

CHAPTER 13

Much From Little: A Precedent and the Mortgage Paid Off

So we learned that the government can be an enormous, unlearning beast.

We learned but it did not because it repeated what those chopper jockeys did, acted as though nothing can ever be done about anything. We'll come to that.

We also learned that some lawyers have their own way of calculating.

The steady ruin of what was a very promising business was a real frustration, more so because there was nothing anybody could do about it. That it was not going to end became apparent when even the general counsel of the defense department to whom the secretary had directed his desire that this totally unnecessary damage to is be ended, assigned a staff lawyer to look out for our interest and see to it that the abuses ended.

Before then when my own efforts were futile, we got a lawyer.

Most of those choppers were, when visibility was quite clear, merely taking a short-cut that at most saved a negligible amount of time as they followed the highway northwest from Washington. They were en route to the then bacteriological chemical warfare installation at Fort Detrick, in Frederick, only 12 miles away by road, to the presidential retreat at Camp David, near Frederick, to secret installations not much further away near Hagerstown, Maryland, Raven Rock, just over the Pennsylvania, or when he was President, to Eisenhower's farm at Gettysburg, Pennsylvania. We were in a valley between two hills, both fairly steep. Under regulations the choppers were required to fly at prescribed heights over the ground.

Rather than follow the curve of the road they were following around the hill to our north elevating to the prescribed height over it, those choppers just skimmed the top of the hill. That loud, reverberating noise,

with its flopping sound, reminded poultry of its natural predator, hawks.

Often prominent people, including the heads of other states, were the passengers to Ike's farm and Camp David.

One Sunday when I could hear the choppers coming in low but not as low as did happen, a Washington lawyer friend, Jesse Chessin, was visiting us. He ran with me when I ran to our main hen house. He saw the panic driven chickens rush to the corners and tear each other up as they tried to claw their way into the corner. He helped me remove those trampled to death and separate those alive but bleeding, most from their backs.

Jesse said we needed a lawyer who was a specialist in the kind of law involved.

He got the firm of Rauh and Silard to represent us. Joe Rauh, head of Americans for Democratic Action, after taking the case, turned it over to his junior partner, John Silard. John was the nephew of the famous atomic scientist and disciple of peace who still used the Hungarian spelling of the family name, "Szilard."

In time, and I was to learn that in litigating time can appear to be interminable, Rauh and Silard filed suit in the federal district court in Baltimore. The judge was the conservative Rozell Thomsen. He was, as I learned later, a caring man who did seek justice.

During what I supposed was the preparation of the case I drove Silard to the University at College Park, and introduced him to some of the poultry faculty then in. I recall that this included Quigley and that he said that what we suffered was expectable. Those others there who were willing to be witnesses for us I do not remember, but Silard did know that qualified expert witnesses would testify for us, who they were and where to find them.

My wife and I assumed, as probably most would, that when we had a lawyer he did what lawyers

do and asked us if he wanted anything of us.

Jesse told me to get there early on the day of the trial so we could talk. He and Silard drove north from Washington, I east from Frederick, and we met in the empty courtroom. It was then, an hour or so before trial, that I learned of "proof of loss" for the first time. Silard never mentioned it to me or asked me how to establish our losses in terms of dollars. All I then could tell him is that we had our books. And beginning then I was scared! Really scared. The look on Jesse's face confirmed it. It was Jesse who had asked Silard about his proof of loss. And Silard had none! So there I was in court with a claim for damages, and a lawyer who was not prepared to establish the money represented by those damages!

In a daze that interfered with my thinking and lasted until long after I was home that night and in shock that lasted longer, I testified, responding to the questions Silard asked me. Then Silard had Jesse testify to what he saw that Sunday in the henhouse in uproar and turmoil. The government's assistant United States Attorney for Baltimore crossexamines me before Silard put Jesse on the stand. That should have made Jesse uncomfortable because in his crossexamination of me the government attorney made a prima facie case that we had suffered no damage at all.

My learning what the government can do and does do in litigation was just beginning.

All the evidence the government needed, its attorney made it appear, confirmed to the judge when Silard was unprepared to refute it, was our income tax reports. According to them our income varied only slightly during the years covered by the lawsuit. We thus appeared to have suffered no damage at all!

Were that not enough to be a disaster to us, it was not long before the government displayed with great effect what the FBI was capable of.

They are, as I was to learn over and over again, past masters of the dirty business I soon saw demonstrated.

The day of the trial someone had to be at the farm to tend the chickens and gather the eggs.

If I took my wife as a confirming witness there could be the suspicion that like me, she had a vested interest in the outcome of the trial and might be considered prejudiced.

