

B

PETITION FOR PERMISSION TO PROCEED OUT OF ORDER  
AND ADD TO PETITION FILED JANUARY 9, 1985

---

---

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA

---

Nos. 84-5058 and 84-5201

---

HAROLD WEISBERG,

Plaintiff-Appellant,

JAMES H. LESAR,

Appellant,

v.

WILLIAM H. WEBSTER, et al.,

Defendants-Appellees.

---

Nos. 84-5054 and 84-5202

---

HAROLD WEISBERG,

Plaintiff-Appellant,

JAMES H. LESAR,

Appellant,

v.

FEDERAL BUREAU OF INVESTIGATION, et al.,

Defendants-Appellees.

Harold Weisberg  
7627 Old Receiver Road  
Frederick, MD 21701

*Use 44  
Tucker*

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA

Nos. 84-5058 and 84-5201

HAROLD WEISBERG,

Plaintiff-Appellant,

JAMES H. LESAR,

Appellant,

v.

WILLIAM H. WEBSTER et al.,

Defendants-Appellees.

Nos. 84-5054 and 84-5202

HAROLD WEISBERG,

Plaintiff-Appellant,

JAMES H. LESAR,

Appellant,

v.

FEDERAL BUREAU OF INVESTIGATION et al.,

Defendants-Appellees.

PETITION FOR PERMISSION TO PROCEED OUT OF ORDER  
AND ADD TO PETITION FILED JANUARY 9, 1985

Harold Weisberg, Plaintiff-Appellant, petitions for permission to proceed out of order and add to petition filed January 9, 1985.

CONCISE STATEMENT OF REASONS FOR THIS ADDITION TO  
PETITION FILED JANUARY 9, 1985

Plaintiff-appellant Weisberg is without counsel for the reasons stated earlier. He is aware that this court frowns upon requests for extension of time or more than 15 pages, but he believes that the information not available to him until after he filed his petition of January 9, 1985, is of such exceptional importance to the nation and to this court, involves the integrity of this court and the judicial system, as he specifies below, *that* he therefore petitions this

court to accept this addendum to his petition.

#### BACKGROUND

Although he is not a lawyer, Weisberg was aware of the limitation to 15 pages and to 45 days under the rules of this court. In addition to his serious illnesses, which are documented in the case record and of which the panel was aware, as the case record also reflects this time of the year he is subject to bronchial infections that have had numerous, painful, debilitating and lingering complications. He had such an infection when he drafted his petition and he feared that if he did not file it immediately he might not be able to file it at all, so he filed the retyped rough draft.

Then he received and was able to examine records pertinent in this litigation and withheld from him that were provided to another litigant, Mark Allen, by the FBI.<sup>1/</sup>

This particular batch of FBI JFK assassination records disclosed to Allen relates to FBI SA James P. Hosty, Jr., who, as without contradiction Weisberg attested, was involved in several major public scandals. Yet the supposed Dallas search slip was and throughout the litigation remained blank. Without refutation Weisberg attested to the great volume of Dallas Hosty records that had to be identified in any honest search; that the FBI withheld them because of their embarrassing content (and because it always stonewalls Weisberg); that the FBI had hidden assassination investigation information, among other places, in the Hosty personnel file, which is duplicated at FBIHQ (Weisberg provided the correct file number for it); and that the FBI's attestations were knowingly and deliberately false, which also was not refuted.

---

<sup>1/</sup> Allen's suit is for records made available to the House Select Committee on Assassinations. It duplicates an earlier request made by Weisberg, whose request, as is the FBI's practice, was ignored when Weisberg was not able to file suit.

