

Fiund while cleaning up. Don't know if we sued, if this is draft, if JL didn't want
or anything else about it. HW 6/3/79

AFFIDAVIT

1. My name is Harold Weisberg. I reside at Route 12, Frederick, Md. I am the plaintiff in C.A. 75-1996 before this Court.

2. On May 4, 1976, my counsel, Jim Lesar, Esq., filed a Request for the Production of Documents with the Clerk of the Court. The first request therein is for "Three boxes of indices referred to in the attached October 22, 1968, letter from" the Memphis prosecutor to the Civil Rights Division. That letter was attached as Exhibit W.

3. These three boxes of indices are of 25 volumes of evidence compiled by the FBI in the case of the assassination of Dr. Martin Luther King, Jr.

4. When Mr. Lesar asked for this at the status call of May 5, 1976, AUSA John Dugan roared in protest and charged Mr. Lesar with unprofessional conduct.

5. I believe and therefore aver that Mr. Dugan knew better. I have twice sat in the courtroom prior to the call of this case and seen him go over xeroxes of records that had been supplied me by his client.

6. In that instance it had not been possible for Mr. Lesar to make any copies in advance for Mr. Dugan because Mr. Dugan's client had not supplied that record in time. It was mailed to Mr. Lesar under date of April 26. Mr. Lesar then xeroxed copies for me.

7. Prior to this and in advance of Mr. Lesar's arrival in the courtroom, I had offered Mr. Dugan copies of records supplied me and he had declined them.

8. While these 25 volumes of evidence are far from complete and do not include all Respondent's records called for by the complaint and amended complaint in this case, they do contain records I know to be relevant and to be withheld deliberately by Respondent despite sworn statements to the contrary.

9. These volumes were compiled in various FBI field offices. They were not compiled in FBI HQ, which can perhaps explain why FBI SA Thomas L. Wiseman has confined his affirmations in this cause to FBI HQ. The volumes are also a guide to other existing and withheld records and where these records are located.

10. If there is no record of these volumes and their content in the FBI HQ index SA Wiseman swears to having used, such index is valueless except as a device for deception.

11. From my prior and not inconsiderable experience with FBI volumes of this nature, these volumes could easily total 1,000 pages. They should contain the early basic evidence in the crime.

12. These volumes do not include the relevant records of the Washington Field Office. I have repeatedly alleged, without any denial, that the Washington Field Office holds records relevant to this cause.

13. Of these 25 volumes, the most recent was compiled August 22, 1968, in Memphis. The crime was on April 4, 1968.

14. SA Wiseman has sworn that I have been given all the relevant records produced by a search of the Memphis Field Office. This is false, as I told Mr. Wiseman in an effort to obtain compliance. I believe and therefore aver that Mr. Wiseman knew this was false when he swore to it. In my belief he felt that he could get away with it by later alleging he had no personal knowledge. However, I have had extensive experience in going over FBI files and know that it is not possible for an FBI Agent, who is a trained expert on the FBI, not to have known that there had to be at least one piece of paper relevant to my initial request of April 15, 1975, and to the original complaint in this cause.

15. It was official practice in my prior FOIA cases for nonfirst-person affirmation to be supplied. In every prior case there was official false swearing, whether or not perjurious. When Mr. Dugan announced to this Court on February 11, 1976, that he was having prepared an affidavit swearing to full compliance, I spoke to him in the presence of Mr. Lesar after the status call of that day. I then informed Mr. Dugan that such an affidavit would be falsely sworn and a deception of the Court and that I would prove it.

17. I also informed Mr. Dugan that I requested first-person affidavits and could provide him with names of those who could execute them. When he declined any and all such offers I made to him in an effort to expedite compliance and reduce the time the litigation could require, I told Mr. Dugan that whether or not he would be suborning perjury in filing the affidavit he described, as of the time of my informing him of the fact and making these offers he would be in that position because he did know that any such affidavit would be falsely sworn and he would be providing it to this Court. His broken-record response to everything Mr. Lesar and I then said was "I can't control my client."

18. In connection with Memphis Field Office compliance, which is virtually total noncompliance, FBI Director Clarence Kelley has written Mr. Lesar that I have been given everything that could even just interest me from the FBI's Memphis Field Office. The fact is that to this day I have not received a single-Memphis Field Office record and only perhaps a half-dozen alleged to have been located there but in each case of other origin.

19. In this case, according to the Attorney General himself, the FBI alone generated 203,500 documents.

20. Despite my motion of June 30, 1976, to date no single component of the Department of Justice has even alleged compliance except for the false swearings by the FBI.

21. It is as easy to believe that shrimps whistle from the backs of cows jumping over a green-cheese moon as it is to believe that not a single relevant piece of paper was generated by the FBI Memphis Field Office near which this crime was committed when an admitted 203,500 FBI documents exist.

22. Of the aforementioned 25 volumes at least two of which have three parts, four were compiled by the Memphis Field Office by August 22, 1968, almost eight years ago. Other relevant records do exist there and have not been supplied.

23. Of these 25 volumes those numbered I, VI, IX and XXV are from the Memphis Field Office. They are dated April 17 and 30, June 10 and August 22, 1968.

24. All were compiled by since-retired SA Joe Hester, who was in direct charge of the Memphis Field Office investigation of the King assassination.

25. The name of Joe Hester does not appear on a single piece of paper supplied to me by Respondent in this cause.

26. Contrary to the representations made to this Court by Respondent, that it is necessary to protect the "privacy" of FBI personnel to prevent them from harassment from me, the names of FBI agents are well-known and often the subject of FBI publicity. This is true in the case of Mr. Hester, about whom one "puff" story alone in the Memphis Press-Scimitar consumes about 55 square inches of space. Rather than preserving his "privacy" that promotion for Mr. Hester and the FBI is illuminated by a photograph of Mr. Hester.

27. The author of that newspaper story, Mrs. Kay Pittman Black, wrote that "Hester, a supervisor in the Memphis FBI, was the agent in charge of the Martin Luther King case.... Although hundreds of agents all over the country worked on the case, the primary responsibility was Hester's."

28. Mr. Hester is quoted as saying, "That was a big investigation. I worked seven days a week, leaving the office at midnight and back at my desk at 7 a.m."

29. Mrs. Black also wrote of Mr. Hester, who was born in Memphis, that "Hester is the man who knows more about the details of the King killing than any official in the country."

30. I believe and therefore aver that it is not possible to go over the FBI HQ records, however skimpy they may be, without SA Hester's work becoming apparent and without its relevance in this cause also becoming apparent.

31. I state this based on the most extensive study of the work in the assassination of President John F. Kennedy, a study to which I have devoted much of the past thirteen years. I have countless thousands of pages of FBI records and know that it is FBI practice for agents to be designated to compile evidence in major cases.

32. I believe and therefore aver that these records compiled by Mr. Hester long before all the relevant records were made include some basic evidence called for in my complaint and not supplied and a "prosecutive summary" the relevance of which is I believe apparent.

33. I believe and therefore aver that while these 25 volumes do not hold all that is called for in this cause they do include reports on all the physical evidence that to that time had been designed ^{etc} with FBI "Q" numbers and that this is so extensive it takes up about a third of the aforementioned index of the three boxes.

34. I believe and therefore aver that these 25 volumes and the indices include a guide to and the results of FBI laboratory examinations and other relevant records as of the time the various volumes were compiled.

35. I believe and therefore aver that the index alone includes a section that is on all photographs and maps prepared, fingerprints examined and physical evidence and that the physical evidence includes that used for comparison purposes no results of which have been given to me in the more than fifteen months since I filed my request.

36. I believe and therefore aver that these 25 volumes include what the FBI calls "letterhead memorandums" and those written by the late Director J. Edgar Hoover and that these include what is relevant in this cause and in establishing whether or not there has been compliance or deliberate refusal to comply.

37. I believe and therefore aver that these 25 volumes and the three boxes of indices I have not been shown since Mr. Lesar requested access to them for me will prove conclusively that there is and always has been deliberate noncompliance in this case with what I regard as abuse of the law, this Court, me and my rights under the law.

38. I believe and therefore aver that when I have had a chance to go over

these volumes and indices I will be able to pinpoint what is and has been deliberately withheld from me in violation of the law with regard to Respondent's relevant records as of prior to August 22, 1968.

39. I believe and therefore aver that the real reason for deliberate stonewalling and noncompliance in this cause is embarrassment to the Department of Justice, not only the FBI, from my making public what I seek in this cause.

40. To my knowledge this is not the only deliberate withholding or the only deliberate deception of or misrepresentation to this Court in this cause.

41. I cite as one example the fact that I have not been given a single piece of paper relevant to the Cointelpro/Invaders request in the amended complaint of last year.

42. It was alleged to this Court by Respondent that these requested records could not be supplied to me because the FBI could not process any request out of the sequence in which requests were received.

43. This is false as it relates to my requests and as it relates to appeals from denial, within my personal experience. They are not taken in regular order.

