

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff

v.

Civil Action No. 2569-70

GENERAL SERVICES ADMINISTRATION,
et al.,

Defendants

Washington, D. C.
June 15, 1971

The above-entitled cause came on for Hearing on
Defendants' Motion to Dismiss before the
HONORABLE GERHARD A. GESELL, United States District Judge.

APPEARANCES:

HAROLD WEISBERG, Pro Se

ROBERT M. WERDIG, Jr.,
Assistant United States Attorney,
Counsel for Defendants

PAGES: 1-24

IDA Z. WATSON
Official Reporter
U. S. Court House
Washington, D. C.

COPY FOR:
MR. LESAR

4A

P R O C E E D I N G S

THE CLERK: Civil Action 2569-70, Harold Weisberg v. United States General Services Administration, et al. Mr. Harold Weisberg, pro se. Mr. Robert M. Werdig for the Defendants.

THE COURT: This is before me on the Government's motion to dismiss and in the alternative for summary judgment.

MR. WERDIG: I suggest the Plaintiff previously filed a motion for summary judgment.

THE COURT: Do you want to argue first?

MR. WEISBERG: Yes, sir.

THE COURT: Go ahead.

MR. WEISBERG: Your Honor, this is, in my case, a simple case complicated by the nature of the defense. The action is brought under the Freedom of Information Act.

Under this law, it is mandatory for the Government to produce public information except for the clearly specified provisions. These exemptions cover material that the Government is not required to produce but may in its option produce.

To this point, the Government has not denied the applicability of the law, 5 U.S.C. 552, and I don't believe it can; nor has it invoked any of the exemptions. I believe on this basis alone --

THE COURT: They say in their papers that what you want with respect to President Kennedy's assassination is not a

record within the meaning of the Act.

MR. WEISBERG: Your Honor, I will address that separately and perhaps, if you would prefer, I will do it right now.

THE COURT: You go any way you want to go.

MR. WEISBERG: The point I wanted to make is whether or not they say that -- they don't say the Act is not applicable and they don't claim exemption under one of the exemptions.

The law requires that it be produced unless one of the exemptions is invoked.

Now, I think the next thing I should explain, Your Honor, is precisely that which I do seek, because I think it might be difficult if not impossible to learn it from the nature of the defense's pleadings.

What I seek is the official evidence of the Warren Commission in the form of photographs because the evidence, itself, is a tangible object.

What I have here, Your Honor, is Volume 2 of the Warren Commission hearings; and I am going to read Your Honor the language from the hearing of March 16, 1964. Arlan Spector was the Commission counsel conducting the examination.

"Mr. Chief Justice, may it please the Commission, I would like to have identified for the record three articles on which I have placed Commission Exhibit numbers; 393 being the coat worn by the

President, 394 being the shirt, and 395 being the President's tie, and at this time move for their admission into evidence.

"The Chairman: It may be admitted.

"(The articles of clothing referred to were marked Commission Exhibits Nos. 393, 394 and 395, and received into evidence.)"

So what I am seeking, Your Honor, regardless of any other description given to it, is copies of evidence officially before the Warren Commission, a published, official proceeding.

Now, pictures of those items of clothing and -- Your Honor, I have not sought to encumber the Government. For example, I have not asked for pictures of the coat of any kind. And further bearing on this, Your Honor, in Volume 17 of the hearings, a table of contents: 393, Coat worn by President. 394, Shirt. 395, Tie.

Now, these are reproduced, Your Honor, but they are reproduced in a manner that --

I would like Your Honor to take a look at it because I think it is relevant in this case. If you will turn the pages, Your Honor, you will come to it.

THE COURT: You go right ahead with your argument.

MR. WEISBERG: Now, what I have asked is two things, Your Honor, and only two things, regardless of what is said in any other pleading.

These pictures were so utterly meaningless that the National Archives -- and you will find this confirmed in writing in the appendages to my pleadings -- found them totally valueless for research and took pictures of its own because these could not be so used.

One of the things I seek is copies of the pictures the National Archives has taken.

The second thing I seek are pictures to be taken consistent with the needs of my research, as stipulated in what the Government claims is a valid contract with the Kennedy family, of these objects of evidence.

Now, the contract, itself, is very clear on this point, Your Honor. It has two provisions that are quite relevant, and, if I may, I would like to read them.

The contract also is in evidence. Assuming the legality of the contract, the Government does -- I think there are illegal provisions in the contract.

"Access to Appendix A materials."

Perhaps it would be better, Your Honor, if I read a description of Appendix A materials because, here again, -- let me begin with this.

