

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....
HAROLD WEISBERG, :
: :
Plaintiff, :
: :
v. : Civil Action 75-1996
: :
U. S. DEPARTMENT OF JUSTICE, :
: :
Defendant. :
: :
.....

AFFIDAVIT

My name is Harold Weisberg, I reside at Route 12, Frederick, Md. I am the plaintiff in this case.

1. After lunch on Wednesday, October 4, 1978, my counsel, Jim Lesar, phoned me and read me the Department of Justice's Memorandum to the Court dated October 2 and just received by him. (Hereafter the Memorandum.) He also informed me that we have but five days from the time of mailing in which to respond. I prepare this affidavit under these time pressures and limitations.

2. In my testimony in 1976 and in a state to the Court thereafter, I undertook to inform the Court that, based on my long experience in FOIA matters, I believed this case would not end in the foreseeable future unless what I described as Departmental misrepresentations as to the Court were ended.

3. Thereafter, instead of ending these misrepresentations continued and expanded. Once the Department succeeded in misleading the Court into having me act as its consultant, these misrepresentations were amplified by a series of what I regard as baseless and deliberate assaults on my personal integrity and on my representations to the Court. More recently, in Court and in this Memorandum, these assaults have targeted on my counsel. This means also upon me because I provide him with information he uses. As the record shows, on September 14, 1978, he informed the Court of what I had just been able to give him for the first time in the few moments we had together prior to the calendar call of that morning.

4. While perfection is not a human state, I do strive to be accurate and informative. In this matter I was accurate and Mr. Lesar's fault, if any, lies in what I regard as serious understatement.

5. My belief that we owe the Court the obligation of full as well as truthful information, whether or not the task is agreeable, is fortified by my reading of two recent decisions of the court of appeals, Marks and Ray.

6. These decisions and the separate opinions of Chief Judge Wright also raise questions of the misleading of district courts by official bad faith.

7. I believe that it is not by accident that there is no affidavit attached to the Department's Memorandum of October 2. If there were such an affidavit, it would be falsely sworn or would be incompetent. Both kinds of affidavits are common within my experience and have been Department practice in this instant cause.

8. While I have not been informed about the present FBI supervisory assignment to this case, I believe that as a result of what the Court stated with regard to SA Beckwith on September 14 SA John Harting is now the supervisor. Supervisor Harting was in the courtroom on September 14 and 28.

9. Supervisor Harting does not dare state under oath what the Memorandum alleges. He has personal knowledge that representations to this Court in that Memorandum are false. Proofs of this are attached below.

10. I have referred to the fact that by subterfuge the Civil Division saddled me with a consultancy because that also is relevant to the character and content of its Memorandum. Attached pages from my consultancy memo for the Civil Division establish the fact that its files show its Memorandum to be false. (See Exhibits 6 and 8.)

11. If the Civil Division had mailed me a copy of the Memorandum, the prior practice, I would be able to quote the Memorandum verbatim.

12. Because I do not have the Memorandum before me, I am unclear on whether it alleges that the FBI has nothing in its files with regard to the Somersett matter or with regard to it and the worksheets matter. This is false with regard to both matters.

13. I further state that proof of the falsity is in the Civil Division's files because it is in my consultancy memo for the Division.

14. I do not state that this is the reason the Division refused to pay me for the consultancy and I do not state that it is for this reason its Deputy Assistant Attorney General, William Schaffer, described my memorandum as worthless when he refused to pay me.

15. The matters at issue are two portions of the affidavit of FBI SA Horace P. Beckwith. I attach these as Exhibits 1 and 2. Paragraph 12 of Exhibit 1 is relevant to the Somersett matter. Paragraph 17 of Exhibit 2 is relevant to the question of erasures.

16. In the course of searching my files for the attached exhibits, I chanced upon a record provided to me in this instant cause which is relevant to a persisting Department and FBI misrepresentation in this and in other cases. This is the all-encompassing claim of the need to withhold what is provided by other police agencies absent which, in effect, the entire system of law enforcement would crumble. The record upon which I chanced is attached as Exhibit 3. A relevant portion of the Beckwith affidavit is attached as Exhibit 4. Exhibit 4 is the page following Exhibit 1 and preceding Exhibit 2.

17. The subject of Exhibit 3 is Charles Stein. In providing me with copies of records relating to Stein and his family, beginning toward the end of 1976 and continuing into 1977, the FBI practiced withholding of what is within the public domain. I appealed this promptly. The FBI has yet to acknowledge my appeal or to provide copies of what it withheld.

18. The FBI did not like Stein, who told the late Louis Lomax, a syndicated writer, what the FBI did not want reported. This includes evidence bearing on conspiracy. Relevant records are among those the FBI continues to withhold despite my providing proof that the withholding is not justified.

19. Exhibit 3 is the FBI cover for the Stein arrest record. In it the FBI did not obliterate the defamatory. The FBI did not withhold the Stein name and arrest record on the ground he had not been convicted, the representation of SA Beckwith to this Court with regard to the names withheld in connection with the robbery of the Alton, Illinois, bank. The FBI also does not withhold the name of the employee of the New Orleans Police Department who provided it with the records covered by Exhibit 3.

20. It is my recollection that the Stein rap sheet of that time

72/ consisted of six entries, not the four recorded on this page I came across by accident, and that Stein was acquitted on all counts. Whether or not my recollection is correct, as I believe it is, Exhibit 3 includes allegations that Stein was a pimp and a crook or a fence. It lays other offenses against him. Nothing is withheld on privacy claim.

21. All of the immediately foregoing statements with regard to Exhibits 3 and 4 represent proof of the opposite of what the FBI has sworn and the Civil Division has provided to this Court.

