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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, )  
 )  
 PLAINTIFF, )  
 )  
 V. )  
 )  
 WEBSTER, ET AL., )  
 )  
 DEFENDANTS )

CIVIL ACTION NO. 78-322

HAROLD WEISBERG, )  
 )  
 PLAINTIFF )  
 )  
 V. )  
 )  
 FEDERAL BUREAU OF )  
 INVESTIGATION, ET AL., )  
 )  
 DEFENDANTS )

CIVIL ACTION NO. 78-420

WASHINGTON, D.C.

MARCH 25, 1982

THE ABOVE-ENTITLED MATTER CAME ON FOR A MOTIONS  
HEARING BEFORE THE HONORABLE JOHN LEWIS SMITH, JR., UNITED  
STATES DISTRICT JUDGE, AT 11:00 A.M.

APPEARANCES:

JAMES H. LESAR, ESQ.  
FOR THE PLAINTIFF

HENRY LA HAIE, ESQ.  
WILLIAM WELBY, ESQ.  
JOHN PHILLIPS, ESQ.  
FOR THE DEFENDANT

DAWN T. COPELAND  
OFFICIAL COURT REPORTER

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P R O C E E D I N G S

1  
2 THE DEPUTY CLERK: CIVIL ACTION 78-322 AND CIVIL  
3 ACTION 78-420. WEISBERG V. THE FBI.

4 FOR THE PLAINTIFF, JAMES H. LESAR AND FOR THE  
5 DEFENDANT HENRY LA HAIE, WILLIAM WELBY AND JOHN PHILLIPS.

6 THE COURT: GOOD MORNING.

7 MR. LESAR: GOOD MORNING, YOUR HONOR.

8 MR. LA HAIE: GOOD MORNING, YOUR HONOR.

9 THE COURT: HOW LONG HAVE YOU BEEN WORKING ON THIS  
10 MATTER, MR. LA HAIE?

11 MR. LA HAIE: JUST ABOUT FOUR MONTHS, YOUR HONOR.

12 THE COURT: MR. LESAR?

13 MR. LESAR: YOUR HONOR, I THINK WE HAVE A MOTION  
14 BY MR. LA HAIE.

15 THE COURT: WHAT IS THE MOTION?

16 MR. LA HAIE: YOUR HONOR, IT'S A MOTION CONCERNING  
17 THE ADJUDICATION OF CERTAIN EXHIBITS. WE SET OUT IN THIS  
18 MOTION A PROPOSAL OF HOW TO DISPOSE OF THIS CASE.

19 THE COURT: GENTLEMEN, I HAVE BEEN GIVING A LOT  
20 OF THOUGHT TO THIS CASE.

21 I AM GOING TO BE READING FROM, I GUESS, THE THIRD  
22 WEISBERG OPINION, STARTING OUT, JUDGE SPOTTSWOOD ROBINSON  
23 SAYS:

24 "HAROLD WEISBERG APPEARS HERE FOR THE  
25 THIRD TIME IN HIS DECADE-LONG CRUSADE

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UNDER THE FREEDOM OF INFORMATION ACT  
FOR DOCUMENTS BEARING ON THE ASSASSINATION  
OF PRESIDENT KENNEDY."

AND THEN THEY GO INTO THE PRESENT APPEAL. I FEEL,  
GENTLEMEN, AND I THINK INDIRECTLY THAT THE COURT OF APPEALS  
MUST FEEL THAT IT IS TIME THAT THIS MATTER BE RESOLVED AND  
THAT WE MAKE SUBSTANTIAL HEADWAY.

NOW, I HAVE CONSIDERED FROM THE STANDPOINT OF SOME  
OF THE FACTUAL CONTROVERSIES THAT HAVE ARISEN AND THE PROPOSED  
ORDER BY THE DEPARTMENT OF JUSTICE.

