7/10/78

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, Plaintiff, v. CLARENCE M. KELLEY, et al., Defendants.	Civil Action No. 78-0249

AFFIDAVIT

My name is Harold Weisberg, I reside at Route 12, Frederick, Md.

1. My prior experience includes that of investigative reporter, Senate investigator and intelligence analyst.

2. Defendants' Motion to Dismiss mailed to my counsel on July 3 did not reach me until July 8, 1978, when my wife and I were completing a lengthy affidavit in another case. The 10-day limit for response restricts the response I am able to make immediately.

3. I am further inhibited by my age, health and the amount of other and unique work I have undertaken and upon which, to the degree possible, I spend virtually all of my time.

4. I am 65 years old. In 1975 I suffered acute thrombophlebitis in both legs and thighs. By the time I was hospitalized the damage to the veins in these members was extensive, permanent and quite limiting. To deter further clotting and the possible serious consequences, I live on a high dosage of anti-coagulant. This requires that I be careful to avoid any injury, even minor bruising. A year ago an arterial obstruction known as a "subclavian steal" was diagnosed. This imposes further limitations upon me, including physical limitations. Both conditions are serious. Coping with these conditions requires much time. I wear one kind of special venous supports during the waking hours and another variety when I go to bed. Both kinds extend from my toes to my torso. I am not permitted to rest by taking a nap in the stronger supports I wear during my waking hours. The time and nuisance of putting them on and taking them off in changing them, as a practical matter, precludes my resting by napping when I grow weary or sleepy and thus results in further

working inefficiency. Taking proper care of these supports further reduces the time in which I can work. Since Friday, June 30, 1978, there has been another medical intrusion into the time I can work. Therapy recommended by my doctor has me walking as vigorously and as often as is practical. Because of the combination of very hot and sticky weather in the period preceding June 30 and the tight-fitting character of these supports, I developed a fungus infection in my toes. While in and of itself the fungus infection presents no special jeopardy, my doctor has warned me that if there is a secondary infection, given the severe restriction of circulation, it could lead to amputations. Caring for the feet and medicating them, as instructed by my doctor, now consumes more of my working time. I also am not permitted to keep my legs dependent for any length of time unless I am walking or moving around. If I stand for as little as 15 minutes, I come close to losing consciousness. On my doctor's instructions when I sit I have my legs elevated. I have had to construct a special means of being able to use the typewriter because of this. I am also required to interrupt what I do at my desk about every 20 minutes and more around. This interruption intrudes into concentration. From all the circumstances it is no longer wise for me to drive the 50 or more miles from my home to Washington and for some years I have not done so because it keeps my legs down for too long. When others cannot provide transportation permitting me to keep my legs up, I use the bus where this is possible. Bus transportation is poor. A few minutes in Washington requires about nine and a half hours from the time I leave home until I return. This means that my conferences with counsel now are rarely in person.

5. I have read Defendants' Motion to Dismiss and the attached affidavits. I desire to make more extensive response than is possible within the present time limits. In part, this is because they constitute an extensive effort to misinform and mislead this Court.

6. I have had considerable experience with the Freedom of Information Act (FOIA), largely but not exclusively with regard to information on the assassinations of President Kennedy and Dr. Martin Luther King., Jr., and their official investigations. With regard to both I have a unique expertise, as evaluated by the Department of Justice itself. In C.A. 75-1996, which relates

to information about the King assassination, the Department prevailed upon that Court to have me serve as the Department's consultant, on the Department's representation that I could provide it with information it could not obtain from the FBI. In C.A. 75-226, the Department responded to my proving that an FBI FOIA agent had sworn falsely in these words: "In a sense, plaintiff could make such claims ad infinitum since he is perhaps more familiar with events surrounding the investigation of President Kennedy's assassination than anyone now employed by the F.B.I."

7. This tribute by non sequitur also represents what distinguishes me and my work from those who are often on TV and in news stories with wild and attention-getting charges. Neither my thoughts nor my work pursue whodunits. I do not live an effort to be a detective story. I devote myself to a study of the functioning and nonfunctioning of our basis institutions in time of great stress.

8. I regard these assassinations as the most subversive of crimes because, particularly with a President, they nullify an entire system of society and of self-government. I also regard governmental failures under such circumstances as another form of jeopardy to the viability of our society. Within my extensive personal experience the widespread popular dissatisfaction with the official solutions to these crimes and with the failure of the institutions of government to satisfy the people is the cause of great if not the greatest disenchantment with government. I find this particularly true of young people, who are then led not to have faith in government and not to want to participate in it or in our system of self-government.

9. Exposure of official error or wrongdoing, in and of itself, is not my purpose. It never has been. Rather do I seek to make possible learning from and rectification of error. Perfection is a state of neither humans nor governments. By recognizing, acknowledging and rectifying errors I believe government is strengthened and earns popular support, as President Kennedy did in assuming full responsibility for the Bay of Pigs fiasco.

10. Although establishing an archive of my records had always been in my mind and prior to illness I had agreed to do so, after I became ill I formalized this arrangement. I have begun the deposit of my records in a public

university archive under a competent historian and the preeminent bibliographer in the field of my work. Most of the records I now obtain are for this purpose, not for my own use in writing or in any personal use. These records will be available to scholars outside of government control or influence.

11. The records I seek in this instant cause will be of value in this archive and in future uses. I therefore desire that they be as complete and as honest as possible. While these records also have value as a means of establishing compliance or noncompliance with other FOIA requests, they also are not for my use in writing.

12. I need no expositions from those of personal involvement in the matter before this Court on the legitimacy that can attach to privacy concerns In this regard, where there is a real privacy issue, I differ from those who have filed the Department's affidavits and those who have executed them in being genuine in this concern and in not sitting in judgment on myself. I have waived all privacy questions as they relate to me in this archive and I have divorced myself from all determinations where they relate to others.

13. As an example of the utter spuriousness of official representations to this Court by the Department with regard to its allegedly great worries about protecting privacy, I attach Exhibit 1, one of the records the processing of which is reflected in the worksheet in question. As the court can see, other than by an X-rated photograph, there is little more the Department could have done to destroy the privacy of the widow of accused assassin Lee Harvey Oswald. Her sexual dreams and acts are not withheld from public scrutiny. Her wonder about medications to stifle her natural longings are now in the FBI's public reading room. Her comments about the married man with whom she slept - after the federal government delivered her into his keeping - have not been bruited around the world only because the press had more genuine concern for real matters of privacy than those who make such false pretenses to this Court on these matters.