44. At my request Mr. Lesar read to this Court and Mr. Dugan a request I made in 1970. It was accompanied by a check, which was cashed without either compliance or even acknowledgement of receipt of either the request or the check.

45. I can produce a check an unknown agent of Respondent tore into small pieces than reconstituted with transparent tape and cashed.

46. I have had no response to an appeal from a denial of 1973 despite several written inquiries. Mr. Lesar accompanied me on two personal visits in an unsuccessful effort to obtain compliance with that FOIA request. In neither case could we get past the reception desk and in neither case would anyone even take my name, address and phone number, despite the fact that what I seek is copies of evidence used in court in public proceedings.

47. Bearing on this and on representations to this Court about "historical" cases at the June 10, 1976, status call is the affidavit of Mr. Quinlan Shea, Chief of the FOIA/PA Unit in the office of the Deputy Attorney General. Mr. Shea's affidavit of April 23, 1976, is filed in C.A. 76-423. In it he swears that:

there are cases "where under the standing guidance of the Deputy General the Department recognizes the historical interest that exists and attempts to effect the maximum possible disclosure of records;" (page 9)

that requests are handled out of order "where an applicant can demonstrate a real and substantial need for preferential handling;" (page 7) and

that "A reversal or a substantial modification of the initial response to the request for Justice Department records results from this procedure in over 50% of the cases appealed." (page 8)

48. What this really says is other than AUSA Dugan has represented to this Court and that there is an incredible record of initial noncompliance when there is "a reversal or substantial modification" in more than half the cases.

49. Mr. Shea also swore to a "de novo review by a member of my staff" and that "I am nonetheless to examine all withheld materials to see if any might be appropriate for release." (page 8)

50. Yet in this instant cause it was more than six months after the action was filed when there was a negative action on appeal and I was told I have the right to file the case then more than six months old.

51. In all the time that has passed since Mr. Lesar informed Respondent's counsel of noncompliance with that 1970 request there has been no compliance, not a word from Respondent.

52. With these explanations I return to the matter of the existing Cointelpro/Invaders records that have not been supplied.

53. I supplied Mr. Lesar with the attachments to the motion he filed for me on June 30. These include two news stories that report confirmation of the Memphis Cointelpro operations by the Civil Rights Division, which has not provided a single relevant record; and by the retired Special Agent in Charge of the Memphis Field Office of the FBI at the time of the records sought in this cause, Robert Jensen.

54. To my knowledge when the first of these newspaper stories appeared, FBI Director Clarence Kelley ordered an immediate investigation of the Memphis Cointelpro/Invader operation.

55. To my knowledge this investigation was completed prior to the first status call in this cause or prior to February 11, 1976, when AUSA Dugan began alleging mootness and demanding dismissal of the amended complaint that includes this request.

56. To my knowledge FBI Director Kelley is among Respondent's officials who have knowledge of this Memphis Cointelpro/Invaders investigation and a report thereon. Neither that report nor a single piece of paper relevant to Cointelpro has been provided to me or offered me in any way by anyone.

57. I believe and therefore aver that when I include a request for these records in an FOIA request and appeal and when I amended the complaint in this cause to include that request, it is and must be apparent even to the Director

of the FBI and his FOIA agents that I have an "interest" in these records.

58. Notwithstanding this he assured Mr. Lesar that everything from the Memphis Field Office that could be of "interest" to me had been supplied.

59. Among the suggestions and directions of this Court going back for months with which there has been no compliance by Respondent is the question of unjustified, indeed entirely unexplained, masking that I know to be entirely without basis.

60. On my first meeting with SA Wiseman, when he handed me these few masked records, I laughed at him and kidded him about the masking of names published many millions of times and including the names of those subpoenaed as witnesses for the trial scheduled for November 12, 1968. Mr. Wiseman was embarrassed.

61. Prior to my second meeting with Mr. Wiseman, this Court told AUSA Dugan that the maskings had to be justified.

62. During my second meeting with Mr. Wiseman I asked him for unmasked copies or justifications. I reminded him of what this Court has said relevant to justifying masking. His response was simple and direct: "I'll see you in court first."

63. To this day I have received neither any justification nor a single replacement of a single record from which there was this masking of the publicly known. In the case over which I ridiculed Mr. Wiseman, the names masked are those of people at or employed by the Aeromarine company in Birmingham, Ala.