I AM GOING TO SUGGEST THAT COUNSEL SIT DOWN IN THIS  
COURTROOM OR IN THE JURY ROOM AND TRY TO RESOLVE SOME OF THE  
DIFFICULTIES THAT YOU NOW HAVE.

I HAVE A FEW QUESTIONS HERE THOUGH, FOR BOTH SIDES.  
FIRST, MR. LESAR, AS TO YOUR POSITION, YOU HAVE HAD A CHANCE  
TO REVIEW THE FBI'S REPLY OF MARCH 22ND.

MR. LESAR: YES, I HAVE.

THE COURT: WHAT IS YOUR REACTION TO THE PROPOSED  
ORDER?

MR. LESAR: INSOFAR AS A PROCESSING OR A VAUGHN  
OF WITHHELD MATERIALS, THERE ARE -- THERE IS FIRST THE PROBLEM  
OF WHETHER OR NOT IT IS EXTENSIVE ENOUGH.

IN OTHER WORDS, THERE IS A WHOLE CATEGORY OF WITH-  
HELD MATERIALS THAT ARE NOT ON THE VAUGHN AT ALL.

THESE ARE SO-CALLED PREVIOUSLY PROCESSED MATERIALS.

1           IN OTHER WORDS, THERE WAS A FIELD OFFICE RECORD  
2 FROM EITHER DALLAS OR NEW ORLEANS AND WHEN THEY CAME TO IT  
3 IN THE FIELD OFFICE FILE, IF IT HAD BEEN PART OF THE GENERAL  
4 HEADQUARTERS RELEASE THAT HAD BEEN MADE IN 1977 AND 1978,  
5 THEY SAID THIS HAS BEEN PREVIOUSLY PROCESSED AND WE ARE NOT  
6 GOING TO RELEASE THIS INFORMATION.

7           NOW, MR. WEISBERG MADE A PROPOSAL TO THE DEPARTMENT  
8 OF JUSTICE THAT WE WOULD ACCEPT THAT WITH RESPECT TO THOSE  
9 DOCUMENTS WHERE THERE WAS AN IDENTICAL DOCUMENT THAT HAD BEEN  
10 PREVIOUSLY PROCESSED AT HEADQUARTERS AND HE HAD RECEIVED THAT  
11 DOCUMENT.

12           IF THEY WOULD PROVIDE HIM WITH THE SERIAL NUMBER,  
13 THE CROSS-REFERENCE, SO THAT HE COULD ASCERTAIN THAT HE HAD  
14 IN FACT RECEIVED THAT AS PART OF THE GENERAL HEADQUARTERS  
15 RELEASE, AND THAT WAS DONE AND HE RECEIVED THOSE CROSS-  
16 REFERENCES BUT THE DIFFICULTY COMES WITH RESPECT TO MATERIALS  
17 THAT ARE PART OF THE HEADQUARTERS RELEASE BUT WHICH WERE  
18 WITHHELD.

19           IN OTHER WORDS, THEY WERE NEVER RELEASED TO WEISBERG  
20 OR TO ANYONE ELSE.

21           THE FBI MAINTAINS THAT THE HEADQUARTERS RELEASE  
22 WAS DONE FOR MR. WEISBERG. THAT IS NOT TRUE.

23           THE COURT: WE ARE GETTING INTO A FORMAL ARGUMENT  
24 HERE. I JUST WANT TO KNOW YOUR POSITION ON CERTAIN MATTERS.  
25 I NOTICE THE COURT REPORTER IS TAKING THIS DOWN. DO YOU WANT

