UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

DEPARTMENT OF JUSTICE,

Defendant.

AFFIDAVIT

My name is Harold Weisberg. I reside at Route 12, Frederick, Maryland. I am the plaintiff in this case.

1. In my affidavit of May 25, 1979, I state that Department moves in this instant cause have been intended to delay compliance and to restrict compliance to the degree possible and that, consistent with this intent, Department counsel, from the first, have underinformed, misinformed and even misrepresented to the Court. In that affidavit I took up item by item the representations of Department counsel in and relating to its Motion for Partial Summary Judgment of May 11, 1979, Memorandum of Points and Authorities and other attachments, including boilerplated affidavits.

2. In that affidavit I also undertook to show how Department counsel sought to expand a Motion for Partial Summary Judgment to cover all questions relating to my requests in their entirety although in fact the Motion relates only to the Stipulation of August 1977 and that incompletely and misleadingly.

3. I have read defendant's Motion for Protective Order and Memorandum of Points and Authorities of May 29, 1979 (hereinafter the Motion). This Motion engages in the same practices, is tainted by unfactual and misleading representations and also is phrased to extend to all matters involved in this long litigation, not merely what ostensibly is addressed, the taking of depositions as they may be relevant to defendant's Motion for Partial Summary Judgment.

4. My initial information requests were made in 1969, more than a decade

ago. This suit was filed in 1975, three and a half years ago, when my renewed requests and appeal both were ignored. I received no response until after I filed the complaint and then under the first of the Department's rewritings of my actual requests.

5. Many material facts remain in dispute. My noticing of the taking of depositions is not limited to what may be relevant to the Stipulation.

6. There is no reference to the Stipulation in the Motion. By content it is not limited to what may be relevant to the Motion for Partial Summary Judgment as it in turn may be relevant to the Stipulation. Instead, there is still another effort to broaden another Motion to include the entire case, to foreclose any other developments in it and to create still more delays in the entire case. Whatever the Court's decision, that can be appealed, making still further delays. If granted, the Motion for Parial Summary Judgment would not and could not be dispositive of the entire lawsuit.

7. As a matter of fact, there is no conflict between the taking of depositions and, if the Court should grant it, partial summary judgment.

8. I have had prior experience with Department and FBI counsel in the taking of depositions. Never have I known them to fear interrupting to prevent an answer to any question. Nor have I known any FBI special agents to be reluctant to refuse to answer.

9. There are many existing factual questions relating to scope and good faith of the searches and to the processing of the records provided that have nothing at all to do with the Stipulation even if it remains viable, which I believe is not the case.

10. (I note that this question, which I have raised over and over again in person, in writing and in court, is ignored in both Motions.)

11. SA Thomas Wiseman had no connection with the Stipulation or searches or compliance under it.

12. Department counsel's newest effort to extend the scope of a motion to encompass all matters involved in the litigation is reflected by the following quotations from the Motion:

> A. "... defendant seeks an order barring all discovery in this litigation ..." (Motion. All emphasis added.)

B. "The facts surrounding this Freedom of Information Act (FOIA) lawsuit are fully set forth in the Memorandum of Points and Authorities accmpanying defendant's Motion for Partial Summary Judgment ..." (Argument, page 1.)

(This also is not a factual statement in that nothing except some aspects of the Stipulation are addressed in the Motion for Partial Summary Judgment. It does not address and in fact ignores most of "The facts surrounding this" lawsuit and most of thsee facts are not fully set forth in the Memorandum ...")

C. "... all issues raised by this ... lawsuit." (Statement, page 1.)

D. "... a dispositive motion may make all discovery moot." (page 2)

E. "... any discovery may be rendered totally unnecessary by the resolution of defendant's motion on the merits ..." (page 5)

13. While Footnote 3 on page 8 admits some limitation, it still is phrased to apply to all searches in response to all Items of my requests amd all issues relating to scope before the Court rather than narrowly, searches under the Stipulation:

"3/ Defendant's Motion for Partial Summary Judgment deals only with the scope of the agency's search for responsive records."