22. In addition to the proofs I attach with regard to the Somerset matter, the Memorandum itself proves the falsity of any representation that the FBI's files held no evidence of Somerset's death. The Memorandum states that there was partial disclosure (of a single document) to me on May 27, 1977. Withholdings are not denied. The Memorandum states there was release (of many volumes of documents) to another requester on May 5, 1978, after he provided proof of Somerset's death. However, the Beckwith affidavit in question was not executed until August 11, 1978, or more than three months later after the FBI's files held this proof of Somerset's death.

23. The other requester is my friend, Daniel Christensen, a magazine writer. He became interested in the Milteer matter from having read what I published in 1971. He has been to see me several times about it and has discussed it with me in writing and by phone. While I am not in accord with all of his interpretations, I have sought to assist him as much as I could, including with his FOIA request. The FBI was aware of this because I informed it. I believe I also informed the Civil Division and included this information in my appeal.

24. Miami magazine published several of Christensen's articles dealing with the Somerset/Milteer matter. It is impossible to believe that the FBI can be unaware of this, given the content of those articles and what they say about the FBI. I believe I also provided the FBI with a copy of one or more of these articles to show it that it was withholding what was within the public domain.

25. Were none of this true, the FBI knew the information was not secret because earlier the FBI provided it to the House Select Committee on Assassinations for public use.

26. Somerset was a self-identified and self-publicized FBI informer.

He also was an informer for Miami authorities. I first published this and other relevant information in 1967, prior to the assassination of Dr. King. In 1971, after that assassination, I published a partial transcript of Somerset's bugging of Milteer. I obtained this through Miami authorities because the FBI withheld it from the Warren Commission even though two weeks before the assassination of President Kennedy Milteer described precisely how, in the official account, the President was killed.

a/ 27. Milteer information is the subject of one of my old FOIA requests with which the FBI has not complied. Department counsel should be aware of this from my testimony in this inst at cause in about September 1976. On that occasion I presented the Department with a typed list of my unmet FOIA requests. Later I presented other copies to the Department. Attached as Exhibit 5 is page 6 of that list. The Milteer/Somerset request is the last on this page.

28. The tape in question remains withheld from me in this instant cause even though it contains evidence of a plot to kill Dr. King and even though the withholdings I appealed so long ago are in the MURKIN file.

1/ 29. Any representation that the Civil Division was not aware of the death of Somerset is proven false by Exhibit 6, which is page 62 of my consultancy memo to it. This relates to Serial 4859, which is the subject of SA Beckwith's false representations. The second sentence of the information I provided the Civil Division states that Somerset had been dead for some time and that the withheld information - information that remains withheld - was within the public domain.

files 30. Proof that the FBI knew this and that the FBI's claims do hold the fact of Somerset's death is attached as Exhibit 7. Exhibit 7 is my May 31, 1977, letter to Supervisor Hartingh, also referred to in my consultancy memo.

31. I state also that this exhibit holds proof of other and unrelieved FBI false swearing. Among these is that the FBI could not respond to my letters about noncompliance because I did not provide it with number identifications. Exhibit 7 reflects the promptness with which I informed the FBI, within a few days of my receipt of the records. In Exhibit 7 I provided the FBI with the numbers of the serials and of the sections in which each is contained.

32. At the top of page 5 in Exhibit 7 and thereafter I provide specific

information with regard to the identical serial relating to which SA Beckwith swore falsely, No. 4859. I also provide specific information, including names withheld from other and related MURKIN records. (Bottom of page 5, under Section 68, "beginning at 5017.")

33. The first sentence of what I wrote Supervisor Hartingh about Serial 4859 tells him that Somerset is dead. The rest of the comment informs him of the fact that what was withheld - and remains withheld - is within the public domain. I provide some of the names. (Later I provided other names and I can provide still others from what is public. These names remain withheld from the MURKIN records after more than 16 months.)

34. Exhibit 7 also establishes the falsity of Departmental and FBI representations relating to erasures on the worksheets covering Section 66. What I wrote Supervisor Hartingh bears on the absence of any affidavit from him in support of the representations relating to this matter in the Memorandum.

35. On page 5 of Exhibit 7 I reported these identical erasures to the FBI. This was the student's source in her memorandum for the Civil Division. My first item under Section 66 states "all of Serial 4919 is withheld. No exemption is claimed. What had been written under 'Remarks' was erased."

36. As I now reread SA Beckwith's affirmation in question, Exhibit 2, with what I recall of what Mr. Lesar read to me from the Memorandum, it appears that SA Beckwith undertook to mislead this Court and that the Memorandum now undertakes to protect him from this offense.

37. There is no doubt that both the FBI and the Civil Division knew that I reported the worksheet erasure. I attach as Exhibit 8 page 64 of my Civil Division consultancy memo. It states after the serial in question, 4919: "All five pages withheld, in this case no exemption even being claimed. There have (sic) been a notation on the worksheet under remarks (sic) but it was erased." (I have previously informed the Court that, because of the burdensome nature of the consultancy and in the interest of time, I submitted my memorandum without reading and correcting what was typed from dictation.)

38. The representation of the Memorandum, that the erasure under "Remarks" could relate to a claim to exemption, is spurious and a contrivance, a further effort to mislead and prejudice the Court. On August 11, 1978, SA

Beckwith swore that only (b)(7)(D) was claimed, a claim of which I was not informed before then (Exhibit 2). The worksheet form used by the FBI in this instant cause has column headings for the most commonly claimed exemptions, including (7)(D). For all other exemptions claimed there is a column other than "Remarks." It is headed "Other" and is under "Exemptions." The "Remarks" column is not for claiming exemptions. (See Exhibits 9 and 10 below.)

