

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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HAROLD WEISBERG, :
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Plaintiff, :
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V. : Civil Action No. 75-1996
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DEPARTMENT OF JUSTICE, :
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Defendant :
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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. Until recently I did not believe that I would be called upon to explain the public value and significance of the results of this litigation. This is because on a number of occasions the Court reflected an understanding of this. I therefore made no records upon which I could draw pertaining to the public value and significance of the records I obtained by this litigation.

2. On one of the occasions on which the Court indicated that for the public this is a significant case that produced valuable information, at the calendar call of October 8, 1976, the Court stated, during an exchange with defendant's counsel:

Well, you know I don't have any feeling that one person is entitled to something more than another one. On the other hand, I do think that the FBI's own basis was first-come-first-served, and, certainly, Mr. Weisberg was first in on that. It seems, since his request for this information goes back farther than any of these others, it is rather unkind, to say the very least, and illegal to say the most, to prevent his having these things in timely fashion ahead of the other people.... I gather, in his book, or his publications, and if he comes after everything else, it, obviously, will have little or no value.... It seems to me that while that may not be something that is for the Court to go into on a Freedom of Information case, it is a fact, just the same, and having him come after the other people is scarcely treating him in the fashion that the Freedom of Information Act is supposed to be handled.... what is ^{is} actually happening in this case, and that is, all of these things will be made available because they must be made available to the two organizations you are talking about: one, the committee from the Congress which is going to reopen the whole thing; the other one the Professional Responsibility section.... by the time all of these things are made public and these people make their reports from time to time, obviously Mr. Weisberg's requested documentation will be worthless or practically worthless.... You see, they wouldn't have made this investigation if it hadn't been for Mr. Weisberg.

3. More than the Court then perceived I have been forced into a public role in this matter. As the Court perceived, defendant frustrated my writing by stonewalling the case and withholding pertinent records. Because of my subject matter knowledge, which defendant's representatives themselves have described as unique, I did assist others, to whom I also provided copies of the records obtained. From memory some of these uses by and for the public follow.

4. One of the numerous official misrepresentations with which I had to contend in this litigation is the false representation that all pertinent information is contained in the FBIHQ MURKIN file, which I did obtain by this litigation. However, I knew there is much pertinent information not at FBIHQ and not filed under MURKIN. I have obtained some of these records and made them, too, available to others, who have called them widely to public attention. I have made these and the FBIHQ MURKIN records available to the print press, radio and TV as well as to scholars and universities. By print press I include newspapers and their syndicates, the wire services and magazine and book writers.

5. On a number of occasions the St. Louis Post-Dispatch, which also syndicated its articles, gave great prominence to records I obtained in this litigation and provided to it. Based on one set of records, it published a series of four front-page articles. Millions of people had access to this previously unknown information by this means. This also is true of the other illustrations that follow.

6. Newsday, on Long Island, which also has its own syndicate and syndicated its stories, published several front-page articles based on information I provided. These articles were written by Les Payne, a Pulitzer prize-winner on its staff, now its national editor. The FBI claimed not to have its own symbolled informant inside the Memphis black youths calling themselves The Invaders. In fact, the FBI had the services of a police spy, Marrell McCullough. He met with the FBI and his numerous and detailed reports were provided to the FBI by the Memphis police. McCullough was the first to reach the body of the assassinated Dr. Martin Luther King, Jr. McCullough penetrated the King party in Memphis and furthered his spying by providing the transportation of Dr. King's closest associates. This information and this publication became the subject of Congressional investigation.

7. Newsday, the Post-Dispatch and other papers to which I provided information obtained in this case provided their stories to the wire services, which carried shorter versions of them to most of the sources of news in the country. This additional publication of the information obtained in this case, in turn, led to follow-ups by other elements of the media, which made that information available to still more people all across the country.

8. The Washington Post, the Los Angeles Times and the New York Times are among the other publications to which I also provided information I obtained in this litigation. I also provided such information to TV and radio stations and networks. I also appeared on radio and TV with this information in Washington, ^{and} New York and elsewhere by phone.

9. On one occasion, in June of 1977, I flew to New York from Dallas, where I was working, to appear on ABC-TV's "Good Morning America" and to use the knowledge and information I had by then obtained to defend the FBI against the baseless charges made against it by Mark Lane, Dick Gregory and their associates.

10. Another means by which I made information obtained in this litigation available to the people was by holding press conferences. One was arranged at the House of Representatives by a Member of the black caucus. It was well covered by all the media. CBS-TV filmed all of it, NBC also was there. I recall this because I made available to both copies of records pertaining to the scientific testing that I had by then obtained. (CBS also had filed a competitive request but its request was inadequate. It did not obtain some of the records I provided to it.)

11. After I obtained the records disclosed in this litigation and not until after I obtained them, the FBI placed some of them in its public reading room. This makes them available to others. I understand that on one occasion a single wire service had a dozen reporters there examining the FBIHQ MURKIN records alone.

12. Once I obtained these records and in order to assure that it was made to look as good as possible, the FBI selected certain records from them and misled UPI into believing that they were obtained by UPI by Freedom of Information action. In fact, UPI pretended to the entire world thereafter that it had broken

loose the records I obtained through this litigation. A longer account of this is included in a prior affidavit that remains entirely unquestioned.

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13. Among the writers of other books who obtained copies of some of these records after I obtained them in this litigation is George McMillan, who wrote a book about James Earl Ray, the alleged assassin.

14. In summary, throughout the many years of this litigation I have provided to a large number of reporters of all elements of the media copies of the information obtained in it and knowledge I obtained from the records, and the media, in turn, have made this information available to many, many millions of people.

15. I have also made copies available for scholarly uses. A college history professor is now editing a scholarly article he prepared for publication in an historical journal, based on the files pertaining to the Memphis sanitation workers strike. (Dr. King was in Memphis in support of that strike when he was killed.) This professor will next prepare a similar scholarly treatment of the Invaders files I obtained. I let him have copies of all of both files, including from FBIHQ and the Memphis field office, about two file drawers of records. He plans to expand both articles into a book, a case history of FBI domestic intelligence in Memphis.

16. One pre-law student, to whom I made all of both the strike and Invaders files available, spent a year in independent study of them. She then prepared an honors paper on her study. It is available to other college students.

17. I have sent duplicates of both complete files to the University of Wisconsin, where another gifted student is now making a similar independent study of them. The paper she produces also will be available to others.

18. Among other things, these three studies examine the enormous FBI intrusion into purely local matters, an intrusion unknown until I obtained the records of it in this instant cause.

19. The University of Wisconsin, where all my records will become a free public archive, is already making some of the information I obtained in this case available for the use of students in and outside that state and the press. It also makes audio and video cassettes including this information available to high schools, colleges and individuals. These cassettes also have been used on

that state's public TV and radio stations.

20. In his well-received book on The FBI and Martin Luther King, Jr., Professor David J. Garrow thanks me for "great help" by making available information I obtained in this instant cause.

21. In addition to the Court's perception of the use that the House assassins committee would make of the information I obtained in this case, the committee also published a 49-page critical analysis by me of one aspect of its work. In preparing this analysis I drew upon information obtained in this case.

22. While defendant misrepresented to the Court that all pertinent information is included in the FBIHQ MURKIN file, it then was compelled to disclose thousands of pages of a large number of other and nonduplicative records. These include but are not limited to the MURKIN and other files of seven field offices; the prosecutorial index, an invaluable research tool the FBI itself could not find, although it prepared that index (I informed defendant where to find it); the abstracts of the FBIHQ MURKIN file; the so-called Long tickler; the Oliver Patterson informant files; crime-scene photographs which the FBI insisted it did not have; the files on the police spy Marreall McCullough; copies of the Memphis police spy and informer reports; the sanitation strike and the Invaders files, both reflecting an extraordinary FBI adventure in domestic intelligence; and the incredible 400-page listing of field office records compiled during the FBI's unprecedented campaign against Dr. King, reflecting its unimaginably large operation, a vast amount of records and a staggering expenditure of tax money in its massive effort to destroy him.

23. In addition to the fact that the FBI was compelled to provide so many records it claimed not to have or could not find, even the FBI's counsel was not aware of the fact that there are abstracts of each and every significant FBIHQ record. The MURKIN abstracts, now disclosed, are important research records.

24. Aside from the FBI's improper political activities that are public now because of this litigation and aside from some very fine work the FBI did in its investigation, also public because of this litigation, there is other information that is not favorable to the FBI that was brought to light by this litigation and it alone. When such information is brought to light, it provides a means for improving the functioning of government and its agencies and for correcting

error, all to the good of the country and its people. A few illustrations of these shortcomings follow.

25. Although the assassination of Dr. King was one of the more serious crimes, often described as the most costly in our history, and although the FBI itself filed conspiracy charges in Birmingham, terrible as that crime was and for all the enormous effort and devotion of manpower to it by the FBI, the FBI NEVER INVESTIGATED the crime itself. When the FBI was under criticism, its own internal records obtained in this instant cause hold its specific written self-justification - that it did not investigate the crime and that it conducted no more than a fugitive investigation. Yet at the time of the crime the FBI led the entire world to believe that it was investigating the crime with the greatest intensity and diligence.

26. With regard to the specifics of the FBI's investigation, it was so superficial and so inadequate that the FBI did not even bother to test-fire the rifle it merely assumed was the one used in the killing and it did not even perform the simple and inexpensive test to determine whether or not that rifle had been fired recently or subsequent to its last cleaning. However, the FBI did perform this test, known as swabbing, on a rifle it knew very well had not been used in the crime and was not even capable of being fired.

27. This litigation has disclosed the fact that, although the FBI is required to preserve all historically important records (and the Attorney General found this to be such a case after it was filed) and although it also was required to preserve the plates made during performance of spectrographic analysis for use in expert testimony and then for a period of five additional years, the FBI now claims it cannot find these plates. It assumes they were disposed of to save space, the insignificant space taken up by a few thin pieces of photographic film. Actually, this alleged destruction is prohibited by law and regulation. This means that the FBI can now claim anything it wants to claim about the results of those tests.

28. This litigation also discloses the fact that the FBI performed neutron activation analyses (NAA) on some of the evidence. Yet after all the many years of this litigation and all the allegedly diligent searches allegedly conducted for the information requested, it has not produced any really meaningful NAA record or any

record reporting the results to its Office of Origin and the prosecution.

29. There is no reasonable doubt that if those tests disclosed incriminating evidence the FBI would produce them. It produced nothing at all pertaining to NAAs until after the Court issued its Order and then it lied to the Court, as I show in another affidavit I am preparing.

30. The crime scene photographs the FBI first claimed it did not have and then swore it did not have after reviewing the file that holds a full account of their possession and filing are of great importance, as I will set forth in detail in the book I still hope to write based on the information obtained by this litigation. After swearing falsely about its possession of crime scene pictures, the FBI then forced totally unnecessary litigation in an effort to withhold those pictures from me. After I prevailed on appeal, the FBI disclosed a letter from the alleged copyright holder, written before the FBI refused ~~those~~ those pictures, saying that it did not really object to my having those pictures. The FBI, although denying it had any crime scene pictures, actually had not fewer than four sets of them, including one set made by the FBI itself. All are now disclosed in this litigation.

31. The FBI's files abound in exculpatory evidence that directly contradicts what the FBI alleged and what it provided for the use of the prosecution. The FBI merely suppressed what was exculpatory. If it were not for this litigation, all such information would remain secreted and entirely unknown. I will be using ^{This} ~~these~~ evidence in my writing. I have already made much of it available to others.

32. If and when I can write and publish this book, there is no possibility at all that it can return a profit. The primary benefit will be to the public, as it has been with the disclosure of these records. My role in this matter has always been a public role. As early as November 1975, when I received the first records from the FBI, I gave copies to the press, print and electronic, without regard to my own publishing interest. Since then, as indicated above, the information I obtained in this instant cause has always been available to those who convey information to the people, and I did, as indicated above, make it available to the county by providing it to the media. The information thus made available to the people is of considerable significance. Without this litigation that information would not have been available.

HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 28th day of January 1982 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