

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....
HAROLD WEISBERG,
Plaintiff,
v.
DEPARTMENT OF JUSTICE,
Defendant.
.....

C.A. 75-1996

AFFIDAVIT

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

1. I have read Defendant's Opposition to Plaintiff's Motion for Partial Summary Judgment with Respect to Memphis Field Office Indices (hereinafter the Motion) and its attachments.

2. This Motion continues the Department's policy of stalling and seeking to misinform the Court. There are but two references to the actual index I seek in the Motion. The supposedly supporting affidavit of FBI SA William Earl Whaley is so far removed from the realities of what is at issue it makes no mention of either Memphis or the index in question.

3. One apparent reason for this contrivance is to be able to quote the decision in Halprin v. Webster (Motion, page 2). In that case the question was of the removal of cards from the general and current working indices after the providing of a Vaughn v. Rosen affidavit. In this instant cause the information contained in a Vaughn v. Rosen affidavit has not been provided to me and the index in question is not the day-to-day general index.

4. The Whaley affidavit is keyed to "The General Index" (paragraph 2, first words). It does not in any way relate to the special case index. In turn, the Motion and the decision in Halprin v. Webster are keyed to this same "General Index," which is not at issue, directly or indirectly, in ^{my} ~~this instant~~ ^{Motion} ~~cause~~.

5. After making passing reference to the "'special case' index" in its

first paragraph, to identify my Motion, thereafter the Department's Motion is in terms of "The General Index" only. As in the Whaley affidavit, these are the opening and controlling words of its second paragraph.

6. The only remaining reference to this special case index in the Motion is in its footnote on page 2: "Defendant has no evidence that any 'special case' index currently exists in the Memphis Office. Defendant is continuing its research (sic) to determine if such an index ever existed, and will notify plaintiff of its findings." (Emphasis added)

7. The representation that "Defendant has no evidence that any 'special case' index currently exists" is a tricky formulation. It does not claim any lack of evidence that such an index ever existed. In fact, while this may be implied, it dare not be alleged because I provided evidence of the existence of this index. I provided copies of records, initially withheld, containing special indexing instructions for precisely the kind of information both the Motion and the Whaley affidavit state is not included in the FBI's general indices.

8. Months ago I found these handwritten indexing directives on copies other than the first copies of Memphis records. I was provided with the second copies as a result of a check by the appeals office. It was examining FBI Memphis withholdings under the claim of "previously processed" and the claim that notations withheld were not what the FBI regards as "substantive." The FBI pretended these notations are not substantive. To me, the requester, these indexing directives certainly are substantive. They also prove the existence of the special case index.

9. The request for indices was filed in 1975. Thereafter the Department represented that another index, to the so-called prosecutorial volumes, was not within my request. Later, under discovery, I obtained a heavily and unjustifiably excised copy of this limited index. (The FBI withheld knowledge of it. I found that proof in records of the Department's Civil Rights Division.)

10. It is now past the middle of 1979 and only now does the Department say that belatedly it is conducting not a search but whatever it may mean by "research." The purpose of this alleged "research" is not given as compliance with my information request. Rather is it an almost certain prelude to the claim that there is no such index or that once again allegedly it cannot be found, or as with the Long Tickler,

that it has been destroyed.

11. It serves no purpose and is not responsive to promise to "notify" me of any findings relating to whether or not "such an index ever existed." I know without question, from FBI practice and need and specifically in this case from records I have, that there was and should continue to be precisely the index I requested.

12. From the time I filed this Item of my requests in 1975 to this very moment, a total defense has been available, if true: a first-person affidavit from any of those involved in ~~the~~ ^{the} Memphis office's investigations and record-keeping that there never was any such index.

13. I believe that my prior proving of false official representations in this and other cases discouraged the providing of another false affidavit claiming there was no such index. Instead, ~~for~~ ^{for} three and a half years and for a long time after my appeal, this Item was ignored.

14. On several occasions FBIHQ directed all field offices to provide inventories of their records relating to the assassinations of President Kennedy and Dr. King. In order to hide the existence of relevant records not provided, including this index, both FBIHQ and Memphis MURKIN records as provided to me were purged of the FBIHQ ^{and} directive addressed to all field offices and of the Memphis response similar to the one I provided earlier from the Dallas office relating to the JFK assassination investigation. I believe that if the personnel processing the Dallas records had known of the King withholding, I would not have received the Dallas records, which disclose ~~both the directive and the Dallas~~ ^{both the directive and the Dallas} ~~and the directive to all field offices~~ holdings.