14. Page after page of FBI records relating to Mrs. Oswald's second pregnancy are readily available, although they are relevant to nothing in the investigation. Countless pages relating to allegations of homosexuality also are readily available. Where these have any relevance, it is limited to the credibility and prejudices of those making the allegations that the FBI compiled

with care. Where I have published such records, after the FBI made them available, I, not the FBI, removed all identifications to avoid doing harm to these people. Many pages of FBI records relating to alleged psychiatric conditions and medical treatment and hospitalization for them have been made available by the FBI without expurgation. This also is true of records relating to contracting venereal disease. None were relevant in the investigations. Where the FBI did not like these people, where they held political views not approved by the FBI or where, as in the case with the widow Oswald, they spoke of the FBI in a manner the FBI did not like, the FBI displayed no interest in their privacy.

15. The Department, which does not like me or my exposures of it and its FBI, has done much the same with me, except that with me defamations in its public reading room did not suffice. It gave the President of the United States the most vicious fabrications about my wife and me, such as that we annually celebrated the Russian revolution. It gave the identical vicious falsehoods to a Senate committee. In both instances this coincided with the interests of the White House and the Senate in the subject-matter of my work. It did the same with Attorneys General, their deputies and with other officials. When in 1977 I again sought all the records on me so I could file a response under the Privacy Act (PA), I received no response, even though my PA request was an old and long-ignored one. When my lawyer wrote the Attorney General requesting that I be put in a position to exercise my PA rights prior to any public release of this and other FBI fabrications and defamations, there was no response. Eight months after the beginning of these releases there still is no response from those who profess to this Court such deep feeling over citizens' rights to privacy. I learned of the public disclosure of these infamies about me when I received phone calls from the press about them. The FBI and the Department manipulated and "interpreted" FOIA to use it as a means of defamation, although long in advance of this I had provided written proofs of the falsity of its fabrications. Instead of complying with the Act, the FBI combined with those who receive the Attorney General's mail to violate the Privacy Act and deny me my rights under it for transparent political purposes.

16. One of the FBI agents who provides an affidavit is in the position of the biblical maiden who, entrusted with the keeping of the family vineyards,

her own vineyard did not keep. SA Horace P. Beckwith is a publicly reported unindicted co-conspirator in the case of the former high officials of the FBI, including its former Acting Director. The charge is of committing such offenses, not of preventing them. There thus is, at the very least, the appearance of a lack of complete freedom and independence on his part. With this record I believe he should not be processing the FBI's records, which include records of such offenses and involve fellow FBI personnel who committed them. I also believe he ought not be providing affidavits in FOIA cases. I am personally familiar with his affidavits and their lack of fidelity. When he provides unfaithful affidavits for those who also prosecute, he is immune. He cannot be said to be impartial or even dependable. (More relating to SA Beckwith follows, Paragraphs 28 ff. and 59 ff.)

17. Except as another cheap effort to mislead and prejudice the Court, there also is no need for any exposition about an alleged hazard to FBI informers. There is no such hazard and no such question before this Court, as there is no genuine question of privacy. However, no reporter or former reporter or investigator has to be told about the reality of some need for confidentiality. I have my own confidential sources. I have been told what some of these FBI people say about me behind my back, how they wonder at what they describe as my persistence, and the extent to which they have inquired into the private lives of those who have been associated with me. I have not disclosed my sources even to my counsel.

18. So the Court can understand that mine and not the FBI's are truthful representations, I attach Exhibit 2 with regard to the fidelity of SA Beckwith's affirmations and Exhibit 3 with regard to the faithfulness of the Department's representations relating to the alleged practice of never disclosing the identities of any of its (or other police) informers. I use this means because the affidavit from which Exhibits 2 and 3 come was filed long before the affidavits in this instant cause were filed and because no refutation of my affidavit has been filed by the FBI or the Department.

19. The importance of worksheets in obtaining compliance in FOIA matters is clear in Exhibit 2, as is SA Beckwith's untruthfulness. In C.A. 75-1996 I was given a crooked set of worksheets, misrepresenting even the number of pages in the record in question. In C.A. 77-0692 SA Beckwith provided one of his nonfirst-

person affidavits in which he sought to mislead that Court with regard to the identical records. In and of itself this raises the most substantial questions about any excisions from the worksheets and about those who have affidavits for all seasons and needs, without attesting to personal knowledge.

20. Neither SA Beckwith nor SA David M. Lattin attests to having made the searches or having done the processing of the records reflected in these worksheets. The Department has not represented that those of first-person knowledge are not available to execute affidavits. Within my extensive personal experience using those who do not have personal knowledge instead of those who have personal knowledge to execute affidavits is a common means of misleading and deceiving the courts in FOIA matters.

21. With regard to making the identification of Informer Morris Davis known, complete with his symbol identification, which was not withheld from me, the FBI was really seeking a political objective apparent to a subject expert and an FBI watcher. The irresponsibles of that House committee turned Informer Davis over to Mark Lane, a notorious and also irresponsible commercializer who at that very moment was commercializing a potboiling book.

22. Contrary to what the FBI represents in this instant matter, it has disclosed the identification of other informers and of "confidential sources" where those who processed the records were not subject experts and could visualize the attaining of FBI political objectives by the releases.

23. There is no question before this Court of disclosing the identities of confidential informers or sources. I have read the FBI's FOIA worksheets covering the processing of many thousands of pages of FBI records. I have yet to see the first such disclosure in any of them. No other records have been provided in this instant cause, only worksheets.

24. Neither now nor ever have I sought the identity of any FBI informer. The opposite is true. When the FBI inadvertently disclosed the identity of an informer and I knew it had deposited those records in its reading room and thus made them accessible, I notified the FBI so it could correct that record and protect that informer.

25. This leads to what in its bobtailed recounting of the history of this case the Department totally ignored. I did file an appeal from the withholding. This Motion to Dismiss was filed before I received a response to my

appeal. My appeal does not include the identification of any informer or of any genuinely confidential source.

