

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. FBI FOIA Supervisor Thomas Wiseman was deposed in this matter on July 5 and 6 of this year. I was present, heard him testify, heard the questions asked by my counsel and heard what Government counsel stated.

2. My counsel asked for assurances that no additional records involved in this litigation would be destroyed.

3. Government counsel refused to provide these assurances and told my counsel to get an order from the Court.

4. One of the most important records involved in this litigation, a record included within my 1969 requests, was destroyed after this case was before this Court and long after I asked for search of the files in which it was.

5. To the best of my knowledge to this day the FBI has refused to search those and similar files I have specified. At the deposition the FBI again refused to promise to search identified and relevant files. Government counsel stated that it is not necessary under FOIA to search files in which relevant records are known to exist.

6. The record referred to in Paragraph 4 above is known as the Long Tickler. The FBI repeatedly denied to the Department's appeals office that any such record existed. As Quinlan Shea later informed the Court, when he followed leads I provided he found what remains of the gutted Long Tickler.

7. The Long Tickler was a control file on the King assassination and the prosecution of James Earl Ray, covering about three dozen subjects.
8. In what remains of the Long Tickler I found records relevant in this ~~instance~~<sup>Starr</sup> cause that were not included in the approximately 50,000 pages that had been provided in supposedly full compliance.
9. This includes records relevant to the Item requesting records of any kind of surveillance on named persons, including me. There had been no compliance with this Item.
10. My counsel asked for assurances that no additional relevant records would be destroyed because I had reason to believe that in fact relevant records in addition to the Long tickler had already been destroyed and because the public press contains reports that field office records are also being destroyed.
11. My requests and appeals intended to assure that no more records be destroyed have received no response of any kind.
12. My attention was first attracted to Supervisor Long because his name was written on so many FBIHQ records I read. The proof that he had a large tickler was withheld in this case by the FBI and the Department. I found the proof buried in a record of the Office of Professional Responsibility (OPR).
13. Another FBIHQ supervisor whose name I have found added to records relating to the King assassination, including records relating to the requests presently litigated, is J. C. Lawn. Prior to the Wiseman deposition I had appealed the withholding of Supervisor Lawn's ticklers and other relevant records.
14. Supervisor Wiseman, unaware of what I knew about the case supervisors at FBIHQ, testified that, in undertaking what he described as greatly exceeding what is required of the FBI under FOIA, he had consulted the person he believed to be most knowledgeable about the King assassination and related records. He identified Supervisor Lawn as this person.
15. For some time I have known that Supervisor Lawn was also in a similar role in the FBI's relations with the House Select Committee on Assassinations.
16. My prior affidavits contain details of how the FBI misled and deceived this committee, what I described as Cointelproing it, the public and the Congress.
17. Some time ago I learned that Supervisor Lawn also had knowledge of

the destruction of records relating to the assassination of Dr. King as well as the assassination of President Kennedy. My information came from a source who requested confidentiality.

18. Prior to the Wiseman deposition, I asked my source if I could disclose what he had told me relating to the destruction of these records. My source has agreed to my informing the Court that he saw a record relating to the destruction of records in both cases on Supervisor Lawn's desk. My source has told me that, if the Court requires it, he will provide an affidavit.

19. My source has provided me with other details. These include the color of the paper on which he saw the reference to the destruction of records relating to both assassinations and the file number as he now recalls it.

20. By coincidence on Saturday, July 7, 1979, I received by mail copies of several articles published by historians relating to the FBI's destruction of records relevant to ongoing FOIA/PA litigation. Two of the matters reported that I believe are relevant are the colors of the papers used for records relating to the destruction of records, selected so those who do the filing will know they are not to be filed, and Government counsel's knowledge of the destruction of records involved in ongoing litigation.

21. There has been no time since January 1, 1968, when I have not had information requests relating to the assassination of President Kennedy filed with the FBI without these requests being complied with. There has been no time since March 1969 when I have not had information requests relating to the assassination of Dr. King filed with the FBI, also not complied with. My litigation for records relating to the assassination of President Kennedy has been almost constantly before some court since 1970. This instant cause was filed in 1975.

22. The record relating to the destruction of records on Supervisor Lawn's desk was seen by my source after this case was before this Court.

