

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,]
Plaintiff,]
v.] C.A. 75-0226
U. S. DEPARTMENT OF JUSTICE,]
et al.,]
Defendants.]

TRANSCRIPT OF PROCEEDINGS

Washington, D. C.

March 30, 1977

The above-entitled matter came on for hearing in open
court at 9:35 o'clock a.m., before:

THE HONORABLE JOHN H. PRATT,
United States District Judge

APPEARANCES:

Counsel for Plaintiff:

JOHN H. LESAR, ESQUIRE

Counsel for Defendants:

MICHAEL J. RYAN, AUSA

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DENNIS K. BOSSARD, C. S. R.
OFFICIAL COURT REPORTER
ROOM 4800-G, U. S. COURTHOUSE
WASHINGTON, D. C. 20001

P R O C E E D I N G S

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2 DEPUTY CLERK: Harold Weisberg versus U. S. Depart-
3 ment of Justice, et al., Civil Action 75-0226.

4 Mr. Lesar for the plaintiff; Mr. Ryan for the
5 defendants.

6 THE COURT: Mr. Lesar, where do we stand?

7 MR. LESAR: Good morning, Your Honor.

8 Well, we have thus far taken four depositions, three
9 of former agents of the FBI, who were involved in conducting
10 the test upon the items of evidence in the assassination of
11 President Kennedy, and one member of the FBI who is still with
12 the FBI, who was involved in those tests.

13 From the depositions and the discovery materials
14 taken thus far, obtained thus far, we have established that
15 we have not been given all the materials requested, and we
16 have established that.

17 THE COURT: What material is that?

18 MR. LESAR: Well, we do not have all the transcripts
19 of all of the depositions yet, but it is clear that worksheets
20 relating to certain items, particularly a laboratory fragment
21 known as QUE-3, which is a fragment found in the front seat
22 of the automobile, has not been given us.

23 I believe, if my recollection is correct of the
24 testimony, that there are indications that there are also
25 reports that we have not been given, and we feel certain of
that.

1 THE COURT: Reports concerning what? Pardon?

2 MR. LESAR: Concerning the spectrographic and neutron
3 analyses. And the testimony indicates --

4 THE COURT: Is there anything else?

5 MR. LESAR: Yes. That there is microscopic testing
6 made of all items of evidence, apparently pretty much as a
7 matter of routine. And according to the testimony of Mr.
8 Galliger, which was taken the day before yesterday, these
9 tests are essential to determining whether or not items are
10 going -- what tests are going to be performed on items of evi-
11 dence, including, specifically, spectrographic and neutron
12 activation testing.

13 We have also established the locations of files
14 which apparently should contain documents of the kind that we
15 are requesting, and apparently those files have not been
16 searched.

17 Specifically, the Dallas Field Office of the FBI,
18 and the Communications Division of the FBI. There are also
19 other files that we are uncertain as to whether or not they
20 have been searched, and we would hope to establish that from a
21 short deposition taken of Mr. Kildy, and Mr. Marion Williams,
22 who are FBI agents who have searched the files in response to
23 this request.

24 So essentially, that is the status of the case.

25 THE COURT: I take it you don't have any further

1 depositions scheduled?

2 MR. LESAR: I have not scheduled some. I do intend
3 to take -- I think they will be very short depositions -- two
4 depositions from Messrs. Kilty and Marion Williams. And then
5 I want also to take Mr. Weisberg's deposition, because he has
6 some matters which we think are relevant that we want to get
7 into the record.

8 THE COURT: That, I wouldn't think, would have much
9 to do with your FOI request.

10 MR. LESAR: No, I think it has very much to do with
11 it, Your Honor.

12 THE COURT: Why is that?

13 MR. LESAR: Well, it has to do with the credibility
14 of what we have been told and what should or should not exist.

15 THE COURT: Mr. Ryan, what have you got to say?

16 MR. RYAN: Good morning, Your Honor; Michael J.
17 Ryan, Assistant United States Attorney.

18 May it please the Court, Your Honor, counsel repre-
19 sents that the discovery which has taken place since the last
20 status call establishes certain things. Your Honor, we would
21 disagree with that quite vehemently. We don't think the
22 depositions have established that there is any missing material.