26. The theory under which the Department dragged allegations of FBI Laboratory secrets into this instant causse is obscure if it exists at all. There is no relevance. Nothing of this nature is within my request. The Department's allegations with regard to Laboratory secrets are spurious.

27. I have had personal experience with FBI Laboratory records. The case that was instrumental in the 1974 amending of the FOIA investigatory file exemption is my case. It was originally C.A. 2301-70. When it was refiled as the first case under the amended Act, as C.A. 75-226, the FBI made not a single claim - ever - to any secrecy. In fact, where in the earlier case it represented my request for the results of nonsecret tests as a request for its "raw material," which was not true, and from this forecast the complete ruin of its informer system if not the Bureau itself, in the second case, when I sought to eliminate this FBI-created nightmare and specified that I did not seek its "raw material," most of the records the FBI provided voluntarily were "raw material." Further bearing on the spuriousness of the Department's present representations to this Court is the fact that the FBI publishes such information, especially for the use of local police forces. It is available to anyone, including professional criminals, at the Government Printing Office. My copy of the 1975 revision cost $2.00. I attach the cover and the table of contents as Exhibit 4. Quite aside from the fact that no secret or arcane sciences are involved in this instant cause, the table of contents discloses that most of this FBI handbook is devoted to that which the Department represents to this Court is somehow secret and must remain secret.

28. All of this and more irrelevancy like it appears to be designed to mislead and to prejudice this Court. In this it is consistent with my long FOIA experience with the FBI. It obscures what my requests are actually for, as in Paragraph 27. Only by inference at two different points is it possible to determine from the Motion for Summary Judgment, the Memorandum in Support and the attached affidavits that my request is for more than worksheets. There is no discussion of this in the briefings. There is a quotation from my letter of request and a deliberate misinterpretation of it in the relevant footnote,

both on the first page of the Memorandum in Support. My request, quite clearly, is for more than the worksheets. It is for "any and all records relating to the processing and release ... whatever the form or origin ... wherever they may be kept." The only specific reference to this that I recall is in the affidavit of SA Beckwith. He states in Paragraph (7) that my request is for "records relevant to the processing and release of the original records," and then and there attests that "These worksheets represent the only documents available within the FBI which are responsive to plaintiff's request."

29. SA Beckwith here uses no ifs, ands or buts. There is no qualification like "of which I know" or "that I have been able to locate." He states unequivocally that there are no other records within my request. I state unequivocally that this is a false sworn statement. I state also that if SA Beckwith was competent to execute this affidavit, he knew he was swearing falsely in this representation.

30. In the beginning of this affidavit I stated my belief and the nature of my work as they relate to the functioning of the basic institutions of our society. One of our most basic institutions, one of the three parts of government, is the judiciary. If the courts are to function in the manner envisioned in the Constitution, they must enjoy the independence granted them by the Constitution. When the executive branch misrepresents to the courts, when it executes and provides false affidavits and obtains their acceptance by the courts, I believe the Constitutional independence of the judiciary is endangered.

31. I would be entirely unfaithful to my work, work that has taken the past fourteen years of my life, work in which I persist without funding and with serious health problems, if I did not raise these questions of misrepresentation and false swearing before this Court. I have not done this work under the conditions of my life and I have not come to this point in my life to shun confrontation on the issue of false swearing to this Court or to accept official false swearing in unseemly silence.

32. It is understanding that perjury is false swearing to what is material. It is my belief that what is now material before this Court is compliance. The latter belief is based upon the fact that the Motion to Dismiss

represents that I have been provided with all relevant records. SA Beckwith's statement in his Paragraph (7) quoted above, that there are no relevant FBI records with which I have not been provided, is the sole basis for this basic and material representation.

33. I reiterate, in SA Beckwith's own words, there are FBI "records relevant to the processing and release of the original records" that have not been provided to me.

34. Although it is obvious that in the processing and release of about 100,000 pages of FBI records relating to the assassination of a President there must be many other records that are clearly within my request because they relate to processing and release, I do not make this affirmation on what is obvious or on any kind of conjecture or surmise. I make this statement on the basis of records, including but not limited to FBI records, within my personal possession.

35. Having repeated SA Beckwith's affirmation and my sworn statement in direct opposition to his, I state my belief that SA Beckwith has committed the crime of perjury before this Court and that I have not.

36. To the degree possible for me when I am not a lawyer and it is impossible for me to visit with my lawyer or revise this affidavit within the time I have, I address what I believe to be other questions of material fact before this Court and representations relating to them or avoided about them by the Department and the FBI.

37. The Department claims exemptions (b)(7)(C)(D) and(E) to withhold information from the worksheets, copies of which it has provided.

38. Exemption 7 begins, "investigatory files compiled for law enforcement purposes," thus requiring that all exemptions under it has been "compiled for law enforcement purposes." There is a further requirement in (D), not consistent with the representations made to this Court by the Department. The exemption on disclosure of a confidential source is limited to "in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation."

39. The Department's briefings and affidavits do not state that

there was, with regard to the records I seek, an FBI "law enforcement purpose" or an FBI "criminal investigation" or an FBI "lawful national security intelligence investigation."

40. This is not oversight. There has been no offer of proof on the question of meeting the standards of Exemption 7 because the proof is to the contrary. The FBI was not engaged in any of these kinds of investigations with regard to the assassination of President Kennedy.

41. The FBI provided investigative services for the Presidential Commission, which is explicit in stating in its Report (at XIV) that it had no law enforcement purposes. Director J. Edgar Hoover was a witness before the Commission. He then volunteered the truthful description of the nature of the FBI's work. I quote without excision from his testimony in Volume 5, page 98, beginning with the question asked him by Commission Chief Counsel J. Lee Rankin:

> Mr. RANKIN. You have provided many things to us in assisting the Commission in connection with this investigation and I assume, at least in a general way, you are familiar with the investigation of the assassination of President Kennedy, is that correct?
>
> Mr. HOOVER. That is correct. When President Johnson returned to Washington he communicated with me within the first 24 hours, and asked the Bureau to pick up the investigation of the assassination because as you are aware, there is no Federal jurisdiction for such an investigation. It is not a Federal crime to kill or attack the President or the Vice President or any of the continuity of officers who would succeed to the Presidency.
>
> However, the President has a right to request the Bureau to make special investigations, and in this instance he asked that this investigation be made. I immediately assigned a special force headed by the special agent in charge at Dallas, Tex., to initiate the investigation, and to get all details and facts concerning it, which we obtained and then prepared a report which we submitted to the Attorney General for transmission to the President.

