

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

RECEIVED

JUL 24 1980

HAROLD WEISBERG,	:	JAMES F. DAVEY, Clerk
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 75-1448
	:	
GENERAL SERVICES ADMINISTRATION,	:	
	:	
Defendant	:	

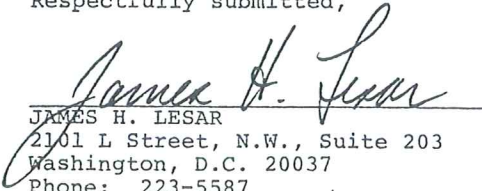
MOTION FOR RECONSIDERATION

Comes now the plaintiff, Mr. Harold Weisberg, and moves the Court to reconsider its order of July 14, 1980, denying plaintiff's motion for attorney fees. This motion is made pursuant to Rules 52, 59, and 60 of the Federal Rules of Civil Procedure.

Plaintiff further moves the Court to vacate its order of October 17, 1979, that all pending discovery requests be held in abeyance until further order of the Court, and to permit plaintiff to undertake discovery on the issue of whether the January 21 and June 23, 1964 Warren Commission executive session transcripts were, as the Court has found, released to plaintiff "for reasons unrelated to this litigation."

A Memorandum of Points and Authorities, a proposed Order, and the July 21, 1980, affidavit of Harold Weisberg in support of this motion are attached hereto.

Respectfully submitted,

  
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 JAMES H. LESAR  
 2101 L Street, N.W., Suite 203  
 Washington, D.C. 20037  
 Phone: 223-5587

Attorney for Plaintiff

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, :  
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 Plaintiff, :  
 :  
 v. : Civil Action No. 75-1448  
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 GENERAL SERVICES ADMINISTRATION, :  
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 Defendant :  
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MEMORANDUM OF POINTS AND AUTHORITIES

By order filed July 14, 1980, the Court denied plaintiff's motion for attorneys' fees. In so doing the Court limited itself to a single finding, that the two Warren Commission executive session transcripts that were released to plaintiff the very day defendant's brief was due in the Court of Appeal were released to plaintiff "for reasons unrelated to this litigation."

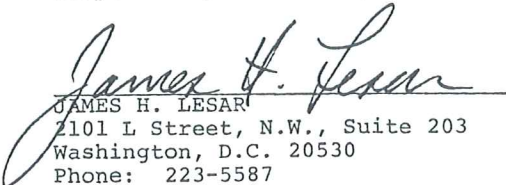
Plaintiff asks the Court to reconsider this ruling in light of the following considerations. First, his extensive experience in litigating under the Freedom of Information Act shows that it is necessary to file suit in order to obtain information he wants even if that information has already been officially released and even if it has been released to other requesters. (See July 21, 1980 Weisberg Affidavit attached hereto) Second, the CIA's annual report to the President of the Senate for 1978 shows that the CIA was well aware that the decision of the United States Court of Appeals in Ray v. Turner would affect its pending cases because it required the CIA to describe "on a deletion-by-deletion basis (as opposed to a document-by-document basis), the nature of the material being withheld and the legal justification for its denial." (See Attachment 1, p. 2) Because the CIA had not attempted that in

in this case was inevitable. This rather than the activities of the House Select Committee on Assassinations is what led the CIA to release the transcripts on the very day the Government's brief was due in the Court of Appeals.

On October 17, 1980, this Court stayed all pending discovery in this case, including discovery which plaintiff wanted to undertake to establish whether the decision of the Court of Appeals in Ray v. Turner had a causative effect on the release of the January 21 and June 23, 1964, transcripts. Essentially, this Court has decided this matter adversely to plaintiff on the basis of self-serving affidavits submitted by the CIA and without affording plaintiff an opportunity to test the agency's representations or to probe for evidence showing that the agency released the documents because of litigation-related developments, not the activities of the House Select Committee on Assassinations.

For the reasons set forth above, this Court should now vacate its orders of October 17, 1979, and July 14, 1980, and allow plaintiff to undertake discovery that will provide a proper factual basis for a decision as to whether the records supplied to plaintiff were released to him because of this litigation or due to reasons unrelated to it.