39. SA Beckwith's affidavit is 68 pages long. It has 52 attachments identified alphabetically through ZZ. It is not from lack of space that he did not claim what the Memorandum represents about the use of the "Remarks" column.

40. Moreover, SA Beckwith's affidavit does state with regard to the exemption claimed that it "inadvertently was not listed in the inventory worksheets." (Exhibit 2)

41. Contrary to the present representation of the Memorandum, there he also states "that nothing was ever written in or erased from this column."

42. All the Memorandum's representations relating to worksheets lack fidelity in ways that cannot be accidental.

43. Giving me the worksheets was not and is not an evidence of the FBI's dedication to openness or full compliance nor does it represent any kind of special favor to me. When the first sections of records were virtually dumped into my hands, they were not bound into sections or volumes. They were not wrapped. They were hundreds of pages of loose sheets. This continued for some time despite my complaints and despite my even offering the FBI large "binder clips" with which to keep the sections separated and identified. There also was no indication of any claim to any exemption in any of these hundreds of loose pages. There was merely wholesale and entirely unexplained obliteration. In this the requirements of the Act and court decisions were not observed. It is in response to my repeated protests and in anticipation of my raising the issue before this Court that the FBI decided the easiest way to avoid this and continue to deny me essential information was to provide me with copies of the worksheets. This then was - and it still remains - a means of avoiding the requirement of the Act. In some instances a single set of entries on a single worksheet relates to an entire large volume of many pages. More commonly - and this is quite common - as of today I have no means of determining which exemption

claimed relates to any one item of pages for which more than one exemption is claimed. This is in violation of decisions I have read. The FBI persisted in this even after I showed it in 1976 how its claims to exemption on the worksheets ranged from confusing to meaningless. (See Paragraph 46 and Exhibits 9 and 10.)

44. While it is true that I made vigorous complaint about the worksheets I later received, this is because they were illegible to begin with and then had their illegibility enormously increased by deliberate misuse of the Xerox machines. This withholding by the FBI's Exemption Xerox also extended to the withholding of large areas of hundreds of pages throughout a number of volumes. These Xerox withholdings were by two means: by total blackness in the xeroxing for large areas of the pages and by the actual physical elimination of parts of the pages in the xeroxing process.

45. Exhibit 7 is one of the many letters in which I complained about this to the FBI. This is still another reason Supervisor Hartingh, to whom I wrote Exhibit 7, does not dare support what is alleged in the Memorandum. My letter begins with this. I follow with an illustrated complaint about the illegibility of the worksheets that as original records should be clear and quite legible. (Paragraph 3) Exhibit 7 also shows that, although I had sought to avoid troubling the Court with the multitudinous examples of these FBI "dirty tricks" (Paragraph 1), I told Supervisor Hartingh, "You are leaving me no choice" (first words, Paragraph 2), and that I would ask Mr. Lesar to "present the entire matter to the judge." (Paragraph 1) There are other references to my determination to end this Cointelproing of me and the Act in this letter. It is for this reason that replacement copies of worksheets later were provided to me. Even that was not until after Mr. Lesar did bring the matter to the Court's attention. Incredible as it may appear, I actually had to use my experience as a publisher to tell the FBI how to make its worksheet forms less susceptible to withholding by small writing. Not incredibly, the FBI used my suggested design as a means of eliminating information by eliminating space in its replacement forms.

46. While seeming to deny that SA Beckwith swore falsely with regard to erasures from the worksheets, the Memorandum actually does not deny that there were erasures. Where SA Beckwith swore there were no erasures, which is false, the Memorandum seeks to explain the erasures and attempts this by unsupported

conjectures rather than the available evidence or an affidavit. I find this incomprehensible, especially because I provided Mr. Lesar with copies for the Court and Ms. Ginsberg and I saw him hand them to her in court on September 14. Copies are attached as Exhibit 9, the worksheet provided with the section and showing the erasures, and Exhibit 10, the different copy attached as Exhibit Z to the Beckwith affidavit of August 11. (Both also show that multiple claims to exemption were made for individual records without informing me which claim relates to what part. With Serial 4925 it is apparent that two blanket claims were made for 19 pages of which 16 pages were withheld in their entirety.)

47. It is beyond my present capacity to locate any replacement worksheets for Section 66. I am aware that I demanded their replacement. However, this does not in any way alter the fact that they are not relevant to the purposes of the Beckwith affidavit. The original worksheets only are addressed in what I wrote Supervisor Hartingh on May 31, 1977 (Exhibits 7 and 9). As the Court directed and as the Beckwith affidavit states, he addressed only the memorandum for the Civil Division prepared by a young student who cited this letter only. Her memo is Exhibit A to the Beckwith affidavit. That SA Beckwith so understood it is explicit in his affidavit. I attach as Exhibit 11 pages 5 and 6 of his Exhibit A. All underscoring is in the Beckwith copy. On page 5, after the date 5-31-77, it reads, "Harold enclosed worksheets for Section 68 to show the quality of xeroxing." This is underscored by hand in the Beckwith copy. The language relating to erasures quoted in the Beckwith affidavit is on page 6, item 17.

48. Also bearing on the knowingness and deliberateness of SA Beckwith's intention of deceiving and misleading the Court with regard to erasures on the original worksheet, Exhibit 9, is the fact that his initials appear on it. He nonetheless substituted what he knew was a different copy and was not relevant, Exhibit 10. His Cointelpro-type effort to make me out a liar backfired.

49. With a record of which the foregoing is only part, once again I am falsely accused of misrepresentation. The unjustified accusation now includes my counsel- who presented to the Court what I had given and described to him. When he spoke the truth at the calendar call of September 28, he was charged with "misrepresentations." (Transcript, pages 11-12, attached as Exhibit 12) That he spoke the truth with regard to the Gerold Frank request, also discussed then, is

established by the carbon copy of my request, attached as Exhibit 13. (See its Paragraphs 7, 11, 18 and 20)

50. The most recent such baseless accusation is in the copy of the Department's Motion to Strike mailed to Mr. Lesar, as has become commonplace, the day before the last calendar call. (Exhibit 14) His truthful representations to the Court, based on what I gave and told him, are characterized as "impertinent, scandalous and immaterial." (This is not the first time I have heard Department lawyers describe false swearing as "immaterial.") In the attached Memorandum in Support we are accused of "misleading" the Court. Our producing the worksheet proof (Exhibits 9 and 10) and the Somerset records provided to Christensen without the excisions that taint those given to me is described as "no evidence." Through this Orwellian use of language, the offenses mentioned by Mr. Lesar and addressed in this affidavit are described as performing official duties under FOIA in "a professional, diligent and upstanding manner."

51. From prior experience with the FBI's defamatory fabrications, I have every reason to expect these new false charges will be spread throughout the bureaucracy in a further effort to defame me and to misrepresent the true character of my work. Earlier such defamations are in the record. These include the conversion of an unselfish and I believe generous participation in a religious function as the alleged celebrating of the Russian Revolution by my wife and me. I know this total fabrication was given to the White House and to the Senate's Church committee. I know it and other such deliberate falsifications were distributed throughout the Department, including to Attorneys General. There simply is no way anyone can protect himself from these indulgences in the authoritarian practices which characterize the Nazi and Soviet states and supposedly are foreign to our government.

52. Mr. Lesar gave me Exhibit 14, which he did not receive until we reached his office after the last calendar call. Later he phoned me to report that Ms. Ginsberg had told him it was all a secretarial snafu and that Exhibit 14 had not been filed because it was only a rough draft. I have no prior knowledge of "rough drafts" being signed by counsel and for the Assistant Attorney General.

53. It has become Civil Division practice to hand us in or outside the

courtroom what was not provided for our timely response. The 68-page August 11 Beckwith affidavit of so many attachments was not executed until the last working day prior to the calendar call of August 14. It reached me on Saturday, August 12, only by accident. This happenstance required that on a Saturday and part of a Sunday I undertake an affidavit in response and have it executed on a weekend if I were to be able to have it for that Monday morning calendar call. Since then other misstatements and misrepresentations of that Beckwith affidavit have required that I prepare a 70-page memorandum for Mr. Lesar.

54. These are not mere tactics nor only harassment, which they indeed are. They represent a strategy that extends through all my FOIA cases. Their clear purpose and intent is to prevent my writing and frustrate the Act. In this they have succeeded. They have prevented my writing, giving me the choice between that and serving the public role I have assumed by using in the public interest what the Department itself has described as unique expertise. This strategy includes the current counterpart of the FBI's earlier defamations and fabrications to deter my work and its acceptability by government officials and others.

55. If I am not to abdicate these public responsibilities, the need to respond to such long and unfaithful allegations, especially under severetttime pressures, also is adverse to my health. In addition to requiring the abandonment of other work, they require long hours and reduced rest. They interfere with or preclude the program of exercise prescribed by my doctors. This is essential exercise because of my circulatory impairments. All of this is well known to the Department and to the FBI.

56. All of this is contrary to the representations made to this Court in camera to force the consultancy upon me and in prior discussion of this consultancy with Civil Division Deputy Assistant Attorney General William Schaffer. He told my counsel and me that he was determined to stop these FBI "dirty tricks." This, too, is Orwellian because the Civil Division now engages in similar practices.

57. This practice also is in direct contradiction to Civil Division assurances to the Senate Judiciary Committee's Administrative Practices Subcommittee. I attach as Exhibit 15 the relevant table of contents page and four

pages of the printed transcript of testimony. I cannot explain the October 6, 1977, date of this testimony because from my records it appears to precede the conference referred to. It is for this reason that I include the table of contents, which dates that testimony at October 6, 1977. My records reflect that I could not have attended any such meetings prior to almost a month later, when there still had not been the meeting described. My first relevant diary note, for November 2, reads "DC - 1996 - conf(ERENCE) with DJ people." The next such entry refers to the first of two conferences in Mr. Schaffer's office, the only one he participated in: "DE - 1996 conference in Bill Schaffer's office, Civil Division." A week later there is this entry: "DC - Conf. with Civil Division, etc., on 1996. Bruised on bus on way home." (This is a reference to the difficulty I had trying to carry a large and for me heavy package of records the FBI was to have mailed. It was neither mailed nor even packaged.) The first of these three meetings was to arrange for the second.

58. I include page 126 of the printed testimony in Exhibit 15 because it is not consistent with the representations of the Memorandum in which the Division seeks to allocate FBI malfunctioning in the processing of the MURKIN records to "~~Operation~~ Onslaught." Deputy Assistant FBI Director Allen McCreight testified that the FBI's "~~Operation~~ Onslaught" agents did not even reach Washington until May 1977. By this time most of the FBIHQ MURKIN records had already been processed.

59. On page 140 Mr. Schaffer testified, "Mr. Weisberg does have reason to complain about the way he was treated in the past. We in the Civil Division are going to try to do something to straighten out all of these cases." He also stated, "I assure you the Department is going to try to do something ...". Mrs. Zusman added, "I would like to expand on" these comments. On the next page she described this as "~~trying to~~ be innovative as to reducing the number of lawsuits by working directly with plaintiffs and with plaintiffs' counsel. It can be very successful."

60. Indeed it was "very successful." In order to obtain any of the records in question, I thereafter was compelled to file C.A. 77-2155. In order to obtain any of the added compliance assured in C.A. 77-2155, I have since had

to file three additional lawsuits. I await compliance in them. My experiences in them are as described in this affidavit. These kinds of "somethings" and "innovations" I would not even wish on the FBI. The fact is that not one of my specific requests referred to in this testimony (Exhibit 15), the identical requests to which I testified in this instant cause in September 1976, has been complied with. As I was entering the courtroom for the calendar call of September 28, I was handed a copy of a letter from Mr. Shea in which he reports the FBI's promise for the future to provide me with copies coequal with later requesters. This is not the first time the FBI made this promise. It has yet to keep its word.

61. This "something" and "innovativeness" is typified by the Memorandum, by false charges and misrepresentations made in the courtroom and by such deceptive and misleading affidavits as SA Beckwith's of August 11. They are typified by charging me with the abuses of which I am the victim, not the practitioner. By these means I am denied my rights, my life is wasted and new, imperishable and entirely false defamations are created in immune official records.

62. If this is not enough, there is also what I regard as fraud. This fraud consists of withholding relevant records of proof of deliberate noncompliance in this instant cause and of representing to the contrary to this Court. I obtained the record I attach as Exhibit 16 by accident in one of the four cases I had to file in a still-frustrated effort to obtain what Mr. Schaffer and Mrs. Zusman promised to the Senate a year ago. This record is vital to compliance because it discloses the existence of inventories of records sought in this instant cause. This record did not escape the diligent eyes of those processing FBIHQ records and those of the field offices listed in the Stipulations. Not one slipped up. Not one provided it. Not one listed it on any worksheet and claimed an exemption to withhold it. Not one provided the other records also essential to compliance and reported in it. Only one field office inventory escaped the dedicated FBI processors; but when I asked the FBI about it, I was lied to and received neither further compliance as a result nor the similar inventories of the other field offices whose noncompliance is now touted as compliance. In the months since I gave copies to the Department and asked for the relevant records listed, I have heard nothing and received nothing.

63. These records disclosing the existence of relevant inventories also

disclose a reason for the FBI's steadfast refusal to search other files I have specified: the response of the field office from whose files I obtained this was directed to the FBI's General Investigative Division, Civil Rights Unit. I did ask for and I have not received any records of the General Investigative Division.

64. Exhibit 16 was sent to all field offices. There is an error in the teletype transmission as a result of which the day, the sixth of January, is omitted. The year is 1977. An earlier similar directive was teletyped to all field offices on November 24, 1976. That was not long after I received the first of the HQ MURKIN records and long before the processing of that single HQ file was completed.

65. Exhibit 16 directs that each field office "prepare an inventory of all materials" relating to "the John F. Kennedy assassination and Martin Luther King, Jr. assassination as well as closely related cases." There is reference to an earlier directive "to inventory all pertinent material relative to the Martin Luther King, Jr. assassination," with an HQ file number other than that of the FBIHQ MURKIN file cited. The items to be included encompass those on which there has been no compliance in this instant cause, such as surveillances and their fruit.

66. It is not merely that I have not received these relevant records from the various field offices or the copies each provided to FBIHQ in response to its orders. Nor is it merely that the FBI lied to me when I showed it its single slip-up, a teletyped inventory of the Chicago Field Office that was mostly of a political nature. It is apparent that those processing records in this instant cause had to know of the existence of these inventories and of the relevant records inventoried and since then have resolutely withheld both while hawking their alleged compliance to the Court.

67. Because in this affidavit I am addressing the truthfulness or untruthfulness of representations to the Court by Civil Division counsel and because Civil Division questions the truthfulness with which my counsel and I address the Court, I provide further information with regard to other of Ms. Ginsberg's allegations that simply are not true. Whether her untruthfulness comes from a lack of knowledge or is deliberate - who indeed does prosecute the

prosecutor? - is immaterial to the result.

68. I was present when immediately after the calendar call at which the Court indicated a willingness for a Vaughn v. Rosen inventory SA Hartingh proposed stipulations. Their purpose was to avoid such an inventory. My willingness to consider such stipulations was that with compliance they could bring this case to a reasonable end and because Mr. Lesar had explained to me that such an inventory is burdensome to a court. It was and is my understanding that the stipulations address the avoidance of a Vaughn v. Rosen inventory and are conditional upon compliance.

69. Mr. Lesar spoke truthfully when he informed the Court that from the first the stipulations were violated by the FBI. The stipulations required the delivery to me of records as processed. Instead, more than 6,000 Memphis pages were accumulated and sent to me in a single, unmanageable, uncollated, uninventoried bulk, in such form that, in addition to all other problems thus created, I could not even use the records. If Ms. Ginsberg had any familiarity with what she addressed the Court about, she would have known the truth. If she had asked SA Hartingh, who sat next to her, he also could have told her the truth, as he could have informed the Court when he heard Ms. Ginsberg assault Mr. Lesar's honesty and integrity by her false representations relating to this bulky single shipment and the stipulations. The untruthfulness of Ms. Ginsberg's statement to the Court, her claim that the FBI had not delayed and accumulated all these Memphis records or shipped them in an unmanageable package, is established by the covering letter from the FBI attached as Exhibit 17 and my response to the FBI, attached as Exhibit 18.

70. The FBI's covering letter, which is also a bill, is dated September 29, 1977. This is the very last day permitted by the stipulations. The FBI, contrary to Ms. Ginsberg's representations, describes "This release" as of "6,293 pages." It simply is not possible for all the thousands of records of the Memphis Field Office, the Office of Origin, to have been processed with 6,293 pages packaged and infinitely more withheld and all of this to have been accomplished at one time. The worksheets establish that many volumes were processed in earlier months and then were withheld for this single shipment that I could not lift - even move.

71. My response, Exhibit 18, in addition to many other details relating to noncompliance with the stipulations, specifies the size of this package as "of more than 6,000 pages" and "about 31 inches of solid paper in one package." It specifies other violation of the stipulations at a number of points, including exactly as Mr. Lesar informed the Court: "You were supposed to provide copies as rapidly as processed," I wrote Supervisor Hartingh. (Later he phoned me to ask, "Are you still mad at us?")

72. In addition to these untruthful representations, Ms. Ginsberg stated that on review Mr. Shea had found the processing of referrals to be "timely." This is not true. Mr. Shea confirmed the accuracy of the FBI's records of referrals. Since then I have provided my counsel with a chart (Exhibit 19) prepared from the FBI's own chart. This reflects that there were delays of about 15 months, hardly "timely" under any circumstances and anything but timely under a 10-day law. The FBI's chart does not include the time lag as a separate breakdown.

73. I regard this Memorandum as part of an FBI Cointelpro-type operation against me and as a new effort to frustrate and violate the Act. I believe there is no reasonable doubt that all involved in it should have known it is what I have described, a dishonesty and a trick to extort part of what remains of my life and my work from me. It represents still another in a long series of abuses of my wife and of me. The preparation of part of an unread rough draft of this affidavit required of me more than nine continuous hours of work on the day Mr. Lesar informed me of the Memorandum, extending that working day to 18 hours. To be able to complete the affidavit, I am required to begin my day at 4 to 4:30 in the mornings. Once again I am required to find a notary on a holiday weekend and then get the affidavit to Mr. Lesar when there is no mail service. The FBI and the Civil Division have to know that either I must work at a pace that is adverse to my health or risk the enormous amount of time I have invested in the case that in itself was extorted from me as a means of frustrating the Act and preventing the work the FBI does not like because it exposes the FBI with accuracy. If I do not respond with adequate proofs, I risk leaving these new and baseless assaults on the integrity of my work and my representations uncontested. I may also fail in the public-service role I seek to fill. Given

this Hobson's choice, I do what is required for a response to meet the public obligations I have assumed.

74. The Department of Justice is also the federal prosecutor. It is not merely the defendant in this case. I do not expect it to prosecute itself any more than I believe that its representatives would engage in such serious misconduct, misconduct which if I were guilty of it could lead to the Department's prosecution of me, if they feared any retribution. Based on long experience, I believe that as long as such misconduct is immune, the Act will be subject to nullification, vast amounts of public moneys will continue to be wasted to this end and the Courts and requesters of public information will continue to be overwhelmed by the extra and totally wasted time and work required of them.

75. I speak of the Department's willingness to prosecute when there is no offense because it has made such efforts against me in the past. Among the records still withheld when my Privacy Act request is of three years ago are the records of such an effort against me, one that I turned around, leading to a two-year sentence for the agent of a Congressional committee who sought to entrap me. As a consequence of the accurate writing the FBI does not like, it actually contrived with a Special Agent in a demeaning scheme for him to file a spurious libel action against me. Public moneys were expended in the legal research to contrive a basis for a spurious civil action to "stop" me. That statwart was unwilling, as the records I have obtained show. When I learned of this rotten business, I wrote the then-retired hero and waived the statute of limitations, as I also did to the FBI's Office of Legal Counsel. No civil action has been filed - or will be.

76. I am aware that in this affidavit I am subject to the penalties of perjury, as the Beckwiths and their kind appear not to be.

77. While the specifications of official untruthfulness and other dishonesties I provide in this affidavit are not nearly as numerous and detailed as with ample time I could make them, I believe they validate what I stated to this Court two years ago, that as long as official misrepresentations are tolerated, cases like this one will be dragged out indefinitely, with the only alternative noncompliance with the Act.

~~78.~~ 78. I had drafted this affidavit to this point when the amended or

second Motion to Strike with attached Memorandum in Support reached me. The delay was because the Civil Division again departed from prior practice and did not send me a copy. It required extra time for Mr. Besar to make and mail a copy and for it to reach me. I have read these pages and their attachment. (Hereafter Second Memorandum.)

79. What follows relates to this Second Memorandum. It is not integrated into the completed part of this affidavit because of severe time limitations. This addendum is not intended to repeat what is addressed directly in the preceding paragraphs.

80. Unfaithfulness to fact regarding the worksheets is more serious because of these words, "The first set of worksheets provided to plaintiff were prepared by Federal Bureau of Investigation Special Agents who were part of 'Project Onslaught'." This is completely false. (Page 2, Paragraph 2)

81. As stated above, initially I was not provided with any record of any exemptions claimed. After some time, as a substitute for indicating exemptions claimed on the records themselves, I was given the worksheets covering the many records provided to that point in the releases. Thereafter, the worksheets accompanied the Sections themselves.

82. It has not been possible for me to file the worksheets with the relevant Sections in those instances where they were not provided at the same time. They are still as I received them. I have checked the worksheets provided later for the first ten Sections. These extend through Serial 1300. I believe this is more than enough to reflect what is true with regard to "the first worksheets provided to plaintiff." Of course, the very first of these worksheets is literally the first sheet of those covering the first Section. I therefore attach it as Exhibit 20.

83. Having checked the worksheets covering these first 1300 documents provided, I state without equivocation that no "Agents who were part of 'Project Onslaught'" prepared a single set, a single page or a single word of any of "the first set of worksheets."

84. In order to represent truthfully rather than untruthfully to this Court, it was not necessary for any Department lawyer to check these first worksheets as I did. Anyone familiar with the Department's FOIA practices

should have known that there was no "Project Onslaught" at the time "The first set of worksheets" was "provided." The records processed with the first worksheets were processed in about September 1976. They were given to me in October. There was no "Project Onslaught" until the following May. (See Paragraph 57 and Exhibit 15 above.)

85. Moreover, Ralph Harp, the SA who processed the very first records, remained assigned to the processing of all the records provided to me from FBIHQ files. He has appeared in the courtroom on a number of occasions. He participated in conferences. As others later joined him, they had his knowledge and experience on which to draw.

86. In addition, as Exhibit 20 shows, SA Harp's worksheets are clear and legible. They were no cause for complaint. They also establish that it was not necessary for the FBI to provide illegible copies and that there was never any need for xeroxing to reduce their clarity.

87. This Paragraph of the Second Memorandum concludes with the first of several conjectures represented as factual when they are not. These conjectures are not attested to by one with first-person knowledge although competent affiants were readily available. As stated above, I believe this is not an oversight. Rather is it an effort to avoid any rebuke or penalty for false swearing.

88. The first such conjecture is that "the first set of worksheets was apparently destroyed." (Emphasis added)

89. The next conjecture is that "any erasures ... were not the result of deviousness or intrigue." In my experience there is no basis for making any such assumption and there is basis for assuming the possibility of the opposite. For example, I did not receive worksheets holding all the information called for in the stipulations. I did not receive them after I complained and again requested them. They have not been offered since Mr. Lesar called this to the attention of the Court and opposing counsel. In addition, as I have affirmed and Mr. Lesar has informed the Court, I have received worksheets with a crooked count of the pages in the underlying records. On September 28 Mr. Lesar cited an instance of an Atlanta record (of which to my knowledge FBIHQ has two different sets of copies). In that case it was SA Beckwith who provided the affidavit.

90. The "apparently destroyed" worksheets reached the Memory Hole, the Second Memorandum conjectures, "to assure accuracy" because other worksheets were prepared.

91. The kind of "accuracy" that could be "assured" by this destruction is the prevention of detection of crooked counts, like the false representation in the worksheet provided to me, that the 29-page Atlanta record of Paragraph 89 consisted of only two pages. The crooked-count worksheet misleadingly represents that I was given the entire record when, in fact, 27 of its 29 pages are withheld.

92. Other conjectures in substitution for first-person knowledge are that "an Onslaught Agent may have jotted down an incorrect exemption number" and "The reviewer would have corrected the exemption." (Emphasis added) As established in the first part of this affidavit, these representations are entirely unfactual.

93. Rather than to "assure accuracy," the destruction of any worksheets guaranteed inaccuracy. Once any worksheets were destroyed, if they differed from my copies, there would be no Departmental means of following any letter of complaint or appeal. With this case in litigation and with representations made to this Court based on the original worksheets, it cannot be believed that the records of processing would be destroyed for any legitimate reason. There certainly was not need to destroy them.

94. In the case of the particular worksheets prepared by SA Goble, one of which is involved in the Beckwith affidavit where it is replaced with an entirely different copy (Exhibits 9 and 10), there was added reason for guaranteeing the careful preservation of his worksheets, including especially the one replaced by SA Beckwith. I had filed an angry appeal over much more than illegibility and the adding of incomprehensibility by misuse of the FBI's Xerox machines. SA Goble's (b)(7)(C) concepts are reflected by the withholding from a newspaper story of the name of an FBI agent who was practically a professional witness. There was wholesale withholding of what was exceptionally widely publicized and of other information that is within the public domain. In response to my protest to the FBI, I was promised that about the last third of FBIHQ MURKIN records would be reprocessed. For the reprocessing of these records it

was essential not to destroy the original worksheets. For all practical purposes, destroying them destroyed the basis of the worksheets part of my appeal.

95. With special reference to SA Goble, it was an urgent need to preserve all his work and notations. His processing was so outrageous that I demanded his removal from FOIA work and wrote the FBI that until I was assured of his removal I would not accept another piece of paper from it. Supervisor Hartingh expressed surprise because he described SA Goble as "a Harvard liberal." Supervisor Hartingh then informed us that SA Goble had been reassigned to a field post and promised the reprocessing reported above of the last third of the FBIHQ MURKIN records. There has been no such reprocessing. Instead, it has been refused.

96. It is not the lack of those with first-person knowledge that accounts for the absence of an affidavit to attest to what Ms. Ginsberg conjectures and states that is not accurate. Of the many special agents who at different times have been assigned to this case, I know of only one who is not alive, the late Supervisor Tom Lenehan. Among those I believe to be available and who have varying degrees of first-person knowledge are Special Agents Hartingh, Harp, Higgins, Cunningham, Smith, Matthews and Keith Gehle, whose position is unknown to me.

97. With regard to the Willie Somerset matter, the exact language of the Second Memorandum is more misleading than I had thought prior to seeing it. The words are "When Serial 4859 was released to plaintiff, there was no indication in the Federal Bureau of Investigation files that he was deceased." (Emphasis added)

98. It is impossible to believe that with the attention to the Somerset/Milteer matter the FBI was not following it closely. Before release to me, the House Select Committee on Assassinations was in touch with the FBI about this subject. This newest attempt to deceive in the Second Memorandum, which is intended to protect false swearing, lies in the false pretense that the time in question is "when Serial 4859 was released to plaintiff." The actual time in question ~~is~~ the time of the Beckwith affidavit. He executed it on August 11, 1978, when he again withheld what admittedly is not subject to

withholding. This was long after the many times I had informed the FBI of the death of both Somersett and Milteer. If those in the FBI with whom I spoke made no notes, then my letters certainly are "indication" in the FBI's files of both deaths. (The Beckwith affidavit addresses the withholding from one such record only. The student who prepared that memo selected this one as illustrative. There are others, as my correspondence makes clear. There also are other records withheld in their entirety and not indicated as withheld on any worksheets.)

99. The footnote on page 3 provides other and serious questions, especially of bad faith. This note begins, "Attached hereto as Appendix A is a copy of Serial 4859." Actually, this copy is from a different file which refers to the "original filed in 44-38861-4859," which is the MURKIN file. Appendix A is from a file whose number is illegible. In this unidentified file it is a Not Recorded Serial, as the stamp reflects. It there is not Serial 4859.

100. A more serious problem is what proves the arbitrary and capricious nature of the Beckwith withholding. The note states that "The brackets indicate those portions of the memo withheld from plaintiff when it was released to him in May 1977." Examination of the bracketed information discloses that much more than the identification of Somersett was withheld in the first paragraph. This examination also discloses that, with the possible exception of the identification, nothing that was withheld ever qualified for withholding under any exemption.

101. If the remainder of the note in the Second Memorandum is not literally false, as I believe it is, the purposes served by the misrepresentation are indistinguishable from those to be accomplished by deliberate falsehood. This language is "The entire memo, with the exception of the informant symbol used by the FBI to identify Mr. Somersett, was released to the second requester in May 1978."

102. This representation is absolutely incredible to me because of what Mr. Lesar said and described at the September 14, 1978, calendar call. He had what I had given him and he said he had: two large volumes of Somersett records consisting of a larger number of Sections as provided to "the second requester," Dan Christensen, by the FBI. If Mr. Lesar did not specify that the FBI did not

withhold the Somerset number, as I believe he did, the FBI certainly knew it had disclosed the number. Anyone making any kind of representation to a court should have determined the facts prior to making any representation. If in fact the Somerset number was withheld from this one page, then the FBI's practice is beyond any excusing because it did provide Christensen with many records from which Somerset's identification and file numbers are not withheld.

103. There was no basis for withholding any of what is now disclosed on initial processing. There should not have been any improper withholding in the records attached to the Beckwith affidavit because his job was to review the itemizations of the student's memo and eliminate unjustifiable withholdings. We now find that there is this additional infidelity in the Beckwith affidavit and that it continues in the note and the withholding from Appendix A. If SA Beckwith made any review at all in preparing his August 11 affidavit and its attachments, he had to know that Somerset was dead and that months earlier the records, including informer and file numbers, had been disclosed to Christensen. SA Beckwith ~~with~~ Department counsel either made representations without any check at all or they made false representations after a check.

104. I cannot attach pages from the records provided to Christensen because Mr. Lesar desired to keep them following his remarks of September 14 in the event there might be further inquiry relating to them. He still has these copies.

105. So there can be no doubt about the authenticity of these documents, I provide the following account: Christensen, who is my friend, visited with me one evening shortly before the September 14 calendar call. He had with him the records provided in response to his information request and he showed them to me. I skimmed them enough to determine that he had been given by the FBI what it had withheld from me. Christensen agreed for me to copy these records and to keep his originals until after need for them at the September 14 calendar call had passed. Mr. Lesar retains the copies made from the originals.

106. From the foregoing Paragraphs it is clear that the Second Memorandum lacks fidelity even now, after the commotion caused by my production of the substitute worksheet and the Somerset information that was withheld from me; and that there is unfaithful representation about this withholding

when, as I understand the present situation, the propriety of the withholdings is the issue before the Court.

HAROLD WEISBERG

Before me this _____ day of October 1978 Deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commissinn expires _____

NOTARY PUBLIC

LIST OF EXHIBITS

No.	Page	Paragraph	
1	3	15	Beckwith affidavit, page 35
2	3	15	Beckwith affidavit, page 37
3	3	16	157-10673
4	3	16	Beckwith affidavit, page 34
5	5	27	FOIA list, page 5
6	5	29	Memo page 62 Consultancy memo, page 62
7	5	30	My 15/31/77 to Haugh 5/31/77
8	6	37	Weisberg consultancy memo, pages 64-65
9	9	46	Worksheet original
10	9	46	Worksheet copy
11	9	47	Student's memo, pages 5-6
12	9	49	Transcript, pages 11 and 12
13	10	49	11/23/76 FOIA request
14	10	50	Motion to Strike
15	11	57	Senate testimony
16	13	62	1/6/77 teletype
17	15	69	FBI letter, 9/29/77
18	15	69	Weisberg response, 10/6/77
19	16	72	Referral chart
20	18	82	Worksheet

LIST OF EXHIBITS

No.	Page	Par.	Description
1	6	23	Byers records
2	7	27	St. Louis <u>Post-Dispatch</u> , 10/1/78
3	11	37	Patterson privacy waiver
4	11	38	Informant report, 5/26/71
5	11	40	Committee transcript, first 6 pages
6	12	42	Ibid, p. 21
7	12	44	Ibid, p. 31
8	12	45	Ibid, p. 13
9	13	47	Ibid, p. 174
10	14	53	Report on Patterson, p. 12
11	14	54	Committee transcript, pp. 119-23
12	15	54	Ibid, p. 157
13	15	55	Ibid, p. 109
14	15	58	3 pages of committee transcript of phone conversations
15	16	63	Committee transcript, p. 73
16	16	63	Ibid, pp. 106-8
17	17	73	Weisberg letter, 5/11/78
18	17	64	Notice to Patterson of telephone record subpoena
19	19	74	P. 3, committee "biography" of John Ray
20	20	75	John Ray letter, 11/8/78
21	21	83	St. Louis <u>Post-Dispatch</u> , 11/12/78
22	22	87	Parole Commission memo, 6/7/78
23	24	92	Parole record, John Ray