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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,)
)
 PLAINTIFF,)
)
 V.) CIVIL ACTION NO. 78-322
)
 WEBSTER, ET AL.,)
)
 DEFENDANTS)

HAROLD WEISBERG,)
)
 PLAINTIFF)
)
 V.) CIVIL ACTION NO. 78-420
)
 FEDERAL BUREAU OF)
 INVESTIGATION, ET AL.,)
)
 DEFENDANTS.)

WASHINGTON, D.C.
OCTOBER 14, 1980

THE ABOVE-ENTITLED MATTER CAME ON FOR A STATUS
HEARING BEFORE THE HONORABLE JOHN LEWIS SMITH, JR., UNITED
STATES DISTRICT JUDGE, AT 9:30 A.M.

APPEARANCES:

JAMES LESAR, ESQ.
FOR THE PLAINTIFF

DANIEL METCALFE, ESQ.
JAMES FIDLER, FROM THE FBI
FOR THE DEFENDANTS

DAWN T. COPELAND
OFFICIAL COURT REPORTER

P R O C E E D I N G S

1
2 THE DEPUTY CLERK: CIVIL ACTION NO. 78-420. WEISBERG
3 V. THE FBI.

4 CIVIL ACTION 78-322, WEISBERG V. WEBSTER.

5 JAMES LESAR FOR THE PLAINTIFF AND DANIEL METCALFE
6 AND JAMES FIDLER FOR THE DEFENDANTS.

7 THE COURT: GOOD MORNING.

8 MR. LESAR: GOOD MORNING.

9 MR. METCALFE: GOOD MORNING, YOUR HONOR.

10 I AM DANIEL METCALFE FROM THE DEPARTMENT OF JUSTICE
11 ON BEHALF OF THE DEFENDANT, FEDERAL BUREAU OF INVESTIGATION.

12 ALSO WITH ME AT COUNSEL TABLE THIS MORNING IS MR.
13 JAMES FIDLER OF THE FEDERAL BUREAU OF INVESTIGATION.

14 AS YOUR HONOR MAY RECALL, THESE TWO CONSOLIDATED
15 CASES ARE FREEDOM OF INFORMATION ACT CASES WHICH PLAINTIFF
16 SEEKS ACCESS TO THE FBI'S RECORDS OF THE KENNEDY ASSASSINATION
17 AT THE DALLAS AND THE NEW ORLEANS FIELD OFFICES.

18 YOUR HONOR HAS BEEN VERY PATIENT WITH THIS CASE
19 TO ALLOW THE PROCESSING OF THE DOCUMENTS AS WELL AS THE
20 ADMINISTRATIVE APPEAL.

21 WE ARE DEALING WITH MANY, MANY THOUSANDS OF DOCUMENTS
22 AS YOUR HONOR MIGHT SURMISE IN THIS MATTER, IN FACT, WE HAVE
23 INDEX CARDS AT THE DALLAS FIELD OFFICE AND THEY AMOUNT TO
24 APPROXIMATELY 52,000 CARDS THEMSELVES.

25 WHEN WE WERE LAST BEFORE YOUR HONOR WE HAD BELIEVED

1 THE ADMINISTRATIVE APPEAL PROCESS WOULD BE COMPLETED BY THIS
2 TIME.

3 THE PARTIES WERE IN AGREEMENT THAT THE APPROPRIATE
4 COURSE IN THIS MATTER WAS TO ALLOW THE ADMINISTRATIVE APPEAL
5 TO CONCLUDE AND THEN TO SEE WHERE WE WERE SO THAT WE COULD
6 THEN LITIGATE THE CASE OR PROCEED WITH ANY MATTER PRIOR TO
7 LITIGATION.

8 I HAVE ADVISED REGRETTABLY THAT THE ADMINISTRATIVE
9 APPEAL PROCESS HAS NOT YET BEEN COMPLETED BUT HOWEVER I AM
10 ADVISED BY THE DIRECTOR OF THE OFFICE OF THE PRIVACY INFORMATION
11 APPEALS FOR THE JUSTICE DEPARTMENT THAT THEY ARE RIGHT ON
12 THE VERGE OF THE COMPLETION OF THAT PROCESS AND THAT IT SHOULD
13 BE APPROXIMATELY THREE OR FOUR MORE WEEKS, BY WHICH TIME IT
14 WOULD BE CONCLUDED AND WE WOULD KNOW WHERE WE STAND.