1 THIS REPORTED OR DO YOU WANT THIS OFF THE RECORD?

2 MR. LESAR: I WOULD JUST AS SOON HAVE IT ON THE  
3 RECORD.

4 MR. LA HAIE: I WOULD PREFER TO HAVE IT ON THE RECORD  
5 ALSO.

6 THE COURT: ON THE RECORD OR OFF THE RECORD?

7 MR. LA HAIE: ON THE RECORD.

8 MR. LESAR: ON THE RECORD.

9 THE COURT: ALL RIGHT.

10 MR. LESAR: I GUESS ONE, WE SAY THE SAMPLE IS TOO  
11 SMALL IN TWO RESPECTS; ONE, THERE IS AN INITIAL PROBLEM THAT  
12 THE PREVIOUSLY PROCESSED HAVE NOT BEEN DEALT WITH AT ALL AND,  
13 SECONDLY, THAT THE SAMPLE THEY PROPOSE -- THEY CAME BACK WITH  
14 THIS IN REPLY TO OUR PROPOSAL THAT WE BE ALLOWED TO SELECT  
15 SOME OF THE DOCUMENTS AND THEY SUGGESTED A MINIMUM OF 50  
16 DOCUMENTS OR 300 PAGES, WHICHEVER WAS LESS.

17 THE 50-DOCUMENT FIGURE IS ACCEPTABLE TO US. THE  
18 300 PAGES WE THINK SHOULD BE INCREASED TO ABOUT DOUBLE.

19 THE COURT: THAT IS A MATTER THAT COULD BE NEGOTIATED.

20 NOW, CAN YOU COMPLETE YOUR SELECTION OF DOCUMENTS  
21 TO BE INDEXED WITHIN 20 DAYS?

22 MR. LESAR: I WOULD LIKE THAT INCREASED TO 30.

23 THE COURT: THIRTY DAYS.

24 WHAT IS YOUR AUTHORITY FOR THE REQUEST THAT THE  
25 FBI PROVIDE YOU AND MR. WEISBERG WITH COPIES OF THE COMPLETED  
INDEX?

1 MR. LESAR: I GUESS, YOUR HONOR, NO AUTHORITY EXCEPT  
2 THAT IT WOULD SPEED THINGS UP CONSIDERABLY BECAUSE OTHERWISE  
3 I HAVE TO TAKE IT TO A XEROXER AND XEROX IT AND MAIL IT TO  
4 HIM AND WE LOSE FOUR OR FIVE DAYS IN THAT PROCESS.

5 IF THERE IS NO TIME PROBLEM, AND IF THE COURT ALLOWS  
6 US SUFFICIENT TIME --

7 THE COURT: WELL, SUFFICIENT TIME IS RUNNING OUT.  
8 THIS MATTER HAS BEEN RUNNING ON FOR FOUR YEARS AND IT'S TIME  
9 IT MOVED FORWARD AND BE RESOLVED.

10 THE TIME AND EXPENSE TO ALL PARTIES IS A CONSIDERABLE  
11 FACTOR.

12 MR. LA HAIE?

13 MR. LA HAIE: YES, YOUR HONOR.

14 THE COURT: WHAT WOULD YOUR REACTION BE TO ALLOWING  
15 MR. WEISBERG TO PROCEED WITH DISCOVERY ON HIS CLAIMS REGARDING  
16 MISSING TAPES AND DOCUMENTS WHILE SIMULTANEOUSLY GOING AHEAD  
17 WITH THE VAUGHN INDEX AS PROPOSED IN YOUR MARCH 22ND REPLY?

18 MR. LA HAIE: WELL, IF I COULD EXPLORE THAT A LITTLE  
19 BIT FURTHER, WHAT SORT OF DISCOVERY WOULD THE COURT BE  
20 THINKING OF? WOULD IT BE INTERROGATORIES --

21 THE COURT: THAT IS THE THING THAT I WANT TO HOLD  
22 DOWN TO THE MINIMUM. I WILL NOT CUT YOU OFF AT THIS STAGE  
23 BUT I DON'T WANT TO GO BEYOND THE NECESSARY SCOPE.

24 IN OTHER WORDS, I AM THINKING OF SHORTENING THE  
25 TIME OF THE INDEXING ALSO.

1 MR. LA HAIE: WELL, AS I INDICATED TO THE COURT  
2 EARLIER, I HAVE ONLY BEEN INVOLVED IN THIS CASE FOR LITTLE  
3 LESS THAN FOUR MONTHS.