THE COURT: That includes the President's clothing, as I understand.

MR. WEISBERG: Not only that, but by Commission Exhibit numbers. It never refers to the President's clothing.

First item, 393, 394, 395.

THE COURT: That is another way of saying the same thing.

MR. WEISBERG: Except, Your Honor, the Government denies this is evidence.

Now, two provisions of the contract that I think clearly are my way, if the contract is valid.

"Access to Appendix A materials shall be permitted only to:

"(a) Any person authorized to act for a Committee of the Congress;

"(b) Any serious scholar or investigator of matters relating to the death of the late President for purposes relevant to his study thereof.

In order to protect the materials, there is a separate provision, and I will read that, Your Honor.

It is III.

THE COURT: Wait a minute. You didn't read all of (b), sir.

MR. WEISBERG: That is correct, but I read all that was relevant. Would you like me to read all of it?

THE COURT: I just want you to know I read all of it.

MR. WEISBERG: I am glad you have, Your Honor.

THE COURT: It says:

"The administrator shall have full authority

to deny requests for access or to impose conditions he deems appropriate."

MR. WEISBERG: For what purpose, Your Honor.

THE COURT: "In order to prevent undignified or sensational reproduction of the Appendix A materials."

MR. WEISBERG: Yes, sir. I will come to that separately, if I may, unless you would like me to address it now.

THE COURT: No, you go right ahead.

MR. WEISBERG: III, Provision 1, Page 4:

"In order to preserve the Appendix A materials and the Appendix B materials against possible damage, the administrator is authorized to photograph or otherwise reproduce any of such materials for purposes of examination in lieu of the originals by persons authorized to have access pursuant to Paragraph I(2) or Paragraph II(2)."

Now, I hold this clearly covers me, Your Honor, because while the Government, in a facetious moment, claimed it had no knowledge as to whether or not I am a writer, it has full knowledge of this. The Archives has. It makes my books available. General Services have bought them for the Lyndon Johnson Library and in many other ways I have set forth in previous pleadings.

I think this is a good point to go into the

sensational and undignified matter.

One of the appendages to my replication is a letter to me from the then Archivist, saying that I had been denied access to this contract.

I am the first one to have asked for this contract, Your Honor. When it appeared in the papers, I went and saw Dr. Bahmer, who was then the Archivist; and he forwarded my request to Mr. Marshall, the representative of the Executors. I was rejected.

That letter is in evidence. The basis given, and later in correspondence confirmed by Dr. Bahmer, was that any use would lead to undignified or sensational usage of this contract.

The first time someone who did not have a position contrary to that of the official one asked for it, it was declassified and given to him on an exclusive basis.

It wasn't even mailed to me until a week after his copy appeared in print. I have appended his copy to my complaint as I appended the original of this.

This is consistent with a long experience between me and Defendants, Your Honor.

We overlap here to a degree with the rights of privacy. Another reason given is the rights of privacy.

Now, if Your Honor would like to see it, I have with me forty pages just declassified of the most private nature about Marina Oswald, all about her pregnancy.

THE COURT: I am not interested in her pregnancy. I am interested in this lawsuit. That is the only thing before me.

As I understand it, you have been told that you can see photographs of these exhibits. Isn't that so?

MR. WEISBERG: I have been told that I can see them at the National Archives.

THE COURT: That is right.

MR. WEISBERG: But there are two disadvantages to this, Your Honor.

First, the law requires providing of copies. The Attorney General's memorandum requires it. The various legal citations that I have provided require it. The Archives' regulations require it, including one they did not provide to this Court, and I would like to read it because it relates to the Kennedy archive.

As a matter of fact, Your Honor, not only was this not supplied to me on request but when I sent someone to the Archives, knowing that they delay indefinitely making a response to me, he was told that after this action was filed that no such regulations exist.

It is entitled, Regulations for Reference Service on Warren Commission Items of Evidence.

I remind Your Honor, I am asking for access to two items of evidence. The second item is:

"Still photographs will be furnished to researchers in the research rooms of the National Archives Building. When negatives are prepared incident to filling requests for copies, the negatives will be retained. Copies will be furnished on request for the usual fees."

And at the very end of the sheet of paper, Your Honor:

"Researchers will not be permitted to view the encased items unattended or to touch or handle in any way the items themselves either manually or with instruments. To the extent possible, the photographs of these materials will be furnished to researchers as a substitute for visual examination of the items themselves. In the event the existing photographs do not meet the needs of the researcher, additional photographic views will be made. A charge is made for unusually difficult or time-consuming photography. Photographs reproduced..."

THE COURT: Isn't that what they have said they are going to do for you?

MR. WEISBERG: Except for one thing, Your Honor. They will not provide them to me and they have --

THE COURT: That doesn't say they will provide them to anybody.

MR. WEISBERG: I beg your pardon, Your Honor.

Item 2 says they will be provided on request for the usual fees.

THE COURT: That is the original photograph that you didn't like, isn't it? Not the ones specially made for you.

MR. WEISBERG: No, sir, that is one of the two things I am suggesting that they refused me.

THE COURT: Not the one they specially made for you.

MR. WEISBERG: Your Honor, I am asking for two things: Those photographs that the Archives took because the ones taken for the Warren Commission were inadequate, and views not yet taken that I need for my research.

In reference to the first one, they have refused me copies. This is specific and this is the point I was making earlier, when I said how difficult it is to find out what I seek from the nature of the defense's pleadings.

Another regulation of the Archives -- I am reading from Page 7105-61-105, Copying Services.

"The copying of records will normally be done by persons with equipment belonging to the Service. With the permission of the Director, researchers may use their own copying equipment,..." and so forth.

One of the points made is in some way I represent some jeopardy to this evidence by wanting to make my own photographs. I specified which of the Archives' cameras they should use.

The evidence is so clear.

There are other regulations covering this.

THE COURT: I want to know what this case is about. You tell me now what it is that they have refused to do.

MR. WEISBERG: They have refused to do two things, Your Honor.

They have refused to make copies for me of the existing pictures; and they have refused to take copies for me of those views which do not exist.

The pictures they have given me, I will be very glad to give Your Honor. They are utterly meaningless.

THE COURT: I want to know what you want, not what they complied with.

MR. WEISBERG: Let me narrow it even more, Your Honor.

All I want is a picture of any size of the damage to the President's clothing. Nothing else interests me except the evidentiary value.

I have made clear I have no interest in the sensational.

THE COURT: Did they not say that they would take that type of photograph for you and let you see it?

MR. WEISBERG: If they did, sir, that denies me the opportunity to compare it with the other material I have at home; and under the law I am entitled to copies.

THE COURT: That is the issue, isn't it? In other

words, they are willing to take those photographs and let you see them but they are not willing to let you take the photographs with you. Isn't that the problem?

MR. WEISBERG: Your Honor, I will take your word for that. I believe to the contrary, that they have refused to take the photographs I want. Perhaps there has been a last minute change in that.

THE COURT: Where did they refuse to do that?

MR. WEISBERG: Prior to the filing of the complaint. They may have subsequent to the filing of the complaint made that offer and I may have forgotten it.

We have had illness in my family. My wife is ill right now.

But the law is clear; the Attorney General's memorandum is clear, the Archives' regulations are clear. It is held and the Congress held that without the providing of copies, the law has no meaning.

Now, Your Honor, I want these not for a sensational purpose. I want these for study. The study of this kind of evidence requires lengthy, detailed analysis. It requires a consultation with experts. For example, a criminologist whom I am in contact with, with the one picture I have gotten from another agency.

It is just of no value to be able to go to the Archives to do it. I can't compare all of the things I have.

Your Honor, I don't know of a single exception of the law or regulations to what I have told you, that the law requires the providing of copies.

Now, one of the arguments of the Government is that I have stated a claim for which I am not entitled to relief.

Rule 8 of the Rules of Civil Procedure reads in part -- I will begin with:

"A pleading, which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim or third-party claim, shall contain a short and plain statement of the grounds upon which the court's jurisdiction depends."

And I provided that.

Subsection (c):

"A short and plain statement of the claims showing that the pleader is entitled to relief and a demand for judgment for the relief to which he deems himself entitled."

And I have already filed that.

THE COURT: What is the basis of this statement that you made in your papers that all of this material you want was given to CBS?

MR. WEISBERG: Your Honor, the basis of that statement was a letter to me by the man to whom I appealed, Mr. Vawter, I believe, I have it with me.

THE COURT: Who is he?

MR. WEISBERG: He is the man within General Services to whom appeal must be made.

Your Honor, after the expiration of the last working day of the time I had to file my reply, they then wrote me a letter denying all of that. But I had previously been told that they had taken these pictures for CBS. They confirmed it and they even offered me access in writing.

THE COURT: You mean they offered you access to the same material they had given CBS?

MR. WEISBERG: That CBS had taken. That may be in these papers, Your Honor. This is one of the papers I had so much difficulty getting certified as delivered to me.

THE COURT: While you are looking for that, I will hear from the other side and then we will see where we are.

MR. WEISBERG: Yes, sir.

MR. WERDIG: My name is Robert M. Werdig, Jr. I am an Assistant United States Attorney for the District of Columbia, representing the General Services Administration in this litigation.

Peremptorily, I must address the Court to the surroundings of this type of litigation, particularly as it attaches to the demise, tragic demise of a national figure, and the attendant public speculation, as well as the desire of those who ordinarily do research work to attempt to discover

what they feel are facts which support their thesis of how this tragic incident came about.

We are before Your Honor because Your Honor and this Court have been granted jurisdiction by the Congress to enjoin Federal agencies from withholding records which Congress has thought properly should be in the hands and available to the general public.

The Congress has instructed each agency to publish regulations, advising a member of the public who wishes to see a public document, how to go about that.

We submitted to the Court as an exhibit that document from Plaintiff which indicated what it was he wanted. We also supplied to the Court our response to that request.

Your Honor has had a chance, I am sure, to review the documents that have been filed. You will see that we have responded to each of the five requested items, one-by-one, seriatim.

The premise of our motion to dismiss was that Plaintiff has not been denied anything that he requested.

As to the characterization of a tag that was put onto these pieces or articles of clothing converting them into an exhibit for the purposes of this action, I suggest that the purposes for which these articles were used before the Warren Commission are entirely different from the purpose for which

they were given to the National Archives.

They are, as we have outlined, articles of historical value that have been deeded, given to the general public for protection as historical memorabilia. They are museum gifts; they are things to be preserved.

In that context, they are not records within the denotation that word has through the legislative history of prior Congresses antecedent to the passage of the Public Information Act.

We further suggest that we are not denying these requests merely because the Plaintiff is a writer. That puts him in no separable category from any other person who may have requested them. I think the Court understands that.

We suggest to the Court that we have provided copies of what we have available and subsequently have been advised that these weren't acceptable.

THE COURT: Well, you haven't told him he can take these photographs with him. That is his problem.

Item 1, for example, copy of the photograph taken by the Archives staff showing the front of the President's shirt. You tell him that he can look at it but you tell him that he may not take it.

Now, as I read the regulation, or listened to the regulation as it was read to me, there is no regulation that says that the Archivist is going to make available copies for

people to take with them.

MR. WERDIG: I have a little difficulty with that particular part of the letter, Your Honor. I cannot conceive of why, if we have a photograph, if he pays for or requests a copy of it, it would not be provided to him. But it would be an exact identical copy of what he was shown, if we have the negatives or if we must make the negatives.

THE COURT: As I understand it, he has asked -- and I grant you it is difficult -- for sort of special, loose photographs of particular portions of the documents; and the Archivist's regulations recite, they are willing to take those photographs and let somebody see them. They have taken such photographs but they won't let him take them with him.

That is what it looks like.

MR. WERDIG: I have some problems with that, Your Honor, and I also have some problems with the regulations which Plaintiff has referred the Court to.

I have at counsel table a Deputy General Counsel for the General Services Administration and he and I are both in sort of a fog about the genesis or effect of these regulations. However, we would suggest that under the Public Information Act --

THE COURT: I don't have any jurisdiction if these are not records.

MR. WERDIG: Correct, to force the Archivist to make

records.

We suggest if there has been a request made for these photographs, they have been supplied to him, regardless of the quality of them, or the sufficiency with which they meet his research needs.

Like a noted comedian says: What you sees, you gets. And what we have copies of, if he requests them and proffers the fee --

MR. WEISBERG: If Your Honor please, may I address that point?

THE COURT: Had you finished?

MR. WERDIG: I yield to him, Your Honor.

MR. WEISBERG: I would like to point out the difference between the second item of the answer that this Court has no jurisdiction and Mr. Werdig's acknowledgment now that this Court does, which means that the law does apply.

Now Your Honor asked me about the CBS pictures. Exhibit 1 to the Defendants' motion -- and this addresses itself to what pictures exist and what kind they are.

THE COURT: They said you can see those.

MR. WEISBERG: Those that do exist. There is no existing photograph of the side --

THE COURT: They say they will give permission for you to examine the photographs taken with CBS equipment by the Archives' staff.

MR. WEISBERG: Your Honor, there were none until after the last working day before my papers were due. I got the third set of papers to which I had to make response.

I have, and I thought I filed it, a letter dated February 11, 1971, from Mr. W. L. Johnson, Assistant Administrator for Administration. One of my problems is, I am told ten things by everybody.

