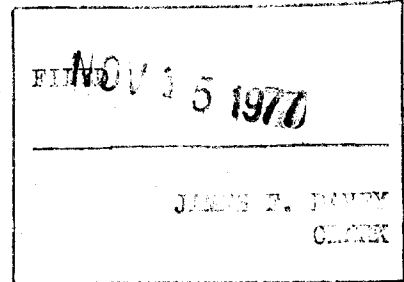


UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA



.....
HAROLD WEISBERG,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,

Defendant
.....

Civil Action No. 75-1996

MEMORANDUM TO THE COURT

Both parties have filed summary judgment motions with respect to the King assassination crime scene photographs taken by Mr. Joseph Louw. On October 12, 1977 plaintiff also filed an Opposition to defendant's summary judgment motion. This memorandum is submitted because of new matters which have come to the attention of plaintiff and his counsel since plaintiff filed his Opposition.

First, page six of plaintiff's motion for summary judgment quoted a passage from the opinion in Meeropol v. Nizer, 417 F. Supp. 1201 (S.D.N.Y. 1976), which described the concept of "fair use" as it applies to copyright law. Although the quoted passage did not set forth the basis of the decision in Meeropol, plaintiff feels obligated to inform the Court that a recent news item in the New York Times indicates that this case was overruled on appeal. An attempt to find a citation for the decision of the Second Circuit Court of Appeals has been unsuccessful.

Second, in the affidavit which he attached to his Opposition

Copyright Law from making copies of the Louw photographs for him is not consistent with its practice. (October 12, 1977 Weisberg Affidavit, ¶22) Plaintiff has just obtained proof that the practice of the National Archives and Records Service with respect to copyrighted still pictures has been "to furnish copies stamped on the back to indicate that permission to publish must be secured from the copyright holder." (Exhibit 1; memorandum by Marion Johnson, 3-8-72)

Mr. Johnson's March 8, 1972 memorandum alludes to a case then before the Court of Claims. This allusion alerted plaintiff to the case of Williams & Wilkins Co. v. United States, 203 Ct. Cl. 74, 487 F. 2d 1345 (1973). In this case the Williams & Wilkins Company, a medical publisher, brought an action against the United States under 28 U.S.C. §1498(b), alleging that the Department of Health, Education and Welfare, through the National Institutes of Health and the National Library of Medicine, had infringed its copyrights in certain of its medical journals by making unauthorized photocopies of articles from those periodicals.

An extensive trial was held before a Commissioner of the Court of Claims. The trial judge ruled that the government had violated copyrights held by the Williams & Wilkins Company.

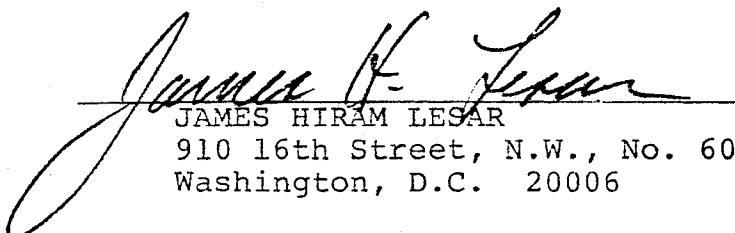
However, on appeal the Court of Claims reversed. After an exhaustive discussion of the evidence and the law, the Court concluded:

Fusing these elements together, we conclude that plaintiff has failed to show that the defendant's use of the copyrighted material has been "unfair," and conversely we find that these practices have up to now been "fair." There has been no infringement. As Professor (now Mr. Justice) Kaplan observed,

The decision of the Court of Claims was affirmed by an equally divided vote of the United States Supreme Court. Williams & Wilkins Co. v. United States, 420 U.S. 376 (1975).

Finally, plaintiff notes that the FBI has now extended its copyright claim to gun catalogues and the like. (See worksheet attached hereto as Exhibit 2) This claim has now been applied to materials which plaintiff and his attorney had previously been told would be provided plaintiff if he wanted them. The invocation of this claim of exemption apparently follows the filing of plaintiff's October 12, 1977 affidavit, in which he stated that the FBI has in fact provided him with xerox copies of copyrighted articles in magazines and newspapers. Thus, the copyright question now before this Court may extend to more than just the crime scene photographs taken by Mr. Joseph Louw.

