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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ROGER HALL, et al.,

Plaintiffs,

vs.

1:04-CV-814

CENTRAL INTELLIGENCE AGENCY,

Defendant.

TRANSCRIPT OF STATUS CONFERENCE

BEFORE THE HONORABLE ROYCE C. LAMBERTH

UNITED STATES DISTRICT JUDGE

AUGUST 21, 2017

Court Reporter:

Richard D. Ehrlich, RMR, CRR  
Official Court Reporter  
United States District Court  
333 Constitution Avenue, NW  
Washington, D.C. 20001  
(202) 354-3269

Proceedings reported by stenotype.

Transcript produced by computer-aided transcription.

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A P P E A R A N C E S

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1 THE CLERK: Your Honor, we're on the record for  
2 Civil Case 04-814. *Roger Hall, et al., vs. Central*  
3 *Intelligence Agency.*

4 Counsel, please approach the lecturn and identify  
5 yourselves for the record.

6 MR. LESAR: Yes. James H. Lesar representing  
7 plaintiffs Roger Hall and Studies Solutions Results, Inc.

8 MR. CLARKE: Good afternoon, Your Honor. John  
9 Clarke on behalf of Accuracy In Media.

10 THE COURT: Okay.

11 MR. TAAFFE: Your Honor, Damon Taaffe. I'm with  
12 the U.S. Attorney's Office representing the defendant, CIA.  
13 And with me is Amanda Blue, who is counsel for the CIA.

14 THE COURT: Okay. Who wants to start?

15 MR. LESAR: Your Honor, I had a brief telephone  
16 conversation this morning with Mr. Damon Taaffe and asked  
17 him for a brief summary of where things stand, and he gave  
18 it to me. And I think he has questions that he would like  
19 to have the Court clarified, and I think that it's  
20 appropriate to begin with that.

21 THE COURT: Okay.

22 MR. TAAFFE: Your Honor, quickly to run through  
23 where we stand on what we understand the remaining items to  
24 be. There are few. Starting with the easiest ones first.  
25 The Court ordered certain items to be released that

1 previously had been covered by exemption six. We are  
2 consulting with civil appellate on that. I don't anticipate  
3 a long delay, but we're going through the process, and  
4 hopefully we'll get that put to bed quickly.

5 The next item is -- there are three denied in full  
6 documents that the Court requested dates on. Those are  
7 items 2, 3, and 15. I can provide those now. I can also  
8 provide them in a supplemental filing that we'll need to  
9 make with respect to other things. But we found those and  
10 are willing to provide them.

11 THE COURT: Okay.

12 MR. TAAFFE: The third item is the Court asked for  
13 additional specificity regarding the Agency's policies that  
14 it applied with respect to destruction of records concerning  
15 item 5, and there are 114 folders at issue. The Agency  
16 tells me that they have found those schedules, and they are  
17 conferring, and they will be able to provide them to the  
18 Court within a matter of weeks.

19 One thing that's not entirely clear to me at this  
20 moment is to what extent those answers can be provided on a  
21 public document as opposed to in camera. But one way or the  
22 other, we'll provide them to you.

23 So that leaves what we understand the final issue  
24 to be, and it's the hardest, and here, as Mr. Lesar  
25 accurately stated, we may need just a little bit of

1 additional guidance from the Court as to what it requires,  
2 and this is the issue of whether there are additional  
3 records out there including communications with Congress.

4 THE COURT: Right.

5 MR. TAAFFE: And the Agency is a little bit --  
6 just not quite sure what more it needs to do. And without  
7 being -- or intending to be argumentative about it, they  
8 have conducted the decennial reviews of the ops files, and  
9 any information that was declassified pursuant to those  
10 reviews has been searched and processed in response to these  
11 requests, and the prior declarations explain how that was  
12 done. And, clearly, the Court's opinion said that there was  
13 some aspect of the explanation that was deficient. And as  
14 we understand it, that may have to do with the declarations  
15 provided by plaintiff that said that there were certain  
16 documents out there perhaps members of Congress had referred  
17 to in their declarations, and the Agency is simply looking  
18 for specifically which documents are they talking about  
19 because they refer to general categories of things that may  
20 have been referred to.

21 THE COURT: Well, there are categories of  
22 documents from congressmen and others that it appeared to me  
23 on their face that probably have operational details. And  
24 if the CIA -- I assume the CIA may have provided things  
25 other than from operational files to congressmen, but the

1 Court has no way of knowing, and the CIA has not provided  
2 the Court any information about whether other things were  
3 also transmitted to Congress. The record doesn't reflect  
4 that things other than operational details were given to  
5 Congress or weren't given to Congress, and I can't say that  
6 everything given to Congress was from operational files. So  
7 I don't have any way to uphold that you only gave  
8 operational file materials to them that would be exempt. I  
9 think if they were from operational files, they would be  
10 exempt.

11 MR. TAAFFE: Right.

12 THE COURT: But I don't have any way of knowing  
13 that you didn't give them other than material. So it's not  
14 really -- you haven't satisfied me that you've met your  
15 burden as to those other materials, and it doesn't make  
16 sense that you would have only given them things from  
17 operational files, frankly. I would think you would've  
18 provided them as much material as you could in response to a  
19 request so that -- I think you have to explain to the Court  
20 in some more detail what it is you actually gave them. And  
21 if you only gave them operational files and didn't give them  
22 anything else, make that record for the Court.

23 The other concern I had was 60 years later, I  
24 don't really know why there would still be these materials  
25 in operational files. I take it you have to provide a

1 report, and don't you provide the report to Congress every  
2 10 years of what are operational files? So maybe I would be  
3 more satisfied if I saw the latest in camera or whatever way  
4 explanation of what's still operational and what's not  
5 operational.