14. This lone admission of any limitation is required by the next sentence of the footnote,

"Plaintiff's Notice of Deposition, however, states that the subject matter of the depositions will be "all issues" related to this lawsuit."

15. All these direct quotations seek to extend the sweep of the present Motion to be all-inclusive rather than in any way restricted to the underlying actuality of the Motion for Partial Summary Judgment, limitation to searches under the Stipulation.

16. However, if what remains of this footnote is factual, then there is need for discovery to resolve questions that have existed throughout this litigation:

"The primary issue in the lawsuit is of course, the propriety of the exemptions claimed by defendant."

17. I believe the good faith of all the searches and compliance by all Department components are also "primary" issues. But even on "the propriety of the exemptions claimed by defendant" I have written many letters and appeals and I have provided a long memorandum addressing "the propriety of the exemptions claimed by defendant" only to have them virtually totally ignored. This means that

after three and a half years of stonewalling and of not responding to countless specifications accompanied with hundreds of copies of records the Department now seeks to stall all those questions still longer by foreclosure of any discovery.

18. The first subheading under Argument claims that any "Discovery Is Unnecessary and Inappropriate at This Time." (page 2) This is argued despite the admission that after three and a half years there still exist "primary" questions about "the propriety of the exemptions claimed by defendant."

19. Here it is further argued that this Court should "protect a party from undue burden or expense," this party being the Department. The actual burdens are imposed by the Department on my counsel and me.

20. No matter what I have done in this instant cause to effectuate compliance and to end noncompliance, the Department has been virtually nonresponsive. The few exceptions came to pass only when all efforts to stall and stonewall had visibly come to what had to be regarded as a de facto end. Even when the FBI and the Department sought and obtained the Stipulation, they began by overt and nullifying violation of it. To the best of my recollection, this remains entirely undisputed by the FBI and the Department. Instead, they ignore the question entirely.

21. It is a very real burden for one in my situation to have to seek to exercise any discovery in a lawsuit three and a half years old. It is a very real burden for one whose only regular income is a modest Social Security check to have to pay a court reporter. It is a very real burden for my counsel, whom I cannot pay, to take this additional time, more so when the Department has refused his request for fees. Yet it is undisputed that I did not receive a single piece of paper until after I filed the complaint and then received about 50,000 pages. It is a very real burden when, whether or not the "primary" one, the Department admits there exist questions of material fact about "the propriety of the exemptions claimed by defendant" and steadfastly refuses to do anything about them.

22. It also was a very real burden on all parties other than the Department f for the Department to delay for so long its oft-promised Motion for Partial Summary Judgment relating to theSStipulation when the Stipulation required full and complete compliance by November 1, 1977, and then, in May of 1979, provided affidavits

executed more than a half-year earlier. (At least one of these is identical with a 1977 affidavit signed by the same FBISA.)

23. With but a single exception those affidavits attesting to the search are by those who do not claim first-person knowledge.

24. In contrast, all persons included in my Notice have relevant first-person knowledge.

25. As my affidavit of May 25, 1979, states, the Shea and Mitchell affidavits are quite limited, Mr. Shea's is limited to a single Paragraph of Mr. Mitchell's and has an explicit disclaimer on all else.

26. The Motion (claims (page 3) that the Department has met its "statutory burden of proof through affidavits by agency officials." It does not state what is true, that all these affidavits are disputed under oath. It does not reflect the fact that there has been no rebuttal of any of my affidavits.

27. Ignoring my disproof of the Department's affidavits does not validate those disproven affidavits. Rather does ignoring my affidavits assure that material facts remain in dispute.

28. "Plaintiff's counsel was, of course, given the opportunity to cross-examine Mr. Shea," the Motion states. (page 4) If this statement is not factually incorrect, it is an exaggeration of reality, as examination of the transcript of the calendar call of January 12, 1979, makes clear. What follows is a statistical representation.