42. It cannot be alleged that the FBI was part of law enforcement by local authorities. Lee Harvey Oswald was killed less than 48 hours after his arrest. There was no trial. No other person was accused. Had this not been the case the public complaint of then Dallas Chief of Police Jesse Curry is that the FBI took evidence from him but did not help him. With regard to Jack Ruby, not only did the FBI not assist in that prosecution, it withheld relevant records from the District Attorney, whom I know. When I learned this, I provided him with some copies of FBI records not provided to him by the FBI.

43. It is represented by the Department that cooperation of foreign police agencies must be kept secret as a condition of further cooperation and

that information received from these foreign agencies is never made public. These representations are not truthful. This is not merely because the existence of Interpol is not secret. It is untruthful because I have copies of records with which the FBI conveyed to a local prosecutor for use in a prosecution and in public information the FBI received from foreign police agencies. The actuality, from countless FBI records I have and have read, is that this is a subterfuge by means of which the FBI seeks to hog the credit for the work of other police agencies. This is conspicuous in the records relating to the investigation of the assassination of Dr. King. These records reflect that the FBI even undertook to limit the credit these other agencies would take in public for the work they, not the FBI, actually did. The false passport James Earl Ray obtained in Canada was spotted by the Royal Canadian Mounted Police, not the FBI. (When its Memphis Field Office urged FBIHQ to ask the Mounties to conduct this investigation, FBIHQ actually rejected that recommendation.) James Earl Ray was arrested in England because of his own blundering. British police, not the FBI, made the arrest. However, there is no possibility that there can be the "disclosure" and the catalogue of horrors conjectured by the Department from the kind of information included in the worksheets. In fact, precisely this kind of information was not withheld from the many worksheets provided to me in C.A. 75-1996, worksheets that cover what the FBI estimated at 20,000 pages of FBIHQ records.

44. It is represented that the names of those agents who processed the records and compiled the worksheets have to be withheld to prevent their harassment. In context, this means by me. In context or out, it is false. Their names were not withheld from the many worksheets relating to the King assassination records and there was no allegation of harassment.

45. I do not know whether anyone else has requested these worksheets. The Department does not state that anyone else has. The Department and the FBI are well aware that I have never phoned any FBI agent or other employee, never engaged in anything that can be described as any kind of improper activity, and have met with such agents only on their invitation.

46. The reality, from my personal experience, is that these names are

withheld to prevent my being able to pinpoint those whose violations of the letter and the spirit of the Act are more persisting and more serious. I did do this in C.A. 75-1996. I stated that if one agent named Goble was not removed I would not examine another record he processed and would present the entire issue to that court. I did this in writing. That agent was removed. The FBI promised to reprocess all those records, although it then did not do this.

47. In C.A. 75-1996 I entered into the record a letter written to a friend of mine by FBI Director Clarence Kelley in which Director Kelley stated that it was FBI policy not to withhold FBI names in historical cases. The Attorney General has found this to be an historical case. The Attorney General's policy statement of May 5, 1977, states the same policy.

48. The practice of not withholding names began with Director Hoover and the Warren Commission. This also pertains to the claimed need to withhold the names of those other than paid informants who provide information to the FBI.

49. The Warren Commission published an estimated 10,000,000 words of evidence. To a very large degree this consisted of entirely unexpurgated FBI reports printed in facsimile. Furthermore, Director Hoover stated that all records possible were to be released. This also was the stated policy of the White House and the Attorney General. No FBI names were withheld, no names of those who gave information to the FBI were withheld from what the Commission published or what was available at the National Archives.

50. I cannot estimate how many thousands of pages of FBI records I have obtained from the National Archives but I can and I do state that until the 1974 amendments to the Act I cannot recall a single excision in any FBI records made available to me by the National Archives.

51. In an appreciable number of instances it cannot even be alleged, as it is now represented by those who neither have nor claim to have personal knowledge, that there was any "implied" confidentiality. Many FBI reports begin by stating that the FBI agents informed those they questioned that anything the FBI agents were told could be used against those making the statements. There was no "implied" confidentiality. When it was promised or asked, the FBI's records so state. Present representation of an "implied" confidentiality" are

an invention for withholding what may not be withheld under the Act.

52. There is what I believe, from my knowledge of the subject and from long personal FOIA experience, a conscious effort by the Department to confuse between the worksheets and the underlying documents. The underlying documents are not the subject of my information request that is before this Court. As part of this effort, which is really an effort to withhold what can be embarrassing to the FBI and to obstruct my work, the FBI now actually discloses what it claims it must not disclose.

53. In this connection and as introduction to it I also state that there is no representation by the Department, no FBI affidavit in which it is stated that what is withheld is not within the public domain. My experience with the FBI's withholding of what is within the public domain extends to its withholding what I published years earlier and what was in the phone book. I mean this literally - that the FBI withheld exactly the same information as the phone book and I published. The FBI did not respond in any manner after I sent it facsimiles of proof that this information was within the public domain. From my personal experience this is a not uncommon FBI practice. It is true of hundreds of names of persons but it is not limited to names.

54. It is common FBI practice to withhold from records it releases what is contained in its own news clippings files. When informed of this it then refuses to release what it knows is within the public domain. To be able to pretend that it had no knowledge of what is within the public domain and to actually withhold what is within the public domain in C.A. 75-1996, it refused my offer of a consolidated index of the published books on the King assassination and an index to the transcripts of two weeks of evidentiary hearing. When it could no longer pretend that it had not withheld what was within the public domain, as I had proven to it regularly throughout its processing of records in C.A. 75-1996, the FBI then claimed that to rectify its "error" would be too costly. It continues to withhold what is within the public domain.

55. The one exception I recall from thousands of instances of this kind of deliberate withholding of the public domain is attached as Exhibit 5. After I ridiculed the FBI in court its withholding - 10 times in a single published news account - the name of a special agent who spoke at a public gathering,

the FBI replaced this one piece of paper from among thousands on which it practiced such knowingly improper withholdings. (This also relates to why the FBI now withholds from the worksheets the names of its agents who process the records and compile these worksheets. In this instance I specified the name to that court.)