6 I don't want to blindly accept that all of these  
7 kinds of things are still operational because I don't really  
8 have any idea why some of these things would be operational  
9 60 years later, and I think a Court shouldn't blindly accept  
10 those kinds of things. I'm not trying to declassify things  
11 myself, but I don't really think I can blindly accept those  
12 kinds of things. That's what I'm talking about.

13 MR. TAAFFE: Okay. Maybe if I can have a moment  
14 to confer with counsel to see if we're on the same page  
15 there and maybe Mr. Lesar has anything to add in the  
16 meantime.

17 THE COURT: Okay.

18 MR. TAAFFE: So as we understand it, the Court  
19 would like clarification regarding non-ops files materials  
20 that were provided to Congress?

21 THE COURT: Right, if there were any.

22 MR. TAAFFE: If there were any.

23 THE COURT: Yes. I don't have a declaration  
24 saying none were done.

25 MR. TAAFFE: Right. Okay. I think that, you

1 know, we respect the Court's wishes on that, and we'll need  
2 to circle back and file something with the Court proposing a  
3 time frame on which we could answer those questions.

4 THE COURT: Right. And then I still want to  
5 figure out how I can address not blindly accepting that what  
6 you did give to Congress was necessarily beyond the Court's  
7 purview and whether I look at the -- what I can look at to  
8 satisfy myself that it's beyond the Court's purview. And  
9 I'll let them comment on whatever it is you propose.

10 MR. TAAFFE: I think we would be interested in  
11 clarifying that because the Agency doesn't want to guess and  
12 get it wrong.

13 THE COURT: I understand.

14 MR. LESAR: Yes, Your Honor.

15 THE COURT: Have I stated it in a way you are  
16 satisfied with?

17 MR. LESAR: Yes. I think you've stated it exactly  
18 as you stated it in the opinion. And it's our concern, too.  
19 And I think it's appropriate to give the Government the time  
20 needed to do a report, and then we can take another look at  
21 it.

22 THE COURT: Okay. All right. Thank you,  
23 Mr. Lesar.

24 MR. LESAR: Thank you.

25 MR. CLARKE: Your Honor, briefly. Other than



1 what's been discussed, I would just ask, is the Government  
2 going to be required to file an affidavit regarding the  
3 search for the 1,400 live sighting reports? I think that  
4 their affidavit was deficient in that area.

5 MR. TAAFFE: I think this falls into the category  
6 of the things Your Honor wanted clarification on. So to the  
7 extent we're filing a declaration with respect to other  
8 things, it would also deal with those in some manner. As I  
9 stand here, I can't quite say what --

10 THE COURT: When would you propose to make your  
11 next filing then?

12 MR. TAAFFE: Well, at this point, I think we need  
13 the agency to figure out how long it will take, which is, I  
14 guess, one step removed from a deadline for a next motion  
15 for summary judgment. But I would propose perhaps  
16 mid-September for us to propose a schedule for when the next  
17 and, hopefully, final briefing would be filed.

18 THE COURT: Okay. What if we come back  
19 September 20<sup>th</sup> at 11:00 and see if we can do that, then.  
20 Set a schedule at that status?

21 MR. LESAR: What day of the week is that?

22 THE COURT: It's a Wednesday.

23 MR. LESAR: Wednesday at 11:00?

24 THE COURT: Yes.

25 MR. LESAR: Okay. It can be done. I normally

1 have an appointment with a physical therapist at noon on  
2 Wednesdays.

3 THE COURT: We can do it in the afternoon, if you  
4 would rather.

5 MR. LESAR: That would probably be better.

6 THE COURT: 3:00?

7 MR. LESAR: 3:00 would be fine.

8 THE COURT: Does that work for the Government?

9 MR. TAAFFE: Your Honor, my agency counsel tells  
10 me she's gone from the 19<sup>th</sup> to the 22<sup>nd</sup>, and I prefer to  
11 have her here. So I wonder if we can do a couple days  
12 earlier or the following week?

13 THE COURT: Did you say your therapy is on --

14 MR. LESAR: It will be on Wednesday of that week,  
15 the 20<sup>th</sup>.

16 THE COURT: What about the 26<sup>th</sup> at 11:00?

17 MR. LESAR: I think that would be okay.

18 MR. TAAFFE: That's fine.

19 THE COURT: Does that work for other counsel?

20 MR. CLARKE: Yes, Your Honor.

21 THE COURT: All right. See if you can agree on  
22 the schedule in advance of that. In any event, then, I'll  
23 see you the 26<sup>th</sup> at 11:00. We'll see if we can  
24 incorporate a schedule there.

25 All right. Anything else you all want to raise

1 today?

2 MR. LESAR: I'm sure it was inadvertent, but  
3 counsel indicated that the CIA was going to provide records  
4 on the scheduling of destruction orders. I think the  
5 Court's opinion also required regulations relating to  
6 destruction of orders, and I would like to see that that's  
7 included.

8 THE COURT: I agree. Okay. I'll see you all the  
9 26<sup>th</sup>.

10 MR. LESAR: Thank you, Your Honor.

11 THE COURT: Thanks very much, Counsel.

12 (Hearing concluded.)

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CERTIFICATE OF REPORTER

I, Richard D. Ehrlich, a Registered Merit Reporter and Certified Realtime Reporter, certify that the foregoing is a true, complete, and accurate transcript of the proceedings ordered to be transcribed in the above-entitled case before the Honorable Royce C. Lamberth, in Washington, D.C., on August 21, 2017.

s/Richard D. Ehrlich September 6, 2017

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Richard D. Ehrlich, Official Court Reporter

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