23. I filed suit for the results of certain nonsecret tests relating to the assassination of President Kennedy in 1970, when it was C.A. 2301-70. It was refiled as the first case under the amended FOIA, as C.A. 75-226. It is presently before the appeals court for at least the fourth time. (It has been to the Supreme Court and it was cited by the Congress as requiring the amending of the investigatory

files provision of the Act.) On discovery in that case but not under oath I was told that in what was allegedly a "routine" housecleaning a single spectrographic plate among many such spectrographic plates was "routinely" destroyed. This was after the beginning of the present litigation and after I had been told it existed and could be provided.

24. The alleged reason for this allegedly "routine" destruction of records relevant in litigation was to save space. This is like saying that discarding a single postcard would provide the FBI with significant filing space.

25. The destruction of this single piece of film, if in fact it was destroyed, was in violation of ~~several~~ FBI regulations and of the Director's word to the Congress.

26. It also is in violation of the Executive Order of October 31, 1966, which requires the preservation of all JFK assassination evidence by all agencies.

27. (Despite this Executive Order, the Army has informed me that it destroyed all copies of all of its files relating to the assassination of the President.)

28. In this instant cause there are hundreds of allegedly missing records. I have no idea how many because my knowledge is limited to those many referred to in records I have received.

29. The representation that all cannot be found is not true. Some Department files have been found. I learned this by accident within the past fortnight when I received a copy of a complaint filed in another jurisdiction. That litigant was written by the Department that it had located and was searching files the Department told me it cannot find and search for compliance in this instant cause.

30. I have additional reasons for concern over the destruction of relevant records in this instant cause. Among these are the following.

31. In its Opposition to my Motion for Summary Judgment relating to the special case index, the Department does not deny the existence of this index, ~~reports~~ <sup>no</sup> search for it and suggests it ~~may~~ <sup>now</sup> may not exist.

32. The MURKIN records that would have disclosed the existence and location of this index were withheld from the FBIHQ and Memphis MURKIN records provided. Two years after my appeal, which was accompanied by an FBI record proving the existence of these records. they remain withheld.

33. In all the approximately 50,000 pages provided in this instant cause I do not recall the providing of a single one of the several different FBI forms containing filing and routing directives that have a block for ticklers. My appeals relating to this remain without response. Appeal was based on the routine production of such records as attachments to many records relating to the assassination of President Kennedy.

34. The reason no such records were provided in this instant cause is apparent from the deposition testimony of Supervisor Wiseman. He testified that ticklers are kept while a case is in court.

35. The FBI never had a JFK assassination case in court. However, there has been no time since I filed my very first requests in this instant cause a decade ago when in some form the King assassination has not been before some court. I was associated with the habeas corpus petition, the evidentiary hearing and subsequent appeals, which lasted until after this instant cause was filed.

36. From Supervisor Wiseman's deposition testimony, ticklers relating to the King assassination should still exist.

37. Instead of providing copies all references to them were removed from the records provided to me, even the printed forms referred to above.

38. Supervisor Wiseman testified on deposition that the Lab maintains ticklers. No copy of any Laboratory tickler has been provided in this instant cause.

39. Supervisor Wiseman's deposition testimony makes it apparent that Supervisor Lawn had ticklers not provided in this instant cause.

40. Supervisor Wiseman also testified to the existence of other relevant records not provided in this instant cause.

41. I do not want to lengthen this affidavit so I merely state that I have provided proofs of the existence of records that are relevant and have not been provided in this instant cause. That they have not been provided to this day leaves limited choices. There is continuing noncompliance despite representations made by the Department and the FBI to this Court or there was destruction of records after this case was before this Court.

42. During the Wiseman deposition my counsel cited regulations prohibiting

the destruction of relevant records while a case was in litigation. The FBI refused to assure against any further destructions. Department counsel then refused to assure against any further destruction. I therefore have serious apprehensions about further destructions of important records in this case, one the Attorney General himself has found to be historical and of special importance.

43. As with the Long tickler, where the facts are both unquestioned and beyond question, I am particularly concerned about records of irreplaceable historical importance, like the special case index and Supervisor Lawn's and other case-control ticklers.

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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.

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NOTARY PUBLIC IN AND FOR  
FREDERICK COUNTY, MARYLAND