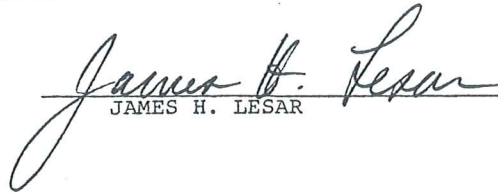
Respectfully submitted,

  
JAMES H. LESAR  
2101 L Street, N.W., Suite 203  
Washington, D.C. 20530  
Phone: 223-5587

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 24th day of July, 1980, mailed a copy of the foregoing Motion for Reconsideration to Ms. Patricia J. Kennèy, Assistant United States Attorney, United States Courthouse, Washington, D.C. 20001.

  
JAMES H. LESAR

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, :  
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 Plaintiff, :  
 :  
 v. : Civil Action No. 75-<sup>1485</sup>~~1996~~  
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 GENERAL SERVICES ADMINISTRATION, :  
 :  
 Defendant :  
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O R D E R

Upon consideration of plaintiff's motion for reconsideration, defendant's opposition thereto, and the entire record herein, it is by the Court this \_\_\_\_ day of \_\_\_\_\_, 1980, hereby

ORDERED, that plaintiff's motion be, and hereby is, GRANTED, and it is further

ORDERED, that this Court's Order of July 14, 1980, is VACATED; and it is further

ORDERED, that this Court's Order of October 17, 1980 is VACATED, and that plaintiff may commence discovery proceedings on the issue of whether the two transcripts released to him while this case was pending on appeal were released for reasons unrelated to this litigation.

UNITED STATES DISTRICT COURT

CENTRAL INTELLIGENCE AGENCY  
WASHINGTON, D.C. 20505

The Honorable Walter F. Mondale  
President of the Senate  
Washington, DC 20510

Dear Mr. President:

Submitted herewith, pursuant to the provisions of 5 U.S.C. 552(d), is the report of the Central Intelligence Agency concerning its administration of the Freedom of Information Act during calendar year 1978.

During 1978, 4,172 requests for access to records were logged and put into processing by the Agency, of which 1,608 were handled under the Freedom of Information Act. An additional 1,055 request letters were received during the year but not formally processed pending receipt of additional information from the requesters. These were, without exception, requests for access to personal records, which, under the Agency's regulations, are usually processed under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) rather than the Freedom of Information Act. A summary of Agency activity during 1978, including Privacy Act and Executive order mandatory classification review requests as well as Freedom of Information requests, is provided in the statistical table below. The figures on requests carried over from 1977 have been adjusted from those reported last year in order to conform with the data contained in our automated log.

	<u>FOIA</u>	<u>PA</u>	<u>EO</u>	<u>Totals</u>	<u>(%)</u>
Workload					
Cases carried over from 1977	762	1227	130	2119	(33.68)
Cases logged during 1978	1608	2136	428	4172	(66.32)
Totals:	<u>2370</u>	<u>3363</u>	<u>558</u>	<u>6291</u>	
Actions taken					
Granted in full	175	179	85	439	(12.14)
Granted in part	315	568	105	988	(27.32)
Denied in full	128	121	25	274	(7.58)
No records found	325	1155	1	1481	(40.95)
No CIA records found	7	72	0	79	(2.18)
Referred elsewhere	29	1	6	36	(1.00)
Canceled	223	33	5	261	(7.22)
Withdrawn	21	6	0	27	(.75)
Early appeal	22	1	0	23	(.64)
Early litigation	9	0	0	9	(.25)
Totals:	<u>1254</u>	<u>2136</u>	<u>227</u>	<u>3617</u>	
Cases carried over to 1979	1116	1227	331	2674	
Increase in backlog	354	0	201	555	(26.19)

Exhibit B

In addition to the above, the Agency, as in the past, responded to numerous other requests from members of the public for copies of unclassified CIA publications such as maps, reference aids, monographs, and translations of foreign language broadcasts and press items--either directly or by referral to those federal agencies with responsibility for the distribution of such CIA products.