23 I think that counsel and his client persist in dis-
24 believing the retired FBI agents, that there are no other
25 documents which have not been produced. There have been no

1 categorical answers that there are additional documents which
2 have been withheld by the FBI. These agents for the most part
3 did not have any documents with them, and they were not aware
4 of any other documents which existed which have not been pro-
5 duced.

6 I think that as long as the litigation persists,
7 Your Honor, that counsel and the client will continue to dis-
8 believe the answers that the FBI agents give regarding these
9 documents and tests and worksheets and so forth.

10 Your Honor, I think that once these latest deposi-
11 tions have been transcribed, and they were just taken on
12 Monday, that we can put a dispositive motion before the Court
13 for its consideration. I think that there comes a time, and
14 I urged this earlier, before this case was on appeal, but I
15 think it is even more clear now, that the mandate of the Court
16 of Appeals has been satisfied with regard to the categories set
17 forth in the Court of Appeals decision, that there is a time
18 when the fairness due to plaintiff is likewise due the
19 defendant, and litigation ought to come to an end.

20 We feel that we can show through the record which
21 has been established on discovery on the remand of this case,
22 and there have been fairly substantial depositions on remand,
23 that the FBI has been complying with the FOIA request in good
24 faith, and that there are not substantially outstanding
25 matters which come within the bounds of his FOIA request, and

1 simply, Your Honor, we think that the depositions will show
2 that. So we will be prepared to submit a motion we think
3 within 30 days, assuming that we get the transcription of the
4 deposition back within a reasonable amount of time.

5 THE COURT: Who was the reporter?

6 MR. RYAN: I'm sorry, Your Honor.

7 THE COURT: Who was the reporter?

8 MR. RYAN: I am not sure whether it was Hoover.

9 MR. LESAR: Hoover Reporting Company, Your Honor.

10 THE COURT: Yes.

11 MR. RYAN: We had four depositions, Your Honor, as
12 counsel mentioned, one of an agent still employed with the
13 FBI and three retired agents. They just gave answers to the
14 best of their recollection and knowledge, and they were
15 vigorously examined on all of the matters that were set forth
16 in the Court of Appeals opinion, and we would think that at
17 this time counsel would be satisfied and have to live with
18 those answers.

19 THE COURT: Would your dispositive motion have a
20 Vaughn V. Rosen affidavit, or something like that connected to
21 it?

22 MR. RYAN: We could arrange to do that, Your Honor.

23 THE COURT: Who would furnish such an affidavit?

24 MR. RYAN: Your Honor --

25 THE COURT: That's kind of difficult, in view of the

111

1 fact that these matters are spread all over the place, isn't
2 it?

3 MR. RYAN: Well, Your Honor, as far as the documents
4 which the FBI has produced, certainly we can itemize those,
5 and we can also reference the depositions as to any other
6 matters which the Court of Appeals has referred to as being
7 areas of possible further withholding.

8 However, in the defendant's view, we feel that the
9 depositions establish that there is no further withholding.
10 For instance, and I don't want to argue the case today, but
11 with regard to worksheet for Item No. 23, which was, I believe,
12 a copper specimen found in the front seat of the President's
13 limousine, Mr. Galliger was inquired of on Monday, where was
14 the worksheet on that particular item. Well, as a matter of
15 fact, there was no worksheet on that particular item, but the
16 item was listed in other papers, a chart, in material that the
17 plaintiff has been given. And Mr. Galliger explained the
18 procedure for using the worksheet, how he was taking down this
19 information at a very high rate of speed while the items were
20 being subjected to analysis down in Oak Ridge, Tennessee. He
21 said that could very easily have been an ordinary mistake
22 that he could have made. And also, the chart indicates that
23 there was no measurable evidence that was derived from submit-
24 ting this particular item to neutron activation analysis, and
25 it could have been at that time, which was 13 years ago, that

1 he determined not to make up a worksheet, there was no data to
2 be recorded. So that was all explained in that fashion in the
3 deposition.