64. The first name masked from the Birmingham Field Office's telegram of April 5, 1968, is the name of the company that sold it, Aeromarine Supply Co. The next masking includes the alias Respondent attributes to James Earl Ray, including in the conspiracy charge Respondent filed in Birmingham and on which the Director issued a press release containing that name, Harvey Lowmeyer. The next masked name is that of Hugh L. Baker, the salesman. I published this name and all the others, to Respondent's knowledge, more than five years ago. Respondent made electrostatic copies of pages of my book and after marking them up distributed them internally. In my book I quoted a public record, the transcript of the guilty-plea hearing of March 10, 1969, a hearing then extensively reported. The portion of the transcript I quoted names Mr. Baker and the sporting-goods company as part of a proffer of proof that Mr. Baker sold the rifle "to the Defendant under the name of Harvey Lowmeyer." There is no secret about the identities of other witnesses, a Captain John DeShazo and Donald F. Woods.

65. As a matter of fact I obtained all this masked information from Respondent in C.A. 718-70, in which I was awarded a summary judgment. It is included in and sworn to in the Ray extradition proceedings which were first denied me as not in Respondent's possession and then claimed to be "investigatory files."

66. My purpose here is not only to explain why even SA Wiseman was embarrassed, but to show the Court the spuriousness and the ridiculousness of these withholdings; the contempt represented by noncompliance with the Court's instructions relating to this withholding; and the extreme to which Respondent goes to interfere with and obstruct my work and prolong this litigation, which is a separate interference, obstruction and cost to me. Any swearing that these names had to be or even could be withheld is, I believe, overtly false.

67. Of the aforementioned 25 volumes, Volume II was compiled by April 17, 1968, by Birmingham FBI SA Snow. I believe and therefore aver that this particular volume will contain proof of other and also deliberate withholding and of the spuriousness of other maskings in what SA Wiseman provided me.

68. One of the initial requests is for tests on cigarette remains. I believe and therefore aver that any or all of Volumes IV, V, XIV, XXIII and XXIV contain relevant records that presented no search problem for Respondent and that with copies I will establish this to the satisfaction of this Court.

69. I believe and therefore aver that Volumes X and XI may contain information on what Respondent has denied under oath, that there ever were any other suspects.

70. I believe this is also possible with respect to other volumes, in particular Volumes II, XII, XIII, XVII and XXV, but is not limited to these volumes.

71. I believe and therefore aver that throughout these 25 volumes there is other material relevant to this cause and not immune; that it includes chains of evidence and reports on physical evidence called for in this cause; interviews relevant thereto; that two of the three boxes of indices are of these records; and that they will enable me to pinpoint other and relevant withheld records.

72. In this affidavit I have limited myself to some of the withheld records that are within the complaint and amended complaint and of the existence of which I have proof. I believe the 25 volumes and indices will enable me to prove to this Court that noncompliance was calculated and deliberate, was Respondent's intent.

73. I herein also limit myself to these identified records, proof of the existence of which I have, and ask for copies of them because of my medical condition, which requires that I work in a certain position for which I am prepared at home and office only. I must also use a special typewriter table. I should not remain in a seated position for more than a half-hour at a time. When seated, I should keep my legs horizontal to the degree possible.

74. These essential medical limitations and needs have been known to Respondent's counsel since February 11, 1976, when Respondent's counsel promised to use his "good offices" to facilitate my examination of relevant records but never did; and to all of those of Respondent's agents with whom I have met, including the FOIA/PA unit and the Office of Legal Counsel of the FBI.

75. The crime basic evidence of which I seek in this cause is by Respondent's own declaration the costliest in our history. The work I have done relevant to it is not duplicated by anyone else.

76. Prior to my illness and prior to the filing of this cause I made arrangements for all of my extensive files to become part of an historical archive in a university system. Whatever records I obtain in this cause will be part of that archive and thus a permanent and public record, together with what work I do based on these records I seek.

77. I have passed my 63rd year. My counsel in this cause is one of my executors and can give this Court any added assurances it may want with regard to the foregoing paragraph.

78. In addition, it has been my practice to make available to the press and to authentic scholars in the field copies of what I obtain in my various FOIA cases whether or not I also publish them myself. I have, at my own cost, published extensively records I obtain.

79. I include the foregoing paragraphs because of the language of the United States Court of Appeals for the District of Columbia in No. 75-2021, decided July 7, 1976.

80. While that cause relates to a different major crime, the assassination of a President, it is for only some of the evidence in that crime I seek with respect to the assassination of Dr. King in this instant cause.

81. This Court has on several occasions and in citation of the words of the Attorney General referred to the records sought in this cause as of more than usual importance and to the crime as an historically important event.

