

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,)
)
 Plaintiff,)
)
 v.) Civil Action No. 75-1996
)
 DEPARTMENT OF JUSTICE,)
)
 Defendant.)

Washington, D. C.

July 1, 1976

The above-entitled cause came on for hearing, pursuant to notice, before THE HONORABLE JUNE L. GREEN, United States District Judge, at 10:20 a.m.

APPEARANCES:

FOR THE PLAINTIFF:

J. H. LESAR, Esq.

FOR THE DEFENDANT:

John R. Dugan, Esq.
Assistant U. S. Attorney.

Duane B. Duschaine
Official Reporter

P R O C E E D I N G S

THE DEPUTY CLERK: Civil Action 75-1996, Weisberg versus Department of Justice; Mr. Lesar for Plaintiff; Mr. Dugan for Defendant.

MR. DUGAN: Good morning, Your Honor.

THE COURT: Good morning.

MR. LESAR: Good morning.

THE COURT: You may proceed.

MR. DUGAN: Your Honor, if I may speak first, at the status call held on May 18, the Court made some comments regarding the processing of cases of a historical interest. I wish to advise the Court that as soon as I received a copy of the transcript, I forwarded it to the Department of Justice, specifically noting the Court's comments.

I had expected to receive yesterday an affidavit in response to the Court's comments. My counter-part in the Department of Justice was sick yesterday and apparently didn't transmit it to me.

It is our intention with respect to the amended complaint and insofar as it relates to the F.B.I. to file a formal motion to stay. It will be documented not only by the F.B.I., but by the individual who is in charge of the review of the Department of Justice Freedom of Information Act section.

It is the Department's position that cases of historical importance are not processed out of turn, they are

not expedited in a sense that they would rush through it, rather they take more time in historical cases to make sure that all is releasable.

The review section in the Department of Justice goes over these very carefully, and we hope to document that fully to the Court's satisfaction. I suspect I will be able to file that by Tuesday, Your Honor.

Now, the Plaintiff yesterday filed and served me with a copy of a motion to compel. With respect to the compliance by the Civil Rights Division, the Criminal Division, and the Office of Professional Responsibility. I have frankly never heard of that section as a formal section in the Department.

THE COURT: It is a formal section that has been set up, and they are working on this very problem. Yes, it is well in action.

MR. DUGAN: All right, we will respond to that motion within the time frame, Your Honor. That goes with the comments I have unless there is any other question.

THE COURT: Was it taken up with the Attorney General? The Court did indicate that was the Court's understanding was that they had expedited it and everything was made available as rapidly as possible in this case.

MR. DUGAN: Well, that was, and I specifically addressed that issue, and it is going to be --

THE COURT: If it is the same gentleman in the F.B.I.,

who signed all --

MR. DUGAN: It was not the F.B.I., Your Honor.

THE COURT: All right.

MR. DUGAN: It is out of the Deputy Attorney General's office who has responsibility for final review within the Department, and I brought it to the highest level of the Department, and I will file a response as soon as I receive it, Your Honor.

THE COURT: Because I had not heard anything to the effect it was supposed to take longer because of its political significance. That I hadn't heard.

MR. DUGAN: I have not read it. I have just been advised that the --

THE COURT: Might I know who advised you?

MR. DUGAN: Rick Greenspan with -- Richard Greenspan with the Freedom of Information and Privacy Unit who in turn has talked to Mr. Quinnschay -- I think his name is --Quinn or Quinnschay -- I believe he is the one who will be signing the affidavit, Your Honor.

MR. LESAR: It strikes me overwhelming, to say the least, in a case of great historical importance are not expedited, but stonewalled, and that is exactly what has happened here. It is what happened time and time again on every request that we have made.

Mr. Weisberg's request whether it be political

assassination material or for information on himself are not handled as other requests are.

I, myself, have very recently, within the last couple of months filed a request for documents which the Department of Justice might have on me. I have received a response, saying a preliminary check had been made, and asking me to designate which division might have documents on me.

Mr. Weisberg submitted a similar request originally with John Mitchell in 1969 and more recently last October, and there has been no response to his request.

So these things are not being handled in a normal manner.

Now, the Department of Justice by its action in the whole history of the King Case has gone over these files on numerous occasions. It has made a review in 1971, a review in 1974.

The New York Times on January 2nd of this year specified the files that had been reviewed, described them. There is no great problem in searching them. There is no problem with even assuming for the purpose of argument the F.B.I. has a problem in answering requests, because of its backlog.

The other divisions of the Department of Justice --

THE COURT: Would you get the transcript that is on my desk, please.

MR. LESAR: The other divisions of the Department of

Justice have made no case that they have any backlog.

As a matter of fact, there not only have been three re-investigation of the King assassination by the Civil Rights Division of the Department of Justice already, but there is in process a massive re-investigation by the Office of Professional Responsibility.

