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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

SEPTEMBER 26, 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

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A P P E A R A N C E S

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1 THE CLERK: Good morning. We have Civil Action  
2 04-814. *Roger Hall, et al., vs. the Central Intelligence*  
3 *Agency.*

4 If all counsel will please approach the lecturn  
5 and identify yourselves for the record.

6 MR. LESAR: Good morning, Your Honor. James H.  
7 Lesar representing plaintiff Roger Hall and Study Solutions  
8 Results, Inc.

9 MR. TAAFFE: Good morning, Your Honor. Damon  
10 Taafe for the CIA. With me is Amanda Bloom, who is the  
11 agency counsel.

12 MR. CLARKE: Good morning, Your Honor. John  
13 Clarke on behalf of Accuracy and Media.

14 THE COURT: All right. Does the defendant want to  
15 tell me the status first, or whoever wants to go first? I  
16 don't care.

17 MR. TAAFFE: I'm happy to.

18 THE COURT: Okay.

19 MR. TAAFFE: So I think, Your Honor, just to walk  
20 through the remaining issues. The exemption of six items  
21 are still being considered by civil appellate. I hope to  
22 have a decision on that soon, but it's out of my  
23 jurisdiction for now. Obviously, if they say no appeal,  
24 then we'll release it, and it'll be done. If they do take  
25 an appeal, then we'll do what we do there, but I don't think

1 that anything else at issue in this case needs to await that  
2 decision necessarily. It's pretty severable, I think, from  
3 our perspective. Plaintiff may feel differently.

4 In terms of the remaining items, I think from  
5 defendant's perspective, we're ready to file a supplemental  
6 briefing on that, and I'll walk through what we understand  
7 the remaining items to be.

8 First, there were some questions about dates of  
9 denied in full documents, and we have those dates and can  
10 provide them quite quickly.

11 In terms of the destruction of files, there were  
12 questions about the destruction schedules, and we have the  
13 destruction schedules and the regulations setting those  
14 forth. The trick is that although those schedules, as they  
15 exist today, are not classified, the ones that were in  
16 existence at the time in the '80s are and were and remain  
17 classified. So we'll need to file a motion to file those  
18 for the Court's in camera review. There were 114 documents  
19 destroyed pursuant to that schedule. Of course, we can't  
20 know what those documents say because they were destroyed,  
21 but parenthetically we'd note we're not even sure they  
22 would've been responsive. But, regardless, the document  
23 destruction schedule and the explanation that we'll provide  
24 will explain what happened there.

25 In terms of the item five documents which have to

1 do with this P-N-O-K, or PNOK list, the age of the documents  
2 in question is considered in the decennial review, and it  
3 has been considered in each of those decennial reviews, and  
4 we can explain that in a declaration that we would file  
5 pursuant to a renewed summary judgment motion. It should be  
6 pretty straightforward.

7 And then item 7, which is records about  
8 Congressional Committee items. There was this, I think,  
9 mystery about why it would've been that -- what's the  
10 gentleman's name? Bob Smith filed a declaration saying that  
11 part of this -- as part of this Senate Select Committee, he  
12 saw certain documents that maybe have not been addressed in  
13 this case in a Vaughn Index. And what happened here is that  
14 in the early 1990s, there was a Senate Select Committee  
15 convened on POW issues, and it was led by Bob Smith, who is  
16 the declarant, and also John Kerry. This committee gathered  
17 materials from all the various intelligence agencies, not  
18 just the CIA. And in 1992 or 3, there was an order calling  
19 for declassification of POW materials.

20 After that, the committee sent the materials that  
21 it had to NARA, which is the archivist, and NARA then  
22 referred those documents back to the agencies with equities  
23 involved, including CIA. CIA reviewed the documents that  
24 were sent to them for a classification and created  
25 declassified versions of those documents that it then sent

1 to NARA. NARA published the declassified versions.

2 So CIA -- and this was clear earlier in the case  
3 in briefing. CIA has permanently accessioned its documents  
4 to NARA. But in an effort to get this case resolved, back  
5 in 2010, 2011, CIA nevertheless reviewed its copies of those  
6 accession documents and processed them as it would in any  
7 FOIA case. So the only possibility that the CIA sees is  
8 that items that may have been viewed by the committee that  
9 have not been sent to plaintiffs or described in the Vaughn  
10 Index are ones that perhaps would be in an ops file, and  
11 those are ones that the Court has said need not be searched.  
12 And we can provide this explanation in a declaration  
13 pursuant to a renewed summary judgment motion, but at least  
14 as defendant sees it, those are the statuses of the  
15 outstanding items.