15. My first clue to this was a Chicago record I have provided the Court. I obtained it about the end of 1976 or early 1977 and asked the FBI, through Supervisor John Hartingh and his associates, for all copies and specifically for the Memphis copy. Supervisor Hartingh's response was not truthful. It is that the Chicago record was a one-of-a-kind accident. The truth is that as of this moment the other 58 field offices' responses, their MURKIN inventories, remain withheld. The Memphis inventory should describe its indices, as does the Dallas JFK inventory, of the Office of Origin.

16. My appeals have not received any ~~response~~ ^{response}, written or oral.

17. This Memphis special case index would have been invaluable in processing the records in this case and in locating records not provided. Its use would have saved a small fortune in time and money. I believe these are precisely the reasons this index was not transferred to FBIHQ for use in processing ~~the~~^{the} records provided in this case. (If in fact the index is not hidden somewhere in FBIHQ, as the Long Tickler was.)

18. The FBI knew all along that it had the Dallas JFK index that now is finally being processed. But the FBI kept that index out of Washington until it believed it had processed all the records it expected to be called upon to produce.

19. From the publicly available information and the record in this case, the Memphis King index could be even larger than the Dallas JFK index. The Dallas JFK index is of 40 linear feet of index cards.

20. The historical value of such indices, their permanent value for scholars, cannot be exaggerated.

21. Both the Motion and the Whaley affidavit, without so intending, explain the need for a special case index to the records of so vast an investigation. In the King case it was the FBI's boast that it conducted the greatest manhunt in its history. Yet the General Indices contain no subject entries, according to the Motion, the Whaley affidavit, the recent deposition testimony of Supervisor Thomas Wiseman and the statements then offered by Department counsel, attributed to knowledge obtained from participation in the Meeropol case.

22. Memphis is the Office of Origin (OO) in the King/Ray case as was Dallas in the JFK case.

23. I have examined many thousands of pages of records of both OOs and records sent by them and to them from and to FBIHQ and the various field offices and Legats. Normal practice is for the ~~copies to~~^{OO copies to} be in multiple, as is indicated on many thousands of records, in the lower lefthand corner ~~of~~^{of} the first pages.

24. With the Memphis office records it was simple to provide me with only those copies which do not disclose indexing in the special case index. The copies provided bear the usual stamps used for directing the indexing of names only in the office's General Index. This is the permanent index of the office, not the case index.

25. Apparently because those processing the Dallas JFK records were not aware of these King records withholdings, the Dallas records initially processed include copies holding handwritten directions for the special indexing. These Dallas records include the order for the making of the special case index. It is phrased to make special case indexing appear to be the norm in such cases.

26. There is no evidence in the record of this case and there is no proof attached to the Motion to justify its representation relating to the special case index that "The cards would not add to the information already furnished to" me. This false representation follows immediately upon an effort to compare this index with "the index cards in any public library." (page 2)

27. Library index cards are invaluable and a necessary tool for access to the information in the books of the library. This is the real parallel with the special case index: it alone provides meaningful access to the many thousands of totally disorganized pages provided in an arbitrary serialization sequence that is not even chronological.

28. The mere inclusion of subject headings, which is what the records I provided with my appeal establish, proves that there is invaluable information not provided to me. The index provides access to information by subject, now impossible. (It also would prove that most of the withholdings from the records ~~provided~~ were ^{not justified} ~~not~~ ~~justified~~.)

29. I believe the Motion's representation⁹ quoted in Paragraph 26 above was not provided under oath because it was known to be false and no FBI personnel would swear to it.

30. Another value of a special case index and I believe another reason for withholding it in this case is the leads it provides to other records. With the undenied widespread noncompliance in this case, the FBI and the Department have ample motive for unwillingness to provide more proofs of noncompliance.

31. The prosecutorial volumes are limited in scope and are of rewrites of only the information the FBI wanted known. While this restricts what their index can contain, that they have not been used at all (Whaley affidavit, paragraph 3) underscores the Department's and the FBI's disregard for the Court and their word to the Court. The Whaley affidavit states that "this index has never

been used as a viable tool^l to aid in searching for and locating information." (pages 2 and 3) It could and should have been used "in searching for and locating information" in this instant cause.

32. If the FBI had cared about complying with the request for pictures of other suspects or about keeping the Department's word to the Court and had returned the photographs I loaned the FBI in 1968, this index would have been of use to FOIA personnel who are not subject experts.

33. Photographs (not originally provided to me) were taken of one Claude Chester McLaren, Jr., at the Mexico City airport on or about April 8, 1968.

34. McLaren's name, along with most other names, was withheld from the prosecutorial index as originally provided to me.

35. However, when the FBI had to reprocess the index, this entry for McLaren emerged: "Shown to Wood, DeShazo and Baker 4/16/68 - no.I.D."

36. It also just happens that these three men were well-publicized witnesses to the purchase of the rifle at the Aeromarine company in Birmingham. Aside from other and very extensive public attention, they were identified in and provided affidavits for the extradition hearing and had been subpoenaed to testify at the trial. However, Supervisor Wiseman and Office of Legal Counsel SA Parle Blake, having withheld their names, refused to provide unexpurgated copies when I informed them of the degree to which these names were within the public domain.

37. Twelve~~ve~~ prints of McLaren photographs were sent by the Mexico City Legat to the Memphis and Birmingham Field Offices. Clearly McLaren, who resembles a sketch of a suspect, the one I loaned the FBI, was regarded as a suspect and for this reason his photograph was shown to those three witnesses to the purchase of the rifle.

38. If the special index is as complete as it should be, another reason for withholding it is to hide the existence of relevant records not searched for.

39. There has been no action on my appealing the refusal to search relevant files. Here I cite two. Both to my knowledge are used for political and other purposes that are apparent from their titles. "Laboratory Research Matters" is Number 80 and "Research Matters" is Number 94. There is widespread use of the 94 file for purposes directly related to Item 7 of my request of April 15, 1975. In

this and in other cases I have obtained a number of such references. Not only was the 94 file not searched to comply with Item 7 - when my counsel asked for this while deposing Supervisor Wiseman, the FBI refused to promise to search that FBIHQ file at this late date and Department ~~counsel~~ counsel was explicit and quite pointed in stating that she would not ask the FBI to do this.

40. I emphasize that there are relevant 94 files in FBIHQ "Central Records," where the search supposedly was conducted and to which it was limited, according to the Department; that to Supervisor Wiseman's knowledge there ~~are~~ 94 files on those listed in Item 7 that he neither searched nor ~~had~~ searched; that ~~his~~ own - the only search slip record he produced in response to the subpoena - noted 94-63917 relating to Gerold Frank and Supervisor Wiseman testified this is a Gerold Frank file; and that in this instant cause records referring to still other 94 files have been produced.

41. His search directive, "Wants only information related to assassination of Martin Luther King," is not the language or intent of the information request. This formulation was designed to avoid producing the information requested. It limits the search to the MURKIN files. This is not where the FBI files records relating to its public-relations and propaganda activities. The 94 files should have been searched in response to my request, not the rewriting of it, because my request is for information provided to other writers whose writing ~~is~~ is consistent with the FBI's solution to the crime. However, FBIHQ files hold many records that are responsive to this tricky reformulation of my request. They are not included on the search slips and Supervisor Wiseman did not provide copies. I obtained some copies later in this instant cause and a large number by other means.

42. Other Orwellian FBI practice with file numbers, descriptions and filing practices that could be exposed by a special case index are illustrated by records in my possession relating to the assassination of President Kennedy. Significant case records that are not filed in the case file are filed where ordinarily they would be immune, in files that normally would not be searched - personnel files, Number 67 files. Illustrative of this is the contemporaneous memorandum of the Oswald case agent relating to Oswald's visit to the Dallas Field Office immediately before the assassination to see this case agent and to leave

what the FBI now represents was a threat. This information was not provided to the Warren Commission by the FBI, was not included by the FBI in its supposedly definitive five-volume report ordered by President Johnson and is in obvious contradiction to the FBI's statements, that it never had any indication of any tendency toward violence by Oswald. Even when 12 years later, in 1975, the FBI conducted a supposedly definitive self-investigation of this bizarre matter after it was leaked, and even when the FBI knew that SAs were communicating with the press, for all the hundreds of pages of this supposedly definitive investigation, the contemporaneous record the case agent was directed to make is not in that or any JFK assassination or Oswald file, at FBIHQ or the Dallas office. It is in that agent's 67 personnel file.

