

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....
HAROLD WEISBERG,

Plaintiff,

v. Civil Action No. 77-1997

CENTRAL INTELLIGENCE AGENCY et al.,

Defendants.
.....

AFFIDAVIT

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

1. As I have previously informed this Court, my prior experiences include service in intelligence agencies and I have spent the past 15 years in an intensive inquiry that includes the functioning, methods and practices of such agencies. I also have extensive experience with them in Freedom of Information (FOIA) matters.

2. The Court's January 4, 1979, Opinion reached me in the mail of Monday, January 8, when I was completing affidavits required in two other cases. I was not able to read the Opinion until January 9, after which I asked my counsel by phone to file a Motion to Reconsider. He informed me that an affidavit by me would have to be executed by the end of this week. I was in court in Washington on two other cases two of the remaining three working days of this week, on Wednesday before this Court. After that we had a conference on information request matters at the Department of Justice. This took so much time that I had to leave for home from the Department of Justice building. Because of medical restrictions, I am not able to drive to Washington. The foregoing means that, for all practical purposes, I was not able to confer with counsel in the drafting of this affidavit. While I have had considerable FOIA experiences, I am not a lawyer and the time allowed does not permit revision of this affidavit by my counsel.

3. The subject matter of this information request has been held to be an historical one by the Attorney General or one requiring maximum possible disclosure and maximum possible effort to comply in searching for the information requested. I find no reference to the Attorney General's finding and its disclosure standards

in the Opinion. There thus is no finding by the Court that these historical-case standards for searching and for disclosure have been met and I believe they have not been met.

4. There are Items of my request that are not referred to or even acknowledged to exist in the Opinion. They are entirely without compliance although I had produced undisputed proof of the existence of such records. This alone raises what I regard as serious questions of CIA intent not to comply and genuine issues of material fact regarding them. The record in this case does not, to the best of my recollection, hold any evidence of any search in compliance with some Items of my request. In this connection the Opinion errs in stating that as a generality, without any reference to such Items and in the sense of assuming good faith (at page 2) that "there is no reason to believe that the additional documents could be located without an unreasonable search." (emphasis added)

5. The Opinion does not state that the record supports a finding of good faith as I believe the record does not. It also does not hold a finding of due diligence. Instead, these are suggested by quotation from the Goland decision, "... the Agency's good faith would not be impugned unless there were some reason to believe that the supposed documents could be located without an unreasonably burdensome search."

6. Whether or not there would be any "unreasonably burdensome search" under the standards applicable to an historical case, and from my knowledge and experience I believe that in this case there would not be, the fact is that in order to comply at least in part with some of my unmet information request absolutely no search is required. Some of the information sought has already been searched under other requests and has been retrieved and copied. Yet it remains withheld in this instant cause.

7. If I had more time I could supply CIA records establishing that search under a prior request yielded records that were deliberately withheld from its general counsel so that the CIA's response would be false and its own general counsel would be caused to falsely deny the existence of those records.

8. What are genuine issues of material fact in dispute having to do with the searches and the existence or nonexistence of records sought might have been resolved if this Court had not foreclosed any discovery, including depositions.

9. The taking of depositions is no easy matter for me because of my age,

state of impaired health and financial limitations. In this case I was impelled to assume this responsibility, not for any personal reason or gain, which is not possible, but from the mandate of the court of appeals in another historical case where similar issues of material fact existed. In its July 7, 1976 decision No. 75-2021, that court held that

The data which plaintiff seeks to have produced, if it exists, are matters of interest not only to him but to the nation. Surely their existence or nonexistence should be determined on the basis of the best possible evidence, i.e., the witnesses who had personal knowledge.... It must be done with live witnesses....

10. The assassination of Dr. King, the costliest crime in our history, and the functioning or nonfunctioning of executive agencies after that assassination I believe "are matters of interest not only to" me "but to the nation," as the Attorney General himself has stated.

11. As I believe I have informed the Court, the Department of Justice stated in C.A. 75-1996 that I have unique subject-matter knowledge. If I were not entirely without doubt that from this knowledge and my prior experience the taking of depositions would establish the existence of records not provided and that locating them would require no "unreasonable" search, I would not consider using what I receive under Social Security, my only regular income, for the taking of depositions.

