

ORIGINAL

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

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JS-2/JS-3

Date: January 11, 2001

Case No. CV 97-1479 WDK

Title: Favish v. Office of the Independent Counsel

DOCKET ENTRY

ENTERED
CLERK, U.S. DISTRICT COURT
JAN 12 2001
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

FILED
CLERK, U.S. DISTRICT COURT
JAN 11 2001
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY
BY *QMJ*

PRESENT:

The Honorable William D. Keller, Judge

Catherine Jeang
Courtroom Deputy Clerk

None Present
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

None Present

ATTORNEYS PRESENT FOR DEFENDANTS:

None Present

- Docketed
- Copies / NTC Sent
- JS - 5 / JS - 6
- JS - 2 / JS - 3
- CLSD

PROCEEDINGS:

The context of this summary judgment ruling is informed by the underlying decision of the Circuit as found at 217 F.3d 1168. The decision requires a review in lieu of affidavits. And, the decision to release is to be determined by balancing the respective interests of the public and the survivors. In this case, the appellate court appears to have defined the zone of privacy protection as those photographs that are "graphic, explicit and extremely upsetting." See the decision at page 1174.

Having the foregoing in mind and following review of the photographs in issue as identified in the Notice of Submission Under Seal of 10 Original Polaroid Pictures to Court for Court's In Camera, Ex-Parte Examination, which was filed January 9, 2001, the Court focuses on the first five Polaroids set forth in Exhibit 2 to the Notice and concludes as follows:

- The photograph identified as "3 - VF's body looking down from top of berm" must be released, as the photograph is not so explicit as to overcome the public interest.
- The photograph identified as "4 - VF's body - focusing on face" is an absolute intrusion into the zone of privacy of the survivors, and as such is not discoverable.
- The photograph entitled "5 - VF's body - focusing on the Rt. side shoulder/arm" is again of such a nature as to be discoverable in that it is not focused in such a manner as to unnecessarily impact the privacy interests of the family.

As regards the balance of the photographs referenced at page 46 of the exhibit to the notice, the Court

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Initials of Courtroom Deputy Clerk *QMJ*

rules as follows:

- The photograph entitled "1 - Right hand showing gun & thumb in guard" is discoverable as it may be probative of the public's right to know.
- The photograph entitled "3 - VF's body taken from below feet" is not discoverable as it does invade the zone of privacy.
- The photograph entitled "4 - VF's body focusing on right side and arm" is discoverable.
- The photograph entitled "5 - VF's body - focus on top of head thru heavy foliage" is discoverable.
- The photograph entitled "6 - VF's body - focus on head and upper torso" is so explicit as to violate the privacy of the survivors and is not discoverable.
- The photograph entitled "7 - VF's face - looking directly down into face" is again so explicit as to be clearly in violation of the survivors' privacy.
- The photograph entitled "8 - VF's face - Taken from right side focusing on face & blood on shoulder" is again so explicit as to be not discoverable as it clearly violates the privacy of the survivors.

Accordingly, summary judgment is entered in favor of the OIC with respect to photograph #4 from the top section of the exhibit list and photographs #3, #6, #7 and #8 identified in the bottom section of the exhibit list. Absent an appeal, the photographs must be provided to plaintiff's counsel within 60 days [see Federal Rules of Appellate Procedure, Rule 4(a)(1)(B)] of this order. In the event neither party chooses to appeal, the photographs will be provided within 10 days of such determination. In the event of an appeal, the photographs subject to the appeal will remain under seal until such time as there is a final decision by the Court of Appeals.

IT IS SO ORDERED.