43. Similarly, FBI records relating to Dr. King were not in Central Records, where they should have been, when these records were embarrassing to the FBI. When the FBI sought to persuade Dr. King to kill himself, at the time he won the Nobel prize, no record was in Central Records, according to the Church Committee Report (Book III, p. 160). The records were found in the "office files" of the Domestic Intelligence Division, whose Assistant Director had sworn to no recollection of the ~~anonymous~~ ^{FBI's anonymous} letter to Dr. King. This discovery was in 1971, years after the FBI's attempt to inspire self-assassination. This and similar proofs are contrary to the Wiseman representation that the divisions ~~do~~ not keep separate files and that all records are in Central Records. (I have provided other proofs with appeals that have not been acted upon.)

44. Other contradictions to the Department's representations to this Court and other leads to relevant and still withheld records should be in the special case index. I have already provided much such information in this case and repeatedly in ~~the~~ appeals that have not been acted upon. I have specified information that has not been provided. There has been no ~~denial~~ ^{denial} of its existence. There also is no claim to any search for this information having been made.

45. It is apparent that one possible consequence ^{of} of producing this index now, more than three and a half years after my complaint was filed, is that it holds other proof of false swearing, whether or not of actual perjury, and proof of continuing and deliberate noncompliance.

46. In this connection I note that SA Burl Johnson's affidavit allegedly attesting to the search of the Memphis files makes no reference to the existence of this index. Before he executed his affidavit I repeated this request and specified the special case index. SA Johnson did not claim that no such index exists.

47. The deposition testimony of Supervisor Wiseman is that the FBI uses case ticklers as subject indices for the life of the cases. The King/Ray case is still alive. The newest appeals were announced last month after Ray lost in the lower court.

48. An index of anything like the 40 linear feet of the Dallas JFK index (Paragraph 19) is hard not to see and impossible not to locate given the FBI's record-keeping practices and its regulations against unauthorized destruction, especially with litigation pending. (The FBI has a special rubber stamp stating "Do Not Destroy - Litigation Pending.")

49. Part of the special case indexing in Dallas, a copy of which has already been provided to me, is a list of pertinent records. This is separate from and in addition to the 40 linear feet of cards referred to above.

50. Based on my prior experiences, my extensive and detailed subject matter knowledge and my reading of more than 50,000 pages of records in this instant cause, I believe it would be impossible to control and retrieve information required for so sensational a prosecution as was anticipated, for all the appeals that were anticipated, came to pass and continue after a decade, without a comprehensive index of a nature other than that of the regular FBIHQ General Index. The FBIHQ General Index does not include all Office of Origin records, either, because some are not sent to FBIHQ.

51. No number of ticklers maintained by various FBI personnel for varying reasons could or did eliminate this need even though they are in fact a kind of index.

52. The case index was known to exist. I believe this accounts for the ambiguous language of the Motion and the Whaley affidavit and for both being restricted to the irrelevant while neither claims that the special case index did not and does not exist.

53. A large number of FBI personnel have knowledge of the case index. No affidavit has been provided from those who have first-person knowledge, like the SAC, case supervisors or chief clerk.

54. FBIHQ personnel who should have personal knowledge includes various supervisors there. Supervisor Long, compiler of that tickler, was never asked about it by the FBI after my appeal from its denial. As of recent date Supervisor Lawn ~~was~~ not only still at FBIHQ but was in a supervisory MURKIN role in connection with records made available to the House assassins committee.

55. The evasive language of the Motion relating to this index, such as if this index "currently exists in the Memphis Field Office," raises questions relating to whether it exists elsewhere. One place where there is need for it is where Congressional committees were serviced. Supervisors ~~Law~~ and Beckwith are among FBIHQ personnel who had such responsibilities.

56. My files hold records of the granting of permission to move all relevant records to a special room for such access, including the servicing of the OPR and continuing to the more recent House investigation. No affidavits attesting to the nonexistence of this index have been provided from any involved in this work.

57. What remained of the allegedly nonexistent Long Tickler was found in the possession of these FBI Congressional liaison personnel. With regard to that valuable record, those conducting that search made no inquiry of Long, who was still in FBIHQ.

58. When several official inquiries concluded that the FBI withheld from even a Presidential Commission, I believe it is not unreasonable to consider the FBI would not be reluctant to withhold from a private citizen requester, especially one it does not like and whose work it does not like.

59. My fear is that this extraordinarily valuable record, one which cannot be replaced, may be destroyed because it holds the potential for much embarrassment to both the FBI and the Department.

HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this _____ day of July 1979 Deponent Harold Weisberg has appeared 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