56. In this instant cause the FBI is without honest possibility of making a claim of not being able to know what is within the public domain relating to any information about the assassination of President Kennedy. Robert P. Gemberling was supervising agent in charge of the compilation of all records in the Dallas FBI office, its Office of Origin. After Mr. Gemberling retired the FBI rehired him as a consultant on Kennedy assassination matters. The FBI has an in-house subject expert from whom it has not provided any affidavit in this instant cause.

57. Mr. Gemberling is in a position to state what techniques or procedures were used by the FBI and whether or not they are publicly known to have been used.

58. I believe that the absence of any kind of affidavit from Mr. Gemberling and the substitution of one by SA Beckwith raise substantial questions of good faith as well as of due diligence.

59. In seeking to justify the claim to (b)(7)(E), SAs Lattin and Beckwith do not dare state that "these techniques and procedures" are not known to have been used or are in any way secret.

60. I have never seen an FOIA worksheet on which such information was ever included. It would be an exceptional case. There is no place on the form for such information. Yet in Paragraph (6) SA Beckwith voluntarily discloses the use, in the context of SA Lattin's affidavit, current use, of only two such techniques against foreign governments by the FBI.

61. It is within the public domain that more than two such techniques were used in the overall investigation. Two of the more obvious ones are electronic and mail surveillances. The FBI distinguishes between the different kinds of electronic surveillances, meaning that there can be more than one technique so designated. (In fact, it spirited a record relating to one - against a foreign government - out of Washington after I filed a request for it. This matter is

not at issue in this instant cause but I do have proof of this statement. The need to use this attempted memory hole special "technique" is that the information was leaked into the public domain claim.) Here also Exhibit 1 is in point.

HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 10 day of July 1978 deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires July 1-82

NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND

ADDENDUM TO AFFIDAVIT OF HAROLD WEISBERG IN C.A. 78-0249

62. In these two affidavits the FBI has told targeted foreign governments how to determine which special techniques the FBI now has in use against them. All these governments need to know is what techniques were used in the JFK assassination investigation. If they believe these FBI affidavits and have or can obtain this knowledge, they can now be more effective in their own protective efforts.

63. Whether or not foreign governments believe these portions of these FBI affidavits, I believe this Court should not credit any part of them because they are careful and deliberate misrepresentations designed to mislead and prejudice if not also to frighten this Court over nonexisting dangers to national security. In addition to what I have already stated in this regard, in what follows I provide additional evidence.

64. On the nonexisting national security question the affidavit of SA Lattin begins with an illustration of careful and deliberate effort to mislead the Court. SA Lattin accredits himself only as an expert on classification (Paragraphs 1 and 2). He next implies (Paragraph 3) that the worksheets are themselves classified. He then states "(4) My examination was conducted in strict adherence to the standards and criteria found in EO 11652," fortifying the impression that the worksheets themselves are classified, particularly because what immediately precedes this is "I have made a personal independent examination of these inventory worksheets ..."

65. Actually, the worksheets are <u>not</u> classified. And in all this sworn circumlocution, which really refers to the underlying documents, SA Lattin does not at any point state that the underlying documents were actually properly classified under the provisions of E.O. 11652.

66. It is my prior experience with the FBI that in practice it ignored the provisions of E.O. 11652. In June 1978, after these FBI affidavits were executed, I received from the same FOIA Unit of the FBI records it claimed had been declassified for me. In fact, those records had been provided to me <u>earlier</u> and <u>bore no indication of classification</u>. They were classified for the first time <u>after</u> being provided to me, then declassified, then given to me in declassified, expurgated form in which what had been released earlier was withheld under

a (b)(1) claim. I provided the FBI FOIA Unit with the information it had withheld under the (b)(1) claim. Weeks have passed. The FBI FOIA Unit has been totally silent on this.

67. SA Lattin continues, "(5) The classification of portions of these worksheets ..." and follows with four quotations from E.O. 11652, each beginning "Classified information ..." None of these is appropriate to the worksheets. They may be appropriate to the underlying documents. If so, that is irrelevant in this instant cause. The worksheets are not "furnished by foreign governments," are not "pertaining to cryptography ...;" do not relate to "disclosing a system, plan, installation, project or specific foreign relations matter ...;" and "would not place a person in immediate jeopardy."

68. Attached as Exhibit 6 is the first of these worksheets to refer to a (b)(1) claim. The sheet itself is not classified. The identification of the record is not withheld. And none of these conjectured disasters has befallen the FBI.

69. In all of this the FBI's expert on classification who proclaims living with E.O. 11652 ignores the violation of it with these worksheets. Exhibit 7 is the worksheet relevant to Serial 281. The worksheet of July 1977 notes "B-1 REFERRAL." Lined through but visible is the fact that the referral was to the CIA. Under the controlling directive of the National Security Council, 30 days after a classified record is referred, if the agency to which referral is made has not acted, it then becomes the responsibility of the referring agency to act as though the referred record were its own record. A year, not a month, has passed and the FBI was and remains in violation of E.O. 11652 on this and on compliance on this. (The FBI assured another court of compliance with regard to the underlying documents on January 16, 1978, without acting on this and other referrals.)

70. Paragraph (6) refers to underlying documents again and states there is withholding "inasmuch as the items would reveal cooperation with foreign police." Whether or not such cooperation is a classifiable item, and it certainly is anything but secret and unknown, the fact is that until now the FBI has provided me with countless worksheets indicating that the source of records was a foreign police agency.

71. Because of the withholding it is not possible to state which "foreign nationals having contacts with foreign establishments or individuals in foreign countries" SA Lattin refers to. I can and I do state that the FBI has all along made such disclosures. Examples that come to mind without a search of my files are the KGB defector, Yuri Nosenko, and in Mexico alone two men named Alvarado Ugarte and Guiterrez Valencia. Most recently, in the FBI's propaganda efforts and in dealing with writers it regards as favorable to the FBI, there was disclosure of one of its more important Russian sources of this nature, known by the code name "Fedora." Others like him were blown in the same operation, a backfired publicity effort. The actuality is other than SA Lattin represents.

72. Throughout the affidavit SA Lattin, by careful language, suggests that all he states is applicable to the worksheets but he does not state this and in fact it is not true.