The trial would also be an agonizing reliving in more intense form of what she had lived in pain for several years.

There was the alternative I used of taking Horace Thompson. He helped me from time to time and he tended the chickens on Tuesdays, when I was preparing to market, and on Wednesdays, when I delivered.

We took him as the confirming witness. Silard had not interviewed him earlier. He did, briefly, before court opened.

Horace had known my wife since she was a child. As a girl, it being safe then, she walked the several miles to his farm to visit and play with his daughter. Like everyone in the area I knew Horace to be a devout, honorable and honest man. I doubt there was a more respected man in the area and in his life he had earned and deserved that respect.

Horace was also a simple man. That does not mean that he was not intelligent. He was. He had made a living on a small farm and had retired. Like most people of the area, he had left it only infrequently, never going far or for long. Like most he accepted and respected authority without question.

As Silard questioned him, Horace suddenly remembered nothing. Oh, yes, there had been a few instances of mild disturbance from what he said were infrequent helicopter overflights, but nothing serious, and he remembered no damages or death.

Then the government displayed the FBI's work. As usual, it had conducted the "investigation" for the Department.

There were two neighbors, Mrs. Rush Wright who lived directly south of us, on the hill that faced us, with us at the bottom of the hill to the north, almost in the flat valley at the bottom of which flowed "Little Bennett's Creek." To her west, atop that end of that "Long Hill," as it is known, a mile long, lived the Jack Croghan family. And farther west, where there were no hills, was a part-time chicken farmer. His name I omit because he is alive and seriously ill.

The government led Mrs. Wright to say that she raised chickens and had had no trouble with them from the helicopters, I whispered to Silard that she had a few scrawny hens running wild, no more, and that from her children chasing them nothing would frighten them. Their ability to run without piling up because they were outside also meant that they would not suffer any damages if they had been frightened. Moreover, with them having the run of the Wright farm, Mrs. Wright had little way of knowing whether they had been frightened or not.

Silard said her testimony was irrelevant and he spent no time crossexamining her.

Edith Croghan, who raised no chickens at all, testified that the helicopters caused her no distress at all. As Silard found irrelevant, with the life she had led even as the young matron she was there was no reason to believe that anything existed that then could have been expected to cause her distress.

Her father was an impulsive man prone to anger and hasty decisions. He had been a successful restaurateur but he sold one of his restaurants in a moment of anger and for some time had his family living in a tent, as from time to time when he was not there, it was laughed about in Byron Darby's country store, an authentic, old fashioned country general store in which the men gathered. The men gathered and gossiped mostly about local matters.

At the time we lived there her father had built her mother a fine home. In semi-retirement he crop farmed a bit. He had given the western end of the farm to his daughter for a home cite. It was on the crest

of that end of "Long Hill" where it sloped steeply down toward the flatland of the valley. Her husband, Jack, a hard-working man then beginning what became a very successful plumbing business, then part-time, was then also a bit inclined toward doing daring, impulsive things, as their two sons, then little boys, learned from him and did.

For example, when the divided superhighway was being built to replace the narrow old road that went through Hyattstown and had not yet reached it from the north, impatient Jack hurried to save the certainly less than five minutes longer it might take them to use the exit to the north that had been opened. He'd drive on the unpaved next section and then cross the unpaved and frequently raw earth diving section to leave near where that cloverleaf near us was being constructed. Once he got stuck in the mud. He phoned me asking me to pull him out with my truck. He asked me to hurry so the cops did not catch him.

Jack was a fine man, a very good father, husband and provider, but he was from time to time a wee bit wild.

As were his very small ones.

Jack had acquired an antique Model A Ford sedan then about 30 years old. He intended to restore it. He had it parked at or very near the crest of the hill near his also fine home.

The boys got in it one day to learn what would happen if they let it go downhill. When they let the brake of it rushed down hill.

But somehow it was stopped, still upright, prior to the expectable disaster and neither the father, the mother or the sons were really distressed over that close call.

So, without doubt, those helicopters did not bother their mother and wife a bit. For reasons of which the judge was not made aware.

Then there was the part-time chicken farmer to the west by about a mile, a full-time carpenter

whose father tended his chickens for him, the man who left early for his regular job and returned late from it. He testified that he and his chickens had never had any trouble from the helicopters. Only he did, and has asked me what to do about it and how to treat those torn and bleeding hens so the others, who like blood, would stop eating and killing those who were hurt from the overflights some distance farther from his henhouse than from mine. His also was not surrounded by hills from which the noise and vibrations reflected and echoed, sometimes amplified.

