UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, Plaintiff, vs. DEPARTMENT OF JUSTICE, Defendant.	CIVIL ACTION No. 75-1996

AFFIDAVIT

My name is Harold Weisberg. I reside at 7627 Old Receiver Road (Route 12), Frederick, Maryland. I am the plaintiff in this case.

1. In the past I have informed the Court of the serious medical conditions that limit what I am able to do. I have had no relief from them with the passing of time. I was 68 years old on April 8, 1981. Because of these medical problems and limitations, it was not possible for me to be at the calendar call of April 6, 1981.

2. After that calendar call my counsel, Mr. James Lesar, informed me of some of what transpired. This includes Department counsel's representation that those persons listed in Items 12-14 and other such Items of my request are not public persons and that there have been no searches , allegedly to protect their privacy. In fact, to defendant's knowledge all are public persons and if Department counsel was not aware of this he had no business making any representation to the Court about them.

3. As I have informed the Court throughout this long, costly and convoluted case, Department counsel have stonewalled this case and have deceived and misled the Court from the very first. The false pretense that those listed in the Items of my request are not public figures is merely the latest of an endless series of deliberate and irresponsible misrepresentations. Without exception, the case record itself reflects the fact that all are public persons.

4. There is motive for these persisting misrepresentations as there is motive for defendant's persisting refusal to search for information responsive to

the individual Items of my request after six years. Information I requested, information that does exist and is not exempt, is information that can be embarrassing to the FBI and other Department components. The information sought in the surveillance Items and those pertaining to the guilty plea can be particularly embarrassing because the surveillances involved violations of cherished rights the FBI and the Department are supposed to protect, not violate; and because the guilty plea is tainted, without reasonable doubt involving considerable and entirely improper pressures, and because it aborted the workings of the American system of justice in this most serious of terrible crimes, the most costly crime in our history.

5. Defendant's seemingly proper protestation of concern for the rights of privacy actually is a put-on. The record in this and in other of my FOIA cases is entirely undisputed in reflecting the opposite. Although there are legitimate privacy interests and they should be protected, in practice this defendant uses privacy claim for political and ulterior purposes, to withhold information that should not be withheld. At the same time it roughly violates the privacy rights of those it does not like. The undisputed record in this case reflects the refusal to protect privacy, violation of these rights in pursuance of the racist and sexist views of some in the FBI and intent to damage those not liked by the FBI. The disclosures of defamatory but irrelevant information in this case, in an effort to argue the FBI's political prejudices and its political preconceptions, are astounding. Its lack of genuineness in this feigned concern for privacy is illustrated by my own case.

6. Because of the possibility of disclosure of total fabrications in the FBIHQ JFK assassination records, I sought to exercise my rights under the Privacy Act. When the FBI, including the supervisor in this case, SA John Hartingh, failed to respond, I asked Mr. Lesar's assistance. He wrote the FBI Director and never received any response. He then wrote the Attorney General, who also failed to respond. Instead, there was wholesale unloading of the meanest, most vicious and deliberate lies about my wife and me. At the same time the FBI ignored the Privacy Act and failed to disclose the documented and written corrections I had provided in accord with the Privacy Act. Of course, if the FBI had not deliberately violated my privacy rights and the Act, it would not have undertaken to spread

its contemptible untruths about me. Long before FBIHQ's general JFK assassination releases, it knew that some of what it planned to disclose about me was false and fabricated. Nonetheless, it made these defamatory disclosures of what it knew was fabricated and false.

7. About as dirty an example of this vicious and deliberate FBI character assassination was an annual religious gathering at a farm we then owned. It was immediately after the Jewish high holidays, generally in late September. It was arranged by the rabbi of the Jewish Welfare Board who served Washington area service personnel and their families. The children and their parents enjoyed gathering eggs, seeing them hatch, and playing with baby chicks and tame animals. The FBI twisted this into the false representation that my wife and I annually celebrated the Russian revolution with an outing at our home.

8. When my work, which is critical of the FBI and which the FBI cannot fault factually, was attracting attention, including at the White House, the FBI, not able to attribute factual inaccuracy to me, instead gave the White House its political falsehoods. It redbaited me. It also did this with Attorneys General and the Congress. The FBI's internal records reflect the fact that it also used its fabrications as pretended justification for not complying with FOIA. It even went so far as to prepare a legal opinion stating that because it did not like me it was not required to comply with the Act or my requests under the Act.