73. All of SA Lattin's affidavit is stated in terms of the opening caveat, "unauthorized disclosure" (top of page 2). But at no point does SA Lattin state that any actual "disclosure" is involved. Disclosure requires that what is not known be made known. There is no statement by SA Lattin that what is withheld from the worksheets is unknown, not in fact part of the public domain. SA Lattin does not even state that he has any way of knowing what is within the public domain.

74. Relevant to this is what is typical of SA Beckwith's affidavits. SA Beckwith has provided affidavits I have read in three cases. In none of these affidavits has he made any claim to first-person knowledge. He swears to what is not factual, as shown by Exhibit 2. He also misinforms courts by underinforming them, by withholding what is relevant of which he does know. He does not state to this Court what he does know in Paragraph 3 of his affidavit, where he misrepresents how "Inventory worksheets are used." He limits this to the FBI, thereby seriously underinforming the Court. The importance of these worksheets that is relevant is how they are used <u>outside</u> the FBI. They are the only means anyone else has of knowing what exemptions may be claimed and what records are withheld. To a subject expert they also disclose entire files the FBI has not searched.

76. Last year I was told by the FBI that I am the first requester ever to receive any FBI worksheets. If this is true, all other requesters had no way

of knowing what the FBI withheld, what exemptions were claimed or even if they received all the pages of any record. (Here also Exhibit 2 is relevant. It discloses the crooked count I received on a worksheet, with more than two dozen pages being withheld by means of a false entry on that worksheet.)

77. I state "may be claimed" in Paragraph 74 rather than "is claimed" because where more than a single exemption is claimed for any record the requester did not know which of the claimed exemptions was intended to apply to any particular page or record. I have received FBI records of more than a hundred pages with blanket claim to more than one exemption. I believe this represents deliberate stonewalling and a deliberate effort to make appeals more cumbersome and to overload the appeals machinery. It requires appeal and review of the entire lengthy record rather than of individual pages. I have such appeals that have not been acted upon in more than a year.

78. Although the FBI is supposed to have agreed to the Department practice of indicating the exemption claimed in the margin at the point of withholding/of this June the FBI was not doing that with me in a large number of instances. (This also bears on the requester's need to know which analyst processed those records, now withheld from the worksheets.)

79. Where SA Beckwith's affidavit is not untruthful it is unfaithful, it underinforms and thus misleads, and it is conclusory.

80. Half of his affidavit is his Paragraph (6). At no point does it hold an unequivocal statement that he is referring to the specific content of the worksheets. Rather does he provide a general dissertation on "the use of Freedom of Information Act exemptions" to which all that follows relates.

81. Illustrative is his (b)(1) conclusory statement it requires careful reading to understand is referenced to the "original documents" rather than the worksheets: "This information, if disclosed, would identify foreign sources or sensitive procedures, thereby jeopardizing foreign policy and the national defense. See affidavit of SA David M. Lattin." SA Beckwith does not even indicate what numbered paragraph of SA Lattin's affidavit. This is not surprising considering that there is no such proof in the affidavit of SA Lattin. In any event, this kind of information is not needed on worksheets and within my experience is not included on them. However, the foreign sources of information, as

for example the Royal Canadian Mounted Police, has not been withheld from me on worksheets I have received prior to this set of worksheets.

82. In this connection SAs Beckwith and Lattin fail to inform the Court of FBI practice prior to this set of worksheets. The underlying documents are of about a decade and a half in the past and on a subject designated by the Attorney General as "historical." This requires different and more stringent standards for withholding. Under Departmental regulations after ten years a review of classified records is required. None of this relevant information is provided in these affidavits. There is no evidence of the classification review having been made.

83. The foregoing Paragraphs represent what is the fact with regard to all such representations in SA Beckwith's affidavit. The claim to (b)(2) is related to the underlying records, not the worksheets. But as it relates to the underlying records it is not true, as is illustrated by Exhibit 3 above, relating to Informer Morris Davis. The FBI has disclosed the names of informers other than Morris Davis and the symbolic representations of informers. This kind of information, in any event, has no place on worksheets and in my extensive prior experience has not been placed on the worksheets.

84. The foregoing Paragraph and earlier portions of this affidavit, especially Exhibit 1, refute SA Beckwith's representations with regard to the privacy claim (Paragraph (6)(c).) With regard to SA Beckwith's claimed need to withhold the names of FBI agents, addressed in foregoing paragraphs and shown not to have been prior FBI practice with hundreds of pages of worksheets, he states what he has not qualified himself to state: "There appears to be no public need for the revelation of the names of those who processed the original documents."

85. SA Beckwith could with as much justification have stated, "There appears to be no public need for the revelation of the names of unindicted co-conspirators." The prior illustration exemplified by my demanding and obtaining the removal of SA Goble from FOIA processing represents such a public need. In worksheets I received two months after SA Beckwith executed this affidavit there is such a need and I am handicapped in obtaining rectification of error by the withholding of these names. There is a public need for the Act to be complied with. There is a public need for public information to be made available, the

purpose of the Act. Withholding the names of agents is not necessary to protect them from fancied dangers. It serves only to make improper withholding more difficult to rectify and to perpetuate in FOIA analyst roles those who withhold more zealously.

86. The last paragraph of SA Beckwith's subsection (c) provides seven categories of privacy information he represents the FBI must withhold. While this is the kind of information I have never found on any worksheet and has no place on any worksheets, I state without equivocation that the FBI has in fact provided me with each and every kind of privacy information SA Beckwith represents is always withheld. These are "references to a person's criminal background," (often and after execution of this affidavit provided to me); "medical background and psychological diagnosis," both often provided; "derogatory information about a third person" (commonly provided beginning with the first FBI records I ever obtained and as with some of the others included in what the Warren Commission published with the FBI's assent); "... due to his mental state" (often not withheld, particularly not where the person was not liked by the FBI); "police department identification numbers of individual"; and "references to a person's personal sex life."

87. SA Beckwith's is the only affidavit provided in this instant cause in support of withholding based on privacy claims. The Memorandum (at page 8) claims that "the inclusion of a person's name ... either as a source of information as a third party ... (or) for various other reasons, carries strong privacy implications. Indeed, dissemination of this file in an undeleted state is the type of dissemination Congress sought to control." The Memorandum adds that "to expose the names of individuals" would "constitute an unwarranted invasion of their privacy ... no legitimate public interest would be served" and "irreparable harm could be done to these individuals."