Although the number of formal requests levied upon the Agency decreased by nearly 13.9 percent when compared with the previous year, the number of new Freedom of Information requests, which tend to be the most difficult to process, showed an increase of more than 28.4 percent (356 cases) over 1977. The Agency expended manpower resources equivalent to 116.6 employees working full-time in processing Freedom of Information and related requests, appeals, and litigation. However, despite this augmented effort, the initial processing backlog grew during the year by 555 cases and the appeals backlog increased by 87 cases. In no small part, the growth of our processing backlogs can be attributed to the increasing demands placed upon the Agency by litigation arising out of these requests. This burden will be worsened in the future as a consequence of a recent opinion by the U.S. Court of Appeals for the District of Columbia (Ellen L. Ray and William H. Schaap v. Stansfield Turner), which requires that federal agencies describe in considerable detail, on a deletion-by-deletion basis (as opposed to a document-by-document basis), the nature of the material being withheld and the legal justification for its denial. Henceforth, even more of our available manpower resources will have to be diverted to work on litigation aspects, and, unless the request and appeal volumes decline, we can anticipate further increases in our backlogs and even less timely responses.

The factors which have made the processing of Freedom of Information and similar requests a burdensome and time-consuming matter for the Agency have been explained in some detail in previous reports. Our decentralized files, the frequent need for intra- or interagency coordination, and the urgent requirement that sensitive records be reviewed carefully by successive levels of experts have made it impossible in almost all instances for the Agency to comply with statutory deadlines. To be fair to all, we follow a general policy of first-in, first-out in handling both requests and appeals, and our processing backlogs are such that the deadlines have usually elapsed long before a specific request or appeal has reached the top of the queue.

We have developed an active training and information program in an attempt to improve skills and productivity. Moreover, during the past year a systems study was conducted within the Agency which, utilizing data from the automated request log to create a computer model of the overall process, sought to identify bottlenecks and other problem areas and to devise possible solutions. The recommendations are currently under study. Given the compartmented nature of our systems of records--which is essential to the maintenance of security--and the damage to the national security which could result if intelligence sources and methods

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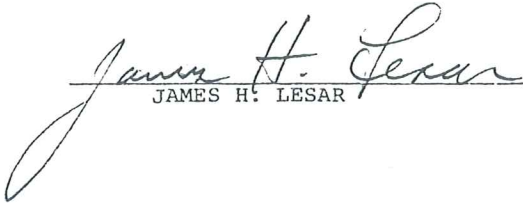
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 :  
 GENERAL SERVICES ADMINISTRATION, :  
 :  
 Defendant :

AFFIDAVIT OF JAMES H. LESAR

I, James H. Lesar, first having been duly sworn, depose and say as follows:

1. I am attorney for plaintiff in the above-entitled case.
2. On Thursday, July 24, 1980, I telephoned Mr. Harold Weisberg in regard to his affidavit of July 21, 1980, which is being filed in support of a motion for reconsideration in this case.

Upon my reading him the first sentence of paragraph 5 of his affidavit, he immediately commented that it was in error. To correct the typographical omission that was made, I have inserted the words "of consequence" after the word "nothing" and added my initials.

  
JAMES H. LESAR

DISTRICT OF COLUMBIA

Subscribed and sworn to before me this 24th day of July, 1980.

  
NOTARY PUBLIC IN AND FOR  
THE DISTRICT OF COLUMBIA

My commission expires \_\_\_\_\_ My Commission Expires August 31, 1984



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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 Defendant. :  
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AFFIDAVIT

My name is Harold Weisberg. I reside at 7627 Old Receiver Road (Route 12), Frederick, Maryland. I am the plaintiff in this instant cause.

1. The CIA represents that it disclosed the two Warren Commission executive session transcripts to me - at the very time the brief was due at the appeals court - because the content was included in a considerable amount of information it declassified for and disclosed to the House Select Committee on Assassinations. The CIA represents that for these reasons it could no longer withhold them.

2. If these representations were true, as my prior affidavits state they are not, then there is much other information the CIA should have disclosed to me under information requests going back for a decade. In fact, I have not received a single piece of paper from the CIA since its alleged declassifications and disclosures. I have not even received a letter indicating that records were being processed and would be disclosed to me in response to a number of requests to which information given to the House committee is pertinent.