29. The entire transcript consists of 33 pages, of which the first 23 are a virtual monologue by the Department's witness, Mr. Shea. Mr. Lesar then addressed the Court for about two pages and Department counsel for about a page. What the reporter mistakenly captioned "Direct examination" begins on page 28. Mr. Lesar has the opportunity to speak less than 14 lines in seeking to elicit from Mr. Shea what "should be restored to the documents." (page 28) Mr. Lesar asked for Mr. Shea's "personal evaluation" of these restorations. Mr. Shea responded, "I want to thank you for asking me that question, Mr. Lesar. I'm under oath. The answer to the question is that I'd put them (the withholdings) back." (page 30) When Mr. Lesar asked Mr. Shea to "detail" the "areas of disagreement" between him and the FBI, Department counsel interrupted and argued whether

withholdings are "really the issue," consuming in lines almost exactly the same amount of time Mr. Lesar was permitted for what the Motion represents as "the opportunity to cross-examine Mr. Shea." The Court curtailed Mr. Lesar, stating, "I rhink you will realize that we have a courtroom full of people who have other matters here ..." (page 32, lines 13-15)

30. "Of course," in the words of the Motion (page 4), this is much less than "Plaintiff's counsel was ... given the opportunity to cross-examine Mr. Shea."

31 Mr. Lesar was expecting me to be present to assist him but that was impossible, as I have previously informed the Court. It is I, not Mr. Lesar, who raised factual questions with the FBI, Mr. Shea and other Department personnel. Me. Lesar does not have intimate personal knowledge of those details.

32. As soon as I read the transcript I prepared a memorandum on Mr. Shea's testimony and the exchanges that followed it. This includes the fidelity to fact of representations made to the Court. As a courtesy I sent a copy to Mr. Shea. Four months have passed and Mr. Shea has neither written nor spoken to me about this memorandum. Because it addresses the actual meaning of Mr. Shea's testimony, which I have not been able to cross-examine, I attach a copy as Exhibit 1.

33. As Exhibit 1 shows, Mr. Shea's testimony was in generalities with remarkably few specifics but in summary it adds up to the need to reprocess the records that have been provided because improper withholdings are so extensive within them.

34. This is why Department counsel, aware of the truth, sought to lead the Court to believe that these withholdings are not "really the issue."

35. In this connection I refer again to the violation of the Court's Order not to withhold FBI names, issued long before the beginning of any MURKIN records processing. Despite the Court's Order, throughout all the first two-thirds of the FBIHQ MURKIN records the FBI did - deliberately - withhold FBI names and other similar names within the Court's Order. This guaranteed the denial of relevant information throughout two-thirds of these records. They remain withheld. There are other unjustifiable withholdings.

36. "... no prejudice would result to plaintiff should this motion be

granted," it is argued at the bottom of page 4. This case is now three and a half years old, Mr. Shea testified to improper withholdings that since have not been restored, I am getting older and my health has deteriorated since the complaint was filed. Much prejudice to my interests comes from any unnecessary additonal delay. Any additional unnecessary delay is opposed to the letter and spirit of the Act and its legislative history, which I have read. All delays deny me of rights under the Act. They jeopardize my possibilities of using the information I seek. Delay is additionally prejudicial because it wearies the Court.

37. There is no claim to any real need for delay in the Motion for Protective Order. This is a case the Attorney General has held to be historical, requiring maximum possible disclosure, not the endless seeking of legal nits to be picked to further delay compliance and my possibilities of either using the information in my own work or serving the public role that has been forced upon me, including by Department counsel.

38. On page 5 it is alleged that "nowhere has plaintiff suggested circumstances demonstrating the need for discovery ..." (emphasis added) In my many detailed affidavits of numerous attachments and in all else I have provided the Department in writing, not the least of which is the lengthy consultancy memorandum required of me, I have more than "suggested" this need. The thin-paper file of carbon copies of my letters to the FBI is about two and a half inches thick and is without FBI response. I have provided the Department with hundreds of pages of copies of its own records refleding denials and withholdings as part of countless appeals. These also do much more than "suggest" the need.

39. With all the consideration that can be given to zealous effort to meet adversarial responsibility, I believe the Department's argument against depositions that beings on page 5, particularly the representation that "Depositions are particularly ill-suited to FOIA litigation" on page 6, is not made in good faith. I have prior experience with the Department's position on depositions in FOIA cases. To now it is diametrically opposite this present representation.