9. FBIHQ did not withhold this fabrication after I informed it of the truth and it did not withhold any part of the concoction to protect my wife's right to privacy or my own. Instead, knowing full well that its defamation was totally false and with the letters of my counsel also on file, the FBI not only released its falsifications - it also suppressed and withheld the correction I had filed many months earlier. Then it called its cruel hoax to the attention of the press.

10. This is but one of many illustrations of the FBI's wholesale and deliberate violations of the privacy of those it does not like. It and the many other such illustrations reflect the Orwellian nature of any alleged FBI devotion to the Act and to protection of privacy. At the same time, privacy has become an FBI buzzword with which it seeks to cover its stonewalling of FOIA cases and plaintiffs. As Quinlan J. Shea, Jr., Director of FOIPA Appeals, the Department's own expert, testified in this case as a Department witness, there is such enormous overuse of the privacy claim that the records in this case require reprocessing

to restore that withheld information.

11. In this instance, the names involved are all those of public persons, as is set forth below. The privacy claim with regard to these names is more than mere FBI stonewalling. It is made to hide wrongful acts and constitutional violations that can embarrass the FBI.

12. My requests are not frivolous and are not fishing expeditions. I had reason to believe that the requested information existed. In some instances I had proofs. In some I had actual copies. I had specific and undisputable knowledge not only of surveillances of various kinds, which I did, I also had a copy of the instructions for the violation of the most basic of the accused James Earl Ray's Constitutional rights, I had copies of some of the records of this, and I had knowledge of the fact that all of this was contrived under the guise of "security" for Ray, devised by experts loaned to local authorities by the defendant in this case. (The FBI continues to withhold the names of these Department experts, despite the contrary Order of the Court, despite the fact that their names appeared in the public press, and despite my appeals, which provide a factual account of the actualities.)

13. Ray was the only prisoner in the so-called Ray Cell-block, ~~the only~~ He was under constant ~~the world-distant~~ microphone and closed-circuit TV surveillance, all inside his cell-block, for all the world as though any danger to him would have been from his guards only. These electronic surveillances excluded the outside of the jail and the entire jail outside the Ray cell-block. They thus excluded all the possible sources of the imagined dangers to Ray. The only Purpose ~~purpose~~ served by these contrivances of the Department's experts on security was to destroy any privacy for Ray, even in his communications with his U.S. counsel. It was evident ~~evident~~ when I received some copies of the Memphis Field Office records that the FBI continued to receive this surveillance information even after the local judge ordered that there be no intrusion into Ray's communication with counsel. After the judge ordered the end of the unConstitutional violation of Ray's rights, about which he had been lied to when the prosecution told him there were no such intrusions, ~~intrusions~~ FBIHQ did not end these wrongful acts. Instead, FBIHQ directed Memphis not to get caught, not to accept more copies of the various interceptions and instead to send only paraphrases of them to FBIHQ.

14. My sources of information were many and excellent. I also was Ray's investigator. I did the habeas corpus investigation, based on which the sixth circuit court of appeals ordered an evidentiary hearing. I also oonducted the investigation for that evidentiary hearing. I found and interviewed witnesses pertaining to whom the FBI still withholds information which is inconsistent with its solution to the King assassination. I interviewed witnesses in federal and state maximum security jails and in local jails. I had access to all the Rays, James, his brothers and his sister, from whom I still hear. Almost all of Ray's prior counsel provided information. I had much to do with the preparation and presentation of evidence at the evidentiary hearing. The trial judge ordered that I participate in discovery. Mr. Lesar and I alone engaged in this discovery. My sources also included a number of reporters; attorneys, particularly Memphis criminal attorneys who had pertinent knowledge; judges; police and sheriff's officials up to the rank of inspector; and other public officials. I even had sources inside the prosecution. A close relative of one of Ray's prosecutors informed me of the electronic surveillances conducted on Ray's defense counsel.

15. The files to which I had access ranged from newspaper morgues to all of the investigation by the public defender's office. It included some of the prosecutor's records and nine large cartons of alleged evidence sequestered in the walk-in safe of the Shelby County, Tennessee, Clerk of the Court. Many FBI evidentiary specimens were there. I cannot remember a single instance in which the report of the FBI's Laboratory was attached to any specimen. The clerk of the court informed me that he had no such reports. Most of the so-called evidence had no more relationship to the commission of that terrible crime than has the garlic wafted over a simmering stew.

