested an extension of time of 60

days in which to respond to the interrogatories. The Magistrate granted it 30 days, until January 3, 1977, to do so.

On January 4, 1977, plaintiff received an affidavit from Mr. Charles Briggs of the Central Intelligence Agency purported to respond to some of the interrogatories. However, the overwhelming majority of interrogatories were either objected to or responded to in an evasive or incomplete manner. The Briggs affidavit did not state which specific interrogatories it addressed. It did not comply with the requirement of Rule 1-9A(a) of the Rules of this Court by identifying and quoting each interrogatory in full immediately preceding the statement of any answer or objection thereto.

On January 7, 1977, plaintiff filed a motion to compel answers to interrogatories by both the General Services Administration and the Central Intelligence Agency. Because the motion had to be filed by that date in order to be considered at the January 14th hearing, it was hastily drawn. The motion sought to compel answers to 24 interrogatories by the General Services Administration and to 96 interrogatories by the Central Intelligence Agency. It did not attempt to demonstrate that each specific interrogatory was relevant and should be answered. Rather it categorized the interrogatories which had not been answered and gave examples as to why they are relevant to the issues presented by this lawsuit.

At the January 14th hearing the counsel for the Central Intelligence Agency stated that the interrogatories had not been transmitted to the CIA until sometime in November, 1976. This made it abundantly clear that games, very dirty games, are being being played with plaintiff's Freedom of Information Act request. This has been the rule in all of the several Freedom of Information lawsuits which plaintiff has filed in this Court.

During the January 15th hearing the Magistrate raised, sua sponte, the objection that plaintiff's motion to compel did not comply with Rule 1-9A(a) of the Rules of this Court. The Magistrate then ordered that plaintiff would be given until February 1, 1977, to file a motion to compel which sets forth the full text of each interrogatory plaintiff wants answered and responds to the objections made to each interrogatory by the Government. The Magistrate then set February 16, 1977, as the date for the Government to make its response to the latest motion to compel. A new hearing on the matter was scheduled for February 18, 1977.

Plaintiff appeals from this order and demands that the case proceed immediately to trial. Plaintiff is widely recognized as the foremost authority on the assassinations of President John F. Kennedy and Dr. Martin Luther King, Jr. He has devoted the last thirteen years of his life to a study of those assassinations and the investigation of them which was made by the Government. Unlike many critics of the Government's investigation of these assassinations, plaintiff does indulge in speculation about who committed these crimes. His work forcuses on an examination of what the evidence shows about the crimes and the way our most basic institutions functioned, or failed to function, in times of crisis.

Plaintiff's work depends, therefore, on access to official documents and records. Plaintiff is now 64 years old. In October, 1975, shortly after this suit was filed, plaintiff suffered an attack of acute thrombophlebitis. The entire main vein in his left leg is now gone. If this case continues on the present course to which it has been diverted, plaintiff will be dead before this Court enters judgment on his Freedom of Information Act request. There is no doubt that the Government is aware of this and would rejoice if it happened, but it would be a most shameful chapter in

our national history should this Court allow it.

Plaintiff cannot afford any further delay in this case. The clock is literally running out on his life and his life's work.

It is time to put a halt to the Government's arrogant stonewalling. The only way this can be done under the present circumstances is to proceed to trial as rapidly as possible so plaintiff can obtain by subpoena what he cannot obtain through interrogatories.

Accordingly, plaintiff asks that the Magistrate's January 14, 1977, order be vacated, and the case set for trial.

Respectfully submitted,

James H. Lesar

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 19th day of January, 1977, delivered a copy of the foregoing Appeal from Magistrate's Order and Demand for Trial to the office of Assistant United States Attorney Michael J. Ryan, Room 3421, United States Courthouse, Washington, D. C. 20001.

James H. Lesar

JAMES HIRAM LESAR

EXHIBIT 1

Civil Action No. 75-1448

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff

vs.

Civil Action No. 75-1448

GENERAL SERVICES ADMINISTRATION,

Defendant

O R D E R

Upon consideration of plaintiff's motion to compel interrogatories

and oral argument thereon,

it is this 14th day of January, 19 77,

It is ORDERED sua sponte that plaintiff be given until February 1, 1977, to file a motion to compel under Rule 1-9 of the Rules of this Court, and the Government is given until February 15, 1977, to respond thereto. A further hearing will be conducted at 2:00 p.m. on February 8, 1977.

UNITED STATES MAGISTRATE

COPIES TO COUNSEL (in person) 1/24/77
(by mail) (Date)

It certainly is not irrelevant. And you contend that it has something to do with the violation of the attorney/client privilege. But I don't see that at all. I think he is entitled to an answer to that interrogatory.

