

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, )  
 )  
 Plaintiff, )  
 )  
 vs. ) Civil Action 75-226  
 )  
 UNITED STATES DEPARTMENT )  
 OF JUSTICE, et al, )  
 )  
 Defendants. )

Friday, May 2, 1975  
Washington, D.C.

The above-entitled matter came on for hearing in  
open court on a status call before THE HONORABLE JOHN H.  
PRATT, United States District Judge, commencing at 9:30 a.m.

APPEARANCES:

JAMES LESAR, ESQ., appearing on behalf of the  
plaintiff.

MICHAEL J. RYAN, AUSA, appearing on behalf of  
the defendants.

RICHARD L. MATTSON, C. S. R.  
OFFICIAL COURT REPORTER  
ROOM 6800, U. S. COURTHOUSE  
WASHINGTON, D. C. 20001

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THE DEPUTY CLERK: Weisberg versus the Justice Department, Civil Action 75-226. Mr. Lesar for the plaintiff; Mr. Ryan for the defendant.

MR. RYAN: Good morning, Your Honor.

May it please the Court, my name is Michael J. Ryan, Assistant United States Attorney, representing the Department of Justice and other named defendants in this action.

Your Honor, this is a Freedom of Information Act case for spectrographic analyses of the spectrographic and neutron activation analyses of the laboratory findings and other matters regarding the Kennedy assassination.

I have been advised by my clients that the request of plaintiff in this matter has been fully complied with and they are now in the process of preparing an affidavit to that effect. I expect that we could submit that to the court by Wednesday.

We have not answered in this case, Your Honor, as the record will reflect, and I have had several conversations with counsel for plaintiff, and it was my understanding, and at least hope and expectancy, we would be filing a praecipe dismissing this matter. In anticipation of today's calendar call, I did talk with Mr. Lesar, counsel for plaintiff, yesterday afternoon, and he indicated that he was preparing some interrogatories to determine whether in fact we had fully

1 complied with plaintiff's request.

2 We would just simply submit, Your Honor, it is our  
3 view that the Freedom of Information Act is set up to handle  
4 requests for identified documents. At this time I have been  
5 advised and assured by my clients that we have fully  
6 complied with his request for these spectrographic analyses  
7 and neutron activation analyses, and that at this time the  
8 case has been compromised and that it would be appropriate  
9 to either voluntarily dismiss or to enter into an agreement  
10 of settlement.

11 THE COURT: Mr. Lesar.

12 Is that the way you pronounce your name?

13 MR. LESAR: Lesar or Lesar, either way.

14 As Mr. Ryan indicated, I have prepared interrogatories  
15 which I filed today which are designed to elicit the degree  
16 of noncompliance with my client's request.

17 THE COURT: What about the degree of compliance?

18 MR. LESAR: Well, there has been some compliance,  
19 but it is not complete, and the documents which we have been  
20 given so far themselves refer to other documents which come  
21 within the request, which we have not been given.

22 THE COURT: Are the documents you are requesting  
23 any different than the documents you requested in a prior  
24 suit?

25 MR. LESAR: Yes, they are. It includes not only the

1 neutron -- it includes neutron activation analyses in addi-  
 2 tion to the spectrographic analyses, which were the only  
 3 subject of the prior complaint, and it also includes other  
 4 scientific tests performed on the bullet and bullet fragments  
 5 and other items of the shooting. There was some indication  
 6 in a conference which we had on March 14 with representatives  
 7 of the FBI that some of those tests which we had anticipated  
 8 would have been performed were not performed. For example,  
 9 there was tissue residue on the bullet -- the bullet which is  
 10 alleged to have struck both President Kennedy and Governor  
 11 Connally, and apparently those tests were not performed.

12 THE COURT: Well, your interrogatories, as you put  
 13 it, are designed to test the extent --

14 MR. LESAR: Of the noncompliance.

15 THE COURT: -- of the defendants' noncompliance?

16 MR. LESAR: Right.

17 THE COURT: In what respect, based on your present  
 18 knowledge, have they failed to comply?

19 MR. LESAR: Well, the first, as I said, there is at  
 20 least one reference in one of the documents which they have  
 21 given us to a spectrographic analysis of the garrell-Ash  
 22 relating to the curbstone which was allegedly struck by a  
 23 bullet, and we have not received that spectrographic analysis.

24 In addition, there is a history in this case of  
 25 evasion. For example, last October I wrote the -- what was

1 the Atomic Energy Commission and requested the neutron activa-  
2 tion analyses and other tests, and got back a letter saying  
3 that they had no other such tests.

4 I then provided them with evidence that other  
5 tests had been conducted --

6 THE COURT: You made reference to a statement of  
7 Rankin, I guess, before the Warren Commission; is that the  
8 matter to which you refer?

9 MR. LESAR: Yes, yes, that's true. Yes, in the  
10 January 27, 1964 transcript.

11 So then on February 14, 1975, I received a letter  
12 from Mr. Sherr, which stated the information contained in my  
13 October 16, 1974 letter was based primarily on advice we  
14 obtained from the former FBI agent who participated in the  
15 work described. He now advises that in addition to the  
16 analyses of paraffin cast mentioned in that letter, neutron  
17 activation analyses on bullet fragments were performed at the  
18 Oak Ridge National Laboratory.

19 So I don't think we can possibly know the extent  
20 to which compliance has been effected until we get some  
21 answers to interrogatories under oath.

22 THE COURT: Mr. Ryan, I assume you do not dispute,  
23 in view of the amendment to the Freedom of Information Act,  
24 the plaintiff is entitled to something?

25 MR. RYAN: Certainly, Your Honor. I believe the

1 Justice. And the reply was in the affirmative. And Senator  
2 Kennedy then backed the proposed amendment to the amendment  
3 to carry.

4 THE COURT: Senator Kennedy supported the amendment?

5 MR. LESAR: Yes, he did.

6 THE COURT: To whom are you directing these inter-  
7 rogatories?

8 MR. LESAR: I have directed one set to the  
9 Department of Justice and another set to the Atomic Energy  
10 Commission.

11 MR. RYAN: Your Honor --

12 THE COURT: Yes, Mr. Ryan.

13 MR. RYAN: I have just briefly looked at the  
14 interrogatories and I notice that the thrust of many of them  
15 indicate what are the type of tests that are normally per-  
16 formed in these types of investigations, and, Your Honor, I  
17 believe this type of inquiry may be somewhat irrelevant in  
18 terms of the law suit that is presently in this court in which  
19 plaintiff has asked for the results of tests of spectrographic  
20 analyses and neutron activation analyses, and if we are going  
21 to go into what we would characterize as, more or less, a  
22 fishing expedition into what types of tests are normally per-  
23 formed, were there any other tests that were performed, in  
24 view of the fact that there has been this representation by  
25 the FBI that the results of these tests have now been fully

1 legislative history reflects that the case of Weisberg v.  
2 Department of Justice was overruled by those amendments and  
3 we have never --

4 THE COURT: Is that specifically mentioned in the  
5 legislative history?

6 MR. RYAN: Yes sir, I believe it is. I believe  
7 there was a question put to Mr. Kennedy whether the amendments  
8 did overrule that particular in our Court of Appeals.

9 THE COURT: I remember Mr. Lesar making some kind  
10 of a reference. I was curious not knowing what he was pre-  
11 cisely referring to.

12 MR. LESAR: The investigatory files exemption was  
13 amended on the floor of the Senate by an amendment which --

14 THE COURT: This is number five then?

15 MR. LESAR: No, number seven.

16 THE COURT: Number seven.

17 MR. LESAR: Which Senator Hart proposed at that  
18 time, and then there was an exchange between Senator Hart and  
19 Senator Kennedy, in which Senator Kennedy referred to several  
20 of the cases in the District of Columbia Circuit which had  
21 established what Congress thought to be an unwise precedent  
22 in the interpretation of the investigatory files exemption  
23 and Senator Kennedy was specifically asked whether or not --  
24 he asked Senator Hart whether or not the proposed amendment  
25 would override the decision in Weisberg v. Department of

1 disclosed.

2           There is a letter which was sent to Mr. Lesar, and  
3 I assumed he received it, from the Federal Bureau of Inves-  
4 tigation, dated April 10, which it is stated it is considered  
5 that the offer of release of the 54 pages of the above-  
6 described data, together with that already furnished to Mr.  
7 Weisberg, responds fully to his FOIA request for spectro-  
8 graphic and neutron activation analyses as contained in his  
9 written request of November 27, 1974 and subsequent discussion  
10 with FBI representatives on March 14, 1975.

11           So that would be the position that the defendants  
12 would be taking in this matter, Your Honor, and irrespective  
13 of the interrogatories, and since there is the clear-cut  
14 request for these particular identified documents, we would  
15 submit that asking if there were more additional test per-  
16 formed is somewhat of a prolonging of -- a needless prolonging  
17 of this law suit. There comes a time in every action when  
18 the matter is compromised or disposed of by the Court, and  
19 we would submit that that time has been arrived at in this  
20 action.

21           MR. LESAR: Your Honor, my client first requested  
22 the spectrographic analyses on May 23, 1966, in a letter to  
23 J. Edgar Hoover, and we are as anxious as anyone to get the  
24 matter over and done with, but we want it complied with  
25 properly.



1 We fought for five years in court in order to  
2 obtain those spectrographic analyses, and throughout that  
3 entire time we were under the impression that the FBI, if  
4 it had done its job properly, would have prepared a typed up  
5 report giving stated conclusions as to the results of these  
6 tests.