40. When I lacked even a modest Social Security check for regular income and I undertook discovery by interrogatories, as the present Motion argues in the better means at the bottom of page 6, the same Department, under the same Act, prevented it by arguing successfully that interrogatories are inappropriate and depositions are the only proper means.

41. In addition, it is my experience that refusal to respond to interroga-

tories is commonplace and false representations in those the Department has provided is not unknown.

42. In C.A. 75-226, because I could and can ill afford to take depositions, I undertook discovery by interrogatories. The Department then opposed this means of discovery and on its representation to that court prevailed. As the same Department, with one of the same signatories, argued in its brief in No. 75-2021, "He has inexplicably chosen the one - interrogatories . least likely to result in his receiving what he alleges he wants .... Depositions of the agents, whose names are known to Weisberg, would seem to be the appropriate course." (page 10, Brief for the Appellees)

43. On this the Department prevailed. The appeals court's July 7, 1976, decision concludes with language not surprisingly not mentioned now by the Department:

> The data which plaintiff seeks to have produced, if it exists, are matters of interest not only to him but to the nation. Surely their existence or nonexistence should be determined speedily on the basis of the best available evidence, i.e., the witnesses who had personal knowledge of events at the time the investigation was made. This cannot be done by interrogatories addressed to a party, although this might serve to narrow the scope of inquiry. It must be done with live witnesses either by deposition or in court.
>
> Decades ago Dean Wigmore said that cross-examination "is beyond any doubt the greatest legal engine ever invented for the discovery of truth." We think it time for the trial court to start the engine running, and thereafter make detailed findings as to what the evidence adduced establishes. Accordingly, we remand this case to the District Court for further proceedings under the Freedom of Information Act not inconsistent with this opinion.

44. Department counsel is well aware of this decision. It also is included in one of Mr. Shea's letters referred to in the Memorandum on page 4.

45. When the same Department and with one of the same signatories argues in this case that "Depositions are particularly ill-suited to FOIA litigation" and encourages substitution of written interrogatories after having argued and established exactly the opposite in C.A. 75-226, questions of good faith are raised. They are magnified by the Department's failure to inform the Court of this most pointed and relevant of decisions on the question of depositions in FOIA cases while citing many others in this longest part of its Argument. There is no mention at all of C.A. 75-226 or No. 75-2021 by the Department.

46. The Department now seeks to engage in mind-reading relating to my

alleged intention "to probe the process by which agency officials reached their oonclusions..." (page 8) This representation is directly opposed to what the appeals court told the Department and me, that in the nation's interest I must seek to establish the existence or nonexistence of the information not provided.

47. Despite the exercise of discovery on remand in C.A. 75-226, the FBI continued to withhold relevant information, sending that case back to the appeals court on its opposition to my continuing to take the depositions the Department itself had argued were appropriate. It then also claimed burdensomeness. In the interim, by means other than Department cooperation in meeting the mandate of the appeals court, I established the deliberate withholding of exactly the information the appeals court directed be obtained in the nation's interest. The question was on the existence or nonexistence of records relating to the performing of certain scientific tests on basic evidence in the assassination of President Kennedy. Only after that case was back before the appeals court for the fourth time did I find proofs in precisely the files the FBI and the Department refused to search when I asked it. I obtained part of those files outside of C.A. 75-226. What I then found also proves the deliberateness of repeated false swearing about the searches at FBIHQ and about the results of those searches. Only on deposition did I learn of testing all records of which were and remain withheld. On deposition also I learned which other files were required to be searched and had not been searched. I obtained some of those files in C.A. 78-0322. When I persevered in that case, after compliance had been assured, an additional 25,000 pages of records were provided. Only then did I obtain copies of the deliberately withheld pertinent records sought to have been memory-holed in a field office. This required years of diligent effort. (My first request was in 1966.)