MR. RYAN: Your Honor, if that is the judgment of the Court, I will convey that to the agency and request that they answer the interrogatory --

THE COURT: Well, that's going to be an order.

MR. RYAN: -- as expeditiously as possible.

THE COURT: It won't be a request. It will be an order.

MR. RYAN: Fine, Your Honor.

THE COURT: Because that's the only way that Congress fashioned this in terms of litigation, for there to be court decisions, and the agency has no alternative except to take it to a higher court.

It's not a matter that once we get a Freedom of Information Act case that we sit and try to persuade the agency to do something. There's no persuasion here at all. It's the interpretation of the statute.

And with respect to the question of tape recording depositions, Mr. Lesar, I don't understand why you can't get the information that I think you are entitled to with a properly fashioned set of interrogatories.

MR. LESAR: Well --

THE COURT: I don't see why you have to drag eight, nine, ten people in for depositions, whether taken by tape recording -- I understand that tape recording is much less expensive than court reporters, and we are not trying to impose additional expense.

But focusing on this area of our concern, about the propriety of the classification, getting sufficient details of that classification to see whether or not there was any statute or any properly extant executive order under which the classification could have been done, I think we can get that data, get that information by interrogatories.

Then if the government has to get it from eight or nine people, they can make telephone calls and whatnot, and it will be under oath.

MR. LESAR: Well, Your Honor, the government has previously taken the position in other Freedom of Information cases that I have handled for Mr. Weisberg that I cannot address interrogatories to persons other than the defendant, and the Central Intelligence Agency is not a defendant in this case.

In addition to that --

THE COURT: Well, they can take that position if they want. But if the defendant has the ability to get the information that is responsive to the interrogatories and that information is in someone who is not a named party, I take the

position that the government still has the obligation to answer the interrogatory. Otherwise we would have to name every employee of the government in every one of these cases, not just Freedom of Information Act cases.

MR. LESAR: Well, your Honor --

THE COURT: Now, don't interrupt me, Mr. Lesar. When you are winning, you keep your mouth shut.

No, it makes no sense at all. We know that the CIA is not a named defendant here. There's no need to name them. You are not seeking that kind of publicity to name them as a defendant.

I don't think we will have any problem. Mr. Ryan is not going to have any difficulty, if the interrogatories are properly framed, from whatever source within the government that he needs to get the information to properly answer the interrogatory, that answer will be put forward.

MR. LESAR: I suppose I have one difficulty in that I have encountered problems before where the information is not obtained on personal knowledge of the person who is swearing to the interrogatory. Now, if they are going to have Mr. Briggs swear out answers to interrogatories, I certainly would agree to that.

If they are going to have Dr. Rhoads say that Mr. Briggs told me thus and such, that puts us in a very difficult position.

THE COURT: Let me suggest, Mr. Lesar, that Mr. Ryan has enough work to do not to play games in this case.

MR. LESAR: I hope so.

THE COURT: All the government lawyers. And I don't have any time to play games, nor do you representing Mr. Weisberg.

We have a piece of litigation here that we should get ready for final disposition. We anticipate that there will only be questions of law.

Now, if there are more than that, then these eight, nine, ten people are going to be sitting in the anteroom out there waiting to testify in this court.

The government has its choice. This litigation will not go away. It will not evaporate. And I don't think that we are going to have any difficulty in this court.

Now, I don't know what your experience has been in any other court, but I intend to get the record developed in this case and dispose of it as expeditiously and as fairly as we can to both your client and the government.

MR. LESAR: Fine. Then we will prepare --

THE COURT: So, you get your interrogatories ready, and I don't think Mr. Ryan will have any difficulty in putting that information in proper form so we can make our determinations. And if we can't get it that way, as I indicated, then we will issue subpoenas and --

MR. LESAR: All right.

THE COURT: -- bring them in.

MR. RYAN: Your Honor, I can assure that the individual or individuals who answered the interrogatories have personal knowledge through the answering --

THE COURT: I have no question about that, Mr. Ryan.

And they are going to answer your interrogatory you filed about the persons who reviewed the documents, et cetera, et cetera.

MR. LESAR: All right.

THE COURT: Now, as I indicated, I don't think that we are in a position on this record yet to determine the motion for summary judgment. When the record is more fully developed as it will be as a result of these interrogatories.

And I will expedite it, so you won't have to go through interrogatories in connection with this personnel claim. On the representation of Mr. Ryan, that's not a lengthy transcript. I will look at it and make that determination as to their Exemption 6 claim on that May 16th item.

MR. LESAR: Your Honor, will we be afforded an opportunity to rebut that claim? It places us in a position to try and rebut an Exemption 6 claim submitted in camera.

THE COURT: Well, you take the basic position that there's no way it could be a personnel file.

MR. LESAR: Yes, that's correct.