

Discovery material 3/16/73

WADC Technical Report 57-87 AD 119038 Stadelman, K^{osin} on hatching eggs 2/57 Dr. Welch told me this a.m. it is a fraud. I have ~~my~~ my own analysis. It is ~~complete~~ complete on adults. typescript 3/10/64 Pentagon conference.

Flight information digest 5/24/67 supplemented 8/16/67 and a couple earlier ones.

9/14/67 Detrick report, Louise Trout

8/17/67 Swilley my H21 complaints.

8/11/67 Memo for the record, Thompson calling Zellmer on my two complaints that week.

8/11/67 Trout to Mitchell, two H21, I'm upset

8/7/68 Daley memo my complaints increasing overflights. Handwritten notes say "He seems to be building up a claim for personal injury based upon his and his wife's nervous condition."

9/2/66 Detrick to Mitchell, double-rotor, directly overhead, read Army. Low. Two others later not low.

9/1/66 Detrick to Mitchell, H-21, directly overhead, 100 ft.

8/30/66 Detrick to Mitchell. Lil reported H21 less than 1000 ft over farm, two later, both overhead, both like White House (hereafter WH).

8/26/66 Detrick to Mitchell

"The helicopter was identical to that of President Johnson's". Directly overhead

8/26/66 Memo for the record by Mitchell. I had asked that they ~~write~~ have someone call me, Mitchell says I was told to write another letter.

8/24/66 Detrick to Mitchell, directly overhead, similar to WH

7/29/66 "Re Weisburg Chicken Farm, Detrick to Mitchell, under 1,000, over property H21.

6/22/66 Detrick to Bleyle Army, over farm.

Undated, Detrick to Bleyle (like others, after our name 622-63) Lil reported two.

4 Apr, 1640 H 21 handwritten

12/21/65 6-700 feet, west of house

12/17/65 Chinook under 600 feet, to east/

11/23/65, my letter to Col. Blackmarr, 2d Army JAG in response to his of

11/17/65 about "continuing effort...to inform Army aviators of your grievance". Three enclosures not included.

10/21/65 he possibly under 750 feet

10/18/65 unsigned "memo for record" Lil called Detrick, h.c. under 500 reported by Lil, handwritten notation "Just file" (My 3/16/73 comment: "just file" when they are supposed to be stopping these things, when this elevation is additionally a violation of basic, standing regulations?)

10/5/65 unsigned ~~letter~~ carbon letter to me apparently for Col. Blackmarr's signature on my reports, procedures. says "been unable to identify the helicopters flying over your property". Note this JAG does not ypu allege are flying over, etc. Now the obvious thing here is why don t they use their radio and ask the pilot who he is, etc. Enclosure not included.

10/11/65, me to Blackmarr re his 10/6. On how they can identify hcs, reporting sonic boom.

10/6/65, Blackmarr to me. "...impossible for us to trace the source of the helicopters violating the flight regulations..." Again, no alleged helicopter, alleged violations. enclosure, below,

10/6/65, to Cmdg Off Army Flight Information, Washington, from Donald Huntington, "Army Claims Officer" (Harvey-note this is claims not operations, is it can have possible bearing on negotiations and running of statute). Admits violations.. It asks that I be informed of the taking of requested steps and that "this headquarters", that is, claims, AG, not operations people, "be informed when the requested information has been provided to Mr. Weisberg". If this was done, it is not in this sheaf of papers provided.

10/1/65, me to Blackmarr, re his 9/27. Harvey, note this language of my letter which supports me and is undisputed in any of this file of his letters: "As you left, the captain [Steven Cmcala] told me that the only questions remaining were the amount of

damage done us and regularizing the arrangements for reporting violations of the regulations". (HARVEY. His response of 10/1 does not dispute this in any way, not even by inference.) Visit because Army has threatened "prosecution as a common nuisance" for reporting [admitted] violations, on orders Second Army. (The, appear to have gone to Detrick from my place and to have ended that.) I go into out health: "...we have had the most exhaustive series of medical examinations and tests and all other apparent reasons for our health problems have been eliminated." Follows ref to "very bad effects upon my wife." The above-quoted language was underlined. Next paragraph refers again to consequences of continuing violations, "The question...is their effect upon our health." This also is underlined, initialled ~~DK~~ in margin NB or WB (William Blackmarr) (HARVEY- of possible importance in re serial number. I enclosed a broadside picture from AP showing none visible) Same initialling opposite underlining of "we are suppose to report and want to report, because we want relief." I tell him that I had been told helicopters had been identified and how they can be identified if the Army wants to. Also underlined and initialled, "It is also a matter that has had and continues to have daily the worst kind of effect upon our lives. How long we can continue to live this way, if indeed the kind of existence these things have forced upon us can be called 'living', I do not know...entire affair is a matter of the greatest importance to us. Its potentiality I hate to consider." I then say, "If I have in this long letter erred in any way, I certainly would like you to call it to my attention." HARVEY. This letter begins with the quotation of Chucala, only questions are amount of damage, etc. There should be a copy of this letter in the Morse file 9/27/65 Blackmarr to me. "... I have no reason to doubt" occasional overflights. Undated, unsigned handwritten notes re regulations, etc. 9/27/65 duplicate of second above. 3/12/65 "Memorandum to Army Claims Office" by Z.P.Koch, Office of Army Claims, apparently at Detrick, reporting my call re helicopter. Note again, not to operations. 7/5/65 unsigned memo reporting nearby helicopter. 7/8/65 unsigned ditto 7/15/65 unsigned ditto 7/23/65 L. Bart "Memorandum for record". Subject "Claim of Harold Weisberg". No reference to my "claim", only to the report of a violation. So, I note that as of this date there was Army recognition that this related to a claim. 7/26 year eliminated in xeroxing handwritten "memo for record", headed "Weisberg". Violation. 7/29/65 Linda Bart's "Subject: Claim of Harold & Lillian Weisberg" which ~~annots~~ makes no reference to anything but another report from me. 8/2/65 Unsigned "Headquarters Second Army" memo on a report from Detrick "this date". Here the Second Army's designation is "Subject: Claim of Harold and Lillian Weisberg." 8/2/65 report of violation. 8/5/65 "Subject: Claim of Harold & Lillian Weisberg" but only on violations. 6/4/65 Capt Z's hand note of call from Detrick after Lil's call there. Undated, typed, unsigned note on violation. Undated hand note someone else annotated with illegible signature ("Lou"?) and "prepare memo and put in file". This begins "Linda Received from Ft. Detrick" and covers 8/26/69 report. There is no memo of this, despite this directive to prepare one. 9/2/65 unsigned memo of two helicopters. 9/27/65 typed, changed draft of letter to me from Blackmarr. Change from WIF you have any questions please contact this office" to "do not hesitate to write to this office." 9/27/65-triple-spaced draft. Changes, 1st par., "Efforts to confirm the information in these reports" has "the information in" deleted. Other minor changes. 7/16/65 (unclear, ~~type~~ stamps/date) headed "Subject: Claim of Harold ~~and~~ & Lillian Weisberg", signed James W. Loane, Captain JAGC Acting Chief, General Claims Branch." Reports conversation with ~~XXXXXXXXXXXXXXXXXXXX~~ JAG 2d Army, Van Voorhis "concerning the claim of Harold and Lillian Weisberg for \$25,000 as well as the Litigation Division OTJAG file concerning related litigation". Says "forwarded herewith". 12/12/63 Van ~~Voris~~ Voris to Lt. Col. Thompson, Chief Tort Claims Branch, Holabird, "I am forwarding a memorandum for the record of my conversation with Mr. Weisberg." It

idnot here.

8/19/64 Chucala's hand note of call from Taft asking that he be present when Chucala and Blackmarr visit us. Described as "interview" Headed 25-30 and "Case #622-63" "I cordially welcomed his presence" Chucala says re Taft.

8/17/64 Chucala's hand note "Case # 622-53" "Telecon[?] Mrs. Lillian Weisberg - for appointment - to visit claimant at his home. 25 Aug 64 (Tuesday) was agreed upon." Unsigned, undated hand note re Hodge, Detrick, "Coordinated to Receive telephone from Weisberg and relay then to Hq. 2d Army. 4111-2201" followed by Detrick's number, 663-4111 and apparently two extensions, 2201 and 4147

Undated hand note headed "Martin[?] medical claim" Following are names and addresses, two at Detrick bracketed and identified as "Witness" in left margin. 1st is "Dr. Henshaw, Maj. U.S. Public Health Service, Ft. Detrick". Next Capt Bissell and Lt. Col Hayes, Detrick, bracketed, "(Poultry)" after Bissell. Concludes with "Dr. H.M. Vevoit" and his U.S. phone and extension.

My map of our location.

9 pages undated, unsigned handwritten notes plus another in different hand or printed if in same hand. Begins with ref to Major Freeman, Hq, USAF and then goes into details of the damage done us, with names of witnesses, apparently from me. Looks something like Chucala's handwriting. His is preceding signature.

Unsigned handprint of apparent helicopter posts or destinations-five.

2/24/65 Chucala's successor, Capt. Nick G. Zegrea to Me re my 2/8/65 to Chucala. Admits trespasses: "We regret that these incidents are recurring despite our efforts to prevent them."

Undated, unsigned hand note, large black caps "CLAIMS" partly legible directing that I be written

2/8/65 me to Chucala Mtg "purpose...my wife's headaches have reappeared. They are rather bad and almost crippling. In addition, both her sense of balance and mine have become involved..." It is clear that medical or health things had been discussed with him earlier.

7/1/64 Chucala's "Subject: AR 25-25 Claim of Harold & Lillian Weisberg", to Chief Jag Claims, Holabird, "reference Memorandum of Opinion this headquarters" and other things, correspondence "from this office under dates 9 August 1963 and 12 December 1963 referred to in forwarding letter from me. None of these are included here.

8/27/64, Hodge to Blackmarr re my phone calls "re Helicopter Overflights". "describes my calls as "nuisance calls". Par. 4 says Blackmarr phoned him 6/26/64 told told him to tell me "that there was a possibility of the Army taking legal action against him, should the harrassment by telephone continue." Etc!

6/24/64 Detrick Post Inspector Major Charleston's "Subject: Chickens and Mr. Harold Weisberg...." (We then had no chickens.) He had been told "to check and see what could be done to stop the harrassing phone calls of Mr. Harold Weisberg." His paragraph numbered 3, "c. The previous Claims Officer, Capt. Van Voris, went personally to Mr. Weisberg's farm and said he could find nothing to substantiate the claims" 4a is similar, says when Van V was there, 7/16/63 and "asked to produce some evidence but Mr. Weisberg could produce nothing." There were plenty of damaged chickens on the place, Harvey, and Van Voris went through my files and took what affidavits he wanted. He also presented more claims for us to fill out, and I see no record of my asking this at this point. It concludes "and yet he could produce no dead chickens to support his claim". Farout, man, assuming he asked. Ever smell one?

7/20/64 Colonel Meritt's memo to Colonel Blackmarr, "Subject: Claims of Harold & Lillian Weisberg." HARVEY-you had perhaps better read under 5 ref to decision of no liability "for damage caused by military aircraft operated outside scope of employment" if you think they may cite or seek to invoke. Then 193 F Supp 815 (1961) states that there is a rebuttable presumption of liability.?

NOTE THIS AMONG THE RECOMMENDATIONS: "3. What immediate injury or damage was caused. 4. Whether they caused any delay [sic] or continuing injury or damage." Harvey, note concluding paragraph, which I leave you to interpret. I think it is quite relevant to my quotation of Chucala 10/1/65 and to my representation of the purpose of the visits from JAG 2d Army.

7/24/63 Two copies 4 page Van Voris "Subject AR 25-25 Claims of Harold & Lillian Weisberg, to Chief Claims, Holabird. Second has fifth page first does not have. P. 2, d, "Helicopter flights...are fairly frequent" and routed over our area, three years after decision! "There are a great many flights in the general vicinity of claimant's farm." In g he says his "investigation was inconclusive because claimants had no records to support their alleged losses. Personal observation, of course, revealed nothing because the undersigned is not experienced in the operation of poultry farms." Note: I don't know whether he inspected the flocks, but I am sure I invited him and he could not have avoided seeing very visible ~~damages~~ if he had. If he did not look, what the hell kind of "investigation" did he conduct? He recommends disapproval because (in h. 1) "The claims are the direct result of a continuing series of incidents and are not, therefore, entitled to be treated as separate, distinct claims." !!!!!!! In h 2 he says I "submitted no evidence to substantiate his alleged losses", yet he did not represent that to be his purpose to us and I did offer him everything in our files and he took only that which he wanted. I think my memo on this should be read with care. He then says "the undersigned does not dispute the fact that overflights and sonic booms occurred...during the period in question" Read his 2 carefully. He quotes me as saying I "felt the United States should engage poultry experts to provide this evidence". That is not the case but it is close enough to validate what I say. We had an agreement at the Pentagon meeting that there would be impartial experts to assess the damage, looking to an amicable settlement agreed to in principle. On this basis he recommends that "the claim should be disapproved in its entirety at the administrative level." Compare this with his bringout and helping us fill out new claims! I think his (3) should be checked against the claims, for I am certain it is wrong. "Eleven of the claims submitted deal with losses sustained prior to July of 1961 and are therefore barred by the two year statute of limitations. But his list of 5 enclosures tends to prove what I say, that I turned him loose in my file cabinet to select what he wanted and there is 3, #misc. Statements & Affidavots". Obviously these are what he selected of my entire file when I turned him loose in it without supervision. These affidavits include ~~some~~ evidence that his reports says I did not provide. Fifth page, above, error on my part. it is- 7/7/64, Leahy to Army JAG returning file "as a matter not within the area of responsibility of this office and for referral to the proper agency of Second Army headquarters." None of 5 atts 7/1/64 Chucala to Claims, Holabird ref of Van Voris Memorandum of Opinion 7/24 and subsequent correspondence this office under dates 9 August 1963 and 12 December 1963. Check to see if included. Encloses my 6/29/64 to Chucala. Someone clipped a new story, "Hens Mistake Helicopter for Hawks; U.S. Pays" and sent to Blackmarr. Note to Linda added "for Weisberg files to note and return Captain Van Voris" My 6/29/64 to Chucala. Mark opposite my ref to Pentagon agreement. My ref to ~~na~~ more chickens and to "continuing ~~problem~~ problem of their effect on our health, to which there should be numerous references in your files."

- 12/14/64 Chucala note of call from Hodge on helicopter reported day before.
12/30/64 Z.P.Koch memo to Chucala on Hodge's call on my report of day before.
1/27/65 Unsigned handwritten, 2 pp. memo on call from Hodge after my report of H21 overflight. Belvoir #192-32147, "there were 3 helicopters flying in that area".
2/3/65 Handwritten note of call from Hodge, my report H-21
3/4/65 Call from Hodge secretary, my report of very low overflight.
3/12/65 Koch "Memorandum to Army Claims Officer", Detrick call on my report.
3/24/65 memo conversation between Mrs. Hahn, Detrick, and Miss Hart, 2d Army, my report, marked "Noted Capt. Z 3/24/65".
4/20/65, typed note from Don to Nick on the owner of a chicken farm reporting H-21
4/26/65 Detrick's call reporting Major Smith, White House, confirmed one of theirs and my offer of film of last four "incidents".
5/20/65 Detrick call on Lil's call of low double-rotor.
6/15/65 on form AR 340-15, of four reports from Detrick, June 2,4,10,15 and efforts to identify 2d Army Flight Det.; 11th Armored Cav; Base Operations, etc. Only the wrong places! when they do check. One actually said what is false and records will show to be false, that

"the helicopter probably belonged to a civilian approximately 5 miles north of Weisberg farm". I knew all my neighbors and none had a helicopter, as FAA records will show. They did check Davidson, which is Belvoir, and got a negative, page 2.