It was all false and there was nothing I had been able to do about it. I could hardly think going home. Horace was silent, without any explanation.

When I told my wife what had happened, that I was so shocked I could not think, not having had "proof of loss" even mentioned to me so I could go over our records before trial, she, who kept the records, knew the answer immediately. Silard would have had he asked. As the lawyer, he should have known that the government would have used our income tax records if they were useful to it. And with our income the question, he should have realized that those records certainly would have been consulted.

All these new and unexpected experiences were painful but important learning experiences.

Who could think that a layman having no experience with the law would have to know what his lawyer should have done and had not, prepare his case? Or recognize that the case was not prepared? Or know what was missing? Or why was it needed? Or how to prepare it?

How the government was able to make our income tax reports lie knowing it was a lie, was very simple, as Lil explained it. And as I should have realized but under the shock of the imminent defeat in court had not been able to.

If any proof of loss had been prepared, as Silard should have known and prepared it, the government would not have dared use our tax returns. They proved extensive losses.

Had I not been so upset I probably would have thought how to respond, but then I learned, in the courtroom and just before the trial was to begin, that the case had not been prepared as such cases are prepared, I was so upset I just could not think.

Our tax records actually proved that our loss in gross income from the damages was more than the gross income reported the previous year!

We had more than doubled our capacity in that year!

Not expecting that the military, mostly the Army, would persist in inflicting that totally unnecessary damage on us I had continued to construct housing for the chickens. In the main henhouse the second and larger half was completed and laying chickens were in it and laying eggs for that year.

Essentially the same was true of meat birds. I had not only improved the existing housing for them, increasing the safe capacity the existing buildings had, I had also finished building another building for them and was using it.

Thus, when our ignored records proved that we had lost more than the previous year's income, and that previous year's income was already much lower than what had been normal because of the earlier helicopter damages, I was made to seem to be liar merely because what is standard procedure in such cases was not followed by our lawyer.

He had prepared no proof of loss.

Learning that made me even sicker. With evidence by which we should have won used, we would lose even if we eventually won!

Without a word Horace did not come to work. We did not see him until after the local papers reported that we had won the case but with a small award because the judge did not believe me. So, in addition to not recovering what we should have, I was also branded among my neighbors as a man who

did not tell the truth in court. But Jesse Chessin's eye witness testimony convinced the judge that we had been damaged.

After this story appeared Horace, very embarrassed, visited us for the last time.

He told us that he had a nephew who was an FBI agent in Hagerstown, about 25 minutes by car from Frederick and about 15 minutes more from where our farm was. He told us the name but we have forgotten it. One way or another his FBI agent nephew persuaded him that his recollection need not include all those damages or that he had so to testify in the interest of something like "the national interest." He seems to have convinced Horace that it would not harm us, make no difference in the trial's outcome. Horace also said he was sorry. He certainly looked it. He knew he had hurt us and I am convinced, knowing the kind of honest man he was, that he had believed what he was told, that he had been imposed upon by someone he trusted.

What the government did is suborn perjury, a felony.

But who prosecutes the prosecutor? The prosecutor also represented the government as its counsel in the civil action we brought against it.

Perjury and its subornation were to become commonplace in my later experience with government lawyers and their actions in the JFK assassination investigations and in my FOIA lawsuits. As in our civil action, all involved for the government knew they would be immune and the record, by now a long record, justifies their confidence that nothing would or could happen to them. It never did except that some were rewarded for what they did.

What was important and was ignored was in the account of the decision the AP put on its wire.

Judge Thomsen held that we did have a Constitutional right to own and enjoy property and that for us as chicken farmers we needed and owned the air space about us to the degree necessary for us to raise

chickens undisturbed. He thus held that the military helicopters were trespassers and in their trespass had damaged us.

Silard said nothing about appealing or filing for the damages subsequent to the period that ended the day the suit was filed. He was nonresponsive even when I asked him to work out a settlement based on the precedent we had established. In spite of all, we had won and the sole remaining question for the period following the filing of the suit was establishing the amount of that damage.

When he would do nothing I went off on my own when the through channels the Secretary of Defense had directed his general counsel's office to look out for our interests and to seek to end those then clearly illegal trespasses by helicopter. A fine and caring man, a good lawyer (good enough as a lawyer to later be appointed general counsel of the selective service military induction system, a real hot seat), Walter Herbert Morse, was the assistant general counsel to work with me to reach a settlement.

Morse arranged a conference at the Pentagon with representatives of the general counsel of each military service and a ranking helicopter operations officer. Silard refused to go with me. I thus was my own lawyer against all that impressive legal talent and all those gung ho! operations officers. The latter, clearly, were reluctant to agree to anything at all.