15 JUST TO BUILD INTO THAT A SAFETY FACTOR, I HAVE
16 SUGGESTED TO MR. LESAR THAT IT MIGHT BE APPROPRIATE TO HAVE
17 ANOTHER STATUS CALL ON THIS MATTER IN ABOUT FIVE OR SIX WEEKS
18 AND MR. LESAR HAS ADVISED ME THAT HE WILL BE OUT OF TOWN FOR
19 A WHILE AND THAT IT MIGHT BE APPROPRIATE TO HAVE THE NEXT
20 STATUS CALL ON DECEMBER 2ND, AT WHICH POINT THE ADMINISTRATIVE
21 PROCESS SHOULD BE COMPLETED AND WE WILL KNOW EXACTLY WHERE
22 WE STAND.

23 ONE OTHER MATTER IS THAT SINCE WE WERE LAST BEFORE
24 YOUR HONOR THE FBI HAS COMPLETED THE PROCESSING OF THE 52,000
25 INDEX CARDS. IT TOOK A LITTLE BIT LONGER THAN THE FBI EXPECTED

1 BUT I AM ADVISED THAT THEY HAVE CONCLUDED THAT PROCESSING
2 JOB LAST WEEK.

3 THEY HAVE A FEW LINGERING REFERRALS OF DIFFERENT
4 AGENCIES THAT HAVE BEEN RECALCITRANT IN RESPONDING BUT I HAVE
5 BEEN ADVISED THAT THEY ARE PURSUING VERY VIGOROUSLY AS WELL.

6 THE COURT: MR. LESAR?

7 MR. LESAR: GOOD MORNING, YOUR HONOR.

8 YOUR HONOR, I AM IN AGREEMENT THAT WE SHOULD SET
9 ANOTHER STATUS CALL AS SOON AS POSSIBLE AFTER THE COMPLETION
10 OF THE ADMINISTRATIVE APPEAL AND THE DATE OF DECEMBER 2ND
11 APPEARS TO BE THE BEST FOR COUNSEL, THE PLAINTIFF AND THE
12 DEFENDANT.

13 THE COURT: THAT WOULD BE IN BOTH OF THE CASES?

14 MR. LESAR: YES, YOUR HONOR.

15 THERE IS ONLY ONE OTHER MATTER THAT I WISH TO CALL
16 THE COURT'S ATTENTION TO AND THE PROCESSING AND THE RELEASE
17 OF THE INDEX CARDS HAS TAKEN FAR LONGER THAN WE WERE ASSURED,
18 AND I HAVE TAKEN SOME PAINS TO TRY TO ASSURE THAT THE RELEASE
19 WOULD BE HANDLED IN A MANNER THAT WOULD NOT ABUSE MY CLIENT
20 BECAUSE IN THE PAST, IN ANOTHER CASE, HE HAD BEEN ABUSED BY
21 THE RELEASE OF THE VAST VOLUME OF DOCUMENTS AT THE VERY LAST
22 MINUTE BEFORE A STATUS CALL IN PACKAGES TOO LARGE FOR HE OR
23 HIS WIFE TO HANDLE.

24 I WAS ALSO AWARE OF MY CLIENT'S SERIOUS MEDICAL
25 PROBLEMS WHICH MAKE IT DIFFICULT FOR HIM TO WALK UP AND DOWN

1 HIS BASEMENT STAIRS AND TO HANDLE HEAVY PACKAGES.

2 MR. WEISBERG IS IN FACT AT THIS MOMENT IN THE HOSPITAL.
3 HE HAS BEEN IN THE HOSPITAL FOR THE LAST THREE WEEKS WITH
4 THE EXCEPTION OF ONE DAY DUE TO A VERY SERIOUS OPERATION,
5 AN ARTERIAL BYPASS OPERATION OF THE LEG.

6 THE COURT: I AM SORRY TO HEAR THAT.

7 MR. LESAR: THANK YOU.

8 IN JUNE, BECAUSE I BECAME CONCERNED THAT THE FBI
9 WAS NOT RELEASING THE INDEX CARDS ON ANY SORT OF A SCHEDULE,
10 I WROTE MR. METCALFE AND SAID THAT I WANTED TO PREVENT THE
11 DUMPING OF A LOT OF THESE INDEX CARDS ON HIM.