After a leak there was partial disclosure of records related to one of the incredible Hosty scandals, his destruction after the assassination of a pre-assassination note from Lee Harvey Oswald that Dallas FBI employees who saw it state was a threat to blow up the Dallas FBI office and the police headquarters. Those disclosed records left in doubt whether or not FBIHQ was aware of the Oswald threat and of Hosty's destruction of that note. What was disclosed to Allen and is required to be recorded in the Dallas files and was withheld from Weisberg removes any doubt. The records withheld from Weisberg after attestation to a search for them and of providing everything confirm that withheld relevant information was indeed hidden in Hosty's personnel file, and it, too, is scandalous in nature.

One of the few Weisberg appeals that was acted upon relates to the two field offices' records relating to so-called "critics" of the official solution to the assassination. The FBI was directed to make such a search and process any relevant records. (Weisberg had even provided the correct title and file number of some.) SA John N. Phillips, who had been held not to be competent because he lacked personal knowledge of the investigation by the same panel only two days before it issued its decision in this litigation in which he provided virtually all of the FBI's attestation, attested, as without refutation Weisberg stated, misleadingly, deceptively and falsely to represent that the FBI had no such records. The records disclosed to Allen are shockingly specific in describing the nature of the "critics" records the FBI, and in particular Phillips' own division, knew it had and had at the time of its attestations.

Weisberg alleged that one of the reasons the FBI stonewalls him and refused to make the required searches in this litigation is because it knew that it had never investigated the crime itself and instead had sought only, from the very outset, to make it appear that Oswald was the lone assassin and that there had been no conspiracy. He also alleged that it was less than cooperative with

the Presidential Commission headed by Chief Justice Warren and resented its existence. Records withheld from Weisberg and disclosed to Allen confirm this graphically.

Perhaps most sensational of all is the information withheld from Weisberg but on file in Dallas, just disclosed to Allen, that Oswald, before the assassination, allegedly told the Dallas FBI two times that he had been contacted by the USSR's "MVD!" Also sensational is the statement by a Dallas FBI agent that the alleged Presidential assassin was its informant or source - as Oswald's assassin was.

#### THE NEW INFORMATION

The character of this relevant and withheld FBI information is such that Weisberg minces no words. He attested repeatedly that SA Phillips lied repeatedly about the alleged nonexistence of relevant ticklers and in particular that it is his and a stock FBI lie in this and in other litigation that ticklers are "routinely destroyed" in a matter of days. The information disclosed to Allen, referred to herein and attached, is from old FBI ticklers that still exist. And these very copies were in Phillips' own division. It thus is apparent that the FBI has lied to the courts "routinely" with regard to the ticklers it does have, that can embarrass it and that it hides them from disclosure when they are not exempt under FOIA.

Attachment A is of Dallas information. The SAs identified were all assigned to the Oswald investigation. (When Fain retired Hosty became the Oswald "case agent.") This states that Oswald "said he had been contacted by the MVD." This information is not included in any Dallas record disclosed to Weisberg and the FBI also withheld it from the Warren Commission. Whether true or not (and as a subject expert Weisberg believes it is not true) it should not have been withheld from the Warren Commission and ought not have been withheld from him in this litigation.

The FBI's outline of its information in Attachment B confirms Weisberg's

attestation to withholding from him and FBI motive for it. (Weisberg attached the copied paperclips for his own information.)

That FBIHQ knew all about the Oswald preassassination threat to bomb the Dallas office and police headquarters and withheld this information and the fact of its own destruction of that threat is explicit at 1 B 3 (marked by paperclip), which states that FBIHQ "handled" that problem the very day Oswald himself was killed, two days after the assassination. That very same day, long before any real investigation was possible, Director Hoover informed the White House (1 A 3) that "Oswald alone did it. Bureau must 'convince the public Oswald is the real assassin.'" The very next item quotes Hoover as considering the investigation not yet made entirely completed, from his memo: "wrap up investigation; seems to me we have the basic facts now."

That Hoover (or anyone in the FBI) was in any way suspicious about how Jack Ruby, its own former informer (1 C 4), was able to kill Oswald is not reflected in any record disclosed to Weisberg or the Commission. This previously withheld tickler record also reflects suspicion of a conspiracy involving Ruby at 1 C 2, "Hoover suspicious of (Ruby's) basement entry and assistance." Any factual basis for these suspicions had to originate with the Dallas office but nothing at all of this nature was disclosed to Weisberg.