Nonetheless we did work out an amicable settlement.

Officially the decision was uncontested, on two levels. The government asked for an extension of time in which to decide whether to appeal the decision. In the end it decided not to contest it, not to appeal.

It was also uncontested at the Pentagon meeting that we had been damaged and the sole question was agreeing on the extent of that damage. I offered the government access to our records and the question of personal injury was delayed into the future. I would liquidate gradually, to reduce the loss to the government rather than dump everything on the wholesale market.

Each and every representative of the services agreed. And no sooner were they out of the presence of the representative of the Defense Department general counsel, there, actually, as the representative of the secretary of defense, led by the army, they forgot all about any agreement.

However, most of the pilots let up on the overflights.

The Assistant Secretary of Defense for Fiscal Management sent a representative, a Colonel Robert Low, who also turned out to be a fine man, for the sole purpose of being certain of our location! That we were along a state road between two main highways where they were only a half-mile apart apparently was not enough because the general counsel had been given our location five miles from where we were!

I invited Colonel Low to make a personal inspection of the chickens and he said that was not necessary. They had no doubt about the facts and he had squeezed this trip in with other work backing up.

As a result of his locating us a new navigational order, complete with an accurate map, was issued. No flights closer than five miles from us were permitted.

That reduced but did not entirely end those overflights. After our farming was ruined- for no reason at all.

It was when I tried to arrange meetings to go over the records together so that the services could be satisfied and reach their own conclusions that I knew that agreement was no such thing, only a means of the services getting the Secretary off their backs.

With the lawsuit already won in Judge Thomsen's uncontested decision, with the sole question establishing the extent of the damages we suffered, I went to the lawyer then referred to, as his father had been, as Washington's King of Torts. His name was Newmeyer, as I recall after all these years, Alvin Newmeyer.

He listened to me as I told him the story, probably asked a few questions, and then he surprised

me by saying, "You know, Mr. Weisberg, you are a famous man in the law books." That really did surprise me.

"How?" I asked him.

"Come with me," he said, and he led me into his law library.

He looked the books over, selected one, laid it on the table, turned the pages, and then he said, "Here. Read this."

He had turned to a Western Pennsylvania case, where property owners near an airport had sued for damages and, citing our case as precedent, had won about \$5 million dollars, a rather good sized sum for those days.

We had established a new principle of law and it was a new precedent. Later we learned that the Congress held quite a few hearings without being able to resolve the problem in any law it would recommend and enact. There were damages from aviation.

Having shown me how I was famous and how effectively others had used our decision, Newmeyer then told me he would take our case.

A case already won and he would not take it. When he had nothing to do other than from our books calculate the extent of the damages, which my wife would have done for him, he still would not take the case!

"Why?" I asked him, I am sure my perplexity obvious.

"Under the Federal Torts Claim Act I am limited to 20 percent of the award," he said. "But in all other damage cases I can and I do get at least 33 percent. So it does not pay me."

For the friend who had sent me to him he had fought a case in which only \$5,000 in damages was sought. For us he could have sued into six figures. The King of Torts did not recognize how much larger

a sum he would have gotten at 20 percent of the much higher figure than the third of the case he actually had to litigate to get a third of only \$5,000!

Our case was already won and in addition to the proven damages to the flocks and reduced income from them of more than 100 percent, there was the cost of the buildings, for which there was no other use and the value of the business ruined, both damages, very real damages. We had almost 5,000 square feet of insulated buildings, with mechanical ventilation and about 1,000 square feet of buildings not insulated. The King of Torts did not even ask the cost of the investment ruined, or of the value of the ruined business. Without any claim for personal injury, this alone got into six figures.

I did not try to persuade him when he reasoned and calculated as he did, in meaningless percentages rather than in the actual, provable damages in dollars, not in percentages. Nor did I remind him that the case was not only won in advance, we had all those officials we could call as witnesses and all the letters, from the Secretary of Defense down, acknowledging responsibility and inability to control those who despite orders continued to damage us.

I sought new counsel. Famed Washington lawyer Edward Bennett Williams interviewed us, he took the case and he assigned it to one of the firm's younger lawyers who, it turned out, had been hired at the request of Supreme Court Chief Justice Earl Warren, who was also head of the Commission best known by his name.

Peter Taft, a pleasant, personable young man, was President Taft's grandson.

Each time I went to his office to confer with him he was busy on another matter Williams had assigned to him. The one I remember most clearly was getting draft deferments for Washington Redskins football players. I remember one was a quarterback just drafted.

