

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RECEIVED

APR 5 1982

JAMES F. DAVEY, Clerk

.....
HAROLD WEISBERG,

Plaintiff,

v.

WILLIAM H. WEBSTER, ET AL.,

Defendants
.....

Civil Action No. 78-0322

HAROLD WEISBERG,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,
ET AL.,

Defendants
.....

Civil Action No. 78-0420

(Consolidated)

PLAINTIFF'S SETTLEMENT PROPOSAL

At the hearing held on March 25, 1982, the Court directed the parties to try and negotiate a settlement. After more than three hours of negotiations, the parties remained far apart. The parties then outlined their respective proposals to the Court in chambers, and the Court directed plaintiff to submit his settlement proposal to the Court by April 5, 1982, and gave defendants ten days to respond to it. What follows is essentially the settlement proposal made to defendants on March 25th, although an effort has been made to refine and clarify it.

* * *

During the course of this litigation, plaintiff has filed hundreds of appeals with the Office of Privacy and Information

Appeals protesting wrongful withholdings or demanding that specified files be searched. However, in order to settle this case, he is willing to limit his demands to a few specified matters that are of particular importance to him.

Indeed, he is willing to settle on terms that will save the FBI considerable time, inconvenience and money. Specifically, if the FBI is willing to comply with the demands set forth below, plaintiff is willing to: (1) waive a Vaughn v. Rosen sampling; (2) stipulate that he will not resort to further litigation to obtain any of the materials withheld in these cases;^{1/} and (3) dismiss these actions.

In return for these concessions, plaintiff seeks compliance with the following demands:

1. Oswald-Mexico City materials. These materials consist of intercepts of phone calls said to have been made by Lee Harvey Oswald to the Russian Embassy in Mexico City prior to the assassination, and a teletype pertaining thereto. Plaintiff contends that virtually all but the exact words of these intercepts have been made public by the government, and that until these records were processed some 16 years later, they were not classified. If the FBI contends that these materials or any portions thereof are exempt, it will submit a detailed affidavit swearing that the substance of the withheld materials has not been publicly released and specifying the exact nature of any alleged damage to the national security.

2. Oswald's income tax records. In his letter of December 16, 1980, concerning the administrative review in these cases, Associate Attorney General John Shenefield directed that tax records which had been withheld from plaintiff be processed. Within

^{1/} Where materials withheld in these cases have also been withheld from the Headquarters files, plaintiff will, of course, be able to sue for the Headquarters materials.

the past few weeks plaintiff has received some such records. For example, copies of Jack Ruby's income tax records, as well as those of his relatives and friends, have recently been released. Although Oswald like Ruby is dead, his tax records remain withheld.

3. Statement of FBI Special Agent James Hosty. Before the assassination of President Kennedy, Lee Harvey Oswald went to the FBI's Dallas office and left a letter for Special Agent James Hosty threatening to bomb the Dallas FBI office and the Dallas Police Headquarters. All knowledge of this was withheld from the Warren Commission, and the Oswald letter was destroyed. In fact, the FBI told the Commission that it had no reason to believe that Oswald had any predisposition towards violence and thus had not told the Dallas police of his presence in Dallas or his past. After Dallas SAC Gordon Shanklin retired, the fact of the Oswald bomb threat and its destruction was leaked to the Dallas Times-Herald. An Inspector General's investigation followed, during which FBI employees with knowledge of the event were interviewed repeatedly. Consideration was given to charging Shanklin with perjury. When Hosty and Shanklin contradicted each other--Hosty said that Shanklin told him to destroy Oswald's threat after the assassination--additional information was sought. What Weisberg believes to have been Hosty's final statement was not placed in the files with all the other records pertaining to this incident, but instead was placed in a "67" (personnel matters) file. (Weisberg has given the file number to the Office of Privacy and Information Appeals.) Thus, this record is a matter of considerable historical importance.

4. Weisberg report on Mafia threat. While in New Orleans in 1968 Weisberg received a person-to-person call at approximately 4:00 a.m. from Harv Morgan, a well-known San Francisco reporter

and talk show host. The phone caller informed Weisberg of an alleged Mafia contract, reportedly already let, on Jim Garrison, the New Orleans District Attorney. Garrison was out of town at the time. The threat had been conveyed to Morgan by a man named Richard Rye. After the phone call Weisberg, who taped the conversation, contacted the ranking New Orleans policeman assigned to Garrison's office. Although Weisberg wanted to turn the tape over to the FBI immediately, the policeman wanted to clear it with the Assistant DA Garrison had left in charge, and the assistant wanted to confer with some associates. After some time had elapsed, they agreed to let Weisberg inform the FBI. Weisberg then phoned the FBI and spoke with Special Agent Hood.