48. The Department's position is that it can withhold from and misrepresent to the district court and then object to the presentation of newly-obtained and directly relevant information to the appeals court as in conflict with the "settled judgment" principle. There is no case I recall in which I did not find deliberatley withheld and relevant records after the record before the district court was closed. In one case, after I provided the appeals court with newly-obtained proof of deliberate misrepresentation under oath to the district court, withheld records

were provided the very day the Government's brief was due at the appeals court. From this and other similar personal experience I believe that seeking to deny me the opportunity to take depositions has as a purpose an effort to prevent my proving deliberate and knowingly improper withholding and a persisting refusal to search relevant files in this instant cause.

49. That there is improper withholding at this late date in this instant cause was elicited from Mr. Shea during the brief questioning permitted my counsel and quoted above. (paragraph 29) Mr. Shea did not voluntarily testify to and my counsel was not able to question him about the many detailed specificiations of noncompliance I provided in numerous appeals or to the searching of unsearched files I have identified to him. He did testify that with regard to the so-called Long tickler I led him to what remains of it after the FBI had not been truthful with him about it. Deposing Mr. Shea is essential in this case so that his testimony can be complete and not limited to what Department counsel asked of him. I am certain that his testimony will not be in accord with prior Department representations to this Court and for this reason is opposed.

50. Moreover, I believe his testimony would rebut the "exempt from mandatory disclosure" argument (page 8). I believe he would testify that this is not the proper representation of standards applicable to historical cases and that they require maximum possible disclosure and maximum possible use of administrative discretion.

51. At this point (page 8) the Motion does acknowledge the existence of what it terms "the primary issue," the "propriety of the exemptions claimed by defendant," all whose depositions I noted have information relevant to resolving this "primary issue."

52. There is no reasonable basis for the allegation that I intend mind-reading or that my concern is with "the process of by which agency officials reached their conclusions." My concern is for compliance, for obtaining the information sought now for more than a decade and for making more complete and accurate the record on which the Court will render judgment.

53. The cited appeals court decision in No. 75-2021 is also ignored where it is suggested that my testimony be by affidavit (all my affidavits having been

ignored to now) and not by deposition. From my prior experience I believe the real reason Department counsel oppose my giving the live testimony consistent with the appeals court decision comes from prior Department counsel's experiences in confronting my knowledge of the matters in question. He declined the Court's and my counsel's offer of me for further cross-examination. Neither ~~he~~ he nor other Department counsel has produced any rebuttal to that testimony.

54. Whether or not intended as a formality, the Motion cites in its support "the entire record herein." The entire record includes my many long and detailed affidavits that have not been contested. These affidavits attest to the infidelity of the Department's representations and to the deceptive, misleading and misinformative nature of the FBI's affidavits. These affidavits also attest to false swearing. Thus the Motion claims to be supported by proof of official false swearing and other misrepresentations that are without dispute in "the entire record herein."

55. There is almost no day on which I do not come to more evidence of unfaithful representations and intent not to comply in my FOIA cases. The most recent illustrations are of the day before I received the Motion. I attach as Exhibit 2 the amplification of the appeal I sent Mr. Shea.

56. "Previously processed" is the claim made to withhold copies of most field office records. The FBI refuses to cite the record that is the allegedly previously processed and identical form of these records. I appealed this as a form of withholding when I first ~~saw~~ saw the claim. (My appeal has not been acted on.) Nonetheless the FBI has persisted in the practice since then. In his affidavit attached to the Motion for Partial Summary Judgment Mr. Shea disavowed approving this "previously processed" claim. It now turns out that the previously processed claim is made for records also allegedly referred to other agencies. A record cannot be both withheld and referred to another agency and allegedly disclosed when "previously processed." Referrals of the present, it now turns out, also include the transcripts of testimony that were published by the Warren Commission in 1964.

57. As Exhibit 2 also reflects, FBI SA Burl Johnson, who executed the Memphis office affidavit attached to the Motion for Partial Summary Judgment, had knowledge

of the existence of other relevant files to which his affidavit does not refer and which were not searched for compliance under the Stipulation or on any other basis. SA Johnson was an Invaders case agent and was required from this work to have knowledge of the existence of files and of the indexing. All indices are an Item of my requests. SA Johnson's affidavit makes no reference to any Memphis indices. All records relating to the Invaders is another Item of my requests.