12 AT THAT POINT, 5,000 OF THE APPROXIMATELY 50,000
13 CARDS HAD BEEN PROCESSED AND RELEASED TO HIM ON MARCH 15TH
14 OF THIS YEAR.

15 MR. METCALFE PROMPTLY RESPONDED TO MY COMPLAINT
16 AND SAID HE HAD GOTTEN IN TOUCH WITH THE FBI AND THAT THE
17 DOCUMENTS WOULD BE RELEASED IN ADVANCE OF THE STATUS CALL
18 AND IT WOULD BE DONE IN REASONABLE SEGMENTS.

19 NO FURTHER DOCUMENTS WERE RECEIVED -- INDEX CARDS
20 WERE RECEIVED UNTIL AUGUST WHERE HE RECEIVED SEVERAL HUNDRED
21 AND AGAIN IN SEPTEMBER, SEVERAL HUNDRED MORE.

22 AT THAT TIME I AGAIN NOTED THAT IT WOULD NOW BE
23 IMPOSSIBLE TO COMPLY WITH THE PROMISE THAT THEY WOULD BE
24 RELEASED IN A REASONABLE MANNER.

25 AS A MATTER OF FACT, AS A RESULT OF MY PROTEST AND

1 APPARENTLY AS A RESULT OF THE FBI'S PREVIOUS PLANS, SOME
2 THIRTY-FIVE TO FORTY THOUSAND CARDS WERE RELEASED IN A PERIOD
3 OF A WEEK OR TEN DAYS IN LARGE BOXES UP IN FREDERICK, MARYLAND
4 TO MRS. WEISBERG, WHO NOW HAS ALL OF THESE INDEX CARDS WHICH
5 SHE CANNOT MOVE.

6 AGAIN -- BECAUSE OF THIS IT SEEMS TO ME, IN VIEW
7 OF MR. WEISBERG'S PREVIOUS VEHEMENT PROTEST TO THE FBI, ABOUT
8 THIS VERY THING, IN ANOTHER CASE, TWO YEARS AGO, YOUR HONOR,
9 THAT THIS IS AN INTENTIONAL VIOLATION OF THE COMMITMENTS THAT
10 WERE MADE TO US BY MR. METCALFE AND IN VIEW OF THAT, IF THERE
11 ARE FURTHER DOCUMENTS TO BE RELEASED IN THIS CASE, WE WILL
12 BE ASKING THE COURT TO SET A SCHEDULE FOR THE RELEASE AND
13 THE MANNER TO BE RELEASED, SO THERE WILL BE NO QUESTION THAT
14 THIS WILL NOT BE REPEATED.

15 THE COURT: NOW, MR. LESAR, WHEN YOU SAY IN ANOTHER
16 CASE TWO YEARS AGO, DID THOSE INVOLVE THE SAME DOCUMENTS?

17 MR. LESAR: NO. THEY INVOLVED DIFFERENT DOCUMENTS.
18 IN THAT CASE I HAD ENTERED INTO A STIPULATION WITH THE
19 GOVERNMENT COUNSEL THAT THEY WOULD PROCESS THE FIELD OFFICE
20 FILES OF THE FBI WITH RESPECT TO THE KING ASSASSINATION AND
21 THAT THEY WOULD DO SO BY CERTAIN DATES.

22 THEY MET THE DATE BUT THE STIPULATION EXPLICITLY
23 REQUIRED THAT THEY BE RELEASED IN REASONABLE SEGMENTS SO AS
24 TO PREVENT THIS THING FROM HAPPENING AND IN THAT CASE THEY
25 RELEASED DOCUMENTS AT THE LAST MOMENT BEFORE THEIR STIPULATED

1 DEADLINE IN AN ENORMOUS VOLUME AND MY CLIENT WAS OUTRAGED
2 BY THIS AND WE DO WANT TO PUT A STOP TO IT, AND I EXPECT THAT
3 THERE ARE GOING TO BE MORE DOCUMENTS RELEASED IN THE FUTURE.