6/4/65 report of 6/2 from Detrick, with hand note similar of 6/15 added

6/8/65, from Detrick, my report ~~6/15/65~~

6/10/65, from Detrick, my report.

6/11/65, from Detrick, my day before call, very low, OD

12/15/64 2 pp Chucala handwritten "Investigation to determine identity of helicopter overflight a) 10 Dec 64 1627 hours; b) 14 December 64 1713 hours." He seems to have selected one I reported with pontons to call all around and find none of bases had one with pontons instead of looking for transient or asking about and I have yet to see any single record of anyone doing what I asked: use radio. In every case, I almost, I reported in time for Detrick/East Coast Relay to contact directly. They have elaborate radio installations. So, Chucala concludes can't be identified (not that didn't happen).

9/10/64 typed memo on form to Blackmarr on call from Hodge, my identification of air-sea rescue helicopter, 1415 hours.

9/10/64, 1500 hours, 2 pp Chucala handwritten "Action after report low-flying helicopter." He calls the same people and never asks one if they have special air-sea rescue markings or known of any transients. I got this identification from identification pictures given me or from Frederick commercial field, something like that. My report quoted is silver with orange trim, no request for such identification, if asked.

12/12/63, Van Voris MEMORANDUM FOR RECORD. A self-serving record of his call to me about an overflight two days earlier. He says he didn't come because I said, two days later, "there would be nothing to observe or record". That could have been true of any attempt to isolate anything from that particular flight, but not in general, for there never was a time when damage was not visible. He does say we offered them pictures ~~showing~~ showing the relationship of that flight and the house.

12/15, Z.P.Koch to Chucala on Detrick's reporting my report night before, 600-750 feet.

8/26/64, Chucala, handwritten, saying that on that date when he and Blackmarr left out place they went to Detrick and told Hodge to accept my calls.

8/26/64, Chucala 1 p hand memo. 75 words approx. Reports somewhat exaggerated representation of what he says I said, but include my displaying tapes recordings and film and affidavits.

7/24/63 another copy Van Voris report, none of attachments included.

8/3/63, my letter to Van Voris. I open by reminding him of his asking if I'd settle under an eminent domain principle, telling him what I have to do to be able operate, how I have to plan, about sonic booms, tell him I have to cancel orders (very illegible copy). Quite the contrary of his representation that I offered no proof, this reports on the problems of computing because of the various means that can be used, says that just yesterday two members of the Agricultural Economics faculty at the Univ of Md had been with me to do this, etc. I then refer to the original agreement, that we get together with experts on this, so we can eliminate problems of computation. Report damage to equipment about which something has to be done if I am to use. I want to be sure that we agree that we are going to try to agree after which I will be better able to proceed. This reflects that I did tell the truth and that there was a purpose in his coming. This file has no copy of any answer but it does hold other letters from me:

7/19/63. I had called him to raise questions about how to proceed with computations but he was not in and didn't return call. "What can we do about those laying flocks damaged but still alive and on the premises?" (Compare this with his report and his failure to respond or deny this letter/offer to see? I send him "copies of these claims" of earlier period.

2/27/63, me to Van Voris reporting I have no copy of a claim I had discussed with him.

10/17/63 Leahy to me (only this one letter in file and none of mine!)

8/9/63, Van Voris memo to chief Army Claims forwarding my 7/27 and 8/8 letters and saying only that "Capt. Van Voris does not recall any conversations with respect to recovery under eminent domain". None of the rest is denied, this is not really denied, and my letter shows I did not talk about settling the claims under eminent domain but for the

transcript by [unclear]

12/11/63 Col. Kryszakowski, AF JAG, to Lt. Col. Thompson, Army Claims. Transmits sonic-boom claim, asks return. Enclosures follow:

1/21/63, Powers, Attorney Advisor Memo for the Record. Refers to me, when I had filed but one such claim, as "this perennial claimant".

Lt. Col. Yandala, AFCJA-15, advised that they had a file on him which is classified under Miscellaneous. "

*** Harvey, unless this turns up in what follows, I think it might be worth asking for this so-called miscellany. Why they should have any kind of file on me outside the file on the claim is not readily apparent

"and Walter Morse considers him a crackpot..." perhaps we will have to confront this. I doubt Morse said it and I'm sure it is contrary to what he told others and me.

10/20/61 Illegible copy my letter to Col. Butt. Note someone added check after my comment that AF behavior was "shameful". I doubt this could be disputed, were there any point. I note it because it is but one ~~xxx~~ of a series of things in these files designed to prejudice. Although the original claim had been rejected, this has a hand note added "\$250.15 award (sonic)".

10/17/61 Butt to me. Harvey, note this carries my claim file as AFCJA - 13, not the 15 noted above. The "miscellaneous" file on me is, therefore, apparently a separate one. There is no reference to any 14. Should we assume this also relates to me and ask for it? Butt says what they had earlier told me, that this was the final administrative action possible. As it was wrong before, I am sure it was in this case, too. Copies indicated to files of Lt. Heimert, Maj. Lowery, Col. Butt. Have they gives us those files? Ask Better why not?

23 Or 28 May 1961 (illeg) Navy Captain Stearns, Director, Litigations and Claims, JAG, to Orrick, Assistant AG, DJ. Attn Russell Chapin (do we want those files, too?) The DJ file designation is included but is illegible.

Stearns says quite the opposite of what the Army argued. It would be good to know if he was the Navy's JAG representative at the first Pentagon meeting when we agreed to use the Military Claims Act. He says of the decision, "would be properly cognizable under the Military Claims Act (10 USC 2733) it is felt they are not actionable under the Federal Tort Claims Act...If they are, Mr. Weisberg could annually vex the Government with a similar suit..."

I am damaged, a court so rules, there is no denial of the damage or the cause, as this cat says I'll be "vexing" them? Would Thomsen appreciate this? If so, consider the part where he says, despite the decision, "pilots have ~~nowhere~~ nowhere else to look but to ~~Federal standards~~ Federal standards to govern their flight conduct." And do they not also have regulations to which to "look"? Could they not issue new ones, as they did? Anything but end the tort! He has comments attached 5 pages. It like his letter have underlining added before xeroxing. I think you should note the quote above is marked.

"Comments on decision of Judge Thomsen..."

Opens by questioning whether state law can protect us, follows with lengthy quote. Admission that sirens also frighten marked in margin.

Bottom page 2 he interprets Maryland law to presume liability and says this can be overcome (only?) "by a showing that the injury was not caused by negligent operation..." He refers to "prima facie" liability under the Maryland statute. Somebody marked "presumption of liability" twice, underlining and arrow.

Page 4, his comment on the Tucker Act seems interesting but is illegible. I think it may say that with greater frequency there may have been a taking. He notes that Thomsen also sat in the Munnally case. This part also is marked.

I find it interesting that he argues overflights are "innocent" whereas his own Navy's regulations prohibit overflights. Noted in case we have Navy people to confront or the validity of legal arguments to assess.

Conclusion: contrary to Thomsen's decision, they have no liability.

Newspaper

4/20/61 N. Crook's Memo For Record with two clips of award, ref to sonic-boom claim status and inaccurate citation of decision, exaggerating what Thomsen said of me, and underlining it alone.

4/17/61 my letter to Col Bauer, response to his 3/31.

Harvey: on proof they had for this claim and for the case, I cite South Dakota State Univ Evidence that after overlights there was a drop of almost half in production. This is underlined. It also shows that two-thirds of the reduction was never regained. I have this, unless Rauh & Silard do. Or unless you took it. I also refer them to actual examinations of the non-laying chickens by the State vet. I offer them all the info I have. The parts of the photocopies of the Univ report that are marked are illegible in this reproduction. One of the excerpts is not included here but is described in the letter.

Illegible, undated note, part shorthand, Hyattstown, Md and helicopters written out.