3. The CIA has disclosed to other requesters information that is within my earlier requests but it has not provided me with that information, not even after it was disclosed to others.

4. That the CIA has disclosed information to others does not mean that I can or will get it without suing for it, as the two preceding paragraphs reflect. For years I have obtained nothing from the CIA except under compulsion.

5. In my C.A. 77-1997, in which I sought information pertaining to the assassination of Dr. Martin Luther King, Jr., I received nothing <sup>of consequence</sup> from the CIA until <sup>1/84</sup>

after I filed suit. It did not act on referrals by the FBI (also pertinent in another case) until after I filed suit. Even then it did not produce records until the time of a calendar call.

6. The most recent of my experiences referred to in Paragraphs 2-4 above, that the CIA does not provide me with copies of what it discloses to others, is included in my January 29, 1980, affidavit, in which I refer to Mark Allen's suit for a single CIA record. Allen also received nothing but typical CIA stonewalling until he was before the appeals court. The CIA then made partial disclosure of that one record. Examination of what it disclosed, as my uncontradicted affidavit states, reveals that the CIA withheld information that was in the public domain before the CIA withheld it. In the half year since that partial disclosure to Allen, the CIA has not provided me with any copy of what it disclosed to him, although that information is within several of my requests.

7. When the CIA stonewalled my broad request for information pertaining to the assassination of President Kennedy, about which I have published six books, and I desired certain information for further study and writing, I made a separate request for its information pertaining to Lee Harvey Oswald in Mexico. Under date of August 23, 1976, the CIA acknowledged receipt of that request. In that same letter it acknowledged that there was duplication between my request and Allen's. Nonetheless, in a half year, it has not provided me with the information it disclosed to Allen.

8. The CIA has disclosed information within my requests to others without disclosing it to me.

9. The CIA has not disputed my representation that it provided to one Edward J. Epstein information that I had requested earlier and it did not provide to me. After Epstein's publication I renewed my request and the CIA still did not comply. I then filed a separate request, limited to the records it had already processed and disclosed to Epstein, but the CIA still did not provide me with copies of that information, which it had already processed and disclosed.

10. Although the CIA refuses to provide me with what it disclosed to Epstein despite my prior request, that information now appears in another book, titled Conspiracy, by Anthony Summers.

11. In general, this is the CIA record with me. My oldest request that has not been complied with dates to the first of 1971. I renewed it after the amending of FOIA. The CIA assigned a new sequential number to it rather than treating it as the earlier request it is. That number is F-75-4927, meaning that it was then treated not as the 1971 request but as the 4927th request of 1975. However, in the ensuing five years the CIA still has not complied with that request. Its number for my broad request for information pertaining to the assassination of President Kennedy is F-76-6669. I have heard nothing from the CIA about this in many years. It is a request that includes what the CIA disclosed to the House committee. Similarly, my Yuri Nosenko request (F-75-4765) is pertinent in this instant cause. It seeks information the CIA represents it declassified and disclosed because of what it revealed to the committee. Contrary to its representations, I have received nothing from the CIA pursuant to that request. Other requests with which the CIA has not complied and which include information the CIA attests it has released because of its disclosures to the committee have its numbers F-76-219, F-76-405 and F-76-437.

12. The foregoing does not represent all my pertinent requests. I merely cite from a single CIA acknowledgment of some under date of August 5, 1976.

13. The CIA's record with me is clear: It does nothing without compulsion, not even when it indicates to a court that it will act promptly.

14. My request of the CIA for information pertaining to the assassination of Dr. King has its number F-76-382. Three months ago it acknowledged in another court that it has and withheld a record of but three pages, to which its attention had been drawn by referral back from the FBI. (The FBI's referral was three years earlier.) The CIA provided the FBI with an affidavit attesting that it was then processing those three pages. Since then I have heard nothing.

15. Unlike others who are better known, like Mark Lane, and those who combine in conspiracy-oriented organizations, I am not one who theorizes conspiracies. My work, which is the most extensive in the field, focuses on the functioning of government agencies in time of great stress. It is embarrassing to agencies that failed to function as well as the country could have expected them to perform. Because my work is at once embarrassing and at the same time accurate, I am singled out for special discrimination and special efforts are made to frustrate my work.