4 FRANKLY, I AGREE WITH THE COURT THAT THE CASE IS  
5 FAR TOO OLD AND NEEDS TO BE DISPOSED OF.

6 I THINK WE -- THAT IS, I AM REFERRING TO THE FBI --  
7 THEY HAVE TAKEN THE STEPS THAT ARE NECESSARY TO DISPOSE OF  
8 THE CASE.

9 I WOULD THINK THAT ANY DISCOVERY AT THIS POINT WOULD  
10 SERVE NO PURPOSE AND WOULD ONLY DELAY THE RESOLUTION OF THIS  
11 MATTER.

12 NOW, IF IT WAS DONE SIMULTANEOUSLY WITH THE VAUGHN  
13 INDEX, YOU KNOW, PERHAPS IT WOULDN'T BE AS DILATORY AS IF  
14 IT WERE CONCURRENT -- AFTER THE PROCESSING OF THE DOCUMENTS.

15 ALSO WE SEE NO NEED FOR THE DISCOVERY. WE HAVE  
16 PUT, YOU KNOW, AFFIDAVITS BEFORE THE COURT AND THEY INDICATE  
17 THAT THEY HAVE RECEIVED ALL THE DOCUMENTS AND WE HAVE LISTED  
18 THE FILING OF THEM.

19 AND MR. WEISBERG HAS WORK SHEETS ON ALL THESE FILES,  
20 SERIAL NUMBERS ON ALL OF THESE FILES AND HE KNOWS WHAT HAS  
21 BEEN EXAMINED.

22 THE COURT: MR. LESAR IS SHAKING HIS HEAD IN THE  
23 AFFIRMATIVE WHICH IS A CONSTRUCTIVE SIGN.

24 MR. LESAR: YES, WE KNOW WHAT HAS BEEN PROVIDED  
25 BUT THE QUESTION IS WE ALSO KNOW SOME THINGS THAT HAVE NOT

1 BEEN PROVIDED AND I WOULD ACT VERY RECEPTIVE TO --

2 THE COURT: THAT IS THE TYPE OF MATTER THAT I WANT  
3 YOU TO SIT DOWN AND EXPLAIN AND IF YOU KNOW OF THINGS THAT  
4 HAVE NOT BEEN PROVIDED, WHY DON'T YOU STATE WHAT THEY ARE.  
5 AND, YOU, MR. LA HAIE, SEE IF THEY ARE AVAILABLE AND IF THEY  
6 SHOULD BE PROVIDED, PROVIDE THEM.

7 THAT IS A MATTER THAT COULD BE NEGOTIATED BETWEEN  
8 COUNSEL.

9 MR. LA HAIE: I WOULD AGREE, YOUR HONOR. LAST  
10 DECEMBER I THOUGHT THE COURT DIRECTED MR. LESAR TO DO THAT.  
11 HE NEVER CALLED OTHER THAN --

12 THE COURT: WELL, WE HAVE HIM IN COURT RIGHT NOW  
13 AND HE IS GOING TO STAY IN COURT UNTIL WE DO GET SOME ANSWERS  
14 ON THESE MATTERS.

15 MR. LA HAIE: THEN, IF I COULD ADDRESS THE DOUBLING  
16 OF THE NUMBER OF PAGES.

17 THE SAMPLE VAUGHN THAT WE HAVE PROPOSED TO THE COURT  
18 WOULD COME FAIRLY CLOSE TO 700 PAGES OF DOCUMENTS AND IF YOU  
19 WOULD INCLUDE ANOTHER 300 FOR MR. WEISBERG, YOU WOULD HAVE  
20 A SAMPLE VAUGHN OF 1,000 PAGES.