4 We think that some of the other questions that were
5 raised by the Court of Appeals were likewise satisfactorily
6 explained in the deposition by these agents who actually per-
7 formed the tests. So we think that on the basis of the
8 depositions that we could put a dispositive motion before the
9 Court within, hopefully, 30 days.

10 THE COURT: Mr. Lesar?

11 MR. LESAR: Well, I would comment that I do not
12 agree with some of the representations that have been made.

13 THE COURT: What did you do about the tie?

14 MR. LESAR: Well --

15 THE COURT: You went along without the tie.

16 MR. LESAR: Yes.

17 THE COURT: Why did you need the tie?

18 MR. LESAR: Well, we need the tie to establish where
19 the samples are taken from that tie, and if any sample was
20 taken from that tie for testing, and if there was a sample
21 taken, why don't we have any results on it.

22 Now --

23 THE COURT: This is just complete speculation on
24 your part.

25 MR. LESAR: No. There are two important things

1 about the tie. The first is that the tie is now in an
2 unknotted state; in short, the evidence has been altered.

3 THE COURT: It is your claim that it ought to have
4 been knotted again?

5 MR. LESAR: Pardon?

6 THE COURT: Is it your claim it should have been
7 knotted?

8 MR. LESAR: No, it --

9 THE COURT: Taken off the dead body and then re-
10 knotted?

11 MR. LESAR: No, sir. It was not taken off the dead
12 body and reknotted, it was knotted at the time it was taken
13 off the dead body. It was cut off the dead body by a scalpel.

14 THE COURT: All right.

15 MR. LESAR: And then at sometime subsequent thereto
16 was unknotted, which destroys essential evidence, including
17 the location of the nick on the tie.

18 The photographs of the -- incidentally, at the
19 deposition taken on Monday, the National Archives produced in
20 response to the subpoena, some photographs which the Archives
21 had taken for Mr. Weisberg back in 1970 or 1971, at his
22 request, and which they have never given him, and which they
23 refuse to be allowed to be introduced into evidence at that
24 deposition.

25 The front shot of the tie shows a nick on an

114

1 unknotted tie; the back shot of the tie shows no nick present.
2 Now, obviously, it's quite clear that, from this, and from the
3 other evidence, that the Warren Commission was misled into
4 believing that a bullet had passed through that tie. That is
5 one part of what we are driving at.

6 We think that the defendant has put in a motion to
7 quash that part of the subpoena requiring them to produce the
8 tie.

9 THE COURT: Yes, we got it this morning, and I
10 notice the agreement between the Kennedy family and the Govern-
11 ment when these items of clothing were turned over.

12 MR. LESAR: Yes.

13 THE COURT: They strongly objected to that.

14 MR. LESAR: It is represented that Mr. Marshal
15 objected to producing the tie. Now, assuming the validity of
16 the contract, the terms of it have not been met, and there are
17 a number of reasons why I think Mr. Garfinkel's affidavit
18 should be stricken. First, it is hearsay. Secondly, it
19 attaches to it a copy --

20 THE COURT: Isn't every affidavit hearsay?

21 MR. LESAR: Well --

22 THE COURT: I mean the person is not present subject
23 to cross-examination.

24 MR. LESAR: In this case it's double hearsay.

25 THE COURT: All right.

1 MR. LESAR: But with respect to certain of Mr.
2 Garfinkel's representations, they simply aren't true, and
3 there are some misleading things. For example, the regula-
4 tions which he attaches to that affidavit are 1972 regulations,
5 and those regulations were made subsequent to Mr. Weisberg's
6 request, and they were changed in response to a court suit
7 that he had brought to obtain these materials.