82. In this sense I respectfully call to the attention of this Court the language of the Court of Appeals in its aforementioned decision:

"The data which plaintiff seeks to have produced ... are matters of interest not only to him but to the nation." (page 6)

83. While what I herein seek is directed at establishing noncompliance and obtaining withheld records, it also will be part of a publicly available archive and I believe is "of interest ... to the nation."

84. To my knowledge Respondent has conducted four "reinvestigations" of the assassination of Dr. King. The first coincides in time with my C.A. 718-70; the second with my investigation and other work in connection with the habeas corpus petition filed on behalf of James Earl Ray; the third followed the filing of the request in this cause; the fourth and current one followed developments in this cause. From none of these "reinvestigations" has anything "of interest ... to the nation" been made available by Respondent.

85. From none of these have I in this cause received so much as a single piece of paper. In fact, Respondent has not even provided any record of any of these "reinvestigations," although the two most recent coincide with status calls in this cause. It is not only the report of the special Cointelpro/Invaders investigation ordered by Director Kelley prior to the first status call in this cause that continues to be denied.

86. From not long after the filing of my request FBI files described publicly by Respondent as of large volume were transferred to the Civil Rights Division for its "reinvestigation." On April 29, 1976, the Attorney General announced transfer to the Office of Professional Responsibility.

87. Before this month I had received only a few pages of records from the Civil Rights Division, mostly those from the records of the Criminal Division and largely relating to Bernard Fensterwald, Jr.

88. On June 30 my counsel filed a Motion for Certification of Compliance. Although to my knowledge other components of the Department of Justice have relevant records that have not been supplied, the Criminal Division had been in charge of the case from the beginning and soon thereafter the Civil Rights Division was involved by the filing of the Birmingham charges of violation of Dr. King's civil rights. Both the Civil Rights Division and the Office of Professional Responsibility during the time of this instant proceeding have had possession of extensive and relevant FBI files in addition to their own from which there had

not been compliance. There also had been no claim of burdensomeness from any component other than the FBI. I therefore asked counsel to move as he did on June 30 in an effort to obtain compliance from those named components of whose possession of extensive and relevant files I did have proof.

89. None of these three named Divisions nor any other part of the Department of Justice has since certified compliance. Neither the Criminal Division nor the Office of Professional Responsibility has made any response. Neither has provided a single record.

90. There are other responses the Office of Professional Responsibility has not made. In his second affidavit Mr. Wiseman made false and defamatory accusations against me, that he had to hide (the known) names of FBI agents to protect them from harassment by me. On June 7, 1976, I asked him to retract this false swearing and defamation. When he did not respond to this request I sent by certified mail, I did file charges with the Office of Professional Responsibility. It has not even acknowledged receipt of the complaint I filed.

91. Under date of July 6, 1976, the Deputy Assistant Attorney General in the Civil Rights Division belatedly mailed my counsel only 32 documents. The plain and simple truth is that most of them refer explicitly to records not provided and relevant and thus to Respondent's certain knowledge to records called for and deliberately withheld.

92. The 32 documents are censored and masked without warrant or sense. This obliterates the publicly known, including the names of people who have gone public on their own initiative. This thus becomes still new proof of noncompliance and the intent not to comply and to obstruct and impede my work.

93. As one proof of Respondent's awareness of this I cite Respondent's failure to file any sworn-to certification of compliance in response to my motion of June 30, 1976.

94. There not only is no reference to this lawsuit in that letter of July 16, 1976, it pretends there is no cause before this Court and informs me that I may appeal the denials to the Attorney General "by writing, within thirty days."

95. It is now more than 15 months since I filed the initial request for readily-identifiable records. At my age and in my medical condition, this is a burdensome and I believe entirely unnecessary delay to which I do attribute the deliberate intent by Respondent to impede and delay my work because Respondent is certain it will be embarrassing to Respondent. I have not filed this or any other cause out of idle curiosity.

96. Because of Respondent's long delay and I believe noncompliance made obvious by my examination of the July 16, 1976, records, I have prepared this affidavit without benefit of consultation with counsel, who is physically separated from me by some distance. Counsel is presently overburdened in four other cases of which I know, all with current or close deadlines. One of these is the remand decision in No. 75-2021, in which the status call is scheduled for July 28.

97. Long delays have characterized each of the seven FOIA actions I have filed. I am anxious, after more than 15 months, for this cause to proceed; therefore, without counsel, I have prepared this affidavit alone in an effort to effectuate compliance.

98. If this Court desires more information or any substantiation, I will provide it, hopefully with the assistance of counsel.

HAROLD WEISBERG

Washington
District of Columbia

Before me this _____ day of _____ 1976,

Deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires _____

Notary Public in and for the
District of Columbia