21 AS SET OUT IN THE DECLARATION OF MR. PHILLIPS, THERE  
22 IS ONLY ABOUT 1700 PAGES THAT HAVE BEEN DENIED IN THEIR  
23 ENTIRETY. YOU ARE ALMOST REACHING THE POINT THAT IT IS NO  
24 LONGER A SAMPLE VAUGHN BUT A COMPLETE VAUGHN AND IT WILL JUST  
25 TAKE THE FBI ALL THE MORE TIME.



1                   THEY ARE UNDERSTAFFED AT THIS POINT AND UNFORTUNATELY  
2 MR. WEISBERG IS NOT THE ONLY FOIA REQUESTER THAT THEY HAVE.

3                   I THINK WHAT THE COURT IS SUGGESTING OR IS THROWING  
4 OUT FOR THE FBI'S CONSIDERATION WILL ONLY DELAY IT FURTHER.  
5 I THINK 300 DOCUMENTS OR 300 PAGES IS A VERY GENEROUS AMOUNT  
6 FOR MR. WEISBERG TO PICK OUT, TO SELECT.

7                   THE COURT: WHAT I AM SUGGESTING IS THAT YOU SIT  
8 DOWN WITH MR. LESAR AND SEE IF YOU CAN NARROW THE GAP. THERE  
9 IS NO REASON FOR EITHER SIDE TO TAKE A SANGUINE APPROACH  
10 HERE. IT IS A MATTER THAT IS SOMEWHAT CONFUSED AND THE BURDEN  
11 IS ON THE GOVERNMENT, WHICH YOU ARE WELL AWARE OF, IN LIGHT  
12 OF THE DECISIONS.

13                   I AM IMPRESSED WITH YOUR PROPOSED ORDER. I THINK  
14 THAT IS THE STARTING POINT. I THINK YOU OUGHT TO SIT DOWN  
15 AND SEE IF YOU CAN'T WORK OUT AN AGREEMENT BASED ON THIS ORDER  
16 AND THEN FILE ANY APPROPRIATE MOTIONS THAT YOU MIGHT HAVE.

17                   MR. LA HAIE: WE ARE NOT AT ALL OPPOSED TO DO THAT.  
18 WE WOULD ASK THAT SOME RESOLUTION BE ANNOUNCED TODAY AND EVEN  
19 IF WE DON'T GO ANY FURTHER, YOU KNOW, CONTINUING THIS FOR  
20 ANOTHER WEEK OR TWO TO TRY TO RESOLVE SOME OF THESE PROBLEMS,  
21 BUT THAT IS --

22                   THE COURT: THAT IS UP TO COUNSEL. THE RESOLUTION  
23 WILL BE ANNOUNCED TODAY IF YOU ALL WOULD MEET EACH OTHER  
24 HALFWAY.

25                   I AM GOING TO LEAVE YOU IN THE COURTROOM AND IF

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YOU PREFER, YOU MAY GO IN THE JURY ROOM WHICH IS BEHIND THE COURTROOM AND NEGOTIATE.

WE HAVE REACHED THE POINT WHERE I AM GOING TO SEE THAT THE MATTER MOVES FORWARD PROMPTLY.

MR. LA HAIE: FINE, YOUR HONOR.

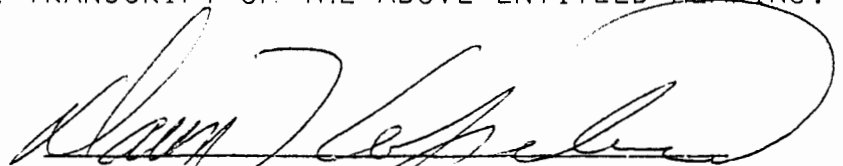
DO YOU HAVE ANY OTHER QUESTIONS?

THE COURT: NO, I HAVE NO OTHER QUESTIONS.

(WHEREUPON, THE HEARING WAS CONCLUDED.)

CERTIFICATE OF REPORTER

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

  
OFFICIAL COURT REPORTER