58. From my knowledge as a subject expert and of this case and its underlying records, I believe one of the real reasons the protective order is sought is an effort to prevent my obtaining more evidence of deliberate misrepresentation to the Court, particularly on scope and MURKIN, of other deliberate noncompliance, and of other acts intended to prevent and delay compliance and to prolong this case.

59. I am alleging bad faith and I am alleging that bad faith has characterized the case from the outset, when the Department first undertook to rewrite my requests. It then ignored my writing it that I wanted compliance with my actual requests, not its substitution. Once the Department decided it could no longer avoid providing some records, it launched upon a stonewalling campaign, beginning with refusing to send me any records until I gave it written blank-check assurances of payment. This one device led to a long stalling of everything. First the Department violated its own regulations by not giving me an estimate of cost and specifying the deposit desired. Then AUSA Dugan, after promising to inform his client that my counsel and I would provide written assurances once I was given this estimate, did not do so.

60. Perhaps the most conspicuous example of bad faith is the matter of the consultancy forced upon me. In addition to the encapsulation provided by my counsel in his May 29, 1979, request that the Court direct the Department to pay me for those services, I believe other facts are relevant in assessing motive for filing motions with ulterior purposes.

61. Prior to the forcing of the consultancy on me I offered several alternative proposals/I considered them better suited to the Department's alleged interests. None of my proposals would have required as much of my time or any great cost for the Department. One proposal was that the FBI, Department counsel

and the appeals personnel consult me by phone if they had any questions about the specifics of noncompliance I had already provided in writing. (See paragraph 38) Another is that one of the paralegals or other personnel reveiw what I had written and then consult me about any questions and have access to my files. For none of these or similar services would I have expected payment. And it is not I who asked for payment but the Department which offered it.

62. Hiring me as a consultant and paying me was the Department's idea. First of all, it smacks of impropriety because I was forced to work for the agency I was suing. Meeting the obligation of a consultant required me to safeguard the Department's interest as opposed to my own in matters before the Court where the Department, not I, engaged in improper acts and was vulnerable from this. I did provide these cautions, which required that I disclose in advance what I might want to raise in court. In addition, it forced me to spend the time FBI and Department personnel should have spent in going over the letters I had written to the FBI and were readily available in Washington. This was and I believe was intended to be a waste of my time for me. It prevented my using that time on other work that as a result I will never be able to do. For months it also was used as an excuse for a complete lack of any forward motion in this case and in any compliance oby the Department.

63. Once I provided that long and detailed memorandum I heard not another word from anyone in the FBI or elsewhere in the Department about it. No questions were asked. Not a single item raised in it was questioned or discussed with me. No action of any kind followed it. No specification of any basis for dissatisfaction with it or request for clarification of any phrasings was made. Neither Mr. Shea nor anyone on his staff asked me any questions about it or provided any new records or corrected copies of records from which there were what now is admitted to be improper withholdings.

64. Given the conditions under which I prepared that memo and did the underlying work, this is truly exceptional. Perfection is not a human state. I was under great time and other pressures because of the extraordinarily large volume of records I had to read and because I had developed another serious health problem and was required to take time to cope with it. That also was an unusually

severe winter. After the generous applicstion of chemicals, my tree-lined lane, the length of a football field, was iced six and more inches thick over its entire length. Until the end of March, despite my age and health, I had to work at chipping off this ice for as much as I could intermittently every day when the weather or my physical condition did not preclude it. Finally, in order to get the memorandum done, I had to buy dictating and transcribing machines. I had never used them before and I have had no use for them since. As I now recall, I did not even have time to read and correct the memorandum. I did not delay providing it until I had time in the belief that I would be required to go over it with the Department in any event. ((Had it been my intention to run up the bill, this would have provided an excellent and legitimate opportunity. In fact, I am certain my time records are not complete. I have never had occasion to keep such records and I am certain that on some occasions I forgot to.)

63. Under these and other circumstances, I believe it is inevitable that there should have been some questions about the memorandum and its contents. Yet I received no question and not a single word of any other kind from anyone in any part of the Department.