7 We now learn that there are no such reports, and,  
8 therefore, we have accepted the data from certain tests.

9 Now, there are certain items of evidence which seem  
10 to us crucial, which, if we have been given everything the  
11 government has, were not performed. There is no neutron  
12 activation analysis on the President's clothing or Governor  
13 Connally's clothing. There is no neutron activation analyses  
14 of a bullet hole which is the result of a bullet which struck  
15 a curbstone on the south side of South Main Street.

16 There is no neutron activation analysis of a bullet  
17 fragment which is FBI laboratory specimen Q-3, and I think  
18 that we are entitled to know whether these things were not  
19 done, and if they were done, of course, we want the reports  
20 on them.

21 And the only way I know to resolve this matter is  
22 to do it in the form of interrogatories.

23 As I come back to the point I made earlier, from  
24 the internal evidence of what they have already given us, we  
25 know that there has to be in existence at least one spectro-

1 graphic analysis which we have not been given.

2 THE COURT: Well, to sum up, you are not willing  
3 to take the Government's representation if not sworn to; is  
4 that correct?

5 MR. LESAR: That's correct.

6 THE COURT: I suppose you are entitled --

7 MR. RYAN: Your Honor, as I indicated at the outset,  
8 we are preparing an affidavit which would delimit the request  
9 and our response to the question, and we would like the  
10 opportunity to submit that for the Court's consideration.

11 THE COURT: Why don't you --

12 MR. RYAN: We will have that in by Wednesday.

13 THE COURT: In your affidavit why don't you come  
14 to the outstanding matters of the interrogatories. The  
15 interrogatories will give you a point of reference from which  
16 to proceed. If the answers to the interrogatories are  
17 covered in an affidavit, I assume that would be satisfactory,  
18 or two affidavits?

19 MR. LESAR: I would say, depending on the content  
20 of the affidavit, we might at that point request --

21 THE COURT: Suppose --

22 MR. LESAR: I might submit a counteraffidavit by  
23 Mr. Weisberg, for example.

24 THE COURT: These affidavits are on personal know-  
25 ledge. The person in charge of the FBI laboratory, or the

1 AEC laboratory, can state categorically that everything in  
2 the way of a test that they have made has been submitted;  
3 that no further tests have been submitted; that that ought  
4 to be good enough for your purposes.

5 MR. LESAR: I would like to have those affidavits  
6 drawn up and submitted, yes.

7 THE COURT: You don't commit yourself as to whether  
8 they will be good enough for your purposes?

9 MR. LESAR: I do not.

10 MR. RYAN: Your Honor, we would be willing to do  
11 that, take the interrogatories as a frame of reference and  
12 respond to the interrogatories through affidavit form in  
13 terms of demonstrating compliance.

14 THE COURT: You file that and if you people can  
15 agree on a disposition of this, all you have got to do is  
16 file the appropriate motion.

17 MR. RYAN: Very well, Your Honor.

18 THE COURT: I think we ought to have another  
19 calendar call on this.

20 MR. RYAN: Your Honor, it might be useful --

21 THE COURT: As a prod.

22 MR. RYAN: As a point of reference within which we  
23 have to work.

24 THE COURT: How much time do you need, Mr. Ryan?

25 MR. RYAN: Your Honor, I would request that we have

1 a calendar call 30 days from today. I believe that would be  
2 more than adequate.

3 THE COURT: As I remember, you have had about  
4 three extensions on your response.

5 MR. RYAN: That's correct, Your Honor. We did  
6 request that our time be extended until April 4, I believe.  
7 We provided the last of the materials on April 15, and I  
8 have not heard from counsel since then.

9 THE COURT: Well, hopefully we are going to get  
10 through this case before the end of May. Suppose we have a  
11 calendar call on Wednesday, May 21. That gives you about  
12 three weeks.

13 MR. RYAN: Fine, Your Honor.

14 MR. LESAR: Thank you, Your Honor.

15 THE COURT: I assume, Mr. Weisberg, at least for  
16 the time being has other means of support, doesn't he, Mr.  
17 Lesar?

18 MR. LESAR: Well, his financial circumstances are  
19 not good, but that is a situation which I don't expect to  
20 change in any event.

21 THE COURT: Good enough to hire you.

22 MR. LESAR: He has had my services without any fee.

23 THE COURT: All right. Okay. May 21. If you  
24 people will agree on a praecipe prior to that time, you won't  
25 even have to come down here.

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(Whereupon, proceedings in the above matter  
were concluded.)

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**REPORTER'S CERTIFICATE**

Certified to be an official transcript of proceedings.



**RICHARD L. MATTSON, C.S.R.**  
**Official Court Reporter**