12. I am without doubt that one of the reasons for the CIA's opposition to my taking depositions is its knowledge that I would prove that its affidavits are false, misleading and in other ways not faithful to fact.

13. I recall no affidavit from the CIA alleging that there has been a computer search or that none of the information sought is not computerized or that pushing computer buttons is "unreasonable" or "burdensome" and I believe neither is.

14. During the period of this litigation, the CIA was compelled to search its records for the House of Representatives, which established a Select Committee on Assassinations. It is certain that the information I seek was within the purview of that committee. This means that for the Congress all relevant CIA records should have been searched, even if that required what this Court was falsely told would be burdensome. The CIA had evaded this and the Court foreclosed me from taking depositions that would have established whether any if not in fact all of the information sought in this instant cause had already been retrieved for the

Congress. I believe it is inevitable that the CIA searched for and located these records for the Congress and kept it secret from the court and from me. If the information I seek had already been located for the Congress, whether or not the Congress was provided with copies, then it is obvious that no "unreasonable" or any other kind of search was required in this instant cause. The searching had been done and the CIA deceived and misled this Court.

15. The CIA has not provided any affidavit from any component that handles Congressional liaison. My recent experience with the FBI parallels this situation with the CIA and illustrated how the shifting of records within the agencies hides them from undiligent searchers in FOIA cases. In FBI Headquarters, beginning shortly after Dr. King was assassinated, a supervisor named Richard Long started what became known as the "Long tickler." This was a file on three dozen subjects by means of which control was maintained over a vast amount of information. The FBI first denied there was any such thing as the Long tickler. The FBI stopped these false denials when I proved the Long tickler existed. The FBI then claimed it could not find the Long tickler. Only after I provided leads to the appeals unit of the Department of Justice was the Long tickler located. It was in the hands of the FBI's Congressional liaison people. Mr. Long is still in Bureau Headquarters, where he is well known. None of the FBI's FOIA personnel ever lifted a telephone to ask him any question about his tickler. When I finally received a copy of it, motive for withholding it was immediately apparent. The FBI, despite assurances to that Court, had and withheld relevant records copies of which were in the Long tickler. The withheld records were embarrassing to the FBI. They disclosed practices that enable the FBI to claim not to be able to find readily-retrievable records. (One example is where and how its clandestine tapes relating to Dr. King were and how FBI Headquarters could pretend not to know.) They even disclose what is incredible and baseless, that in 1970 the FBI associated me with two different bank robberies in at least five different files. Despite this I received false assurances of compliance with my Privacy Act request from Headquarters and two field offices. All three had and withheld these false and defamatory records.

16. There are questions of good faith. There is no reason to presume good faith when there is evidence in the record reflecting the opposite. Moreover, this House committee, like several earlier committees of both Houses, found that

the CIA withheld information from other agencies when it should not have and in other ways was less than honest.

17. I raised questions of good faith and I provided proof of bad faith that to the best of my recollection is undisputed in the record. In addition to what I have provided, many illustrations are available. A current illustration also reflects what I have come to understand, that I am the object of special opposition by the CIA and other agencies because of the nature of my work and writing. I do not theorize conspiracies. I do not criticize them unjustly and I defend them from unfair criticism by others who have interest in the subject matter of my work, particularly the attacks of the self-promoting Mark Lane.

18. The question of my request for all the CIA's records relating to its use of drugs, hypnotism and other means of mind and behavior control came up at a calendar call. I have such a request before the CIA. The CIA acknowledges this. When it is in a mellow mood, it occasionally offers or provides copies of such records it has already released to others. It also has refused to provide me with such records, those already processed and not requiring any "unreasonable search." As I have informed the Court, on one occasion when I reminded the CIA of its having disclosed records within my request and had already searched them out and copied them, instead of providing them, the CIA informed me that it would put me at the bottom of its long list. (I earlier informed the Court that there can be no more remote bottom that the CIA reserves for my Privacy Act request of 1971, which has not been complied with.)

19. The CIA's sequential number for my relevant request is 76-438, which is to say that this request is about three years old. I have other requests that are even older. The record shows that the CIA has not complied with them. I believe the CIA has a bad faith, not a good faith, record with my information requests.

20. The January 5, 1979, Washington Post reports the CIA's disclosure of records within my request No. 76-438. Under the headline, "Memos Show Humans Used in CIA Drug Test," this account begins:

CIA documents released this week contradict testimony given a Senate intelligence committee by intelligence director Stansfield Turner and another intelligence agency official that no human subjects were involved in the final series of the agency's massive drug testing program. (Attached as Exhibit 1)

21. I understand that these records also disclose CIA interest in this program for use in assassinations. My much earlier knowledge of this led to my request.

22. After disclosure of these records to another requester under FOIA, the CIA neither provided the records to me, informed me of their availability, nor asked me if I desire copies. After searching, after copying and two weeks after disclosure, I have not had any word from the CIA. One of its counsel involved in my information requests, the one who earlier addressed this Court with regard to that request, was in the courtroom on Wednesday, January 10, and made no mention of this to me.

23. Also showing that the CIA discriminates against me and then hokes up contrivances with which to bamboozle a court to explain why I have not been given records, a recent illustration of its false representations under oath, is its disclosure the very day its appeals brief was due in No. 78-1831 (C.A. 75-1448 in district court).

24. That case is for three still withheld executive session transcripts of the Warren Commission. In C.A. 2052-73 I obtained one such transcript, that of January 27, 1964. It was alleged to have been properly classified as "TOP SECRET." Ten pages of the transcript of January 21, 1964, and the entire transcript of June 23, 1964, were withheld by the CIA on the identical claim to "national security." The day the brief was due I was given the other two transcripts.

25. Examination of these transcripts shows that they do not meet the CIA's description of them, that they hold no secrets and that they do not and did not qualify for withholding. When in the last moment these two transcripts were given to me, the CIA also provided a false and irrelevant "explanation" for its second such abrupt about-face in my lawsuits for Commission transcripts referring to the CIA. Copies of both transcripts are attached as Exhibits 2 and 3. Even the names not provided to the Warren Commission then were within the public domain. (Certainly the USSR knew who had defected and what its defectors could have said.)

26. One of the CIA employees responsible for these withholdings and others relating to JFK assassination records has since retired. In a slack-jawed moment he told a journalist who knows me that there was no legitimate reason for the withholding of these transcripts, that the CIA just wanted them withheld, and that in time it would permit them to be released.

27. In the other Warren Commission transcript withheld by the CIA, that of January 27, 1964, while there are no security secrets, there are embarrassing statements by former CIA Director Allen Dulles. He told his fellow commissioners

that for the CIA false swearing is right and proper. The subsequent careers of his successors provide no dispute. As stated above, the current CIA Director was led to provide false information to the Senate. Richard Helms was a perjurer who copped a plea to a lesser charge. (The current Director also provided false information to the Senate on the same subject in earlier testimony.)

28. Under these and similar circumstances there is no reason to accept the word of the CIA when it is questioned and every reason to test it by Wigmore's engine when it is contested, as the appeals court told me to do and as I was fore-closed from doing in this instant cause.

29. Because there has been immunity for false representation and for misleading the courts, such liberties are taken by Department counsel. In the October 16, 1978, reply it is suggested on page 6 that all the Items of my information request must be retrievable under the names of Dr. King or James Earl Ray. This is ridiculous. It is an engine for automatic noncompliance. Here also my request Item 6 is misrepresented and my correction of a prior and nonaccidental misrepresentation of it is described as a new request. The information I asked for exists, I have seen some of it and in the case of the assassination of President Kennedy the CIA itself has disclosed such information, extending even to its writing of book reviews it then caused to appear as independent critical work. (One review of my book on the King assassination was written by a college professor with a long history of support of the government's position in assassination solutions. When he wrote this review he was simultaneously engaged in anti-Angela Davis writing for the USIA.) My protest to the CIA over its initial noncompliance is deliberately tortured into what it clearly neither says nor means (also page 6). When I protested that "What you have sent me is ludicrous," this was true as I intended it, as a reflection of what little information the CIA provided compared with what it had. This has since been proven to be correct, even if limited to additional compliance I did not receive until after I filed the complaint. When I complained that "Virtually all of the records released consisted of newspaper clippings," this was in no sense what Department counsel suggests, that I did not mean the other Items of my request. Rather is it an unquestioned statement of fact, that despite the several hundred pages since provided and then known to exist, what the CIA sent me was "virtually all of ... clippings." Consistent with this is the representation on page 9 that my request does not request what it requests

and that therefore it was not complied with because the CIA "could not have foreseen" that I asked for what I asked for. (That my request was understood and did not lack clarity is clear in footnote 7 on page 6, which quotes the request.)

30. Obvious questions of bad faith thrust themselves from some of the pages initially withheld and not disclosed until after I filed the complaint. The CIA was engaged in illicit domestic activity and the revered Dr. King was its target. Because of the reverence in which Dr. King is held and because of the unconfessed and illicit nature of the CIA's targeting of him, there was obvious ulterior purpose in this withholding that was persisted in until it became too hazardous. This is a glaring demonstration of bad faith.

31. Clearly unbelievable and a recent concoction to frustrate the Act, requesters and the courts is the representation that any additional compliance would require the page-by-page searching of all the many records the CIA has. The Court credited this without providing me with an opportunity of resolving the dispute about a very material fact, as I would have done by depositions. It is a childishly false misrepresentation of an intelligence agency that cannot function, as the rest of the record is of an intelligence agency that collects information for the purpose of not providing it to those within the agency who might need it so they may do nothing with it.

32. When it had no need to mislead and misinform a court in an FOIA case and had great need to misinform and mislead the nation and the Congress, the CIA made exactly the opposite representation, then a proud boast - that it has by far the best filing and retrieval system in existence - much better than the FBI's. This was its "explanation" when it was caught in another proscribed activity, training domestic police. The CIA then claimed that because it had this world's best filing and retrieval system it was necessary for it to train local police so they, too, could file and retrieve information as rapidly and completely as the CIA. Now, years later, the same CIA laments that it cannot find its records on its domestic target who was also a great leader, a force for peace where the CIA waged war, and a Nobel laureate, only because the CIA allegedly has so inefficient, decrepit and outdated a filing and retrieval system.

33. Dirty tricks aside, an intelligence agency, which reputedly the CIA is, functions on information. It obtains information, it stores information and it retrieves information to make use of it. It is required to provide full and

accurate information to all our highest officials, including the President and national defense officials. All functions require expeditious and complete retrieval of information without everyone in the agency getting down on all fours and pawing around in the mess of all its paper, the present ludicrous representation. The CIA is not composed of a disconnected series of components that are enemies of each other. Each draws upon others and must or the agency cannot function. If during World War II a mere phone call could provide all relevant information on important personages, as in my personal experience it did, subsequent knowledge, experience, sophistication of methods and the largesse of the Congress cannot have made a shambles of the CIA's information retrieval capabilities.

34. Moreover, as recent CIA testimony to the House Select Committee on Assassinations confirms, it not having been in any way secret before then, regardless of CIA pretenses, the CIA also compiles what it calls "personality profiles" or "201 files." These include many persons far less important and controversial than the assassinated Dr. King. (No personality profile has been provided in this instant cause nor has there been any affidavit stating that none exists.)

35. No personality profiles have been provided in response to Items of the request to which they are relevant. No affidavit attests that such personality profiles do not exist or cannot be found. What is known of the CIA's practice leads to the belief that they were compiled and do exist.

36. The CIA has a daily function of providing intelligence summaries to the White House. Dr. King was a controversial figure. From the CIA's own records, he allegedly was dominated and financed by Chinese Communists. At various points in his career and at the time of and after his assassination, it was essential for the White House to have information the CIA now pretends it does not have and could not find if it did have.

37. The CIA operated propaganda organs during Dr. King's time. It is impossible that they never mentioned Dr. King - as it is impossible that the CIA does not know of its own components from which no records have been provided.

38. From my knowledge of its earliest days, from my subsequent experiences and from long and close study, I state that when the CIA does not find information it has it is because the CIA does not want to find that information.

39. Untruthfulness is an intelligence agency tradition. As the CIA's former head told his fellow Warren commissioners on January 27, 1964, he might not have

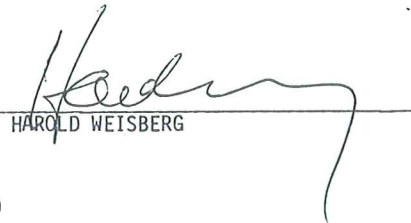
told even the Secretary of Defense the truth. As the commissioners then agreed, the formulation being that of the one who was also in charge of the Senate's CIA oversight, all such agencies use "terribly bad characters." (The late Senator Richard Russell also told me he believed the CIA and FBI withheld from the Commission and also misinformed it.) It is not only in this case that the CIA has been caught in dishonesties for which it is virtually immune. This now is public knowledge, extensively in the records of many official bodies.

40. As recently as Wednesday, January 10, 1979, this Court was informed in the Allen case that the CIA had sworn a record withheld from him was a "national defense" secret despite the CIA's having disclosed the identical information years earlier. This also is my experience with the CIA. It discloses to those whose writing it likes what it withholds from me and continues to withhold after the sycophantic writing is published. This is uncontested in No. 78-1031, now before the appeals court.

41. That more such proof, which I believe is relevant in this case, is not before the Court is not because I cannot provide it. Rather is it because the Court foreclosed me. Long experience with CIA affidavits that are disputed indicates that often they are untruthful, misleading, evasive and intended to intimidate the courts with false claims to "national defense" or to special secret sources to protect or as is claimed in this case, that identifying a newspaper or a hotel by name could be catastrophic to the national defense. There is no absurdity to which the CIA will not stoop if it fears exposure of what can be embarrassing to it or no device too demeaning if it can be used to frustrate compliance when the CIA has motive not to comply.

42. There also is no extravagance it shuns when it fears exposure. On January 10 it had two highly paid officials in the courtroom. Their transportation alone cost much more than buying a transcript, which would be a permanent record. And that case was argued pro se by the student Mark Allen.

43. Within my extensive experience there is no basis for assuming CIA good faith. I believe this and due diligence are required of it. The Opinion does not find either.


HAROLD WEISBERG

Before me this 12 day of January 1979 Deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires July 1, 1982


NOTARY PUBLIC

Memos Show Humans Used in CIA Drug Test

1/5/78 By Bill Richards
Washington Post Staff Writer

CIA documents released this week contradict testimony given a Senate committee by intelligence director Stansfield Turner and another intelligence agency official that no human subjects were involved in the final series of the agency's massive drug testing program.

Turner and Edward Gordon, who was described by the Central Intelligence Agency director as an "expert" on Project OFTEN, the last known CIA drug testing program, testified in September 1977 at the Senate subcommittee on health and scientific research that no humans were drugged as part of the project.

OFTEN was the last in a series of drug testing and mind control experiments on which the CIA spent millions of dollars. The experiments, kept secret for a quarter-century after they began in 1949, ultimately involved a range of sites stretching from San Francisco warehouses to prestigious U.S. universities.

According to the latest documents, released under a Freedom of Information Act request filed before Turner's Senate testimony on Project OFTEN, the final program ran from 1967 into 1973. It was finally disbanded after newspaper reports of covert drug and chemical testing on humans by the CIA and the military.

The OFTEN project was originally designed to include drug testing on human subjects. But Turner and Gordon told Sen. Edward M. Kennedy (D-Mass.), chairman of the Senate subcommittee, that there was no evidence in the agency's files to indicate any humans were actually used in experiments before the project was terminated.

The documents state, however, that the CIA allocated \$37,000 in 1971 to test a glycolate class of chemical on humans at the Army's Edgewood Arsenal Research Laboratory.

One report, compiled in 1975 under the heading, "Influencing Human Behavior," notes that 20 persons were tested with the drug—five prisoners from Holmesburg State Prison in Holmesburg, Pa., and 15 Army volunteers.

The report does not say what the test results were except that side effects were evident up to six weeks later. The report notes that the CIA spent money for medical follow-up testing of the research subjects.

A CIA spokesman noted yesterday that while several memos and reports mention the testing, one 1975 memo states that an unnamed doctor at Edgewood told a CIA interviewer that year that no human subjects were used in the tests.

The spokesman noted that the program was set up to include human drug testing. "Maybe it did happen," he said, "but it's all academic now."

EXHIBIT 1