3/31/61, a first lieutenant, Air Force (NOT JAG), Helmert, to Secretary, on my sonic-boom claim, with a sentence added by Bauer.

Harvey, they are using 10 USC 2733, Military Claims Act. Means both AF and Navy did but Army argues it couldn't.

2. is a lie. Dover AFB had initially confirmed, not denied, and was quoted in the newspaper. My source. They had admitted to me and accepted the claim from me. Because this is a deliberate lie to the higher-ups and is typical of what causes the present situation, as it did all our problems, I ask you to note the attached handwritten note, both parts. The first says, "You know how I feel about paying anything" and the second asks if someone else shouldn't sign, appears to be SAF, or Secretary Air Force? Someone has ~~not~~ written "No!". Or, it is clear they do not adjudicate, do not consider evidence, have no intention of either, and all this is hidden. It is not in what was sent to the Secretary.

3. is likewise deception. Even if the storm could have caused damage, as it never did, the boom was first. It acknowledges that chickens could have broken steel equipment, and they offer to pay for it. If you compare this listing from my claim, you'll find it is precisely what they offer to pay except for one, the largest item, lost egg production, which is on next page.

4. The argument is irrelevant because there is no comparison between immature pullets and laying hens, because there is nothing to indicate the magnitude or the cause of the fright referred to, and because it is, from the material I sent them, false. The real fact is that no expert could say there could have been all the damage admitted with none on the laying capacity. The cited opinion of the AF vet could not have been more irrelevant because it refers to chickens already laying and is of dubious basis in any event. ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

2/9/61 Wright-Patterson JAG to HQ USAF. Note that 2 says they lied in denying the boom occurred. They knew they lied and yet acted based on the known lie. So, in 3, they switch to whether the boom was "the proximate cause".

As to damage, note this language in 3:

"It could unquestionably result from an isolated low level fly over." I think this, in general, is all the proof we need in the other cases, if not also in this.

I am going into this to give you a case in point. On the one hand they acknowledge all the damages I allege except loss in production, including losses in chickens, ~~not~~ yet to strain for a basis to refuse paying the claim, they argue "the lack of evidence of a severe 'pile up' among the flock." This notwithstanding admitted losses in five different flocks for which, in their amendment, they agree to pay!

This gets really crazy in the allegation that the ~~chick~~ chicks were sick with bronchitis, which they never had, ~~and~~ ~~that~~ ~~the~~ ~~state~~ ~~vet~~ ~~showed~~ ~~no~~ ~~sickness~~ ~~of~~ ~~any~~ ~~kind~~ ~~and~~ ~~I~~ ~~never~~ ~~alleged~~ ~~they~~ ~~had~~ ~~bronchitis~~ ~~or~~ ~~had~~ ~~it~~ ~~as~~ ~~a~~ ~~result~~ ~~of~~ ~~the~~ ~~boom~~. Moreover, I have already cited the letter reporting repeated examinations by the state vet showed no sickness of any kind and I never alleged they had bronchitis or had it as a result of the boom.

See on p. 10, 4/10/60

6/10/60 Disposition form, to base vet. This form is incomplete, so what base is not indicated and the answers are incomplete, ending in an incomplete sentence. Because of what he actually says and the misrepresentation of it by others afterward, I think we should ask for the entire thing. From the language I will quote, I think you will agree that if the omission is accidental, it is a remarkable accident. In what follows, I will add emphasis.

- "1. Request your professional opinion to [sic] the following questions:
 - a. Could the injection of live virus vaccine cause the results alleged in the attached letter?
 - b. If the answer to the above is negative, could the vaccine, if contaminated, ~~cause the results as alleged?~~

"2. ~~Request any other additional information you can furnish concerning the problem as alleged?~~
There was no "injection", which involved individual handling and extra stresses.

It was not as assumed, a live-virus vaccine, but as my claim clearly shows, something much different, an "attenuated live virus vaccine". This means it was weakened, diluted. "Contamination" is carefully controlled by the government. All vaccine was licensed and produced under supervised conditions that made this a frivolity. Besides, there was an exceptionally clear medical record on this particular flock: no sickness, no infection, and tests so fine they included even brain-tissue cultures and studies. The State was baffled and went to this extra trouble. The physical health record was exceptional, that good.

So, an entirely irrelevant situation is presented, factually incorrect to boot. The answers?

1. The worst that could be expected is "It is possible to get a mild respiratory symptoms after vaccination...." and when this guy is stretching to make it possible to allege what is later alleged, the most he says is that "it is possible to get the adverse results...allegedly blamed on the sonic boom if care is not taken in the choice of vaccine and in the method of application."

"Mild respiratory symptoms" five month before production are here, meaning in relation to the claim, irrelevant. Some vaccines are supposed to have this result. The symptoms, meaning sniffing, as ~~from~~ from a cold, in the absence of a disease, can indicate no more than that the vaccine "took". You should realize that in all of this they never asked and didn't ever know what vaccine I used. MY claim makes repeated and successful use, with no adverse result ever, clear. And I, of course, was not the only user. This in itself takes care of the hedging, "if care is not taken in the choice of the vaccine". Actually, I used only a mild one. But nowhere is "the results alleged" indicated or described. I claimed deaths from trampling. From the vaccine? Physical inability to lay eggs. That is something I don't believe was ever attributed to a vaccine, especially not so long later. "Care" can't refer to a federally-licensed and sale-licensed, approved vaccine, especially not an attenuated one. "Method of application"? Note they says it was injected, it ~~was~~ Without checking records I can't be sure, but I am certain it was in liquid form ~~for~~ top in a nostril or more likely, merely in the drinking water. So, "method of application" also is out, irrelevant. This would be true even if I had injected, for the vaccine ~~could~~ would have run out if I'd ~~administered~~ administered too much. It came in measured quantities.

In 2 he says he can't ~~answer~~ answer: "It is necessary to know what vaccine was ~~used~~ used and the method of application before I can determine if the vaccination caused his troubles." They never asked, as this file in itself proves. Instead they misrepresented this opinion, never dreaming we would ever see it. "Also, I must know whether any other diseases were vaccinated against at the same time." For your information, the answer is "no". But again, I was never asked.

"3. Excluding vaccination there is the possibility that these birds were coming down with "infectious Bronchitis..." Not only never asked, but the record submitted is contrary: no sickness of any kind-ever-State lab certified.

"4. I must agree that it is possible for chickens to be frightened to the point

of self-destruction, that eggs may not hatch and that egg production will be". Here it all ends. Regardless of what may follow, and I'd sure like to have it for the major issues, it is clear that he is saying that my claim may be valid and probably is with a sonic boom.

If you or Mr. Lewin will examine the representations of this, based on which lawyers and higher authority acted, you will see it is, at best, not faithful. It is really, I think, deliberate deception. The evidence I submitted is not only not refuted, it isn't even addressed. The answer, of course, is in the handwritten note, that as a matter of policy they will not pay damages because they prefer the fiction that there are none.

Undated, incomplete copy of what is not the original of the first page of my claim.

1/26/61, Col Lee, Staff JAG, to Dover AFB ar to MAJ Claim. It attracts attention to what has been underscored in red in my letter, impossible to isolate in the xerox, and asks for "information regarding claimant's statement". Preceding this in file, I recall nothing that could be the response. Nothing addressed to Lee. In 2 they almost demand a statement that my allegation be denied when in fact it was true.