8 In addition to that, Mr. Garfinkel represents that
9 Mr. Burk Marshal has not approved Mr. Weisberg's request for
10 access to the Kennedy family X-rays and autopsies, and the
11 truth of the matter is that Mr. Weisberg made such a request.

12 A request was solicited of him by two officials of
13 the Archives. Mr. Weisberg refused to request access to
14 those materials because he was aware from the information that
15 was being made available to him from various sources that
16 access to these materials was going to be used as a propa-
17 ganda ploy against the Kennedy family, and he refused to
18 participate in that. And that is exactly what happened.

19 Now, the contract also specifies that there is to be
20 a determination made by the Administrator of the General
21 Services Administration. No such determination has been made
22 in accordance with the terms of the contracts. I would
23 respectfully urge the Court not to quash the subpoena, or to --

24 THE COURT: Well, it is moot now anyway, isn't it?

25 MR. LESAR: No, it is not moot.

1 THE COURT: It was filed Friday, but we didn't get
2 it until this morning. I understand that the deposition --

3 MR. LESAR: I understand. But I would renew it in
4 connection with the depositions to be taken of Mr. Weisberg.

5 THE COURT: And you will take Mr. Weisberg's deposi-
6 tion to contain testimony concerning the credibility of
7 certain people who have already been deposed; is that correct?

8 MR. LESAR: Yes.

9 THE COURT: I have never heard of it being done.
10 There is always a first time.

11 MR. LESAR: There is always a first time.

12 THE COURT: I think we have reached the end of the
13 rope on this case, Mr. Lesar. I think we have been very
14 patient with you, I think that's what we're supposed to be,
15 but I think the Government has gone out of its way, so far as
16 I can see, to accommodate you and Mr. Weisberg. I think there
17 comes a time when the buck stops.

18 MR. LESAR: I agree with that, Your Honor. I think
19 we have an exceptionally strong mandate from the Court of
20 Appeals to do what ought to be done to resolve these questions.

21 THE COURT: Yes, well --

22 MR. LESAR: Because we have not yet been able to do
23 it; I expect that we will be able to do it very shortly.

24 THE COURT: My temptation was to enter a 60-day
25 order of dismissal, giving you 60 days to come in and reopen

1 if you could show good cause. I am not going to do that, I'm
2 going to accept Mr. Ryan's suggestion and give him 30 days to
3 file dispositive motion, and assuming that that will conclude
4 the case, you will have an opportunity again to relitigate in
5 the Court of Appeals, which you have successfully done in the
6 past.

7 MR. LESAR: I would assume also that we will be per-
8 mitted to continue in the meantime, and we will answer Mr.
9 Ryan's motion when it is filed.

10 THE COURT: That is right. Sure.

11 MR. LESAR: And when we have the transcripts.

12 THE COURT: You will have 10 days to respond.

13 MR. LESAR: And when we have the transcripts avail-
14 able --

15 THE COURT: Yes.

16 MR. LESAR: -- we can do that.

17 THE COURT: All right.

18 MR. LESAR: Fine.

19 MR. WEISSBERG: May I consult with counsel, Your
20 Honor?

21 MR. LESAR: Your Honor, Mr. Weisberg has asked that
22 he be permitted to testify very briefly as to the direct rele-
23 vance of the photographs which the Archives has refused to
24 permit to be put into evidence. And I would request that --

25 THE COURT: No, we won't permit that certainly at

CERTIFICATE OF COURT REPORTER

1
2 I, Dennis K. Bossard, Official Court Reporter for
3 the United States District Court, District of Columbia, do
4 hereby certify that the foregoing transcript of proceedings
5 is a true, correct and complete transcript of the proceedings
6 before the Honorable John H. Pratt, United States District
7 Judge, and heard on March 30, 1977, in the District of
8 Columbia.

9 Given under my hand this 29th day of April, 1977.
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Official Reporter.