4 THE COURT: MR. METCALFE?

5 MR. METCALFE: YOUR HONOR, IF I MAY, I WOULD JUST
6 LIKE TO BRIEFLY RESPOND TO THE FINAL POINT MADE BY MR. LESAR.

7 MR. LESAR AND I HAVE BEEN COOPERATING AS BEST AS
8 I POSSIBLY CAN IN THIS CASE TO TRY TO ACCOMMODATE WHATEVER
9 REQUESTS HE HAS MADE ON BEHALF OF THIS CLIENT FOR THE RELEASE
10 OF THESE LARGE VOLUMES OF INFORMATION.

11 WHAT HE HAS SAID IS SUBSTANTIALLY CORRECT AND HE
12 DID CONTACT ME IN JUNE AND SUGGESTED THAT WE TRY TO STAGGER
13 THE RELEASE AND I REQUESTED THAT THE BUREAU TRY TO STAGGER
14 THEM IN AS MANY SMALL RELEASES AS POSSIBLE.

15 REGRETTABLY, AS I POINTED OUT TO HIM IN MY LETTER
16 OF SEPTEMBER 25TH, REGRETTABLY THE BUREAU IN ITS EFFORT TO
17 TRY TO GET THESE 52,000 INDEX CARDS TO HIM, THEY HAD A
18 REPRODUCTION BACKLOG AND THEY HAVE NOT BEEN ABLE TO GET IT
19 OUT AS QUICKLY OR AS STAGGEREDLY, AS IT WERE, AS THEY HAD
20 HOPED.

21 THERE IS NO QUESTION BUT THAT THEY HAD HOPED TO
22 DO BETTER BUT THEY HAD DONE THE BEST THEY POSSIBLY CAN AND
23 THE IMPORTANT POINT IS THAT THEY HAVE PROCESSED AND RELEASED
24 THESE CARDS.

25 WE WOULD HOPE TO COOPERATE WITH MR. LESAR IN THE

1 FUTURE AS BEST AS WE POSSIBLY CAN BUT I DO BELIEVE THAT THIS
2 HAS BEEN IN NO WAY INTENTIONAL. MR. WEISBERG HAS BEEN DEALING
3 WITH THE FBI FOR A LONG TIME AND THIS WAS NOT INTENTIONAL
4 AND WE HAVE BEEN TRYING TO DO THE BEST AS WE POSSIBLY CAN.

5 THE COURT: MR. LESAR?

6 MR. LESAR: YOUR HONOR, MR. METCALFE HAS ALWAYS
7 BEEN VERY PROMPT AND EFFICIENT IN RESPONDING AND HE HAS
8 RESPONDED TO MY COMPLAINTS ABOUT THIS. I HAVE ABSOLUTELY
9 NO COMPLAINT AT ALL ABOUT MY DEALINGS WITH MR. METCALFE.

10 THE PROBLEM IS, AS MR. METCALFE HAS NOTED, THAT
11 MR. WEISBERG HAS BEEN DEALING WITH THE FBI FOR A LONG TIME
12 AND THERE IS A CERTAIN AMOUNT OF TENSION BETWEEN THEM.

13 WE HAVE, IN FACT, GOTTEN DOCUMENTS THAT SHOW THAT
14 THERE WAS A DELIBERATE POLICY ON THE FBI'S PART IN THE PAST
15 ABOUT NOT RESPONDING -- TO EVEN RESPONDING TO MR. WEISBERG'S
16 REQUESTS AND IT IS APPARENT THAT THERE IS VEHEMENT DISLIKE
17 OF MR. WEISBERG IN THE FBI, AND THAT, OF COURSE, GIVES THEM
18 MOTIVE FOR THIS TYPE OF BEHAVIOR.

19 MR. METCALFE HAS PROVIDED ME WITH SOME OF THE DETAILS.
20 I HAVE REQUESTED THAT HE PROVIDE ME DETAILS ON THE PROCESSING
21 AND THE RELEASE OF THESE DOCUMENTS.

22 MR. WEISBERG SIMPLY DOES NOT BELIEVE THE EXPLANATION
23 THAT HE HAS BEEN GIVEN AS TO WHY THESE CARDS WERE NOT RELEASED
24 TO HIM SOONER AND IT APPEARS FROM THE FACT THAT ON AUGUST
25 8TH, FOR EXAMPLE, AND IT MAY EVEN BE AUGUST 10TH, BUT THEY

1 RELEASED A FEW HUNDRED CARDS TO HIM AT THAT TIME AND THAT
2 THEY HAD COMPLETED CARDS AT THAT TIME AND THERE IS NO WAY
3 THAT I CAN CONCEIVE OF THAT THE BACKLOG TOOK ANOTHER TWO MONTHS
4 BEFORE THEY RELEASED ANY SUBSTANTIAL GREATER NUMBER OF CARDS.

