

EXHIBIT A

Pages 1 - 14

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE JAMES LARSON, MAGISTRATE

VIETNAM VETERANS OF AMERICA, et)	
al.,)	
)	
Plaintiffs,)	
)	
vs.)	NO. C 09-37 CW (JL)
)	
CENTRAL INTELLIGENCE AGENCY, et)	
al.,)	
)	San Francisco, California
Defendants.)	Wednesday
)	June 30, 2010
)	10:40 a.m.

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff: Morrison & Foerster
425 Market Street
San Francisco, CA 94105-2482
(415) 268-6411
(415) 268-7522 (fax)
BY: GORDON P. ERSPAMER
DANIEL J. VECCHIO

For Plaintiff: Edrington, Schirmer & Murphy
2300 Contra Costa Boulevard, Suite 450
Pleasant Hill, California 94523
(925) 827-3300
(925) 827-3320 (fax)
BY: FURAH Z. FARUQUI

(Appearances continued on next page)

Reported By: Lydia Zinn, CSR #9223, RPR
Official Reporter - U.S. District Court

1 APPEARANCES (CONT'D)

2 **For Defendant:**

US Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue NW, Room 7302
Washington, DC 20001
(202) 514-0265
(202) 616-8202 (fax)

5 **BY: CAROLINE LEWIS WOLVERTON**
6 **KIMBERLY L. HERB**
7 **LILY SARA FAREL**

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1 **THE CLERK:** Calling Civil Case C. 09-0037, *Vietnam*
2 *Veterans versus CIA.*

3 **MR. ERSPAMER:** Good morning, your Honor.
4 Gordon Erspamer, from Morrison Foerster, representing the
5 plaintiffs.

6 **THE COURT:** Good morning.

7 **MS. WOLVERTON:** Good morning, your Honor.
8 Caroline Lewis Wolverton, from the United States Department of
9 Justice, on behalf of defendants. And with me are
10 Kimberly Herb and Lily Farel, also for the defendants.

11 **THE COURT:** All right. Good morning.

12 **MS. WOLVERTON:** Good morning.

13 **THE COURT:** Okay. This is plaintiffs' motion to
14 exceed the 25-interrogatory limit.

15 I've read your papers. I'm inclined to grant the
16 motion. Seems to me that there are certainly complex issues in
17 this matter that would warrant this brief extension -- minor
18 extension of the normal rule, but you seem to be fighting hard
19 on this.

20 **MS. WOLVERTON:** Excuse me, your Honor. With all due
21 respect, the hearing was calendared for the plaintiffs' motion
22 to compel responses to interrogatories. We did not understand
23 that it was a hearing on the motion to exceed the page limit.

24 **MR. ERSPAMER:** There is a separate motion on the page
25 limit, your Honor. This is a motion to compel the original 25

1 that were agreed to by Counsel in her letter dated February 26,
2 2010. Counsel says, quote,

3 "Pursuant to the parties' agreement, we
4 are working to provide responses by
5 April 2nd to the February 19th letter
6 identifying the 25 interrogatories,"
7 -- which were never responded to, and no objections
8 were filed, so all of the objections were waived.

9 **THE COURT:** Well, I thought the objection was that it
10 was beyond the 25-interrogatory limit.

11 **MS. WOLVERTON:** Yes, your Honor. That is correct.

12 **THE COURT:** Well, we're talking about the same thing.

13 **MR. ERSPAMER:** Well, not quite, because there's an
14 agreement to answer these 25.

15 **THE COURT:** I understand that's part of your
16 argument.

17 **MR. ERSPAMER:** Yeah, yeah. Right, right.

18 **THE COURT:** Okay. All right. Proceed.

19 **MR. ERSPAMER:** Okay. So, your Honor, you know,
20 this -- as these interrogatories have been pending -- the
21 original group -- since 2009, we had an agreement to answer 25
22 specific interrogatories in February of 2010. They're very,
23 very basic interrogatories about issues in the case, such as
24 consent, notice, names of witnesses, relevant documents.