I have been informed by the Archives of the United States that CBS personnel were not permitted to see or examine President Kennedy's clothing and no photographs or motion picture film of that clothing were taken for CBS.

That is directly contrary to the letter you asked me to find, which I do now have, the one to which I had to respond by a certain date. Dated September 17; and it is the rejection of my appeal under the regulations. It is signed by Mr. Robert Q. Vawter.

THE COURT: Yes, I have that in front of me.

MR. WEISBERG: He breaks it down into five items, and Item 5:

"Permission for you to examine the photographs taken with CBS equipment by the Archives' staff."

This caused no horrendous uproar in the Archives.

All I am asking for is what is normal except for purposes of telling you otherwise.

On the question of what pictures exist, let me read

from the letter in which they respond to my appeal.

I have exhausted my administrative remedies, Your Honor.

Going down to the bottom of that page:

"There is no existing photograph of the side of the knot of the tie."

A bullet is supposed to have gone through that tie. I have what I think I can fairly describe as a faked photograph made by the FBI that I would be glad to show you, so arranged to make it look like there is a hole in the front of the tie.

This is the kind of material given me. It has no evidentiary value. The pictures I seek are only the ones that they have taken and those that are needed for any kind of a proper study.

All I want is to see the damage to the clothing. I don't want blood; I don't want gore.

One thing I think should be responded to here is the direct challenge I made when I was given a spurious -- I made it to Mr. Burke Marshall and to Government. I sent copies of the pictures that have been provided me.

You show me any except an undignified or a sensational use I can make of this. I said, On the other side, show me any possible undignified or sensational use I can make of a picture of as little as an inch of cloth.

What I am addressing is the genuineness of the argument made here. My letter of appeal, which goes over a whole series of a dozen letters of requests and verbal requests, specifies the non-existence of the pictures I seek. If I had them, I wouldn't be going through all this.

I don't know if Your Honor recognizes what a major effort this is for me, a man of no means at all. I am not doing it because it is not required of me to do my work.

THE COURT: I have no quarrel with the fact that you feel you need this information.

MR. WEISBERG: I didn't understand.

THE COURT: I don't in any way suggest that you don't feel that you have a genuine need for this information. My problem is a much more limited one.

You have come to a court to ask help to get the information. This Court has very limited jurisdiction in the matter. I can enforce the Freedom of Information Act, 5 U.S.C. 552, under which you are proceeding --

MR. WEISBERG: May I give Your Honor --

THE COURT: You will be quiet now, sir.

MR. WEISBERG: I beg your pardon.

THE COURT: -- but it is my view that the Act does not, at this stage of its interpretation and as I read the Act, apply to the type of material you are seeking and, accordingly, the motion of the Government, as a matter of law, to dismiss

is granted.

Donors who give items of this kind to the United States may under other prevailing statutes set conditions, as they have been set here, and they may give what is in effect an absolute authority to the Archivist to determine how he is going to proceed in dealing with individual applicants.

That is not a matter as I see it that the Court can interject itself into in any way; and, accordingly, the Government's motion is granted on the grounds that the Act does not apply to the material you are seeking.

You may submit an order to that effect.

MR. WERDIG: Thank you, Your Honor.

THE COURT: I will say to you, Mr. Weisberg, since you are pro se, you may appeal this order of mine. You have remedies in the Court of Appeals.

MR. WEISBERG: There is no effective remedy, Your Honor. I am in effect a pauper.

I am sorry Your Honor didn't see fit to let me read --

THE COURT: I am sure they would assist you in that Court in getting assistance from counsel if you need it.

MR. WEISBERG: Thank you, sir.

May I ask Your Honor to clarify one point?

MR. WERDIG: May I be excused?

THE COURT: Yes, thank you.

MR. WEISBERG: Did I understand Your Honor to tell me

the existing record shows that I will be shown pictures, they will not be delivered to me but I will be shown them?

THE COURT: I was referring to a letter dated September 17, 1970 by Mr. Vawter; and whatever that letter says, I take that as a commitment by the Archivist.

That is what I understand.

MR. WEISBERG: The Archivist is here.

THE COURT: You are out of my Court now, sir. You can talk to him in the hall.

MR. WEISBERG: Thank you, sir.

CERTIFICATE OF COURT REPORTER

I, Ida Z. Watson, certify that I reported the proceedings in the above-entitled cause on June 15, 1971, and that the foregoing Pages 1 to 24, inclusive, constitute the official transcript.

Ida Z. Watson