1/31/61, 1st Lieutenant Heimert, AF Hq, to Secretary (really!) Air Force affirming the correctness of all the falsehood, concluding "It is recommended that the appeal be denied." By this time the falsehood was known, and it was admitted in a matter of days, in the letter of 2/9/61 above. Butt affirmed the same day, next page. That is pretty fast. Heimert writes his letter 1/31 and the same day Butt says—and this is complete — "The appeal of Harold Weisberg has been presented to the Secretary of the Air Force under the provisions of 10 U.S.C. 2733 and has been denied." I had no idea the letters got written so early in the morning and that the Secretary of the Air Force had nothing else to do so he could read, deliberate an act on this thick file, with enough time left for the shuffling papers to get back to Butt through the regular mail or by messenger with enough time left for him to make a record—all in a single day! And still have time to write me the same day, which is what follows:

1/31/61, Butt to me. This is the letter I skipped to refer to earlier. Remember, Harvey, the date is stamped on this. This means it was both dictated and typed — all in that one day, 1/31/61. Guess the entire Air Force did nothing else that day? It is the letter falsely saying their investigation shows no sonic boom when it did. It also falsely says it is the final administrative action, soon enough proven by them to be false. (Next is a duplicate of Heimert's of 1/31/61 above, also stamp dated 1/31/61. When you consider that Heimert was at Olmstead base, which is near Harrisburg, it is clear that my exaggeration of what was accomplished on that single day is not much exaggerated.

Frederick V. Miller, 1st Lt. and a vet, the conclusion of something else, probably the incomplete 6/10/60 Disposition Form. If so, something is still missing. It seems to say that egg production could be "decreased from a loud noise". It seems to pretend that once they forget about the noise, all is the same with the chickens, something chickens never learned and he surely didn't from experience. He goes into what we never had, like "thunderstorm losses", makes new ones not claimed for up, "suspended incubation trouble". Even I can't guess what that one is!. And I can do some guessing, too!

6/29/60 A t/Sgt says he was told there was no boom. Great proof!

6/10/60 Dover AF Base, which confirmed the boom, asking Fort Lee Air Defense Sector if there was one and gets the 7/1/60 answer "This headquarters has no record of any 'sonic booms' on May 22 May 1959". Considering that they were farthure away than a boom can carry, little wonder!

7/6/60 apparent forwarding of foregoing to Dover from unidentified Captain Grahl, but it says it is "concerning the sonic boom on May 22 May 1959 near Hyattstown, Maryland", which is something less than a denial of it!

6/29/60, Grahl at Dover to Andrews, ~~now~~ transferring the claim to them. Same date, Grahl to me notifying me of the transfer to Andrews.

11/16/60, Lee to me, denying claim, the "infected" letter. Says it is "final and conclusive". Is it necessary to deceive and to lie to a claimant this way? It was anything but final and conclusive, as he admits, for I could appeal. (duplicated several later)

11/16/60, Lee to Andrews. "This long before I received any refusal, he says, in what it was never expected would be seen, "ample evidence appears in the file to support the allegation that a boom did occur (see newspaper clipping, Exhibit B)" So, they lied, to me and to all higher authority, including, apparently, the Secretary. Even the clipping, part or all of the "ample evidence", I supplied, from the Library of Congress.

"It is readily admitted that sudden loud noises do frighten fowl of all ages, sometimes causing them to crowd...many are suffocated....the statement from the Veterinarian (Exhibit F) indicates that fright from loud noises may ~~sometimes~~ result in the decrease of egg production, and eggs which will not hatch..."

Here is where he makes it up, their being lab reports, "It is also possible that this particular ~~group~~ group of chicks were already infected..." It is not that I had not addressed this, I had, at the outset, in person and in writing. If they doubted, they did not ask. Instead they fabricated.

He makes up another one. Where the eggs being set upon by waterfowl were broken or the fowl were so frightened they abandoned the nest, he says "it is alleged that the waterfowl eggs did not hatch..."

"Chickens are known to be, by nature, rather nervous animals, readily panicked by sudden noises." Ours were never, ever, bothered by thunderstorms, which is part of their normal lives, that to which, genetically, they are adjusted. So, he blamed it all on them and wild animals! inside such tight, closed houses as we had: "Thunderstorms, the presence of wild animals, and other similar occurrences can result in trouble for the poultryman and the incidence of such hazard is high". No doubt why we never had it? "It would be extremely unfair to conclude that claimant's damage arose ~~from~~ from a possible sonic boom..."

All this stuff about how easily chickens are frightened and damaged by the fright ~~is~~ is not what they have steadfastly pretended, nor is it what they told Thomsen in the trial.

7/8/60 Claims Office Major Hamilton, Andrews, to Chief Claims USAF. His recapitulation of "5. FACTS" is less than that. He doesn't even concede that the Post printed the story ("an article allegedly appearing in the 23 May 1959 Washington Post) with a copy in hand, from the Library of Congress!

While they ~~know~~ there had been a boom, "ample evidence" being their own description, they resort to the lack of knowledge alleged to a base more than 100 miles away to say that base alone "had no record of any sonic boom on 22 May 1959".

He then refers to the then pending suit. What he does not say is that in making this claim, I had told Dover AFB about that and had been careful to omit any loss in production to any other flock in this claim. It is 100% limited to the loss to this flock. Only chickens immediately damaged are included in chickens. When these are for as little as less than \$9.00 for a flock, can it be that I was cheating? For so small a sum?

Under "Citation of Authorities", b., he really stretches, using failure to damage a brick wall as a comparison and that not from a legal or scientific source but from an Air Force propaganda sheet I have, a public-relations dishonesty not uncommon and amply disproved since. Narvey: the government has outlawed sonic booms anywhere over US land.

Although the boom was confirmed, he pretends again that it was not and says "it is my opinion that the claim could be rejected on this basis."

He winds up by ~~repeating~~ ^{repeating} word for word, the ~~only~~ language of another in this file, the previously-quoted answer to 11B in the 7/4/60 claims report quoted above. (This memo is repeated below in a pink copy.) (An incomplete copy of my 12/13/60 to Air Secretary here, with notation original and two copies to Col. Lee.)

8/9/60 Colonel Averbuck (the guy who exaggerated and misrepresented the decision later) to AFCJA-13, in connection with this claim, ~~SEE~~ Subject: O.K. Farm v. United States. Several unclear documents follow.

11/21/60
This makes repeated complaints and the legitimacy of the complaint of low-level flights clear (but they are "authorized", as though that eliminated damage!) While a colonel actually saw low-level flights, they use the same device they did with me, asking other bases. Even then they admit that low-flying planes were observed by others nearby. This is by now redundant, but I repeat as evidence of their certain knowledge in these matters:

"The Chief of the Veterinary Group...furnished a statement...that premature moulting and impaired egg laying is possible as a result of infrequent noise..." This is added to by another AF vet, who says in addition that the noise may ruin a flock (Attach. 14, which may or may not be here.)

Next to the last page quotes this language from a Texas case, Miller v. Mapes, 278 SW 2d 385, 1954, "where physical injury results from a fright or other mental shock caused by the wrongful act or omission of another, the injured party is entitled to recover his damages, provided the act or omission is the proximate cause of the injury and the injury ought, in the light of all the circumstances, to have been foreseen as a natural and probable ~~cause~~ consequence thereof...." Here the AF itself adds that injury was foreseeable and that "an unauthorized low flight would be negligent".

7/8/60 O.K. Farm v U.S. "Information on the effects of high intensities of sound on poultry is lacking", the base and area veterinarian Major J.D. McCullough says.

"The only scientific work located" was the Stadleman report. It used tape-recorded sound, fairly continuously when it was played back. It was for broilers. At the beginning 31 days of age, ~~the chickens reacted violently~~ "they reacted violently". At 45 days "there was still some crowding." Decible level 20 lower at far end of pen used. Its conclusions include "loss...more likely to occur from an isolated, low-level fly-over than from continuous noises." It expects effects from "shadow or other conditions" with the reality rather than tape recording. This recap says nothing about mortality. It nonetheless concludes that such a "stress factor" or "annoyance" might be the one that ~~will~~ "will send the chickens into a slump when added to other stresses". This is to say the chickens are getting along o.k. with the other stresses normal to their lives, but this one can tip the balance and throw them into "a slump", in egg production. It is specific in describing "Unusual noise that explodes into ~~panic~~ the flock into panic might be such a stress." This also is what I alleged in the claim, and they accepted the fright and considerable damage as realities.

6/12/59 Kelly AFB Base Request for information from Texas A & M Poultry Dept. Damage claim from hatching-egg producer for meat chickens from sonic boom by two planes. Harvey, meat-strain chickens are emotionally more stable. While only four birds were smothered, a premature moult was caused, in early summer, which would be quite early. Production dropped so much the entire flock of 1,000 was sold although it was only a little over a year old or at what would have been its laying prime. Quisenberry, head of poultry department, says the stress from the boom could have caused the moult.

The panic would have caused a drop in egg production.

This is restricted to meat-type layers. What it says that is relevant supports me.

7/29/60 Col. Lowre, USAF Claims, JAG, to Middletown, Olmsted AFB. re my claim, transmitted for disposition.

6/12/60, Major Jacobson, Staff JAG to Chief Claims, USAF JAG saying my claim is attached (it isn't here), reporting pending suit. First endorsement, same date, by Averbuck. He reports informing Army which "feels I that "it has nothing in common or pertinent to Mr. Weisberg's suit." Averbuck concurs that claim is separate and should be handled that way.

Undated memo on low-flying helicopters by Major W.W. Tomlinson, Office Secretary Air Force. It opens by describing me as "a wealthy gentleman chicken farmer who owns a farm on the direct helicopter route from the White House to Camp David and Gettysburg" (Have hower's farm at Gettysburg.)

It identifies blue as Air Force helicopter color.

7/20/60 Butt to Tax and Litigation Division asking if he can proceed to settle.

7/8/60 Hamilton memo for chief claims, duplicate of above. Attached are claim attachments as above, id, duplicate, both sets less clear. End this file.

Unidentified file that starts as though it is Leahy's

2/7/68 Cpt. Povney's memo on suit, on how long flight plans are kept and where and says all area pilots know farm and problem. There is an appended hand note signed RLP 2/7/68, telecon w/ Burdick, giving strange concept "damage criteria" considering regulations, decision, etc. "depend on whether area is congested", saying if plane is over 500' no damage recovery allowed. For helicopters, they are allowed to fly as low as possible w/o causing damage". Adds, "Burdick may want us to act as coordinator for services in this case. Will postpone that decision. If we accept, on request from VGL, we will have to find a "chicken expert" In all those years the services had made no effort to find out what happens to chickens after what I reported in overflights and damages, so long after I filed claims, after the first suit?

5/6/68 Capt. Burtis, Army Claims to chief. Litigation Division, OTJAG saying it encloses "the claim of Harold Eisberg who recently [sic] filed an action in U.S. District Court" and that "The file contains all the evidence obtained from every source which is in the possession of this office." It will be interesting to see what "all the evidence" is.

7/3/64 Taft's letter to Leahy charging alterations in ~~transcript~~ transcript of 3/10/64 meeting and saying it had been agreed "you would have to hold off administrative action with respect to the claims ~~already~~ already filed." Leahy's response is not next in the file.

He has annotated it: "Heartening News! L". This, I think, bears on the note I made earlier that instead of settling this matter as had been agreed and trying to end the problem the military had determined to use me to undo Judge Thomsen's decision, which they didn't like and about which they had cracks to make.

Bearing on the running of the statute, this hand note at bottom of first page:

"Suspend file to 1 Jan 66" and "File"

Can they have agreed to this and now alleged the running of the statute?

7/7/64, Leahy to Claims, Molabird and Staff JAG, Hq, Second Army, returning "enclosed correspondence in connection with the reporting by Mr. Harold Weisberg of alleged violations of regulations by helicopters...not within the ^{area of} responsibility of this office" but is Second Army's.

1 July 64 so pale as to be illegible, Hucala to Leahy's office. It says their correspondence on this matter begins, as best I can make it out, July 28, 1958 and refers to their correspondence of August 1963 and December 1963. We, therefore, should have their files going back at least to 1958.

It forwards my attached letter. My letter is not attached here.

1/6/64 Leahy to me, almost illegible, it is copied so pale. A note at the bottom of the first page seems to read "Suspend". Whereas he concludes this by asking that I "henceforth direct all communications concerning your existing claims to this office", he told 2d Army something different 7/7/64, above.

Apparently undated Disposition form memo, four pages, by Leahy, to General Roberts. Subject is "Jurisdiction of the Department of the Army to Consider the Claims of Harold and Lillian Weisberg". Now this is between January and April 1964 items in this file. If it is not until that late date that Leahy addresses "jurisdiction", what about the agreement between the services, independent of me, that the Army would take jurisdiction for all, made almost two years earlier? *from AF & Navy Department, above*

Note "consider", odd usage at that late date, it seems to me.

Opening, we are "operators of a de luxe poultry farm". They therefore should not contest our claim to such a quality. His interpretation of 22 claims is that they allege "Damage to us and to our poultry by military aircraft" going back to January 1959 to the present, i.e. on or about 22 July 1963."

It is my recollection that we went back only two years from the date of the Pentagon meeting of 1962 on the date of filing, merely a day or two later, not to January 1959. However, I also note that he fixes this date in case it later has significance.

He concludes this paragraph, "The claimants ~~have~~ failed to submit any adequate proof

to substantiate their claims."

"No matter how one interprets his words "any adequate proof" or what he may have had in mind in selecting these words, they have to be both dishonest and designed to misinform the top brass. This was addressed to a general.

First, there was an agreement with the Army and the other services to negotiate these matters, to reach an amicable settlement with impartial experts agreed upon to assess the damage, and then there was proof submitted, described as more than enough by the JAG officer who selected what he wanted. In addition, there were the regular instalments of the logs that I gave the government, in addition to the contemporaneous reportings of the overflights. And the government's own files show there were overflights, as the regulations put into effect show their recognition of the damage they were inflicting.

By this time Leahy had proof of everything except the amount of damage. This included the most detailed reportings of the overflights and proof that they had occurred, proof of damage by many eyewitnesses and the proffer of other proof, some supplied, like pictures. I had even taken injured chickens to the Pentagon almost two years earlier.

I don't think there can be any reasonable contesting of anything except the sums, and they were not only agreed upon as part of the projected amicable agreement, but in some cases were inserted by Army JAG itself. I left the sums blank so they could be filled in later as we agreed upon them. Colonel Taylor put them in in the first instance and Captain VanVorhis directed "11 to later.

Harvey, I note the above as reflecting on Leahy's purposes and intent, his determination to prevent the agreement we had agreed to seek - I had bound myself, in effect, to agree to the arbitration of the experts on this - really as what seems to be clear throughout these files, a determination not to pay any claims for any damages by aviation, the determination to pretend the fiction that there is never any damage from aviation, and to force this thing into court so they could overturn Judge Thomson, using us as their guinea pigs. Under some circumstances, this might be acceptable legal procedure, but I don't think it can be so considered when there is an agreement directed by the Secretary of Defense to eliminate the damages and the need for going to court.

Where I say above that Leahy had everything, I mean the Government had enough. What Leahy had I have no way of knowing except from this file. He may not have been given all the affidavits VanV took, the logs or the pictures. A hasty skimming of this file so indicates. Yet at the beginning, 5/6/68, his Captain Burtis refers to its having "all the evidence obtained from every source". Claims knew of the things mentioned directly above, so if they did not have them, they also knew they were in the government's possession and didn't want them.

The conclusion of his Paragraph 2 ^{is} directly opposed to the Pentagon agreement and he also knew it, as the Army had been part of it. Even Army JAG inserted the sums.

In 3 a he describes the Thomson decision as "properly predicated" under Maryland law. In quoting the Maryland statute he has underlined as follows: "is prima facie liable liable for injuries to persons or property on the land..." He underlines this again on the next page, Under Jurisdiction of the Army.

I think you should note his quotation of the statute there. It bears on the government's interrogatories. It actually said the government is liable if they are only in part responsible. This addresses all claims to sickness, etc., as they alleged in the single sonic-boom claim, where it wasn't so in any event.

He then quotes Section 8 of the Maryland Code that, in reading, I think can be fairly interpreted as significant in the personal-injury part of our claim, esp. after the first suit: "...as to be imminently dangerous to persons or property..." This clearly does not mean only by the airplane crashing and smashing us up in the crash. It is in terms of a completed overflight, not a crash. How except as I have alleged can such a flight in the language of this law be "imminently dangerous" if physical contact is precluded by the language of the law?

In the face of his own interpretation of the law and the decision in the next paragraph, "prima facie liability", I fail to see how he could in good faith have decided and written us as he did, rejecting the claims as he did.

Two copies of an illegibly-dated Leahy letter to me, apparently in January. The second has an illegible note in the lower-left-hand corner. In it he asks for what I had already supplied, pretending I hadn't, and for what we had agreed to negotiate with impartial technical experts.

1/30/64, General Williams to Leahy, re next Pentagon conference. They want Morse and Sec Defense frozen out, "the preferable action would be not to involve Mr. Morse in the conference." This memo was read by phone to get to Leahy, not awaiting mailed receipt. Word for word. Typed copy ~~xxxx~~ initialed "L"

Undated draft of letter to me, with hand note "Not used-sent to Washington 30 Jan 64" (

Undated Burtis memo shows Chamberlain confirming my report from contact with the pilot and is obviously wrong in distance and has ~~the~~ ^{the} elevation above ground admitted to be no more than ~~2,000~~ 500 feet.

1/27/64 Thompson's Memo for Record. From this they even lie to Generals ("The operator ~~had~~ been identified as a new pilot who had not received instructions". Above says not new pilot. But does it mean anything except negligence when there are regulations, standing instructions and a clear and existing problem? This quotes me as saying I would shoot the next one down. I didn't and had no way of doing it anyway. Unless a 22 pistol, an antique, had the capability.

Lt Huyett's memo that 1/24/64 on their not taking my call. Thompson's office.

1/22/64 Leahy to me asking that I give him "information ~~me~~ on the agreement between you and the government". Days copy sent to Morse. Look for in his file as test of completeness and to see if he annotated.

1/15/64, me to Leahy.

1/9/64 Leahy to me

Capt. Jabez Loane IV memo of my 1/6/64 call on hc in distress

Burtis memo of his 1/3/64 conversation with Maj. McGrady, "to request the Major to check Lt. Col. William C. Tyrell's chronological files to obtain a memorandum for record which may have been made of the meeting held in April 1962 between Col. Haefle, Mr. Morse, Col. Tyrell and Mr. Weisberg"

*****Harvey None here. None anywhere that I've seen in these files. Is it possible that the Sec Defense orders such a meeting, so many colonels are there, and there is no record? Note also this Chronological file. I think we want it.

sent? Burtis memo of his 1/2/64 visit to Chamberlain. Chamberlain has a file. He asked Chamberlain for copies. If they have it and we have it, my log provides a means of checking its accuracy. If it is incomplete, then it means the Secretary of Defense, the claims people and we were deceived.

Negligence: Chamberlain had issued instructions to avoid us. But he kept getting calls, as this shows, proving that his instructions went unheeded. His records had to show if I reported actualities. If I saw helicopters, I had no way of knowing what he was sending where and obviously had to be telling the truth.

Says he knows of no emergencies. There were emergency landings of which he had to know.

2/23/63 me to Leahy

12/18/63 Thompson for Chief Claims, Weisberg file. Van Voris 12/12/63 memo of phone conversation with me attached. Referring to notes the Morse files contains, "There are indications that Weisberg was lead to believe that the claims would be considered administratively" Since they took claims form to the meeting and gave them to me, this is hardly meant to say or reflect no more that I "was lead to believe that the claims would be considered administratively". He then says, "I think we should reconcile ourselves to the fact that sooner or later we will be forced to adjudicate the

claims and admit there have been overflights in the past. We will have difficulty availing ourselves of the statute of limitations (probably) inasmuch as five claims were filed by 14 May 1962...and remaining claims were filed on or before 26 July 1963. Van V says I offered him film but he did not visit.

11/29/63 me to Leahy Illegible. Harvey, I think all my allegations and reportings should be checked to see what they do not dispute or respond to.

11/26/63 Leahy to us

11/16/63 me to Leahy

11/13/63 Leahy to us

11/1/63 me to Leahy Illegible copy. I believe this had to do with my offer of experts and no response after two letters and two calls.

10/31/63 Leahy to us

10/20/63 me to Leahy, initialled by him. Illegible, but note that this refers to what I made available to Van Voris, what he took, and I don't think it was ever denied. Just ignored to avoid doing anything.

10/17/63 Leahy to us

8/26/63 me to asst sec army.

Illegible in this copy, but my list of sonic booms, to Morse.

1/27/64 Thompson's memo on our claim (not claims) dupe of ~~above~~ above, with attachments.

8/9/63 Van Voris to "olabird" forwarding my "attached letters" and saying he does not recall any conversations with respect to recovery under eminent domain." Note he does not write this to me and did not answer letter.

My attached letters of 7/27/63, 8/3/63, 7/19/63. Note on last, apparently in Leahy's writing, of a George Holler 2444 1st. Rev. Service, Balt. These unanswered letters clearly show I was proceeding under a re-iteration of the original agreement.

10/17/63 Leahy to us. No refs to correspondence with Van Voris showing I was proceeding under the agreement, and pretends otherwise. There should be a copy in the Morse and other files.

10/3/63 me to Morse. Refers to health problems, viciousness of chickens, ~~in~~ includes picture of damage, request for return underlined. I don't recall getting back. It is not here.

12/24/63 Van V. to Chief Claims, clear copy. Harvey: comparing this and my unanswered letters to him above should make such clear, as well as what was going on inside the army and behind our backs. Affidavits he took from my files attached.

5/23/61 Stearns, Navy JAG to Orick, DJ says cognizable under military claims act. but not Ports. Memo attached on this.

Morse note to Tyrell forwarding "additional notes", form 95s from me and offering those of past.

Harvey, these are copies of the originals and as I said, I left out the sums, \$5,000, which is visibly missing. They are the ones who used Military Claims.

Handwritten notes about case on Broadmoor Apts pad

4/27/62 memo about call from Col. Taylor on 1st Pent. Meeting. Taylor told them to bring claims forms.

8/23/63 Leahy's jurisdiction memo. w. attachments, duplicates.

7/16/63 Loane to Van Voris forwarding files, asking return...

Handwritten notes by Leahy on reports call to me

Harvey, several points re the last notes in the Leahy file.
They claimed I not they chose Military Claims Act. Leahy actually claimed at the meeting where they changed the transcript, that they had not filled the amounts in, and I think what was eliminated had to do with my pointing out the difference in the colors of ink and handwriting. Also on was there an agreement. This seems to say there was, that Chamberlain was to admit ~~them~~ disprove. Well, the last thing on this last note if you do what I did, overexpose it. It says, "Col. Haefle, I called Weisberg who is writing to give me figure for amounts." Lt. Col. ~~Tyrrell~~ Tyrrell. 10 May 62. I wrote Taylor. They wrote the figures in pursuant to the agreement at the meeting.

Department of the Army File? pp 19-20

12/11/63 Deputy Army General Counsel R. Tenney Johnson's memo for JAG forwarding attached Morse file. 20

11/29/63 Morse memo (carbon) for Johnson enclosing my letters to him of 11/7 and 16 and two of Leahy's to me. This says he is giving Johnson "all my correspondence and memos... Particularly note Mr. Weisberg's records of overflights submitted with his letter of May 5, 1962 and my notes of a meeting of May 3, 1962 between the services and Mr. Weisberg." Among the meanings of this is that I did submit some proofs, they had them, Morse attached special significance to it, and he did make notes of the meeting. I have not seen them yet and did not in skimming. He particularly does not dispute my comment that what Leahy wrote bears no resemblance to our agreement, and that I can't understand it.