25 Last night, at 8:30 our time/11:30 Washington time,

1 we received something styled as the defendants' response to
2 plaintiffs' interrogatories.

3 I've reviewed it this morning. It consists almost
4 entirely of objections. There are 14 general objections.
5 There are no substantive answers that I can find in any --
6 anywhere in the document.

7 The -- there were references to document production
8 generally. And there are a few statements that the CIA knows
9 nothing, based upon an artificial limitation that they put in
10 the general objections that they were limiting their responses
11 to one test program rather than the ones plaintiffs complained
12 about.

13 I mean, really, quite frankly, your Honor, this is a
14 case where sanctions should be imposed. These are -- we have
15 met and conferred on the original group. We agreed on 25.
16 They were supposed to, you know, comply with it a long time
17 ago. They didn't do it. Here they come in, you know, the
18 night before the hearing and come up with what is really,
19 your Honor, not a single substantive response to any -- any of
20 the interrogatories by any of the defendants. It consists
21 entirely of objections and other nonresponsive matters.

22 So I would ask the Court to order them to respond to
23 all of the 25 interrogatories they agreed to respond to; to
24 find that their objections have been waived, and to do it
25 within a reasonable period of time; perhaps 30 days,

1 your Honor.

2 **THE COURT:** When were the interrogatories originally
3 served?

4 **MR. ERSPAMER:** They were originally served in, I
5 believe -- well, it's 2000 -- late 2009. I'll give you that
6 exact date: December 23rd, 2009. It's actually November 16th,
7 2009. And the second set on December 23rd, 2009. And then the
8 agreement to answer specifics -- specifically enumerated set of
9 25 took place on -- when it was acknowledged by letter by
10 counsel on February 26, 2010, which is Exhibit G to the moving
11 papers.

12 **THE COURT:** And did that set include one or more
13 interrogatories, with subparts?

14 **MR. ERSPAMER:** It included 25, four of which had
15 subparts. So, in effect, it would be 29 according to their
16 count; 25 according to our count; but they agreed to respond to
17 them by April 2nd. Now here we are in July.

18 **THE COURT:** All right. Ms. Wolverton.

19 **MS. WOLVERTON:** Thank you, your Honor.

20 Yes. The interrogatories at issue exceed the full
21 33's limit of 25 on the discrete subparts are counted as the
22 rule requires. And the plaintiffs have offered no substantive
23 reason for contending otherwise. Yes, the defendants and the
24 plaintiffs agree after the plaintiffs had served a total of 43
25 interrogatories in November, without any request for exceeding

1 the 25 limit or order of the Court. And as soon as we reviewed
2 them and realized that it exceeded the number, we advised the
3 plaintiffs that we objected on those grounds. And we had a
4 series of discussions back and forth, during which the
5 plaintiffs agreed that they would serve 25, and we agreed that
6 we would respond to 25.

7 And then when we began preparing our responses, it
8 became clear that when you looked at the discrete subparts, it
9 exceeded the 25 limit. We promptly brought this to the
10 plaintiffs' attention, and we offered to meet and confer
11 regarding it.

12 The plaintiffs did not respond to our request, and
13 instead, filed the motion to compel.

14 And the reason that we decided to go ahead and answer
15 the 29 is because we recognized that we had to answer 25. We
16 did not want to involve the Court's resources and time any
17 further. And we wanted to --

18 **THE COURT:** Sounds like you didn't answer.

19 You filed objections.

20 **MS. WOLVERTON:** Your Honor, we disagree with the
21 plaintiffs' characterization of our responses. They came
22 substantive information. Those responses aren't before the
23 Court. We submit it's premature to make any determination. We
24 went through them -- all 29 -- in good faith, and prepared
25 responses, and filed -- or served them when we agreed that we

1 would, again, in an effort to avoid further expenditure of the
2 resources, when there are several other serious important
3 matters pending relating to discovery.

4 And I do think it's important to note in this context
5 that the plaintiffs ignoring the defendants' request to meet
6 and confer about the number of 29 is consistent with their
7 pattern of ignoring the Court's requirement of preparation of
8 joint statements. Under paragraph 8 of the Court's standing
9 order, the Court requires the parties to meet and confer
10 regarding discovery disputes, and work together to try to
11 prepare joint statements, which -- I understand the intent is
12 to help the parties narrow the issues of dispute contention, if
13 eliminate them altogether.

