

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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HAROLD WEISBERG, :
: :
Plaintiff, :
: :
v. : Civil Action No. 75-1996
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U. S. DEPARTMENT OF JUSTICE, :
: :
Defendant :
: :
.....

AFFIDAVIT

My name is Harold Weisberg. I reside at 7627 Ald Receiver Road, Frederick Maryland. I am the plaintiff in this insaant cause.

1. Before ~~S~~ filed this lawsuit ~~S~~ had, as I informed the Court at the outset, completed about two-thirds of the draft of a book on the assassination of Dr. Martin Luther King, Jr., and its investigation. Six years earlier I filed several requests of defendant pertaining to it. These requests were iggored by order of highest authority. In 1971 I published a book that remains the only definitive and accurate book on this assassination that is not in accord with but is critical of the official account. The partial draft of the second book was intended to update the earlier work. This draft is based on my own original investi- gative work and my work as investigator for the accused assassin, James Earl Ray. As Ray's investigator, I alone conducted the investigations that persuaded the sixth court of appeals to order an evidentiary hearing and for that hearing. Preparatory to that hearing, by order of federal district court in Memphis, Tennessee, I participated in discovery. I also located witnesses for it. None of my work was rebutted by either the FBI or Tennessee authorities. That court finally held that guilt or innocence then were immaterial.

2. All of this work made me a unique expert on that assassination. This was recognized by the Department of Justice in several ways, including in the finding of its FOIPA office and in its request that I become its consultant in my suit against it.

3. When a book is nonfiction, particularly if it deals with major national issues, such as this terrible crime and how government agencies performed when confronted by it and thereafter, even if a book is a commercial success, it also serves important noncommercial and public purposes. Such a book serves important public needs as official agencies did not and cannot and will not try to do. If there is to be any alternative to blind acceptance of all official decisions and acts by the public, then the private researcher, investigator and writer is essential. There is no other way for the public to be informed. This was foreseen by those who founded our nation and it is one of the distinctions between a representative society and authoritarianism and totalitarianism.

4. My books are not and cannot be commercial. Because of publisher fear of criticizing the Warren Commission and the FBI, I was forced to become a publisher to open the subject of that crime and its investigation. I have kept in print all the books I published, although it is uneconomic to do so, because it serves a public need. No large and wealthy publisher has done this, not even with best-sellers. After I was seriously ill and could not afford it, I reprinted my third book, which was about to go out of print. I did this notwithstanding the fact that my last book had not yet returned the cost of printing alone. If I live long enough to recapture only the printing costs of the reprint of the third book, I will be happy and many years past my present 69. I have no way of promoting ^{and} advertising these books. They are sold only by mail, by me, and only when ^I am asked for them. They sell from their reputations and because they are listed in the standard directories, like Books In Print. Almost all of the present limited demand for them is from libraries, colleges, scholars and those interested in the subject matter.

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5. Even if it were not true that my books are not and cannot be commercial, as the Court recognized in 1976, defendant in this case made any commercial success impossible. Before then, as the case record also reflects, defendant decided to make everything I obtained available to others so that I would be denied the possibility of recovering even my costs and the first use of the information obtained. First use is a norm of scholarship. When I obtained some of the information used to procure Ray's extradition from England (in C.A. 718-70), copies were made available to others on defendant's initiative. In this instant cause, defendant's counsel told the Court, when I had received only a few pages, that everything I obtained

would be made available to others as soon as I received it. Obviously, this is ruinous to any commercial possibilities of any book as the Court then stated. When the Court was attempting to expedite what compliance there later was, in trying to explain the alleged need for foot-dragging, defendant's counsel stated that "because of the public interest the entire Martin Luther King assassination file will be processed, and will be made public on a partial basis as soon as they complete a certain amount. I think 400 or 500 pages. That is the objective of the FBI at this time." The Court said, "Well, you know I don't have any feeling that one person is entitled/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. Certainly, what he has been attempting to do is to get some sort of scoop on the deal, 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." When defendant's counsel said, "he is not getting it after," the Court corrected him saying, "Well, you see what 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. So that they will have it. There will be nothing withheld from them, I assume, because there can't be, and so these things, as they come along, we assume they will make some of them public. Now, 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." Defendant's counsel then admitted, "Your Honor, he is the one that has triggered this complete review of the file and that is what we are doing." The Court then said, "you see, they wouldn't have made this investigation if it hadn't been for Mr. Weisberg." A little later he tried to pretend that neither the OPR

nor the Congressional committee would disclose any records, that ^{more} ~~more~~ of the information would be made public. The Court said, "We don't know that, do we?" He then pretended, "I don't understand the significance of that." The Court then said, "as the Court understood your statement, as these things are made available to these people they will be made public -- quotes. I believe that is what you just said. When it is made public, he is scooped. He is no longer going to come out with something astounding that the other people haven't had.... When it is made public, it is made public, and when these things are turned over to him, I am sure they are also to be made public, just as they were in the Rosenberg situation. There isn't any question but that they will.... But the point is the longer it is delayed, insofar as he is concerned, it will be practically worthless."

6. The Court was correct. Defendant's OPR published a lengthy report, obtained as much attention for it as possible and it disclosed a large quantity of records, including FBI records. The House committee published 13 printed volumes that include a great volume of the records produced in this still unended case. Moreover, all the committee's hearings were broadcast ⁺ on coast-to-coast radio and reported in the newspapers and a number were televised nationally. The most dramatic of the committee's exhibits consisted of FBI records I obtained in this instant cause.

7. Not content with this, the FBI then got the international news service, UPI, to make a request for some of the records I obtained, led UPI to believe that they were disclosed only as a result of its request, and then UPI syndicated a series of articles in which I was not only denied first use of my work but in which UPI took credit for my work. This, too, is ruinous to commercial and all other possibilities of any work of nonfiction.

8. By these and other similar means, defendant decided to and did ruin any possibilities of any book I would write before I could write it. Simultaneously, defendant ~~kept me~~ ^{kept me} tied up in this very long and costly litigation. In fairness to the government and to the historical record, it should be concluded before I write.

9. The case record also reflects, without any contradiction or dispute of any kind, that prior to this litigation the FBI decided it had to "stop" me and my writing - the word of several FBI agents - by tying me up in litigation. I obtained those records outside of this instant cause But I did provide them along

with an affidavit that remains entirely undisputed.

10. With regard to this assassination and that of President Kennedy and their investigations, because of their great importance and my expertise in both, I have been in a public role and have, to the best of my ability, attempted to serve it fully, fairly and openly. Because mine is a scholarly rather than a commercial endeavor, I have helped all who asked help, including those whose uses could hurt me and who are what are normally regarded as competitors.

11. Contrary to defendant's representation to this court, I have not been provided with all records pertaining to the scientific testing. Some were the first records provided. As soon as I received ^{the} that I did receive, I held a press conference and made copies available to the press. CBS-TV had made a limited request ~~for~~ that partially duplicated mine. I gave CBS copies of what it had not obtained. I also provided copies to others of the media who were not able to attend that press conference.

12. Drawing on information I obtained in this instant cause as well as by my prior work, I assisted a number of major and minor elements of the media. I spent quite a bit of time with CBS-TV, which was preparing a "special" on the King assassination, even though I had every reason to believe that I could not agree with what it produced. (And I did not) I also used this information in helping many others, including the wire services, and a number of large newspapers. Some have their own syndicates and syndicated this information widely. These include the New York Times, the Washington Post, the St. Louis Post-Dispatch, and Newsday, which is ^{the largest nonmetropolitan} ~~THE LARGEST NONMETROPOLITAN~~ paper in the country.

13. Because the Rays are of the St. Louis area, the Post-Dispatch has additional interest in this subject. I provided it with copies of many of the records I received, including entire files, and it reported that information extensively, including by syndication to other newspapers. For example, the records on Oliver Patterson, an FBI informer, made a series of four page-one stories for it and the many papers in its syndicate.

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14. With regard to the items of my requests pertaining to a group of young Memphis blacks calling themselves the Invaders, the information I provided Newsday's Pulitzer prize-winner, Les Payne, led to several front-page stories it also syndicated and to the exposure of an informer who had penetrated the Invaders

and other black organizations and even Dr. King's party. (Later the informer was called to testify by the House committee.)

h/ 15. With regard to that House committee, although I perceived that from the start it was wedded to the FBI's account of the crime, I nonetheless spent time with its staff, provided records and assisted it as much as I could until confronted with an irreconcilable conflict. Its published hearings include a 50-page analysis I provided of some of its evidence. In preparing this I used information obtained in this instant cause. (The House committee got little more from the FBI than I obtained in this instant cause, nothing of substance. The FBI's own records, now in the case record, reflect the fact that initially it planned to restrict the House committee to the MURKIN HQ records only.)

16. Aside from these and other public uses, the widespread use and publication of information that was withheld until I obtained it in this lawsuit, there have been a number of scholarly uses of it after I made it available. Some of it is used in seminars and in teaching and at least three "honors" papers are based on it. (An honors paper requires at least as much time as a major course for a full year plus the preparation and acceptance of a paper that is the equivalent of a thesis.) Duplicates of some of these records, including the entire Invaders and sanitation workers strike files, are in two colleges and in use by their students.

17. Major uses of this information remain to be made, aside from my own writing. (I believe it would be unfair to defendant if my writing precedes the end of this case.)

As a practical matter, the enormity of the records disclosed in
itself denies access
18. As a practical matter, the enormity of the records disclosed in
writing access to them, so, because I preserve all that I receive exactly as I receive
records
them for future deposit in a ^{university} archive, I made extra copies of the more
significant records and filed them by subject. From this large file I provide
information to others who request it, including the press.

19. All of my records will be deposited at the University of Wisconsin, pursuant to the request of the Wisconsin Historical Society. However, as I have come to what could be of immediate use and interest, I provided it with duplicate copies. I have spoken and conducted seminars there. These were videotaped by the University. These videotapes were used on state-wide public TV and made available to other colleges and high schools, where they are used in ^{teaching -} ~~teaching courses~~

HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 29th day of July 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, 1986.

NOTARY PUBLIC IN AND FOR
FREDERICK COUNTY, MARYLAND