5 MR. METCALFE HAS ADVISED ME THAT THE PROCESSING
6 OF THE DOCUMENTS OF THE ENTIRE 52,000 CARDS WAS COMPLETED
7 BY SEPTEMBER 18TH. IF THAT'S THE CASE, GIVEN THE FACT THAT
8 IT HAS TAKEN NEARLY, I THINK, TWO YEARS TO PROCESS THE 52,000,
9 OBVIOUSLY THERE WERE A SUBSTANTIAL NUMBER OF CARDS THAT HAD
10 BEEN PROCESSED LONG PRIOR TO THAT DATE AND WERE AVAILABLE
11 FOR XEROXING.

12 THAT IS WHY WE SIMPLY DON'T BELIEVE THE EXPLANATION
13 THAT HAS BEEN PROFFERED.

14 I MIGHT ADD THAT I WOULD LIKE TO ASK THAT THE FBI
15 PROVIDE A WRITTEN EXPLANATION FOR THE DELAY.

16 THE COURT: I CAN SEE THE PROBLEM BOTH WAYS IN THIS
17 CASE. FROM THE STANDPOINT OF THESE TWO CASES THAT HAVE BEEN
18 CONSOLIDATED, I THINK BOTH SIDES HAVE PROCEEDED IN GOOD FAITH.

19 I THINK THAT MR. METCALFE HAS FULLY COOPERATED.

20 WE WILL SET THAT NEXT STATUS FOR DECEMBER 2ND AT
21 9:30. IS THAT AGREEABLE?

22 MR. LESAR: YES.

23 MR. METCALFE: YES.

24 THE COURT: THERE ARE 52,000 CARDS. CAN YOU
25 APPROXIMATE THE NUMBER OF DOCUMENTS INVOLVED OR PAGES INVOLVED

1 OVERALL?

2 MR. METCALFE: I BELIEVE -- THIS IS A VERY ROUGH
3 FIGURE. I BELIEVE THAT WE ARE TALKING SOMEWHERE IN THE
4 NEIGHBORHOOD OF 100,000 DOCUMENTS.

5 MR. FIDLER, DO YOU HAVE ANY IDEA?

6 I BELIEVE, YOUR HONOR, WE ARE TALKING ABOUT APPROXI-
7 MATELY OF 100,000 PAGES.

8 THE COURT: AND I WOULD ASSUME THAT THERE ARE QUITE
9 A FEW PEOPLE WORKING ON THIS PROJECT?

10 MR. METCALFE: OH, YES. THERE HAVE BEEN QUITE A
11 FEW AND IT HAS BEEN A DIFFICULT PROCESS. WE HAVE TRIED TO
12 ACCOMMODATE MR. LESAR AND MR. WEISBERG AS BEST WE COULD.

13 THE COURT: ALL RIGHT. DECEMBER 2ND.

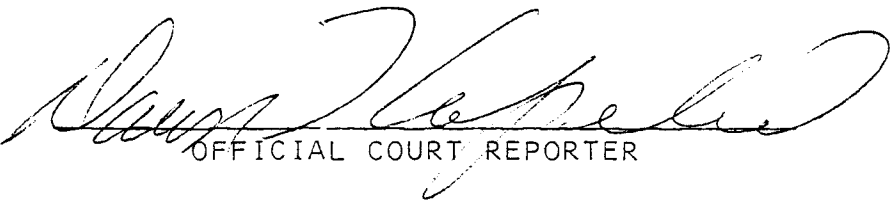
14 MR. LESAR: THANK YOU.

15 MR. METCALFE: THANK YOU.

16 (WHEREUPON, THE HEARING WAS CONCLUDED.)

17
18 CERTIFICATE OF REPORTER

19 THIS RECORD IS CERTIFIED BY THE UNDERSIGNED REPORTER
20 TO BE THE OFFICIAL TRANSCRIPT OF THE ABOVE-ENTITLED HEARING.

21
22 
23 OFFICIAL COURT REPORTER
24
25