

Rec'd 6:40 p.m.
5-10-78

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 75-1448
)	
GENERAL SERVICES ADMINISTRATION,)	
)	
Defendant.)	
)	
)	

DEFENDANT'S MOTION TO QUASH AND FOR
A PROTECTIVE ORDER

Defendant, by its attorney, the United States Attorney for the District of Columbia, respectfully moves the Court to quash the subpoenae duces tecum requiring the appearance of Mr. Charles I. Briggs, Chief, Information and Services Staff, Directorate of Operations, CIA, and Mr. Gene F. Wilson, Information and Privacy Coordinator, CIA, for depositions on May 12, 1978, and to enter a protective order that their depositions not be taken.

In support of this motion, defendant submits herewith a memorandum of points and authorities.

Earl J. Silbert

EARL J. SILBERT
United States Attorney

Robert N. Ford

ROBERT N. FORD
Assistant United States Attorney

Michael J. Ryan

MICHAEL J. RYAN
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing Defendant's Motion To Quash And For A Protective Order, memorandum of points and authorities in support thereof and in opposition to plaintiff's motion to strike affidavits, etc., and proposed order, has been made upon plaintiff by handing a copy thereof to counsel for plaintiff, James Hiram Lesar, Esquire, 1231 4 th Street, S.W., Washington, D.C., 20024, on this 10th day of May, 1978.



MICHAEL J. RYAN
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 GENERAL SERVICES ADMINISTRATION,)
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MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF DEFENDANT'S MOTION TO QUASH AND FOR
A PROTECTIVE ORDER, AND IN OPPOSITION TO PLAINTIFF'S
MOTION TO STRIKE AFFIDAVITS, ETC.

Rules 26(c) and 45(b), Federal Rules of Civil Procedure.

On May 8, 1978, upon his return to the office after a two week absence, defendant's counsel learned that on or about May 4, 1978, plaintiff's counsel had hand-delivered a notice to take deposition of Messrs. Charles A. Briggs, Chief, Information and Services Staff, Directorate of Operations, and Gene F. Wilson, Information and Privacy Coordinator, CIA, on May 12, 1978. Defendant's counsel has also just been informed that subpoenae for taking these depositions have been delivered to the CIA on the instant date May 10, 1978. Both the notice to take deposition and the subpoenae direct Messrs. Briggs and Wilson to bring with them:

1. Any records of or pertaining to the agreement between Yuri Ivanovich Nosenko and the CIA referred to on page 271 of the book Legend by Edward Jay Epstein;
2. All reports, memorandums, notes, correspondence, or other records relating to the publication of the photograph of Yuri Ivanovich Nosenko in the April 16, 1978 issue of the Washington Post;
3. All requests for records pertaining to Yuri Ivanovich Nosenko by Edward Jay Epstein, Jones Harris, John Barron, The Reader's Digest, or anyone acting or purporting to act on their behalf, such as an agent, employee, or associate;
4. All letters, memos, or reports which respond or relate in any way to the requests described in item no. 3 above; and

5. All requests made by plaintiff Harold Weisberg for records relating to Yuri Ivanovich Nosenko and all letters, notes, memos, or reports which respond or relate in any way to these requests by Mr. Weisberg.

Apart from the fact that CIA is not a party to this lawsuit, defendant submits that the notice and subpoenae for taking depositions are both inappropriate and contra to the intent of the Court of Appeals in its March 31, 1978 order, and should accordingly be quashed.

First, by its order of March 31, 1978, the United States Court of Appeals for this Circuit directed plaintiff to present in a motion for new trial in this Court the alleged "new evidence" which he had attempted to present for the first time in the appendix to his reply brief in the Court of Appeals (see Attachment 1 to plaintiffs' motion for new trial). The limited nature of that order is clear on its face, and defendant submits that only in the event that this Court should determine to grant plaintiff's motion for new trial and reopen this matter would further proceedings, including discovery, be appropriate.


Second, as indicated in defendant's opposition to plaintiff's motion for new trial, the "new evidence" plaintiff seeks to present to the Court consists of information derived from two books and a newspaper which, in addition to its unsworn, double hearsay nature, hardly creates an issue of fact or credibility when compared with the first-hand, sworn testimony in the affidavit of Mr. Briggs. In fact, plaintiff has presented no first-hand sworn testimony rising to the level of new evidence which warrants reopening this matter. Further, in defendant's view, the Court of Appeals order creates no right in plaintiff to engage in a fishing expedition for evidence where none exists.

Third, counsel for defendant has been informed that the proposed deponents have out-of-town commitments on or about the time noted by plaintiff for their depositions.

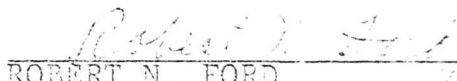
With respect to plaintiff's motion to strike the affidavits of Mr. Briggs and to hold Government officials and attorneys in

contempt for submitting the affidavits in this Court, defendant respectfully submits that for all the foregoing reasons including those set forth in defendant's opposition to plaintiff's motion for new trial, there is no merit to plaintiff's motion, or any reason to give less than full credence to Mr. Briggs' affidavits.


Wherefore, defendant respectfully requests the Court to quash the notice and subpoenae for taking the depositions of Messrs. Briggs and Wilson, and to enter a protective order that their depositions not be taken and that any other discovery device to which plaintiff may resort be stayed pending the Court's resolution of plaintiff's motion for new trial; and to deny plaintiff's motion to strike affidavits and to hold Government officials and attorneys in contempt.



EARL J. SILBERT
United States Attorney



ROBERT N. FORD
Assistant United States Attorney



MICHAEL J. RYAN
Assistant United States Attorney

UNITED STATES DISTRICT COURT
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Plaintiff

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GENERAL SERVICES ADMINISTRATION,

Defendant

Civil Action No. 75-1448

O R D E R

Upon consideration of defendant's motion to quash and for a protective order, defendant's opposition to plaintiff's motion to strike affidavits and to hold Government officials and attorneys in contempt, and the entire record herein, it is by the Court this _____ day of May, 1978

ORDERED that defendant's motion to quash the subpoenae duces tecum directed to Messrs. Charles A. Briggs and Gene F. Wilson of the CIA be and it hereby is granted, and said subpoenae be and they hereby are quashed, and discovery is hereby stayed pending further order following the Court's disposition of plaintiff's motion for new trial; and it is

FURTHER ORDERED that plaintiff's motion to strike the affidavits of Mr. Briggs and to hold Government officials and attorneys in contempt be and it hereby is denied.

UNITED STATES DISTRICT JUDGE