For example, I have several FBI records in which it is stated explicitly that I and my writing must be stopped, and that to this end my information requests would not be complied with. The FBI used the word "stop." I have a CIA record in which it acknowledges having records it did not provide to an official processing one of my information requests. Even when its own general counsel asked for records pertaining to me, the CIA denied having such records and then, inadvertently, provided me directly with a record that states on its face that it had been withheld from the CIA's general counsel. It also states where other withheld records are.

16. This practice is not limited to the CIA. Other agencies, embarrassed by my writing and unable to cite any serious error in it, have disclosed to others what I also requested without providing me with copies. These include the Department of Justice and its FBI, General Services Administration and its National Archives, and the Secret Service.

17. My uncontradicted affidavits state that this is not the only case in which withheld information was not provided until the matter was before the court of appeals. Subsequent to my prior affidavits, I received from a Department of Justice component a record in which the lawyers actually state that they should moot a case after oral argument before the appeals court by providing the information that had been withheld for years.

18. If the CIA's representations in this instant matter had been made in good faith, the CIA would have provided me with copies of the pertinent information it attests to having revealed, its basis for claiming it disclosed the two transcripts for reasons having nothing to do with this instant cause. But in fact, as I state above, I have received nothing from the CIA, not even a letter making a promise of later and belated compliance.

19. At the October 17, 1979, calendar call the Court reflected awareness of the actuality, that I am required to sue to get any compliance from the CIA, in its following statements:

There wasn't any doubt that there was a stonewall as far as Mr. Weisberg was concerned with respect to these transcripts. (page 12, lines 21-23)

I understand that, but that is just the point I am making: Mr. Weisberg had to sue. You were not going to give him any portion of it for that reason, isn't that correct? (page 13, lines 18-21)

That is exactly right, so Mr. Weisberg had to sue. He had to sue long before that. (page 14, lines 1-2)

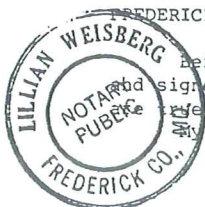
I don't think you understand what I am saying. Point one is that from the very beginning, the government's position had never changed up until the time that it went before the House Subcommittee that he was not entitled to this information, and that is what this Court held. So then, in that sense, Mr. Weisberg had to sue because the government contended he wasn't entitled to any of them. That is point one, the litigation was necessary in that sense. (page 14, lines 8-16)

That is the second point you are making (to government counsel). Point one is that the litigation was necessary. You can't deny that. At no time did the government say they were going to give him any portion of those transcripts, at no time. (Government counsel agreed, "Correct," as she did also with what the Court then stated, "In that sense, it is correct ...") Now, there came a time, the government contends step two: that his action was not the primary motive for the government eventually giving him the two transcripts. That is the second point you make. ... Over a period of time, there wouldn't be any necessity. But the Act doesn't work that way. The Act doesn't say, Well, look, you can get a request and you can sit around and wait long enough so that the information is meaningless. So if we can stonewall somebody for ten or fifteen years, then we will give him the whole thing; but the Act doesn't work that way. There will come a time when all this stuff is just down the drain. The next generation won't care ... (page 14, line 24, to page 15, line 25)

That is not the way the Act works. Certainly, a lot of this stuff will be declassified. In the Year 2050, most of it; but the Act doesn't work that way. No. It is today that they are entitled to it under the existing statute. (page 16, lines 8-12)

Well, (to my counsel) you are never going to get anything but conclusory and vague affidavits out of them when they start talking about national security ... That is why we go through the process of waning it down and ultimately get into in camera inspections and, even then, they can snow you. (page 28, lines 13-18)

  
HAROLD WEISBERG



FREDERICK COUNTY, MARYLAND

Before me this 21<sup>st</sup> day of July 1980 Deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true. My commission expires July 1, 1982.

  
NOTARY PUBLIC IN AND FOR  
FREDERICK COUNTY, MARYLAND