88. As general statements, related to the underlying documents rather than the worksheets in rare instances some of this can be true. None is related to any specific claim to exemption for any identified record. All these representations are in sharp contradiction to extensive FBI practice that is within my personal experience and is represented in records I obtained from the FBI.

89. There is an obvious public interest in knowing who provided what

information relating to the most horrible of crimes, the assassination of a President. There is obvious public interest in an evaluation of the alleged evidence being possible by subject experts and by the public.

90. Once again there is no showing that the names are not within the public domain and in connection with the same or similar information. Many thousands of such FBI records are already within the public domain by having been published in facsimile without any excisions by the Warren Commission and by being available without excisions at the National Archives. Neither of these relevant factors is mentioned in the Memorandum or in SA Beckwith's affidavit. In addition, a very large number of these persons went public on their own initiative and are reported in a vast number of news and magazine articles and countless books. Moreover, the Attorney General's policy statement of May 5, 1977, on this exemption requires that except in rare instances these names not be withheld.

91. While there is no doubt that in some instances withholding to protect privacy is necessary, my extensive personal experience of the past is that most of these claims are spurious and are to serve ends other than those of the Act. (These names do not apply to worksheets.) I addressed the spuriousness of such claims in an affidavit I provided for C.A. 77-0692, in which SA Beckwith also provided an affidavit for the Department. Because my affidavit was not refuted and to the best of my knowledge has not been mentioned by the Department I illustrate what actual FBI practice has been with regard to privacy by attaching as Exhibit 8 pages 9 and 10 of my affidavit in C.A. 77-0692. I believe it is apparent from this exhibit that the FBI's present representations relating to its devotion to protecting privacy are contrary to its practice, particularly with regard to persons it does not like, whose views it and its agents disagree with and who are black. This is in sharp contrast with its new-found need to withhold the names of white FOIA processing agents on the nonexisting need to protect them from harassment and prevent reduction in their efficiency.

92. The kinds of withholdings SA Beckwith refers to in (d) is of information that has no place on worksheets, like "symbol numbers" and "file numbers of informants." However, as stated above and reflected in Exhibit 3, this is not undeviating FBI practice.

93. Withholdings that are actually at issue, rather than the irrelevant

ones addressed by the Department and the FBI, represent an abrupt change in FBI policy. I have been able to identify the time of the change in FOIA policy by examining the last 5,000 pages of FBI records I received under C.A. 78-0322. Processing of them was to have begun in early April. I received them on June 28. It is during the processing of these records that changes in practice become apparent. This includes the withholding of FBI names in the later records where the names are not withheld in those processed earlier from this one large file.

94. Coinciding with this is a press campaign and appeals to the Congress for "relief" from the burdens of FOIA and representations about the costs of FOIA. It is apparent to me that the FBI and the Department intend to use this instant cause in these endeavors, as my prior experience enabled me to identify such efforts in the past.

95. In fact, for a long period of time I have been endeavoring to inform the Department of the enormous waste of time and money in the FBI's handling of FOIA requests. One of my experience can identify these misuses of the Act to create false time and cost statistics. (The reality is that in my C.A. 77-2155 the FBI and the Department were unable to inform that court of the actual cost of making a copy of any one of the records covered by these work-sheets. The reason is a false emphasis on unreal and inflated costs.) In the last records I received, those referred to in Paragraph 93 and at other points in this affidavit, there is the attribution to FOIA costs of inquiry that clearly was not made under FOIA. In C.A. 75-1996 I put into the record an instance of a request stated not to have been under FOIA. This citizen's letter to the FBI was not only processed under and attributed to FOIA - an automatic appeal was entered under FOIA appeals. Even more incredible is the fact that while I was suing for some of the information provided to that citizen and having information withheld from me, that citizen was provided with the information withheld from me in a case in court.

96. As I have stated, I have long experience with the FBI in FOIA matters. From this experience I believe it now seeks to misuse this instant cause and the prejudice against the subject matter of the underlying records that exists in the press and in the Congress for purposes that are not within the Act and are contrary to the intent and the language of the Act. I believe that the

FBI and the Department, as in the past, seek through me to rewrite the exemptions to the Act to be able to withhold information that is embarrassing to the Department and to the FBI. To do this there are the above-cited and other misrepresentations and misstatements to this Court.

97. By now, from its own representations, the FBI has processed an exceedingly large number of FOIA requests and a fantastic number of pages of public information. In this instant cause it alleges that now it must withhold the names of FOIA processing agents to protect them and their families from harassment. I note the total absence of a single instance of this despite the enormous number of FOIA requests processed and the large number of agents involved in this processing. The claim is conjectural, conclusory, baseless and quite opposite the popular image of the derring-do fearlessness of the FBI and its heroic agents.

98. As an illustration of the liberty the FBI takes with this Court in other of its representations in this instant cause, I use its claims with regard to special investigative techniques it alleges the need to "protect" so their "future usefulness" will not be impaired. This also relates to the genuineness of the allegations with regard to "privacy" and the FBI's dedication to preserving privacy rights.

99. Exhibit 9 is a record relating to one such technique, wiretapping, provided to me in C.A. 75-1996. The date of this record, from the third highest FBI official to the second highest, is significant. It is the very day James Earl Ray entered a guilty plea. Aside from the attempted defamation of the widow of Dr. King and his successor as leader of his organization, there is significance in this record not immediately apparent to a nonsubject expert. This wiretap was after Dr. King was killed. What is not generally known is that prior to his death authorization for such wiretapping was not renewed. An FBI effort to obtain permission prior to Dr. King's death was not approved. Nonetheless, as Exhibit 9 shows, the FBI did engage in this wiretapping. Within my experience it is to hide what held this potential for embarrassment (in this instance apparently not known to the processing agent) that information is often withheld under spurious claim to exemption. In this instance use of such a technique and FBI illegal practices with regard to such a technique were both disclosed as

part of the effort to defame Mrs. King.