14 The plaintiffs have filed five individual statements
15 of discovery disputes, without ever even attempting to discuss
16 with us how we might work together to prepare joint statements.
17 And, as we've pointed out in our responses, several of the
18 issues included in those statements, we believe, had either
19 been resolved or at least narrowed or were on that road.

20 An example is the plaintiffs' individual statements
21 concerning the Department of Veterans Affairs' privilege log.
22 The plaintiffs moved for or they requested in their statement a
23 motion to compel a revision of the privilege log, which, during
24 the meet-and-confer process, I indicated to plaintiffs' counsel
25 that the VA agreed to go through and see if it was possible to

1 elaborate on the entries and provide additional detail.

2 Similarly, on their statement concerning the
3 appropriate scope of discovery, the plaintiffs make reference
4 to documents concerning health affects of the chemicals that
5 are involved in the tests. And, as I explained --

6 **THE COURT:** These are not matters that are before me
7 this morning, right?

8 **MS. WOLVERTON:** No, your Honor; but it's indicative
9 of the plaintiffs' pattern of failing to adhere to the Court's
10 meet-and-confer requirements and the requirement that they work
11 with us to provide joint statements. And --

12 **THE COURT:** Are you local counsel now?

13 **MS. WOLVERTON:** Are you local, or are you in
14 Washington?

15 **THE COURT:** All of you.

16 **MS. WOLVERTON:** We're in Washington, yes. That's
17 right, your Honor.

18 The defendants, the Department of Defense, Army,
19 CIA -- they're all in Washington, so most of the work has to
20 happen, by nature, there; but we do think this is important. I
21 mean, we request that the Court order the plaintiffs to comply
22 with its standing order, paragraph 8. We welcome the
23 opportunity to work with the plaintiffs to try to narrow these
24 issues and avoid consuming the Court's time and the parties'
25 time, when there are a number of issues. And we think that

1 there's still much room for narrowing and resolution.

2 **THE COURT:** Respond?

3 **MR. ERSPAMER:** Thank you, your Honor. I'll be brief.
4 The group of 25 was specifically enumerated group. If you look
5 at F, February 19th letter lists the interrogatories they would
6 reply to. And in Exhibit G, counsel -- the same counsel that's
7 arguing before you today -- says we have an agreement to
8 provide responses to the 25 interrogatories identified in the
9 February 19th letter by April 2nd. It's in the second
10 paragraph.

11 So there was an absolute -- an agreement to answer a
12 listed, enumerated number of interrogatories, notwithstanding
13 the fact they didn't answer them and they refused to answer any
14 of them on the appointed date, we did meet and confer again.
15 And there are letters attached to the moving papers as
16 Exhibit H, I, J, and -- J. So there was a -- we went above and
17 beyond our obligation to meet and to confer.

18 So the -- so the final point -- did they supply
19 answers? I guess the Court can't really resolve that today,
20 because they were only served last night, months and months and
21 months late; but I can tell you I read them as I was sitting
22 through your calendar, and there's no substantive information
23 in any of them.

24 **THE COURT:** All right. I'll ask that you lodge with
25 the Court today -- a copy of the answers that you received last

1 night.

2 **MR. ERSPAMER:** Okay.

3 **THE COURT:** So-called answers. And I'm afraid I'll
4 have to take it under submission, but let me say this. This is
5 a ridiculous issue to bring before a Court.

6 Obviously, this is a very complex -- I'm sure it's
7 going to be a heated battle all the way through, since it goes
8 back so far and raises a lot of sensitive issues, but the
9 number of interrogatories to require a full hearing by the
10 Court, and now an extended consideration of the matter is
11 something that you can work out just using your common sense.

12 **MS. WOLVERTON:** Your Honor, we agree wholeheartedly.

13 **THE COURT:** I don't think so. Otherwise, we wouldn't
14 be here.