Assistant Director Alex Rosen, who then headed the Investigative Division, provided a picturesque confirmation of Weisberg's attestation that the FBI did not investigate the crime itself (1 B 4): "Rosen characterization of FBI's 'standing around with pockets open waiting for evidence to drop in.'"

The FBI's "adversary relationship" with the Warren Commission is the subject of Item 3. Hoover opposed the Commission (1) and this "adversary relationship" (3) led even to "Hoover's blocking Warren's choice for general counsel," (4) the man who ran the Commission and who is ordinarily the selectee of the chairman. There are two references to the FBI's preparation of dossiers on both

the "staff and members" of the Commission. (Emphasis added) The second mention leaves the FBI's improper purposes and intentions without doubt: "Preparation of dossiers on WC staff after the Report was out." (3 C 1, emphasis in original)

That Hoover himself did the leaking he denied, condemned and attributed to others is explicit. (3 C 2) So also is it that the FBI and CIA got together to "prearrange" what they would tell the Warren Commission.

At 3 C 7 the FBI gives the lie to Phillips, its own affiant in this litigation: "Subsequent preparation of sex dossiers on critics of probe."

Attachment C is from the FBIHQ Hosty personnel file that Weisberg correctly identified to the district court and on (ignored) appeal. (Hosty wrote Director Kelley after a personal meeting.) In the third paragraph he states precisely what Weisberg had attested about his Dallas personnel file, that it held his alleged version of assassination investigation information and that "Serial 157" of "this file contains answers" to questions he had been asked "which are not the same answers I submitted." He objected strongly and enclosed a copy of what also is relevant in this litigation, his "memo to the Dallas SAC ... different from the one appearing in my personnel file." None of this is on the entirely blank Dallas Hosty search slip attested as genuine by the FBI in this litigation. Hosty then proceeds to identify still other relevant records and still other FBI alterations in what he actually reported.

No record disclosed to Weisberg includes what Hosty reports (page 2, paragraph 2) that Hoover "personally advised me on 5/6/64, and SAC Gordon Shanklin of the Dallas office in June 1964 that my testimony before the Warren Commission was excellent." Also disclosed to Allen are the identical pages of Hosty's testimony that Weisberg provided to the district court and in which Hosty, who had received and destroyed Oswald's threat to bomb the FBI and police, swore to the Commission that he and the FBI had no reason to believe that Oswald would be in any way violent. (The case record also holds Hosty's report that Oswald

beat his wife, hardly a record of nonviolence.) Hosty thus was praised for ✓  
deceiving, misleading and lying to the Commission with all records withheld and  
omitted from the search slip.

That a large number of FBI Dallas employees knew about Oswald's pre-  
assassination threat and its post-assassination destruction and were entirely  
silent about it throughout the period of the Warren Commission and for more than  
a decade afterward is explicit in Attachment D. This high-level FBIHQ record  
reflects that FBIHQ knows its Dallas SA did lie in its r<sup>e</sup>ference to "not dis-  
ciplining others who are not being truthful." (Paragraph 2)

The FBI's general lack of forthrightness and reluctance to provide copies ✓  
even to the committees of the Congress is reflected in Attachment E. (The records  
it required the Senate committee to examine at FBIHQ were disclosed to Weisberg  
under the compulsion of litigation.)

No  
The second Hosty disciplining referred to also is required to be in the  
Dallas files and index, yet that search slip is as void on this as it is on 100  
percent of the many other known Dallas records relating to Hosty. It happens,  
perhaps by the most remarkable of coincidences, that this disciplining after  
Director Hoover's personal praise of Hosty was on the first day after page proofs  
of the Warren Report were disclosed officially.