New Orleans field office records released to plaintiff during the course of this litigation give the correct time for Weisberg's call to SA Hood. However, timed and dated FBI Headquarters records reflect the fact that FBI Headquarters was informed of this by New Orleans about two hours earlier than the time Weisberg phoned the FBI.

The records reflecting how the FBI knew this and what it did with that knowledge before Weisberg phoned them remain withheld. Weisberg believes that . . . the FBI could only have known this by means of an electronic intercept.

As a condition for ending this litigation, Weisberg insists upon a thorough search for any interceptions and all records pertinent thereto. The search should be made by the agents who are most knowledgeable about where such records might be located. The search should not be limited to Elsur's but should include all places known to have been used for hiding records, such as do-not-file files, "June" files, SAC safes, special file rooms, "80" (Lab Research) files, and any other place where such records might be. At the conclusion of the search, the agents who conducted it

shall submit affidavits detailing what was searched, how the search was conducted, and who was contacted for information regarding the existence and locations of such materials.

5. Garrison records. The disclosed New Orleans records show that pertinent Garrison records are in an "80" (Laboratory Research Matters) file and, as best Weisberg can recall, in a "67" file. Additional records on him are known to exist, such as tapes made during electronic surveillance of him, and informant files.

If a list of all references on Garrison is provided, plaintiff will eliminate those he does not want.

6. Warren Commission critics. In his letter of December 16, 1980, Associate Attorney General John H. Shenefield directed the FBI to "attempt to determine whether there are any official or unofficial administrative files which pertain to the Kennedy case, with particular emphasis on seeking files on 'critics' or 'criticism' of the F.B.I.'s investigation. Any records located as a result of these searches will also be carefully screened and, if appropriate, processed for possible release to [Mr. Weisberg]." (Emphasis added)

The FBI has not carried out Mr. Shenefield's orders. Instead of searching for files on Warren Commission critics, the FBI has merely checked its indices under the title of "Warren Commission critics" and variants thereof, and, of course, found nothing.

Plaintiff will limit his request for records on critics and criticism to those listed on Attachment 1 hereto. An all reference search should be made for any records on these persons. (Plaintiff has provided the Office of Privacy and Information Appeals with specific file numbers on critics.)

7. Films, tapes, and pictures. Associate Attorney General Shenefield's letter of December 16, 1980, noted that various films and tapes in the Dallas and New Orleans files had not been processed for possible release to plaintiff and asserted that "[t]he Bureau will now consult with him regarding these materials and will process any which are of interest to him." Except in regard to the tapes on Marina Oswald, which plaintiff agreed to waive because of their personal nature, the Bureau has not done this.

In a declaration by Special Agent John N. Phillips filed in this action and in a letter from Mr. John K. Hall dated March 25, 1982 (Attachment 2), the FBI has asserted that plaintiff has been provided "all the releasable tapes and films contained in the Dallas and New Orleans Field Office files responsive to your request."

There are two crucial qualiers in this phrase: "releasable" and "contained in". The latter phrase is particularly deceptive because the Court, which has received the Phillips' declaration employing this language, is unaware that the Dallas field office has loaned out films and tapes; thus these materials, while within the terms of plaintiff's requests, are no "contained in" the field office files. See Attachment 3, plaintiff's 3/27/82 reply to Mr. Hall's letter of 3/25/82.

In order to resolve this issue, plaintiff proposes that the FBI list all films, tapes, and pictures in the Dallas and New Orleans field office files, or which were in those files orginally ^{been} but which have/transferred or loaned out. Once provided with this list plaintiff will tell the FBI of any he doesn't want copied.

8. Attorney's fees and costs. There would seem to be little basis for contending that plaintiff has not "substantially prevailed" in this litigation. He has already obtained thousands of pages of records which were originally withheld from him. The FBI

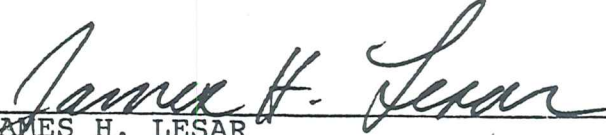
has a long history of not responding to his Freedom of Information Act requests until he sues, and then resisting compliance once suit has been filed. In the instant cases, after suit was filed the FBI planned to limit itself to the main Oswald, Ruby and Warren Commission files. The list of 18 files which is contained in the proposed Order it submitted in connection with its Vaughn sampling motion reflects how many more files it now acknowledges are pertinent. The FBI had originally concealed the existence of the special index consisting of 43 linear feet of 3x5 cards in the Dallas field office. It resisting releasing this index, perhaps the most valuable single record for scholars of the Kennedy assassination, until forced to do so during the course of this litigation. It was also forced to release some 3,000 pages of records which originally had been wrongly withheld from plaintiff on the grounds that they had been "previously processed" in the Headquarters files. And even after the administrative review resulted in the release of thousands of more pages, plaintiff obtained still more by objecting to the exemption claims still made on reprocessing.

Thus, plaintiff is eligible for a discretionary award of attorney fees and costs, and this is a case in which such an award should be made. At present plaintiff's attorney fees and costs amount to less than \$10,000. Thus the sum at stake pales into insignificance when compared with the amount of money which would be expended by the FBI if it succeeds in its desire to do a Vaughn v. Rosen sampling.

CONCLUSION

The settlement proposal made by plaintiff above is fair and reasonable and promises to end this litigation sooner and at much less cost and inconvenience to all concerned than any other alternative.

Respectfully submitted,




JAMES H. LESAR
1000 Wilson Blvd., Suite 900
Arlington, Va. 22209
Phone: 276-0404

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have this 5th day of April, 1982, mailed a copy of the foregoing Plaintiff's Settlement Proposal to Mr. Henry LaHaie, U.S. Department of Justice, Washington, D.C. 20530.



JAMES H. LESAR

Mark Lane
Harold Weisberg
Howard Roffman
Sylvia Meagher
Josiah Thompson
Jim Garrison
Joachim Joesten
Leo Sauvage
Edward J. Epstein
Richard Popkin
Paul Hoch
David Lifton
Mary Ferrell
Earl Goltz
Penn Jones
Harold Feldman
Vincent Salandria
Bernard ("Bud") Fensterwald, Jr.
Hal Verb
Sylvan Fox
Robert Kaffka (FBI informer)
Nerin Gun
Herve Lamar (James Hepburn)
Willard Robertson
Cecil Shilstone
Thomas Buchanan
Truth and Consequences
Assassination Inquiry Committee
Assassination Information Bureau
Citizens Commission of Inquiry
Citizens Committee of Inquiry



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

MAR 25 1982

Mr. Harold Weisberg
7627 Old Receiver Road
Frederick, Maryland 21701

Dear Mr. Weisberg:

Reference is made to your letter dated February 18, 1982, which was received March 4, 1982, concerning your Freedom of Information Act (FOIA) request for materials pertaining to the assassination of President John F. Kennedy.

Please be advised that all the files responsive to your FOIA request were searched and processed. These searches were made upon receipt of your initial request and during the administrative appeal process.

If you believe that material was not received by you, as indicated by our disclosure letters, please advise us of the date of our letters and the discrepancy in the enclosure count and an effort will be made to rectify any problem.

As a result of your letter we verified that you were furnished all the releasable tapes and films contained in the Dallas and New Orleans Field Office files responsive to your request.

Please note that the Dallas Field Office does not maintain a personnel (67) file on James Hosty. The only

Mr. Harold Weisberg

personnel file located containing information on the Kennedy Assassination, 67-425, concerning general personnel matters, was processed and the releasable material was furnished to you.

If you make separate, specific requests for additional material please furnish as much information as possible. It may be necessary to charge search and/or duplication fees for the separate request. You may, of course, appeal any fees that you might be charged.

Sincerely yours,

James K. Hall / JKH

James K. Hall, Chief
Freedom of Information-Privacy
Acts Section
Records Management Division

Mr. James A. Hall, Chief
FOIPA Section
FBI
Washington, D.C. 20535

3/27/82

Dear Mr. Hall,

In the March 25, 1982 answer to my letter of February 18, 1982, SA Phillips resorts to the identical misrepresentation and deception he employed in his March 22, 1982 declaration. In both formulations, with regard to Dallas film and tapes, he says there are none "contained" in the Dallas office that have not been provided. He does not state and without perjury he cannot state that there are no Dallas films and tapes that have not been provided because he knows there are. The most perfunctory Dallas search will disclose their existence and their present location. They can be provided and they were to have been provided long ago pursuant to ^{the} December 16, 1980 letter of Associate Attorney General John H. Shenefield.

In that letter the AAG states that "there are various films and tapes in these (i.e., Dallas and New Orleans) ^{Files} which were not processed for possible release to Mr. Weisberg. The Bureau will now consult with him regarding these materials and will process any which are of interest to him."

Since then the FBI has not consulted to me with regard to this matter and until the imminence of action in court did not bother to respond to my letters about it. And even now it seeks again to deceive and mislead in order to withhold public information. The one matter taken up with my counsel was the Marina Oswald tapes. Because of their nature and that content which was known to me I waived them only. They hold personal information that ought not be made public.

If the judge believed the Phillips affirmation he was deceived and misled, and it cannot be accidental.

When those films and tapes were loaned by the Dallas office, unless it departed from clear FBI practise it prepared a covering inventory, copies of which are required to be in its files and those of FBIHQ. They also are included in pre-existing

Dallas inventories.

It simply is not possible that FBIHQ is not aware of the present location of these films and tapes for at least the past five years. It likewise is impossible that Dallas could not inform FBIHQ, should any inquiry have been necessary, of what left its office, when it left and where it was sent.

If I have to inform the Court of this I will. However, ^{day before} yesterday the Court reflected a great desire to end this litigation, a desire I share, and I would prefer not to bother the Court without need.

And if SA Phillips were as familiar with this case as he would like the Court to believe, he would never have dared try pull such a dirty trick.

I have read the Dallas records. The film is a matter of great interest to me. My third book is devoted to the existing film that was suppressed. It includes the facsimile reproduction of a number of Dallas records pertaining to the film that Dallas obtained, ~~to~~ some it avoided obtaining until it had no choice, and what it sent to the Warren Commission. The information contained in the Dallas records I received in C.A. 78-0322 adds greatly to what was available in the Commission's records. The Dallas records ^{also} reflect the fact that although the Dallas office pretended otherwise it made copies of what it sent to the Commission and kept this fact secret from the Commission.

From the time of the AAG's letter until now the FBI has not claimed that Dallas does not "contain" these records nor did it represent to the appeals office that they did not exist. At its request I was in touch with the appeals office. I was informed that I would receive prints of all film and dubs of all tapes. The appeals office was aware of their existence, if not, as I believe, their location at that time.

With regard to the third paragraph of your letter, what I wrote was based on a list prepared by a student. When I began to write you further about this I discovered error in that student's work. It now is not possible for me to duplicate that checking, particularly not within any length of time I believe the Court

would now consider. I therefore waive that matter.

With regard to the Hosty matter, one record in particular is of interest to me and locating it should not present you with any major problem. It was placed in a 67 file the number of which I now do not recall. I did write the appeals office about this and I believe provided the number then. However, that appeal was ignored and there is no letter from it to which I can refer.

For your information and assistance, Lee Harvey Oswald, before the assassination; went to the Dallas office and left a threatening letter for Hosty. All knowledge of this was withheld from the Commission. (The FBI told the Commission it had no reason to believe that Oswald had any predisposition toward violence and thus had not told the Dallas police of his presence in Dallas or his past.) After the retirement of then SAC Gordon Shanklin, the fact of this threat by Oswald and its destruction was leaked to the Dallas Times-Herald. There followed an Inspector General's investigation the records of which were disclosed to me. During that investigation it was necessary to interview some of those with knowledge over and over again. Charging Shanklin with perjury was considered. When Hosty and Shanklin contradicted each other - Hosty said that Shanklin told him to destroy Oswald's threat after the assassination - additional information was sought. Instead of being placed in the file with all the other records, what I believe was the final statement by Hosty was placed in that 67 file. The matter is of considerable historical importance. If locating this in Dallas is any kind of problem, there should be a copy at FBIHQ which ought not be difficult to locate.

You close your letter by ^{suggesting} ~~saying~~ that I am making an additional request. I think it is apparent that I am not making any additional request.

Sincerely yours,


Harold Weisberg