15 **MS. WOLVERTON:** Your Honor, that's why we said we
16 would answer the interrogatories to avoid being here. We told
17 them before.

18 **THE COURT:** We'll see if you do or not, but I'm
19 warning both of you, since I'm going to have all of the
20 discovery here, I want you to be mindful of the meet-and-confer
21 requirement. That means meaningful meet-and-confer. You can
22 discuss it on the telephone since you're so far apart, but I
23 don't want any games played, or we'll call it 5:30 Pacific
24 Time. And obviously, you're not going to be in your office. I
25 want meaningful discussions about every single issue that comes

1 up.

2 If you can refine it to a narrow issue and submit it
3 informally without hundreds of pages of paper, that would be
4 great. If you can't, then fine. We'll deal with it formally,
5 but we'll decide whether we deal with it formally or not. All
6 right?

7 **MR. ERSPAMER:** That's perfectly fine with --

8 **THE COURT:** I don't like issuing sanctions. I very
9 rarely do that, but I'll certainly have that in mind if what
10 appears to me to be a blatant misuse of the Court's resources
11 here.

12 **MR. ERSPAMER:** Your Honor, just so you're aware, I
13 think there are seven other motions; two-page letters that
14 under the standing order that have piled up. There are
15 humongous problems with privilege logs, with -- with -- that
16 are this thick (indicating); with the non production of
17 documents; gaps in the production; objections to every document
18 request. Production consists almost entirely of material drawn
19 from the public domain that was published in connection with
20 congressional hearings.

21 **THE COURT:** All right. I'll tell you what.

22 **MR. ERSPAMER:** There are missing documents. It's a
23 mess. And we -- all the motions that were filed were filed by
24 us. There are massive noncompliance.

25 **THE COURT:** All right. How long are you going to be

1 in town?

2 **MS. WOLVERTON:** Today, your Honor, but in response to
3 that, as I said, the plaintiffs made no effort to work with us
4 today.

5 **THE COURT:** I know you said that. How am I going to
6 pick between two people that look totally reasonable to me,
7 when they're pointing fingers at each other?

8 All I can interpret is we have a bunch of disputes
9 that ought to be resolved; at least, some of them. And late
10 filing on the eve of a hearing on a motion which, to my mind,
11 looks completely routine is inappropriate.

12 You keep looking at me like I'm speaking another
13 language. Are you having trouble understanding me?

14 **MS. WOLVERTON:** No, your Honor. I understand
15 perfectly.

16 All I can say, again, is that we tried to avoid
17 further expenditure of time and resources by agreeing to
18 respond, even though we continue to maintain that it exceeds
19 the limit.

20 **THE COURT:** I'll be the judge of whether or not you
21 responded or not, but certainly Mr. Erspamer's not going to
22 stand there and tell me that you haven't responded when, in
23 fact, you have. So I'll take a look at that. And we'll go
24 from there.

25 Before you leave today, I want you to walk right

1 through that door -- all of counsel. Sit down. Meet and
2 confer about all of these other issues, and see what you can
3 work out.

4 All right?

5 **MS. WOLVERTON:** Thank you, your Honor.

6 **MR. ERSPAMER:** We have an extra copy of that
7 response, so we can hand up to the Court right now.

8 **THE COURT:** Fine. Give it to my courtroom deputy.

9 (Whereupon a document was tendered to the Court)

10 **MR. ERSPAMER:** Okay. Thank you, your Honor.

11 (At 10:54 a.m. the proceedings were adjourned)

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CERTIFICATE OF REPORTER

I, LYDIA ZINN, Official Reporter for the United States Court, Northern District of California, hereby certify that the foregoing proceedings in C.09-0037 CW(JL), Vietnam Veterans v. CIA, were reported by me, a certified shorthand reporter, and were thereafter transcribed under my direction into typewriting; that the foregoing is a full, complete and true record of said proceedings as bound by me at the time of filing.

The validity of the reporter's certification of said transcript may be void upon disassembly and/or removal from the court file.

/s/ Lydia Zinn, CSR 9223, RPR

Thrusday, September 2, 2010