Respectfully submitted,


 JAMES HIRAM LESAR
 910 16th Street, N.W., No. 600
 Washington, D.C. 20006
 Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of November, 1977 mailed a copy of the foregoing Memorandum To The Court to Assistant United States Attorney John R. Dugan, Room 3419, United

GENERAL SERVICES ADMINISTRATION
NATIONAL ARCHIVES AND RECORDS SERVICES

PAGE

INTRASERVICE MEMORANDUM AND ENDORSEMENT

OF PAGES

SUBJECT OR TRANSACTION

Revision of "Regulations for Reference Service on Warren Commission Items of Evidence"

FROM	TO	DATE AND MESSAGE
NNFL John SON	NNFL	<p>3-8-72. ND asked me to give the regulations a check to avoid any need for further revision after publication. I have considered revising the second and fourth paragraphs to correspond to our actual practice concerning copyrighted still pictures and photographs of oversize charts containing copyrighted material, which is to furnish copies stamped on the back to indicate that permission to publish must be secured from the copyright holder. This practice was authorized by the conclusion of L's opinion of March 18, 1971 (copy attached), although the practice existed in NARS before that time. I consulted Mr. Steven Garfinckel of LR about the proposed revision in our conference today, and he recommended that we not revise the regulations in regard to copyrighted material. He said that a commissioner of the Court of Claims has recently made a decision that would prevent Government agencies from furnishing copies of copyrighted photographs, at least. He expects the Court of Claims to uphold the decision of the commissioner.</p>
		<p>I told Mr. Garfinckel we would go ahead with the publication of the regulations. A new typed copy should be made.</p>
		<p><i>Marion Johnson</i> Marion Johnson Legislative, Judicial and Fiscal Branch</p>

DATE AND MESSAGE (Continuation)

of Mr. Garfinkel's comments.

Mark G. Eckhoff

MARK G. ECKHOFF

Chief, NNFL

RGCOHJ

Regulations Concerning Procedures for Reference Service
on Warren Commission and Related Items of Evidence

1. Documents (paper records) will be furnished to researchers in the research rooms of the National Archives Building. Items of particular value or fragility may, at the Archivist's discretion, be photocopied and the copies furnished to researchers in lieu of the originals. Copies will be furnished on request for the usual fees. Copyrighted material will be reproduced for research only after receipt of a release from the copyright holder.
2. Still photographs will be furnished to researchers in the research rooms of the National Archives Building. When negatives are prepared incident to filling a request for copies, the negatives will be retained. Copies will be furnished on request for the usual fees. Copyrighted materials will be reproduced for researchers only after receipt of a release from the copyright holder.
3. Motion picture films and sound recordings will be made available to researchers on appropriate equipment in the National Archives Building. Use copies will be prepared and the original materials withheld from normal reference use as a protective measure. Copies will be furnished on request for the usual fees. Copyrighted materials will be reproduced for researchers only after receipt of a release from the copyright holder.
4. Oversize charts, graphs, diagrams, and other means of two-dimensional presentation will be furnished to researchers in the research rooms of the National Archives Building. Copies will be furnished on request for the usual fees. Copyrighted materials or items incorporating copyrighted materials will be reproduced for researchers only after receipt of a release from the copyright holder.
5. Three-dimensional objects and materials that have been subjected to techniques of detailed scientific examination (the aforesaid provisions notwithstanding) will be withheld from researchers as a means of protecting them from possible physical damage or alteration and in order to preserve their evidentiary integrity in the event of any further official investigation of the assassination of President John F. Kennedy. The Archivist reserves the right to limit the number of such items that may be shown to a researcher within a given period of time, as it will be necessary for a member of the staff of the National Archives to be present at all times during the viewing of such items. Researchers will not be permitted to view the items unattended or to touch or handle in any way the items themselves, either manually or with instruments. To the extent possible, photographs of these materials will be furnished to researchers as a substitute for visual

examination of the items themselves. In the event that existing photographs do not meet the needs of the researcher additional photographic views will be made. A charge may be made for unusually difficult or time-consuming photography. Photographs reproduced from existing negatives or prints will be furnished on request for the usual fees. The clothing of President Kennedy will not be shown to private researchers, except those researchers whose applications to examine the X-rays and photographs relating to the autopsy of President Kennedy are approved by the Kennedy family representative. Photographs of the clothing will be shown to other private researchers. No copies or enlargements of photographs of this clothing prepared by the National Archives will be furnished to researchers in order to avoid any possible violation of the provision of the letter agreement between the General Services Administration and the Kennedy family representative dated October 29, 1966 (page 2), in regard to preventing undignified or sensational reproduction of the clothing.

6. One photocopy or photograph of an item of evidence will be furnished without charge to persons presenting proof of prior ownership.

1-A

44-1740
Re: MURKIN
Date: 10-77
(month/year)

Serial	Date	Description (Type of communication, to, from)	No. of Pages		Exemptions used or, to whom referred (Identify statute if (b) or (3) cited)
			Actual	Released	
69(a)	-	REDELEO '68 MAGAZINE	31	0	b3 (17 USC 101)
69(b)	-	1968 Sporting Arms and Ammunition WILCHESTER-WESTERN MAGAZINE Adolf C. Persons	48	0	b3 (17 USC 101)
121	-	BAY OF PIGS MAGAZINE	110	0	b3 (17 USC 101)