At least one Dallas FBI SA stated that "Oswald was an informant or  
source of SA Hosty," yet no such information was disclosed to Weisberg. The FBI  
here passes this off with a rather large exaggeration, the untruthful claim that  
this "was looked into by the President's Commission, and there was no substance  
whatsoever to this particular claim."<sup>2/</sup>

2/ The fact is that the Commission did not and recognized that it could not  
make any such investigation and that its only source was the FBI's self-  
serving testimony, of Director Hoover and Assistant Director Belmont. Former  
CIA Director Dulles, in an executive session transcript Weisberg obtained via  
FOIA and published in facsimile, told his fellow Commission members that lying  
about this kind of report is right and proper.



Selected pages of a longer report of the Senate Intelligence Committee's interview of SA Robert M. Barrett, who had been assigned to Dallas, are Attachment F. He confirms (page 5) Weisberg's unrefuted and ignored attestations and appeals, that pertinent and withheld Ruby records are in Dallas files and are withheld: "... opened a PCI case on Ruby." Weisberg correctly identified even the FBI printed form the agents are required to fill out after each contact with any kind of informer. None has been disclosed, Barrett confirms the existence of such a file, known normal FBI practice, and the Barrett confirmation was in Phillips' own Division.

That even FBI SAs knew and admitted that it never intended to investigate the assassination itself, FBI motive for withholding that Weisberg attested to without refutation, is reported on page 13. Barrett denied knowing this but the committee informed him "explicit directions that the investigation was to establish that Oswald acted alone" were reported to it by "other FBI agents." (page 13)

This and other disclosed FBI records, including Attachment B, hold specific reference to an organized crime aspect of official assassination investigations. Yet, as with all else where it is equally false, the FBI represented to the District Court that it required "discovery" from Weisberg - so it could prove "compliance" - so that in some manner neither the district court nor this court's panel was troubled about, "discovery" from Weisberg would permit the FBI to "prove" that it had provided the records it had not searched for, processed or disclosed and knew it had not.

Whether or not true, existing Dallas FBI records reporting that Oswald, the only officially alleged Presidential assassin, had been contacted by the USSR's MVD and at the same time was an FBI informant or source, without doubt exist, without doubt are relevant, without doubt do not appear on the Dallas search slips attested to be all of them and genuine, and without doubt remain withheld from Weisberg. No "discovery" from him is or was necessary for the FBI

to know of the existence of these records and indeed, the very Division that handled them for both the Congress and Allen provided the false attestations by which the defendant-appellant prevailed before the district court and this court.

Without doubt Jack Ruby, who murdered Oswald and thereby eliminated the possibility of any trial, had been an FBI informer and it without doubt had the usual records relating to that association. It without doubt did not require "discovery" from Weisberg to be aware of this. But, as with all other alleged "discovery" matters, he had, in fact, provided this information in detail and with documentation. Yet no search for any of this existing information has ever been made and Weisberg's appeals, falsely represented as acted upon, remain ignored.

The FBI and in particular the very FBI Division that provided uniformly false attestations to the district court knew very well that it had and deliberately withheld by subterfuge and false representation records relating to the so-called "critics" it had been directed to process by the appeals office. The attachment to this petition relating to the "critics" also was in that very Division at the very time it provided sworn misrepresentation and untruth. An obvious reason for the FBI's knowing and deliberate untruthfulness to the courts is found in its own words, that among the dossiers it prepared on these "critics" is what it described as sexual dossiers. This is not a known law-enforcement purpose, not a proper function of any agency of government and is a form of abhorrent police-statism. Even the respected and eminent members of the Warren Commission were not immune in the FBI's quest for the defamatory after it had been mildly criticized.

Certainly the FBI, at either Dallas or FBIHQ, required no "discovery" to be aware of the existing and withheld records relating to the ordered destruction after the assassination of Oswald's threat to bomb delivered to Hosty before the assassination. That the FBI received such a note, destroyed it and then kept this