Williams had an interest in the team, whose counsel he was. He owned part of it.

When time dragged on and nothing happened I complained to Williams. He offered to get us other counsel. We told him that with all the time we'd spent preparing Taft we wanted the firm to continue representing us but to do something. He promised they would.

He did, too, without our assent. He gave the case to Taft as a personal rather than a firm case. We did not accept that. And he couldn't do it, but he did!

More time passed. Then I got a handwritten letter from Taft, mailed as I recall, in either Albuquerque or Phoenix. He dropped us on his way to Orange County, California, a strong Republican area, to run for Congress as the Republican he was, a member of its Rippon Society.

When I took that letter to the judge he could not believe it. In my presence he debated aloud whether to do something about it. He decided against it, probably because he was separated by a continent from the lawyer he was considering doing something about. He agreed for me to represent myself until I got counsel. But no firm got far enough past that negligible award in the first case to learn that the second case was already won and all that need be done was calculate and establish the damages and settle or go to trial.

At one conference the judge called for his chambers, when the assistant United States attorney then assigned to the case was obviously stonewalling, the judge turned to him with some exasperation and said, "Look, this man has already won his case. That is the meaning of my prior decision that was not appealed. The sole question is assessing the damage. Now he has offered you access to all his records and he says you have not gone out to look at them. Why don't you? Why don't you bring this to an end?"

With that pressure that attorney made a date, came to see us, looked at virtually nothing, and after pointless chitchat left, never to return again.

He did not give a damn about the judge, what he said or what he wanted.

His client was his boss, the Department of Justice, and he did what it wanted, not what the judge

told him to do. He and the Department knew what I did not know and neither cared about what the judge wanted done.

Desperate, and impressed by the manner in which he had beaten us for the government I asked that former Baltimore assistant United States attorney if he would represent us. He said he could not. He recommended a friend at the prestigious firm of Baetjer & Howard, Harvey Clapp. Harvey was initially quite interested. The lawyer who would have handled it in court was so pleased with the courtroom opportunity it gave him that he practiced some of it one day when I was there.

And then the government cooled off one of the most important law firms in the state.

It filed a statement that Williams had let the statute of limitations run on most of the damage for which we could make any claim.

Somehow, Clapp had not perceived that legal eagle that he was.

I had been led to believe at that Pentagon meeting that the statement of claims I filed tolled the running of the statute. Clapp also believed that. But in fact belated legal research showed the government statement was the truth.

Incredible as it may seem, one of the country's most famous lawyers, one of its most successful law firms, had made the most inexcusable of legal mistakes, letting the statute of limitations expire on much of the period of time for which we could claim damages. All it had had to do to prevent that was to file a complaint.

But in all the many months it represented us, it never got around to that, the beginning of any lawsuit!

When I later learned that I wondered whether my having published my first book critical of Williams' friend and Taft's sponsor, Warren, had had anything to do with that.

And Clapp had not even looked into it.

The government began pressuring Clapp once it was clear he was not filing anything and might not be all that interested. It offered to settle in full for twice what I'd gotten before, for \$1500. I told Clapp no. They kept making small increases, I kept rejecting them and Clapp grew more exasperated. Like it was my fault that Williams, the great defender, particularly of the likes of Joe McCarthy and Mafia big-shot Frank Costello, had let the statute run. Not that anyone at Baetjer & Howard told me I could sue Williams for that. As our lawyers they really did look out for our interest!

But the statute had not run on personal injury. This did not interest Clapp. He just wanted to get out of it so much he would not stop to think that if we got as little as a penny for personal injury that could be another precedent the government did not want. And it should have learned from the first case what that had already cost it, those costs escalating as others, with it as precedent, filed for damages around airports and collecting.

Convinced that the government would not run the risk I finally told Clapp that the minimum for which I'd settle was the amount of mortgage unpaid at the time of settlement. If not, I said, we go to trial.

As Clapp had refused to understand, the government did not want to risk another precedent adverse to its interests in aviation cases. It accepted my offer. The total, including all factors, came to about \$20,000.

That paid our mortgage off but we had other debt from my work, for us a not inconsiderable sum.

Of course, none of this could happen in the United States of America, ordinary people of no influence getting screwed by their government; the Army telling its boss, the Secretary of Defense where to go; the Department of Justice doing whatever the Army wanted, regardless of the impact on it of that first decision; with three prestigious law firms screwing us all over again; with all the official stonewalling to hurt

us more, as it did.

No, of course not- nothing like this- any part of it- is supposed to happen here in the United States.

Only, it did, all of it and more.

And again, how much we learned from more of the impossible being more than possible.