So quite clearly by its own action, the Department of Justice has placed a very high priority on a re-investigation of this case.

Now, the documents -- it is essential that we get the documents and get access to them quickly for several reasons.

There is a problem with Mr. Weisberg's health which I referred to in an affidavit. He has a very serious health problem. He may die any day.

The Nation will be deprived of his evaluation of these documents unless we get them.

He has been the investigator for James Earl Ray. James Ear Ray has Court litigation still pending and the documents which we have already obtained in the course of this lawsuit have proved very useful to that litigation.

Among other things, because they reveal the types of very vital evidence which has been previously withheld from us. So it is of utmost importance we get these documents, and we get them quickly. I think there is no excuse whatsoever except a desire to cover up the facts of this case which explains the

refusal of the agency to make these available in the normal course.

We had another example of the inexcusable sort of attempt to find excuses to delay and obstruct the handling of this case on the issue of whether or not we would be provided copies of the Timesphotographs, and it has taken a considerable amount of our time to get some of the correspondence relevant to that.

I would hope that the Court would direct Mr. Dugan to instruct the Department of Justice to provide us with all correspondence and all communications relative to the Times photographs, because I think the Court is being defrauded on the issue.

As of yesterday, Mr. Weisberg received a letter from Time Magine, and now they indicate that they will make the photographs available to him.

And it seems quite clear to me that this whole issue of whether or not those photographs are available was something that was dregged up by the F.B.I. as an excuse to further delay this case.

Still another example. In his affidavit, Mr. Weissman's (sic) first affidavit, paragraph 80, he specifies in response to our interrogatory about the cigarette butts, that "cigarette butts were recovered in New Orleans, not Atlanta."

Now, this means that the search has already been

conducted. We have indicated that we want those as specified in our amended complaint that we are entitled to those, and yet we have not obtained them, and it is not because it will take them any more time to conduct the search, because they have already done the search.

I think that this case will be hopelessly prolonged until all chance of seeing that truth and justice are established unless there is some firm direction to get this thing moving.

THE COURT: What I was looking at, there was something that came up in another Freedom of Information case in which the Government attorney indicated that all the See documents on persons in the F.B.I. reports were cross referenced and readily available. Since that had always been indicated not to be the case, I indicated I wanted to have that record so that I might make other counsel aware of it. They said that there was no question about it, it was all available; that there was no difficulty at all, and this statement was made by Mr. Spader. I found him to be a thoroughly responsible individual, so I am trying to locate that in this section.

If I might say, the Court feels the Government has complied with the order to produce these items to which the plaintiff are entitled. This has taken an inordinate amount of time, and we will expect them to produce the items or explain why not or produce them to the Court. I think it has been too long.

MR. DUGAN: What items, Your Honor?

THE COURT: Something more than the few pages that have been given, sixty-four or whatever.

MR. DUGAN: Your Honor, if I can understand what is before the Court, and whether the Court is responding. We had an April 15, 1975, request. We submitted --

THE COURT: A tremendous length of time, isn't it? It is now July 1st of the following year, and the others were made in December of last year, isn't that right? Which really I am not going to decide, because that is too soon. They both should be responded to immediately.

MR. DUGAN: Well, I am advising the Court that I intend to file a motion to --

THE COURT: A request for additional time for something is not going to be granted. We want them to get to it. It is not possible for them to say they have not been over these papers before. They have been over them dozens of times, so have them made available.

MR. DUGAN: Your Honor, I think it is very easy to say what plaintiff has said and what the Court has accepted, they have been through these files. The Court assumes, the plaintiff assumes that it is one or more file cabinets, but everybody is going --

THE COURT: I don't care, let them start with one, one file cabinet is going to produce more than sixty-four sheets.

MR. DUGAN: Well, Your Honor, we intend to file this motion. If the Court wishes to deny it --

THE COURT: I am not going to act on a motion that is not before me.

MR. DUGAN: That has been our problem, Your Honor. We come before the Court, and I am trying to comply.

THE COURT: You are before the Court on a Freedom of Information case which has been filed in 1975 on a request that was made in that year. And also an amended request for something beyond that.

Now, the point I am making is, I know counsel is in the middle. I am well aware of that. Where the F.B.I. is saying to counsel, "we can't do this sort of thing," and so it is going to be incumbent on counsel to carry the message of the Court. This is not to counsel, this is to the F.B.I. which is the defendant in effect in this case.

MR. DUGAN: All right.

THE COURT: They are required to produce these documents or explain why they have not and time is not going to be the answer.

MR. DUGAN: All right, Your Honor.

THE COURT: Therefore, it would have to come forth with the things and give them to him.

MR. DUGAN: Your Honor, the appropriate vehicle for the conveyance of that message is by Order of Court.