My 11/16 to Leahy emphasized there is much he seems not to have that I have given (it turns out he did have it and lied) and I emphasize the hazard of all of this to our health. I again ask for a conference. (I sent copies to Low 11/16, copy here)

Sec Defense Routing slip dated 4/24/63 1:30 p.m. with brief summary of May 3 mtg, copies to Vance, Niederlehner, others named, with handwritten notes on back. Called "Action Copy" with action not later than 4/27/62. Except that they were to let me know if they agreed to my experts as impartial, this is pretty much what we agreed to as I recall it and of what it mentions that we agreed to. I am sure I raised this same question of agreement on experts with Morse later and with Van Voris, in writing not answered.

Harvey, I think you should take this apart and copy. You told me not to take apart.

Aside from confirming me, it shows other files not given to you, at least 5 plus the two above, or eliminations, or both.

My 4/17/62 letter to McNamara, annotated. Harvey, please note that on page 1 I ask them to make an immediate inspection to see the damages for themselves. Never done. Much later Low came closer, and I've seen no report from him. Van V refused, as his own 7/24 memo of the next year reflects. There should also be answers to the questions asked in these notes. Request for inspection repeated page 2. Note what I invite, even pathologist to post chickens. I even suggest experts to use, including out of Maryland.

Morse's 5/9/62 confirms that we had an "understanding", that I had begun to comply with it, and that he had passed my claims on to Army JAG ~~with a request~~ "with a request that appropriate action be taken". Looking at those claims, appropriate action can mean only my interpretation of the agreement, that we were to get together and work it out amicably.

Because my long May 5 letter is so long and because you have paperclipped it all together I'm not slowing down to go over it now. A glance shows it to be specific and detailed, even with the names of witnesses.

Note that Morse doesn't question the overflights but admits them, as happened at the meeting.

My short May 5 with log. It also is clipped so I leave undisturbed.

8/1/62 Morse's letter for McNaughton's signature, copies to two others whose files are not here, referring to two of my letters not attached. I think you should pay close attention to what I take to be admission of continuing overflights, last paragraph.

7/28 me to Morse reporting I don't yet have the necessary claims forms I'd asked for and the initiation of the obtaining of experts as per agreement.

7/28/62, my answer to McNaughton's 7/12, not attached. Niederlehner's copy.

7/25/62 USAF Col. Woodbury's Memo "Helicopter Overflights". Refers to memo of 7/20, which ~~is not attached next~~ is not attached next. Note that 2. reports pilot observation confirming my report from 10 miles west of our place, in air.

Undated Army Mil. Operations memo to Morse. Order to avoid us by five miles and stay 2,500 feet up except in emergency.

7/20/62 Stempler to Army Chief aviation affairs forwarding my letters

my letters

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4/9/62 McNaughton me, b.j.
4/17/62 McNaughton to me, by Morse, admitting "relief you sought has not been obtained".

Action letter or Sec^uef. Memo calling for action by 7/19/62. Copies indicated to a number whose files we do not have. My 7/12 follows (2 copies). This again notes adverse effects on our health, calls it greater danger.

My 8/4/62 to McNaughton marked "sonic boom" and "no answer required". Yet this points out they replied about flights other than I reported and therefore they have not been given responses. Harvey, note that the AF did see one I reported and approximately where I reported it. Noted above and earlier. (2/25/62)

9/25/62 McNaughton to me. This mislocates our farm but reports orders to avoid. Or, in effect, helicopters routed over us on purpose.

9/10/62, Chamberlain to Stampler (three copies p.1), re overflights, re Stampler's 9/4. Stampler's does not follow. Note two of his recommendations: this be handled on higher level and have FAA declare our farm "a restricted area".

5/4/62, Asst Adj. General Lt. Harris M. Richard to Davison C.O. establishing restrictions, 5 miles, at least 1,500 feet above terrain

11/5/62 AGC Major W.D. Wassel to Davison C.O. repeating above and precluding Presidential's except when necessary and then only with elevation 2,500 above terrain, but when this is done it must be reported promptly. The AF report above proves this also wasn't done.

9/4/62 Stampler to Chamberlain, attaching pictures I provided (not attached). They were with my 8/24 to McNaughton, which also describes. It follows. I see nothing to respond to S's request for information for reply re pictures if anything.

Map of directive with interesting note, including "this is permanent".

11/21/62 Morse to me, referring to Low's visit and forwarding copy above. Only very unusual conditions can justify violation. ("directive in nature").

9/28/62, me to McNaughton. I report mislocating of our farm after all that had happened. "John", who I take to be Niederlehner, added note to "Jack" (McN.), "Had we better not get out of this exchange?" I also cite specific violations, including one emergency landing I recall clearly.

Several duplicates.

1/14/63 me to Morse, reporting more violations.

12 pages relative to the sonic-boom claims of Mrs. Franklyn Smith.

3/4/63, FAA Regional Counsel Martin J. White to ~~State~~ Sec. Defense re my complaint. Illegible copy follows, plus White's 3/4 to me

5/9/63 Col Sidney Barry's Memo for record re my 5/8 call. Note added says WH he's complying, which is false. 5/14 reply by Morse.

8/9/63, Leahy to us. Harvey, please note handwritten additions backing out of the agreement

7/10/63 me to Morse listing sonic booms. Note of 7/15 referral to OP NAV

8/21/63, Morse to me forwarding sonic-boom propaganda and saying Leahy ill.

10/17/63, Leahy to us.

10/20/63, me to Morse. Note says answered by phone.

11/1/63, me to Leahy. Last in this file.

These appear to be duplicates. However, in going over them, I note what might be significant on the 7th sheet, ANWAV (9 August 62), seemingly from headquarters, Military District of Washington, to Commander, U.S. Army Command. It says about my complaints about overflights, "1. Action relative to overflights ...was first initiated by this office on 4 May 1962..." Now I had been in touch with them beginning in 1955 or 1956, and if it was not until my May complaint and action ordered by the Secretary of Defense, not in response, say, the the decision in the first suit, of which we now know there were very much aware, does this not raise a question of added negligence?

The third from the last is a Chamberlain 5/29/62 memo listing five flights from March 16 to 29 that coincide with my complaints. So, I couldn't be making it all up, anyway.

It might be worth checking the log to see what percentage of the flights I have noted for those two weeks this comes to.

The last two sheets are a record of a complaint in which the hazard to my wife and the fright to the chickens is clear and where even in Chamberlain's attacked attempt at justification, it is clear that the regulations were deliberately violated. His explanation is that "However, this was an official flight and necessary to the best interests of this unit's mission".

Would this, for example, justify landing on one of the buildings? How can such a contraption justify violation of their regulations? His report has to be distorted to falsify, but it remains an admitted violation of regulations that were to have been "directive" except for emergencies, and this a year and a half later.

How much of this is required to constitute a "taking"? I think with chickens, very little.

4/30/73

I intended these to cover all possible uses and needs, beginning with an accurate and complete inventory. In-court use, search for more discovery material, motive in what the government did to use and in the legal areas, what could be significant to the judge, etc. So, they are much more voluminous than your immediate interest, in addressing the running of the statute move. Here I do want to note that after I sent you several copies I found a memo in which they address this from the other side, saying that I had stopped the statute, so they could not plead that. It may not be possible to read and correct all I have written, but I am now commencing, and I'll attempt to isolate what I noted that could be relevant to your immediate interest. I have used devices in seeking to attract your attention in these 20 pages, like asterisks in the left margin.

I also will not have time to check, but from my recollection of Morse's description and Major Briggs, this can't include his files. There are others who had files, disclosed in these records. From what Both told us, the volume of Morse's files alone exceeds what you have been given.

Only if you can find the time to read all these records can you form your own opinion, but it is mine that regardless of how incomplete these are, there was a fixed determination not to pay us anything, not to acknowledge that such damages can happen, and that whatever was done was done pursuant to this pre-determination. And that especially because of what Judge Thomsen said of me in his decision, they decided to use me as the guinea pig in seeking a reversal.

I have a carbon of the attached pages. I will not have copies of the documents.