16. During the 1973 evidentiary hearing I observed a man I later learned was an FBI informer in the same maximum-security cell with James Earl Ray. I knew him as a very identifiable member of the so-called Dixie Mafia. After I learned that Ray's cellmate was an FBI informer, I requested the pertinent and withheld information. This request, too, remains totally ignored. While I do not expect the FBI to willingly provide proof of that additional violation of Ray's rights, this information is pertinent to the surveillance Items of my requests.

17. The surveillance Items are not limited to electronic surveillances, which are included. The language employed in my request is "any surveillance of

any kind whatsoever," and "meant to include not only physical shadowing, but also mail covers, mail interceptions, interception by any telephonic, electronic, mechanical or other means, as well as conversations with third persons and the use of informants." These Items also are not limited to the FBI as the surveillor, nor to its continued evasion, the names of persons as the "subject" of surveillances.

18. Despite noncompliance so complete that searches have not been made and attested to, I have received, in this and other cases, proofs of the existence of all kinds of surveillances aimed against persons listed in my requests. The most obvious proof of the fact that the FBI, the Department and Department counsel have knowledge of the deliberateness of noncompliance with regard to the surveillance Items is the evidence I have produced, especially from Oliver Patterson. He had been an FBI informer. He became my informant. He confessed to direct and indirect surveillance on all the Rays and their attorney, J. B. Stoner. Proof that Patterson surveilled them is in FBI records I have. For three years my appeals pertaining to Patterson records and those of an associate pertaining to whom no records have been provided, remain ignored. I did provide privacy waivers from both.

19. The MURKIN records provided, while far from complete, do hold proof of surveillances on James Ray and his counsel beginning as soon as Ray was arrested in England. The FBI knew the names of the lawyers Ray asked to represent him before his requests reached those lawyers. The FBI received the results of Scotland Yard's surveillance of Ray, as it later did those of the Memphis sheriff's office. FBI agents as well as informers surveilled Ray's relatives. Although this is in FBI records I have examined, the FBI still has not conducted searches to comply with the surveillance Items of my request. It also has not disputed the proofs I produced.

20. FBIHQ MURKIN records include instructions to the St. Louis office to obtain Carol Pepper's bank statements, even if no grand jury was sitting, as long as the FBI was protected against embarrassment. This is FBI doubletalk for by hook or crook, even by breaking, entering and stealing. With regard to Carol Pepper, although no grand jury was sitting, the FBI got her bank records. Copies were even in the hands of sycophantic writers who are included in my request.

21. That Bernard Fensterwald was under physical and electronic surveillance

has been disclosed by the FBI.

22. Wayne Chastain, then a reporter covering the King assassination and its aftermath for the Memphis Press-Scimitar, was fired after meeting with me in public places. When he was fired he was given a full account of his meetings with me. He had been under surveillance.

23. The FBI's denial of having information pertaining to me is deceptive and deliberately evasive. My appeals note the childishly evasive semantical contrivances employed to deceive and misrepresent. For years there has been no response. The FBI's denial is limited to me as the "subject" of the surveillance. Whether or not I ever was, whether or not FBIHQ would have been informed, and whether or not it would, from embarrassment, admit the truth, the fact is that the FBI surveilled me in its surveillances of others and thus has pertinent records. To my knowledge this does back to pre-Pearl Harbor days. My source was then the assistant attorney general in charge of the Criminal Division.

24. My Lesar and I both observed surveillance of us in Memphis in 1973. Our mail then was interfered with, sometimes crudely. We had reason to believe that the FBI was the beneficiary of, if not the agency conducting, this surveillance.

25. Despite the FBI's boiler-plated insistence that it may not provide copies of the records of other police, it has done this extensively in this instant cause, particularly with copies of surveillance reports. Almost all held unflattering information the FBI wanted to be available. In addition to copies of some of James Ray's communications, the FBI, in this case, provided me with hundreds of pages of Xeroxes of Memphis police political records pertaining to the Invaders and the sanitation workers strike,/ The FBI also [redacted] with its own informers. At least one of those Mr. Lesar and I caught keeping an eye on us looked like an Invader.

26. Mail of the late Judge Preston Battle was intercepted and copied before it reached him. Mr. Lesar and I knew this and had copies of some of his intercepted mail. We obtained it under discovery while we were preparing for the 1973 evidentiary hearing.

27. When we forced the former District Attorney General to disgorge some of what he referred to as "~~souvenirs~~" that he had stashed away in his cellar,

they held the results of surveillances, including copies of Judge Battle's intercepted mail pertaining to the Ray case.

28. Beyond question, Gerold Frank and George McMillan, who wrote books supporting the FBI's solution to the crime, had copies of FBI records before their books were published and long before I forced the disclosures made in this instant cause.

29. While I had no proof of surveillance of William Bradford Huie, whose money corrupted all the processes of justice in the King assassination, I did have proof that Huie, while pretending to be Ray's defender, in fact was spilling his guts to the FBI. This was obvious even to Ray, who knew that no sooner had he provided information to Huie, through his counsel of the time, those identified by Ray were subpoenaed. In 1973 the State of Tennessee entered the transcript of Huie's grand jury testimony in the record of the evidentiary hearing. In it Huie boasted of his duplicity and claimed it was right and proper. He claimed that he was gypped because, whether or not guilty, Ray owed him a confession of guilt in return for the $40,000 Huie gave Ray's lawyers, not a cent of which reached Ray.

30. Renfro Hays is the only other person listed in my Items who is not accounted for in the preceding paragraphs. Hays is an investigator who was not trusted for major investigations by the Memphis lawyers for whom he did occasional small jobs. He also floats in and out of psychiatric wards. He latched onto the Ray case by phone, by contacting Arthur Hanes, Sr., before Hanes set foot in Memphis. Hays was well-connected with the people of the rundown area in which Dr. King was killed. As a result, he came up with much information that contradicted the official account of the King assassination. Hays told me that when he felt pressures from the police, who shared information and solutions with the FBI, he merely made up wild stories to lead the police and FBI on wild-goose chases. Some of the fictions he created still endure in the assassination mythology. Nonetheless, Hays was the first investigator to produce evidence contradicting the FBI's claimed solution. Despite the state of his mind, his relish of vengeance and the fabrications he launched in his quest for vengeance, some of Hays' information was sound. It is confirmed by my own investigations, those of the public defender, and even by the FBI's. The FBI developed the same exculpatory evidence and then merely ignored it. Hays also is listed in my Item because he told me he was the subject of FBI interest.

31. As with all other Items, my request for information pertaining to plea bargaining is based on reason to believe that the information exists and is significant. The plea into which Ray claims he was forced by Percy Foreman - and from which Ray appealed as soon as he could fire Foreman - represents no compromise and no bargaining. It actually resulted in what then was the maximum sentence possible. When in court Foreman tried to extend the plea into a confession that there had not been any conspiracy, Ray interrupted the proceedings to refuse to agree to that. Had Foreman remained uncorrected he would have pled Ray guilty to the shooting, which Ray refused to do. Moreover, for all his vaunted reputation, Foreman negotiated nothing. He merely accepted the judge's 99-year term. (For the judge to participate in the guilty plea that was to come before him violated the ABA's standards which, as I reported in my book, Frame-Up, were drafted by the present chief justice. From my knowledge of the facts of the case, which was good enough for the habeas corpus petition to prevail, there was no basis for considering the maximum possible sentence as a compromise and there was little reason for considering any kind of plea. The prosecution could not place Ray in the State of Tennessee at the time of the crime. It was never able to place him at the scene of the crime. It was not able to connect the so-called Ray rifle with the crime. Investigation, including by the FBI, supported many of Ray's claims.

32. I also knew that before Foreman snatched the case the prosecution had offered Ray a 20-year deal, through Arthur Hanes; that Ray had rejected it; and that Hanes had testified he would have advised rejection of it if Ray had asked his opinion. It did not make sense that, after turning down a 20-year deal, Ray would have begged for a 99-year sentence or would have regarded that as a compromise.

33. When Mr. Lesar and I obtained access to the public defender's investigation, we learned that, skimpy and late as that investigation was, it nonetheless was a substantial defense of Ray. (The judge appointed the public defender as co-counsel after Foreman pled poverty.) MURKIN records support the case built by the public defender's investigators. It was not by any means an investigation that would lead an experienced criminal lawyer, least of all a Percy Foreman, to enter into a 99-year deal. More suspicion was added after the federal indictment of Foreman for selling out a different indigent client, Jon Kelley, a

wiretapper. I became aware of this when I met the lawyer who replaced Foreman as Kelley's counsel. I then saw and I have copies of records reflecting the fact that the sons of the late H. L. Hunt paid Foreman $100,000 to stifle Kelley. The cases against all others have been resolved but as of my last knowledge, not the case against the now aged Foreman. I had earlier knowledge of this case from the former FBI agent who was then Hunt's chief of security and a target of the wiretappers. He caught the wiretappers hired by Hunt's sons.

34. Whether or not so, there is the appearance that Foreman was being repaid by the Department for earlier favors. Whether or not this is the fact, there is no doubt that the 99-year deal was not a compromise and it did put Ray away for the longest period then possible under Tennessee law; that at the very least there was and there was in the hands of Ray's lawyers a substantial defense; that there had been whoesale violation of Ray's rights, including by the Department and the FBI; and that, instead of protecting his rights, the FBI violated them and also was the beneficiary of the violations. The FBI was aware that the local sheriff was violating the local court's order protecting Ray's rights and it did nothing about those additional violations. Any trial of Ray would have been a great embarrassment for the federal government. These indicate some of my reasons for seeing information pertaining to the plea bargaining and those participating in it.

35. I can provide similar information about the basis for all of the Items of my requests if the Court so desires. With regard to each, I had reason to believe that the information exists and is significant. In many instances I have found pertinent information in MURKIN records, even though no search has been made to respond to each Item. For example, Items 5 and 6 of the November 23, 1975, request are based on my personal investigation and its use in the 1973 evidentiary hearing. The cabdriver, James McCraw, informed me that the FBI had seized his manifest after the word got out that he had refused to transport Charles Stephens, the only alleged eyewitness of any kind, because as of only minutes before the crime Stephens was too drunk. McCraw so testified at the evidentiary hearing and was not rebutted. Item 6 seeks the sheriff's radio logs. I located the former deputy sheriff, Judson Ghormley, who actually found the strange package that included the rifle. He had immediately reported this finding by radio. The log

discloses that he found it significantly earlier than the FBI story has it. He found it, in fact, before - from the FBI's account - Ray could have dropped it. He also testified at the evidentiary hearing and was not rebutted.

36. Although to the degree possible I have avoided arguing the facts of the King assassination, I have also offered to inform the Court on several occasions. This was not because I believe it is required of a requester. Rather is it because of the continuous official campaign of distortion, deception, misrepresentation and outright untruth that have succeeded in stonewalling this case and in obfuscating most of the issues.

37. With regard to each of the Items that have not been searched in the more than five years this case has been before the Court, I can provide considerably more on the Department's motive for refusing to comply with the Act, for its refusing to search for information responsive to each Item, and for its endless stalling and efforts to divert, mislead and misinform the Court. These have enabled defendant to avoid compliance that can be so embarrassing to defendant.

38. For example, with regard to Charles Stephens, James McCraw and Judson Ghormley, in Paragraph 35 above, as little as there is about them in MURKIN files, that little is what can be enormously embarrassing. It dipputes the official account of the crime and it confirms the investigations I made for and prior to the 1973 evidentiary hearing. For all the FBI effort to hide McCraw, who knew that the alcoholic Stephens was too drunk to have been a witness to anything, the FBI covered itself by having similar information from another source - and suppressing it. Even after Stephens made a negative identification of Ray, the Civil Rights Division drafted the affidavit in which Stephens pretended to make a positive identification of Ray. This is the only claimed eyewitness identification and the only Ray identification used to effect his extradition. Ghormley was the first to find and report the package that held the rifle. Because the FBI knew that Ray could not have dropped that odd package by the time Ghormley found it, the FBI created a witness and a finding more to its liking. Protecting its creation requires the suppression of the log of the sheriff's radio broadcasts. In the FBI account a city policeman named Vernon Dolahite found the package. However, after this the FBI was silent when the Department ignored its Dolahite connection and fabricated still another version, which it then used in the extradition. The

Department pretended that Captain N. E. Zachary first found that package. He swore to this official lie. In fact, Zachary did not even reach the scene until long after the package was found. Not only was the FBI silent about this - it furthered the fabrications of evidence by conceiving and fashioning its own false evidence and extending this even to its elaborate mockup of the scene of the crime, all to make it possible to allege that Ray had dropped the package that led to him when all the evidence was to the contrary. In fact, the FBI also had and ignored an abundance of other proof that Ray was not at the scene of the crime at the time it was perpetrated.

39. My requests seek information pertaining to the crime and to the various official efforts to manipulate the courts and what would be known and believed. It is because the information I seek is so embarrassing to officialdom that there are and have been all the multitudinous devides for stonewalling and avoiding compliance by any means possible.

40. If at this late hour the Court desires any further explanation of any Items of my request, whether or not the Act requires it, I will provide that information as expeditiously as is now possible for me and at whatever length the Court may desire.

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HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this _____ day of April 1981 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