16 Really, I don't think a renewed motion at this  
17 point would be terribly lengthy. I think we have some  
18 discrete issues, and that's it.

19 THE COURT: When are you proposing to file that?

20 MR. TAAFFE: The agency would want 30 days or so  
21 to put a declaration together. The only trick in that  
22 regard is that I have a Title VII trial beginning  
23 October 30<sup>th</sup>, so we would request until maybe the second  
24 week of November.

25 THE COURT: All right. Let me hear from the

1 plaintiff.

2 Thank you.

3 MR. LESAR: Good morning, Your Honor.

4 THE COURT: Good morning, Mr. Lesar.

5 MR. LESAR: Well, we had expected that we would  
6 have more information as a result of the Court's opinion and  
7 the instructions the Court gave at the last status hearing.  
8 I understand that the exemption six issue has to wait until  
9 there's a decision on appeal. Despite the indication that  
10 was given at the status hearing, that did not appear to be a  
11 problem. Apparently it is.

12 With respect to -- the Government was supposed to  
13 provide information which it now declares as classified and  
14 it seeks to file an explanation ex parte. That's going to  
15 require a motion for leave to file it ex parte, which we  
16 will probably oppose.

17 With respect to the decennial review, the Court  
18 instructed that certain regulations and decisions be  
19 provided, and apparently we are not even going to get the  
20 regulations now without it being litigated as a separate  
21 issue. It would've been very helpful to have them before we  
22 go to a briefing schedule.

23 With respect to the question of the schedule, I  
24 have no objection to time that the defendant proposes for  
25 filing its motion; however, I have an extraordinarily

1 complicated schedule this fall with major cases and major  
2 briefs coming due all the way up through December, and so I  
3 will need additional time.

4 I will turn it over to John Clarke, who will have  
5 some additional comments, I think.

6 THE COURT: What's the date you would want to  
7 propose for your opposition?

8 MR. LESAR: Sometime in January.

9 THE COURT: Okay. If they do November 15<sup>th</sup>, you  
10 can do January 15<sup>th</sup>?

11 MR. LESAR: That I would do, yes.

12 THE COURT: All right.

13 Mr. Clarke.

14 MR. CLARKE: Yes, Your Honor. I would just  
15 suggest that the Government's affidavits include its search  
16 regarding the imagery that was mentioned in the Court's  
17 order and also the 1,400 live sighting reports. We've  
18 gotten none of those. So I would just hope that the  
19 affidavits would include those.

20 THE COURT: Okay.

21 MR. CLARKE: Also, Your Honor, the Court mentioned  
22 that some of these records that are 60 years old, the Court  
23 did not see any reason why, or wanted an explanation as to  
24 why they would still be an operational file. So I would ask  
25 that the Government's affidavit include that also.



1 THE COURT: It better. I already said I don't see  
2 a basis for it, so we'll see what they say. I expressed my  
3 view.

4 MR. CLARKE: Thank you, Your Honor.

5 THE COURT: All right. Then the Government's  
6 motion will be due November 15<sup>th</sup>. The opposition's  
7 January 15<sup>th</sup>. The inter reply February 15<sup>th</sup>. And I'll  
8 do my best to get out a ruling in March so we can try to get  
9 this case wound up.

10 Anything else you all want to try to do today?

11 MR. TAAFFE: Not from the defendant.

12 MR. LESAR: Thank you, Your Honor.

13 THE COURT: Maybe we're going to get to an end, at  
14 least at my level.

15 MR. LESAR: Some kind of an end.

16 THE COURT: Thanks very much, Counsel.

17 MR. LESAR: Thank you.

18 (Hearing concluded.)  
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## 1 CERTIFICATE OF REPORTER

2  
3 I, Richard D. Ehrlich, a Registered Merit Reporter  
4 and Certified Realtime Reporter, certify that the foregoing  
5 is a true, complete, and accurate transcript of the  
6 proceedings ordered to be transcribed in the above-entitled  
7 case before the Honorable Royce C. Lamberth, in Washington,  
8 D.C., on September 26, 2017.

9  
10 s/Richard D. Ehrlich October 23, 2017

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Richard D. Ehrlich, Official Court Reporter  
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