100. The foregoing is true with respect to the techniques of "black bag" jobs (breaking and entering) and "bugging" (microphone surveillance) in other records I have received. In prior cases such records have been released to me without any claimed need to "protect" a technique lest its future effectiveness be destroyed. Attached as Exhibit 10 are some such records as I used them in C.A. 75-1996. I use these copies because with regard to this and other selections from my prior affidavits there has been no denial from the FBI or the Department. The teletype from FBIHQ in Exhibit 10 directs what can be done only by a breaking and entering, the examination of records without a subpoena.

101. After this affidavit was prepared, I received two relevant communications in the mail of July 10, 1978. The first, dated July 7, reports the Deputy Attorney General's action on my appeal. (Exhibit 11) The second, from Paul L. Hoch, of Berkeley, California, provides me with several examples of frivolous FBI claims to "national security" exemption with regard to the underlying records. (Exhibits 12A and 12B, 13A and 13B)

102. The July 7 action on appeal by Mr. Shea confirms my prior statement that the appeals machinery is limited to determining only that the excisions in the worksheets are "compatible with the excisions made from the actual records," the underlying records. Thus the review does not address substance. It does not and cannot determine whether the excisions are in fact either justified or necessary.

103. Mr. Shea also states that "The classified materials have been referred to the Department (classification) Review Committee for determination whether they warrant continued classification under Executive Order 11652."

104. Each of these matters reflects the fact that the rest of the Department is largely the captive of the FBI in FOIA matters. If review shows the excisions in the worksheets to be "compatible" with the excisions in the original documents, then the review process in this instant cause in this respect is completed. Whether or not the withholding is justified, even reasonable, is not reviewed. The review authority is limited to the FBI's representations. This also is true of the classification review committee. Neither reviewing authority has any independent source or knowledge. The FBI has each in the

position of rubber stamping its withholding of what is within the public domain.

105. The two examples I received from Mr. Hoch reflect this with "before" and "after" samples of several of the FBI's "national security" claims with regard to the underlying JFK assassination records.

106. Exhibit 12A is the "SECRET" FBI copy of an FBI memorandum with three paragraphs deleted. Exhibit 12B is the identical, never classified memo without these excisions. (Notations identified "PLH" were added by Mr. Hoch.) All the content of the excised three paragraphs except for two sentences was published by the Warren Commission. These two sentences, the first two on page two, became public domain more than a year ago. The only content of those two sentences then not already within the public domain is the reference to FBI agents. The Commission published one of these photographs twice, as two different exhibits. The fact of the tape recording has been within the public domain for from three to five years. All that could have been new when the content of this memo was released by the Secret Service is the FBI's negative identification. This, of course, is contrary to all earlier official representations, beginning with those made to the Commission by the agencies involved.

107. Knowing none of this and finding the traditional references to the most "extremely sensitive" sources (made public by the Warren Commission), the Depart ment's classification review committee might be persuaded that "an extremely sensitive source" and a "highly confidential source of this Bureau" (paragraph 2, page 2) require (b)(1) protection. If the classification review committee so determines, it will be preserving the unjustified "secret" classification of what is within the public domain and has received the most extensive coast-to=coast print-press and electronic press attention.

108. I do not violate "national security" in informing the Court that the "highly confidential source of this Bureau" is the Central Intelligence Agency. The CIA itself made this public several years ago.

109. There likewise is no genuine issue of "national security" in my informing the Court of the yearning by the intelligence agencies to withhold what the FBI still has classified as "secret." The official story of the CIA is that it destroyed this tape recording by reusing it prior to the assassination of President Kennedy. If this were true, there would be no way the FBI agents

could have listened to that October tape recording after the President was killed in November 1963.

110. Exhibit 13A is the excised copy of the intercepted change of address card Lee Harvey Oswald sent to the Communist newspaper, The Worker. The basic facts were made public domain by the Warren Commission. Exhibit 13B is the unexcised card. (D-21 is an FBI identification. Notations identified "PLH" are by Mr. Hoch.) Here again "national security" lies in the public domain.

111. These are not exceptional instances, as my prior paragraphs reflect and as could be established by many more illustrations.

112. If by any remote chance there is an FBI agent who does not know that such mail was being intercepted and that the interception is public knowledge, even the subject of testimony before a Senate committee, I believe good faith and minimal diligence required some effort to determine whether or not what is clearly marked as having been given to the Warren Commission and having been transferred to the National Archives under the Executive Order of October 31, 1966, was within the public domain. (The "D-21" reflects this.)

113. I have more information that is relevant to FBI efforts to hide what is embarrassing by improper classification of the record that is Exhibit 12A. From prior experience I believe that if I disclose this information now possibility of further FBI disclosure will be reduced. For now I state that the FBI has and withholds other relevant information. In part, this is by improper classification of a nature that almost certainly will deceive and mislead the Department's classification review committee, if the withheld information ever reaches it. I state also that the FBI has taken steps to reduce the possibility of that record reaching this committee.

114. Other relevant public knowledge that the classification review committee and the Court may not possess is that the intelligence agencies represented to the Warren Commission that the CIA, by clandestine means, obtained photographs of Lee Harvey Oswald and a tape recording of a phone call he made when he approached the Cuban and Russian embassies in Mexico City almost two months before President Kennedy was killed. Immediately after the assassination an FBI agent in Mexico City flew the photographs and the tape to Dallas. Earlier other FBI agents had interviewed Oswald. His face and voice were known to the

FBI. The withheld part of Exhibit 12A reflects that these FBI agents made negative identification. This negative identification was incorporated in a letter Director Hoover wrote the Secret Service on November 23, 1963. The Secret Service has made a copy of this letter available and I have it. The problem all of this makes for the FBI comes from its predetermination of a no-conspiracy assassination, a predetermination reflected in its first report and fixed upon the Commission. (The report is identified as "CD1." See Paragraph 41 above.) If there were someone other than the real Lee Harvey Oswald representing himself as Lee Harvey Oswald so long before the assassination and in association with the Russian and Cuban embassies, there is a strong suggestion of either a conspiracy or of someone setting Oswald up. There is further potential of embarrassment for the FBI because in this supposedly definitive five-volume report the President ordered of it prior to creation of the Warren Commission the FBI withheld all mention of the foregoing information.

115. From extensive personal experience and from personal examinations of many thousands of FBI records, I state that the first law of the FBI is "don't embarrass the Bureau," not 5 U.S.C. 552.

HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 10 day of July 1978 deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires 11-1-82

NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND