

cc: Files

Mr. Saloschin

Mrs. Gauf/

Mr. Lindenbaum

August 16, 1972

Leon Ulman
Deputy Assistant Attorney General
Office of Legal Counsel

Robert L. Saloschin
Office of Legal Counsel

Appeal of Paul L. Hoch under the Freedom
of Information Act for pre-assassination
FBI records referring to Lee Harvey Oswald.

As you recall, the above appeal has been pending for approximately one year and is currently assigned to John Gallinger. Disposition of this appeal was discussed in a meeting in your office on July 25 attended by Mr. Gallinger, Miss Paff, and myself. We concluded that the least undesirable alternative now open to the Department is to advise Hoch that the denial is "modified" and that the records will be reviewed with a view to a possible discretionary grant of access to some of them.

On July 28, John and I met with the recently designated FBI liaison representatives for freedom of information matters, Dwight Dalbey and John Mintz. We discussed with them our reasons for not recommending an outright affirmance of the Deputy's denial, as well as our reasons for reluctantly abandoning the approach of asking Hoch for a substantial financial deposit. The FBI representatives indicated that the FBI would make the review of the records which we had in mind, provided the Department would direct them to do so and would furnish them with guidelines for use in making the review. Thereafter, John Gallinger prepared drafts of the 3 papers necessary to carry out the foregoing disposition of this appeal (a memo to the Attorney General, a letter to Hoch, and a memo to the FBI), and gave them to me before he left on his vacation on August 4.

On August 7, after making editorial revisions in John's drafts, I delivered them to Dwight Dalbey's office. Dwight was on vacation, but I left them with John Mintz, asking him to read them and then call me to discuss any problems or changes.

From Criminal

On August 14, John Mintz informed me that our drafts had been reviewed in the FBI's Executive Office and that Mr. Gray had expressed disapproval of our proposed disposition, both as to the idea of giving Hoch access to any of the requested records and as to undertaking the contemplated review. Mintz added that he, Mintz, had not turned the drafts over to the Executive Office until that Office had asked him for them, but it was his impression that the Executive Office knew that the Hoch appeal was being taken up between OLC and Dalbey's office because of information from someone in the Department. (So far as I know, no one in the Department knew that we were processing this Hoch appeal except 4 lawyers in OLC, 2 lawyers in the Civil Division, possibly someone in the Deputy's Office, and Sol Lindenbaum, although we have made no particular secret of the fact that this matter is in process.)

I was somewhat surprised at this reaction, since I had received the impression on July 28 that the Bureau would not seriously oppose our proposed disposition of this appeal. In view of my discussions with Sol Lindenbaum on the related Weisberg spectrographic analyses case (see Addendum hereto), I promptly told Sol about the message from Mintz. We were both somewhat puzzled at Gray's reported position, since Gray has some sophistication about the judicial treatment of freedom of information disputes, and we wondered whether the FBI's reaction may have been influenced by the extremely unpleasant impression projected by Weisberg.

Nevertheless, Sol and I agreed that unless we are prepared to switch and recommend a simple affirmance here, which in my judgment would unduly jeopardize the Department's interests, the matter would have to be presented to Roger Cramton, who in turn may have to decide whether to present the issue to Ralph Erickson. (Sol and I both assume that Kleindienst will delegate the disposition of this Hoch appeal to Erickson.)

Roger Cramton and I are not expected back in the Office until September 5. Sol Lindenbaum suggested that you may wish to talk to him (Sol) after examining the attached drafts. These drafts are the same ones which were prepared

by Gallinger, revised by me, left with John Mintz of Dalbey's office on August 7, and returned by Mintz to me on August 14. However, the drafts bear changes marked in red, which were added by me late on August 14, after Sol had glanced over the drafts in the light of Mintz's message about Gray's negative reaction. As you can see from these red changes, the memorandum from Cramton to Erickson would report to Erickson that Gray does not support our recommended disposition of this appeal.

I am sorry to burden you and Roger Cramton with this complex, difficult and overdue matter. After we discussed it in your office on July 25 and in Dwight Dalbey's office on July 28, I thought it was well on its way to settlement. I believe that we should probably consider one further effort to resolve this matter without putting Ralph Erickson in the position of having to decide between the recommendations of OLC and the FBI. That would be to have another meeting with the FBI after Dwight Dalbey returns from vacation, perhaps with Pat Gray participating, to see if there is not some aspect of this which will permit us to agree, at least tacitly, on the disposition. For example, the proposed letter to Hoch might be modified by adding an express statement that the contemplated review may not necessarily result in any records which the Department is willing to grant access to. However, in view of the long overdue nature of this matter, I think it should be disposed of early in September.

Attached hereto are: (1) the Gallinger/Saloschin drafts; (2) the incoming papers on the appeal, beginning with Gerald Fines' memorandum of August 19, 1971; and (3) a packet of files relating to Weisberg's pending lawsuit for the spectrographic analyses which is discussed in the Addendum. This latter packet consists of the Civil Division's files, the files of the Deputy's office, and other papers and references some of which pertain to that case.

I am sending a copy of this memorandum to Sol Lindenbaum.

Attachments

ADDENDUM

While waiting for the Dalbey/Mintz response to our drafts for disposing of the Hoch appeal, I looked into another aspect of this appeal not previously discussed with anyone: Whether our recommended disposition of it would undercut our position in any pending litigation. Even though different Kennedy assassination records and different requesters are involved, I find that the recommended disposition of the Hoch appeal may somewhat undercut our position in Welsberg v. Department of Justice, which has been argued and is now pending in the Court of Appeals for this Circuit, assuming the disposition here were to come to the attention of Welsberg and the court. The records in dispute in the Welsberg case are those of the spectrographic analyses of the Kennedy bullets.

I think those records may constitute an even weaker case than the ones in the pending Hoch appeal, and there is a substantial question in my mind whether the Department should not moot out the Welsberg case before it is decided, for much the same reasons that we should try to avoid a confrontation over the Hoch appeal. I have discussed this possibility with Alan Rosenthal, who argued the case, and with Walt Fleischer, who was on the briefs. Both think it is a matter of policy, and I gather they would not object to mooting it out, which Walt seems to think may be a good idea. Sol Lindenbaum, with whom I also discussed this matter because of the time factor and the procedural questions involved, thinks I should explore it further, but I have not taken it up with the FBI, even to the extent of asking to see the spectrographic analyses in issue. I have, however, obtained and examined all the files bearing on the case that I can locate (those from the Deputy's office, those from the Civil Division, and those in the Central Files that were attached to the Attorney General's June 4, 1970 denial; see "packet" attached hereto). The Welsberg appeal on these spectrographic records was handled by Steve Lockman, and Hoover's May 28, 1970 memo on the reasons for denial is very weak legally. After reading these papers I still feel that we run a considerable risk

in being in this Court of Appeals in a dispute over these spectrographic analyses records, and should probably moot out the case in order to protect the FBI's files from a bad precedent. Alan Rosenthal thinks the case may be decided soon.

It also appears that the statement in the Attorney General's June 4, 1970 letter to Weisberg that the availability of the spectrographic analyses "is being litigated in the federal courts" (see Joint Appendix in "Packet" at pp. 23-24) was probably erroneous. (The records of this entire Weisberg request and appeal matter are very confusing. For example, the Attorney General's denial of Weisberg's request for the spectrographic analyses was on June 4, 1970, but the Deputy's denial of Weisberg's request for the same records is dated later, June 12, 1970. The apparent explanation is that the Attorney General acted on a Weisberg letter renewing this request while an initial disposition of the request was still pending before the Deputy.)