THE COURT: Then I will make one. I will order --

MR. DUGAN: I would want the Court before it orders to listen to the affidavits that I want to file. I have not filed a motion before the Court, but I want to. If the Court wishes to deny it, at least we have made a record of it. Then the Court can deny it and enter an order. I then in turn can convey it to the F.B.I., but I cannot accurately convey to the F.B.I. just by virtue of getting transcripts from these proceedings. I have tried to do that. I tried to expedite it. I have tried to comply with the Court's suggestion. I have not filed my motion pursuant to the Court's suggestion, and the Court would deny it, but I do we have got to make a record instead of it being on oral representation.

THE COURT: There is a motion that was filed May 8, by the plaintiff for a motion under Vaughn v. Rosen for a detailed itemization and indexing.

MR. DUGAN: It is clear, Your Honor, that they haven't even reached it. You can't make an index. We have discussed that. We have been trying to make a distinction between the April request which we filed a full affidavit pursuant to the Court's request. I think we have given a full index as to what has been done in that earlier request.

Now, with respect to the second request that was in December, we intend to file a motion with respect to the F.B.I.'s part of this case.

Now, plaintiff has asked that we comply with the other division. Now, I don't -- he mentioned this other division that I didn't even know existed. I will respond to that with respect to those divisions.

THE COURT: What the point they were making is not the request to the other division. The question is, this other division has just finished going through the papers or they are working on them on Martin Luther King's assassination. That is of the F.B.I. That is where they got them. It is the F.B.I.'s files, it is not somebody else's files they made up. These are the F.B.I.'s file on Martin Luther King's assassination.

Since this group is going through it, what plaintiff has maintained is that there is a manpower to dig them out.

MR. DUGAN: Well, my response to that is if I am going to re-evaluating a case to decide whether something should be re-opened, that doesn't mean I am looking for the same thing that Mr. Weisberg and Mr. Lesar are looking for, my responsibility as a prosecutor to look through a file is not to look at some of this information they requested. Twenty-eight categories of evidence.

Now, it is a different responsibility if I were a Freedom of Information Act lawyer looking for response to their request to see whether any exemptions are properly claimed.

Now, the twenty-eight categories of evidence are listed in their December 23 letter. That does not mean if I am

reviewing it to decide whether it should be open, I would sit here and pull these out.

I think it cannot be equated with the fact that somebody is looking over for a different purpose, that, therefore, it is no bother to them to pull these documents out. They are Department of Justice lawyers, they are not F.B.I. employees. They are not atuned to the same issue that privacy and the Freedom of Information Act unit are atuned to.

Your Honor, I respectfully submit we will file this motion. If the Court wishes to deny it with respect to the F.B.I., that is the Court's prerogative. We will respond with respect to the most recent motion, documenting whether the Criminal Division, whether the Civil Rights Division, or whether the Office of Professional Responsibility has complied.

I don't even know if it was referred to these various divisions. I do know only one, the Civil Rights Division has made a certain disclosure.

We will respond to that. That is where I am at this point, Your Honor, and I hope that we will be able to document to the Court's satisfaction that either we have complied or unable to comply, and then from that, the Court can enter an order.

THE COURT: Why is it they are unable to comply? That is really the point. I just want them to comply so I don't have to keep after them. If you want me to issue an order --

MR. DUGAN: Your Honor --

THE COURT: Just give them the papers.

MR. DUGAN: I wish it were that simple.

THE COURT: It is that simple if they don't have anything to hide, and believe me, that is the position they have put themselves. You may carry that to their office, and tell them that is what I feel. That is the position they have put themselves in by looking like they are absolutely not giving forth anything, because they have something they are trying to hide. That is what it looks like.

MR. DUGAN: I am afraid, Your Honor, that just strikes me as accepting the plaintiff's view --

THE COURT: All I am saying is let them prove to the contrary by their bringing them forth. Nothing will clear it up any faster, will it, than turning it to the light of day.

The prosecution is over and done and been and gone, and this particular man -- the man who has supposed to kill him is dead. What possible basis do they have for withholding this thing up.

MR. DUGAN: The F.B.I. has advised this Court, and I have advised this Court on behalf of them that they are not jumping out of order from Freedom of Information Act requests. If the Court wishes to --

THE COURT: The Court feels they have not handled this thing in order even. I do not believe it. I have had other

cases that are later than this that they have given them. I don't believe it. There is no reason for their being this far behind on this request. I don't want to see some more papers trying to justify it. There is no justification. I am sorry.

MR. DUGAN: Your Honor --

THE COURT: You file your motion, and I will act on it.

MR. DUGAN: All right, Your Honor. Thank you.

THE COURT: I will sign an order on this other one.
(Whereupon, at 10:40 a.m., the above-entitled cause adjourned sine die.)

CERTIFICATE OF OFFICIAL REPORTER

This record is certified by the undersigned reporter for the United States District Court for the District of Columbia to be the official transcript of the proceedings indicated.



Duane B. Duschaine
Official Reporter