66. Failure to respond with any kind of added compliance when the memorandum is of such length, detail and specificity is, I believe, an additional indication of bad faith and of the consultancy having been forced upon me, through misrepresentation to the Court, as another means of stonewalling this case and compliance with my requests.

67. If the Court rejects both of the more recent Department Motions, even if this is not appealed, the Motions will nonetheless have had the effect of further delaying compliance, taxing the Court and wasting more time for my counsel and me.

68. Why this should be official intent and practice in this case may not be apparent to a nonsubject expert. The real questions involved in study of the official investigations of political assassinations are lost in the confusion and misunderstanding coming from official obfuscations on one side and wild misconspiracy theorizing on the other. The combination, particularly with the executive agencies investigating themselves and able to dominate the investigations

by the Congress, has prevented any thorough official investigation.

69. From the time of the first book on the assassination of President Kennedy and the Warren Commission, which was my first book, dating to February 1965, almost all the major, factual disclosures that are embarrassing to the executive agencies originate with me. This also is true of the assassination of Dr. King, My book on it remains the only factual book that accurately brings to light faults and failures in the official investigations. New information about both crimes that is embarrassing to the executive agencies comes from my FOIA requests and lawsuits. With a single exception I recall no factual and relevant addition by either House of Congress. This relates to the scientific study of the tape of the Dallas police broadcasts when the President was killed. That tape was forced on the House committee by one friend of mine, based on preliminary analysis performed on it by still another friend of mine whose most recent consultation with me was during the preparation of this affidavit. Of the more recent sensational developments I brought to light the existence of a motion picture, existence of which the FBI kept secret. It stated the film does not even show the building from which the FBI claims Lee Harvey Oswald alone fired all shots in the Kennedy assassination. Following up on these suppressed records, which I obtained in C.A. 78-0322, still another friend, with whom I work and am currently working, obtained that film and published an entire newspaper page of still photographs from it showing the presence of <u>two</u> moving images where the FBI claims only Oswald was. The new evidence of some of the testing withheld from the court in C.A. 75-226 includes the removing of samples for testing in the FBI Laboratory of the point of impact of another shot. I brought this shot to light in my second book, in 1966. I did not obtain the proofs held secret by the FBI until 1978, despite 1966 reqqest. All of the supppsedly "new" medical evidence, which disproves the medical findings of the Warren Report, was published in facsimile in my 1975 book, the last book I was able to publish. In the King assassination those seemingly new and also sensational proofs taken to mean James Earl Ray lied before the House committee were actually obtained in this instant cause. (The House committee merely obliterated the identifications of the FBI Lab in showing them on TV.)

70. The so=called internal investigation of the FBI's performance in the King assassination by the Office of Professional Responsibility (OPR) was an inve

investigation of what is not relevant in the crime, the FBI's campaign against Dr. King. However, I published the broad outlines of it more than five years earlier. As my prior affidavits show, I came across the first known indication of the FBI's Cointelpro activities in 1969 and gave this information to the Department only to be defamed for it by the FBI, which thus was able to avoid exposure until after the 1974 amending of the investigatory files exemption of the Act, for which I have some responsibility.

71. So it is that I and my FOIA suits present the fear of embarrassment to the executive agencies.

72. It is because I am not a "conspiracy theorist" and because my work from the first has addressed the functioning of the agencies of government in time of and following these great crises that special efforts are made to delay and prevent my work that otherwise, to this day and despite the fact that it is the first and the most voluminous work in the field, remains without any substantial criticism and without a single complaint of unfairness made to me by anyone.

73. The political assassinations are "family jewels" cases for the executive agencies, especially for the FBI and the Department. Throughout my many affidavits I have avoided arguing the facts of the King assassination and have referred to them where necessary in addressing compliance and noncompliance relating to specific issues. However, if the Court would care to see the glitter of a few of these "family jewels," I can open the lid on request.

74. The actual purposes served by the Department's motions are to delay and if possible prevent my work by keeping me bogged down in unnecessary litigation while to the degree possible avoiding the disclosure of records that are embarrassing to the Department and a number of its components, not only the FBI.

HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this _____ day of June 1979 Deponent Harold Weisberg has appeared and and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires July 1, 1982.

NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND