

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

PLAINTIFF

v.

Civil Action Number

CALARENCE M. KELLEY et al.,

78-0249

Defendants

AFFIDAVIT

I, Harold Weisberg, being duly sworn, depose and say:

1. I am the plaintiff in this case. I reside at Route 12, Frederick, Maryland.

I have devoted the past 15 years to an intensive study of the assassination of President Kennedy and the official investigations of that crime. I have published six books on these subjects. I am familiar with many thousands of pages of records relating to the crime and its investigations. These records come from the files of the Warren Commission, the FBI, the CIA, the Secret Service and from other agencies involved in the investigations of the assassination.

2. Drawing upon prior experiences as an investigative reporter, a Senate investigator and an intelligence analyst I have also conducted my own personal investigations in a number of places from coast-to-coast, including Dallas, Texas, where the crime was committed on November 22, 1963.

3. My expertise and the detailed factual knowledge ~~which~~ I have acquired led the Department of Justice to inform the court in my C.A. 75-226 that I know more about this assassination and its investigation than any FBI employee.

4. In my C.A. 75-1996 the Department of Justice informed that Court of my having the same expertise and knowledge with regard to the assassination of Dr. Martin Luther King, Jr., and the official investigations of that crime.

5. I have also acquired some knowledge of FBI practices and its manner of handling requests under the Freedom of Information and Privacy Acts (FOIA and PA) as a result of having filed more such requests than any other person of whom I have any knowledge and

from having filed more FOIA suits for the releveant records in both crimes than any other person of whom I have knowledge.

6. The knowledge I have acquired is of such a nature that in C.A. 75-1996 the Department of Justice obtained the assent of that Court to use me as its consultant ostensibly against the FBI in matters relating to compliance in that case.

7. I draw upon these expertises and knowledge ~~in this affix~~ and the experience they represent in this affidavit.

8. I have read Defendant's Motion for Enlargement of Time and Memorandum in Opposition to Plauntiff's Motion for Summary Judgement and the attachments to both, including the affidavit of Horace P. Beckwith/

9. The Memorandum and the affidavit are incomplete and inaccurate. From my knowledge of this case and its antecedents and the records involved and from my prior experience I believe the incompleteness and inaccuracies are not accidental and have as two of their purposes misleading this Court and denying to me public information to which I am entitled under the Act.

10. An example of incompleteness is in the withholding from this Court in these records of the initial denial of my requests that are at issue in this instant cause.

11. Consistent with these omissions and inaccuracies defendants represent falsely that but a single request is at issue in this instant caude. This false pretense is embidied inx the pretense that the requests are limited to what is described as "worksheets" and in the language of the Beckwith affidavit, Paragraph 2, "in response to plaintiff's FOIA request of December 6, 1977..." Similarly, in Paragraph 2 of the Memorandum there is the same incorrect limitation, "Plaintiff brought this action... seeking the disclosure of the worksheets produced during the processing of the Kennedy assassina-tion documents."

12. The worksheets are only part of my requests, as defendants^{, their counsel} and affiant Beckwith well know.

13. My requests are represented in the Complaint, Paragraph 7, where there are four different descriptions of the records sought. ^{Only} One of these is the worksheets.

= 14. My actual requests are incorporated in my letter of December 6, 1977, Exhibit A of the Beckwith affidavit.

15. These are set forth in particular in Paragraph 2 of the first page of my letter making the requests and in the third paragraph of the second page.

16. I set forth that there were several dozen of my FOIA requests ^{for JFK assassination records filed with} ~~of~~ the FBI alone, going back to the first of 1968, that were without compliance and remained without compliance more than a year after I testified to this and provided the Department with a partial list of those requests in 1976.

17. It is the Department of Justice's position that it could and would comply with all my JFK assassination requests by providing copies of the FBIHQ files. This is explicit in C.A. 77-2215 the transcript of which is not yet available.

18. Rather than limiting myself to the worksheets I asked for "any and all such records of whatever source or nature, however, generated and wherever filed or stored or described or classified by the FBI."

19. That my requests were not limited to the worksheets is explicit in the concluding paragraph of my letter making the requests:

"...other records relevant to the processing were generated ...worksheets... other records relevant to processing and review. I herewith ask for a copy of any and all records relating to the processing and release of all these records, whatever the form or origin of such records might be and wherever they may be kept. ...If there are other records that indicate the content of these released records I am especially interested in them...If there is a separate list of records not yet released I ask for a copy of it ~~and~~ also and if an inventory was made a copy of the inventory."

20. Clearly my requests were not limited to the false pretenses now made by the defendant to this court, that I asked for no more than the worksheets.

21. From personal experience I know such records do exist and are generated in the FOIA and PA processing of requests.

22. With regard to an inventory I was told by Department representatives on ~~April~~ April 6, 1978, that in the processing of any other request the first step was to be the making of such an inventory.

23. As my letter of December 6, 1977 states, "non-compliance with my requests was ordered and approved to the highest FBI levels, including the first Director."

24. Other FBI records that I have obtained in other causes leave no doubt that my requests were rewritten to limit compliance and were ~~misrepresented~~ misrepresented by the FBI as a means of non-compliance.

25. I have obtained copies of FBI records that spell out the intent not to comply and the intent to circumvent and limit my actual requests ^{for information that is} ~~that~~ ~~to a degree,~~ ~~was~~ included in those records for which the processing records sought in this instant cause were created and are relevant to compliance.

26. Other FBI records I have obtained outside this instant cause and also relevant to compliance or non-compliance with my FOIA and PA requests include the intent to "stop" me over my writing and to accomplish the same and other ends by conniving with a since-retired FBI Special Agent. Under this connivance the FBI Office of Legal Counsel approved the filing of such a spurious suit against me in the name of this Special Agent but he chickened out. He also stayed chickened out when, once I learned of this intent to "stop" me I provided him and the FBI with a written waiver of the running of the statute of limitations.

27. My requests cover ^{other} such records the existence of which I know from other records I have obtained by other means outside this instant cause.

28. My requests for processing records other than worksheets is not based on hunch or presumption and is not in the nature of a fishing expedition because these records do exist, to my knowledge, from copies I have obtained ~~from~~ by these other means.

29. Despite the allegations and representations in the Memorandum in ⁹ Opposition and in the Beckwith affidavit, I have received no single record other than five volumes of worksheets covering the approximately 98,000 pages of records released in later 1977 and early 1978.

30. I also have received no statement in which it is claimed that the other records sought do not exist.

31. As stated above the "Memorandum ~~of~~ in ¹pposition beging with the false representation that all I seek is" the disclosure of worksheets produced during the processing of the Kennedy assassination documents." (Page ~~2~~¹, Paragraph 2.)

32. In Paragraph 4, page 2, "Defendants contend that portions of the material sought are exempt from mandatory disclosure" under the exemptions set forth in "the Affidavit of Horace P. Beckwith."

33. With regard to some of these withholdings, of which the names of FBI agents is an illustration, these statements by the Department are in contradiction to court decisions I have read and are in contradiction to the written statement by Defendant Clarence M. Kelley with regard to historical cases, including the case of the assassination of President Kennedy. (This letter, from Director Kelley to a friend of mine, is in the record in my C.A. 75-1996.)

34. ¹Neither the Memorandum in Opposition nor the Beckwith affidavit make any reference to the directive with regard to FBI agents names in historical cases, to prior court decisions or to voluntary disclosure.

35. There also is no reference to prior FBI practise in my C.A. 75-1996 with regard to such identical records in which the names of FBI agents processing the ^{were} information ~~was~~ not withheld.

36. To my personal knowledge this is known to at least some of the counsel and ^{Government} to SA Horace P. Beckwith. I met SA Beckwith in his role in the processing of the records provided to me in C.A. 75-1996. SA Beckwith participated in conferences relating to compliance and non-compliance in that case in which I also participated. This

37. ~~The~~ statement in Paragraph 3 on Page 3 of the Memorandum in Opposition is subject to more than one interpretation in this instance cause because my ^{requests are} ~~request is~~ not limited to the worksheets: "...defendants released 2,581 pages of material (sic), withholding only that material which is exempted from mandatory disclosure..." Here there also is reference to the Beckwith affidavit relating to the exemptions claimed.)

38. All that has been released to me is expurgated copies of worksheets. The switch from reference to worksheets to "material" can be misleading.

39. These worksheets describe the individual records by date and source and list exemptions contained. I have seen a large number of worksheets and I have not seen a single page of a single one that contains substantive information of the nature now represented to this Court by the Department.

40. Moreover, were none of ~~the~~^{my} foregoing paragraphs and those to follow true, and they are true, other of the records sought in this instant cause and still withheld are clearly within my long standing requests under the Privacy Act.

41. After long stonewalling there was limited FBI HQ compliance with my Privacy requests. Once I filed statements showing the false nature of those records contrived about me this limited compliance grounds to an end. In a year, despite my many efforts and request, no further records have been provided under my Privacy requests.

42. However, the records reporting the high-level directive that my/requests not ^{FOIA/PA} were be complied with was included among the FBI HQ records that were provided.

43. That these prior requests do include records relating to my FOIA requests is reflected in records provided by the Dallas Field Office. These are among the records including the rephrasing of my actual requests. These records were not provided by FBIHQ, although the Dallas records reflect that FBIHQ does have such records.

44. Beginning at the bottom of Page 3 there is this representation in the Memorandum in Opposition:

(sic)

"Defendants have recently processed and released (April 12, 1978) all the documents identifiable with plaintiff's request. Thus, defendants will move for summary judgement within the next thirty (30) days. The thirty (30) days is necessary in order that defendants might be afforded an opportunity to prepare proper affidavits." (emphasis added.)

45. As set forth in the foregoing paragraphs any representation that there has been full compliance with my requests is a false and fraudulent representation. Any affidavit attesting to this will be falsely sworn and will be knowingly falsely sworn, as is established by the itemization of my requests in my December 6, 1977 letter and in the Complaint in this instant cause, both of which specify records ~~more~~^{not limited to} than the worksheets.

47. Because it is sworn to the Beckwith affidavit does not state that my requests are for the worksheets only, although as an attachment to the Memorandum in Opposition which contains this false representation it can be so construed. SA Beckwith is more careful in his language. In Paragraph 1 his description is "requesting records pertaining to the processing and release of records concerning the assassination of President John F. Kennedy." (However, he slips on the last page, as set forth below.)

48. To SA Beckwith's knowledge the worksheets are not the only "records pertaining to the processing and release of records concerning the assassination."

49. But SA Beckwith does not attest that I have been given a single piece of paper other than a worksheet. And his affidavit refers to worksheets only.

50. In Paragraph 2 SA Beckwith lists the exemptions claimed, (b)(1), ~~(b)(1)(A)~~, (b)(2), (b)(7)(C), (b)(7)(D) and (b)(7)(E).

51. I do not believe these exemptions are properly applied to worksheets, which are limited to a listing of records, the number of pages in each record, and the number of pages released and the exemptions claimed. (In some instances records are withheld without claim to any exemption.)

52. My long prior experience reflects that these identical exemptions are claimed when they are not applicable. It is ~~my~~ common practice, within my personal experience, for exemptions to be claimed for the public domain.

53. Beginning on ⁺page 2 the Beckwith provides "explanations which details" the claims to exemption.

54. Under "classified matters" it "explains" that the claim to (b)(1) is that the information "is currently and properly classified pursuant to Executive Order 11652." My understanding of that order is that it requires the addition of certain stamps and added information that I do not see on the worksheets pages I have examined.

~~SA~~ 55. The Beckwith affidavit, which is limited to the worksheets not the records itemized in the worksheets, claims that ~~the~~ what might apply to the original documents does apply to the worksheets which are records that do not contain any substantive information. This information (in the worksheets only, that is), if released, would identify foreign sources or sensitive procedures, thereby jeopardizing foreign policy

and the national defense."

56. The Beckwith affidavit does not specify which provisions of the exemption ~~is~~ are claimed. It fails to claim that the information withheld in the worksheets is even the information that is the classified information in the records listed in the worksheets. Thus if the date is withheld in a classified record and the date is withheld in the worksheets the date in the worksheets is alleged to be a national-defense secret. With regard to Kennedy assassination records this is preposterous.

57. The plain and simple truth that is evaded in the Beckwith affidavit is that the worksheets do not hold substantive information or secrets of any kind.

58. Here the ~~secret~~ affidavit seeks to mislead the Court with the claim, limited to that which is withheld from the worksheets, not the records listed in the worksheets, "if released, would identify foreign sources or sensitive procedures, thereby jeopardizing foreign policy and the national defense."

59. The real questions have nothing to do with the "identification" of foreign sources. Everyone knows that all police agencies cooperate with which other. In fact, SA Beckwith was associated with compliance in my C.A. 75-1996 in which these "foreign sources" were identified with regularity in both the records provided and the relevant worksheets. this allegedly (b)(1)

60. At no point and in no manner does the Beckwith affidavit represent that ~~the~~ information withheld in the worksheets that were provided is secret information, information not otherwise known.

61. While there is the representation that something else is "properly classified pursuant to" the executive order, SA Beckwith does not claim that the worksheets themselves are so classified and in fact they are not classified. Attached as Exhibit 1 is the cover of the first set of worksheets provided, and the first following page. Neither is classified.

62. While the Beckwith affidavit makes conclusory if not vacuous reference to what ~~would identify~~ "would identify...sensitive procedures," it does not claim that any such "sensitive procedure" is secret or in any way known. Is an example of this

there is the "sensitive procedure" or intercepting, opening and copying mail. This is anything but secret, in general and in the investigation of the assassination of President Kennedy. Mail to and from Oswald ~~is~~ when he was in Russia was admittedly intercepted by both the United States and Russian Governments. That the FBI itself intercepted Oswald's letters to the Russian Embassy in Washington is in the Warren report and is not secret, whatever the state of SA Beckwith's knowledge, expertise or intentions in this instant matter. A recent controversial book goes into detail about the interception of Oswald's mail and prints direct quotations from the intercepted mail. The Senate Intelligence committee under Senator Church held public hearings at which such matters were testified to at great length. The hearings have been printed and a report was issued. Thus any representation of any hazard ~~if there is~~ ~~on the worksheets~~ what ~~is~~ "would identify" the "sensitive procedure" of mail interception would be a fraudulent representation to this Court. The same would be true if such allegedly "sensitive procedures" were wiretapping or bugging or the use of diplomatic intermediaries or other such well-known intelligence methods.

63. I have read and examined FBI worksheets covering more than 50,000 pages or records outside this instant cause. Based on this examination of FBI worksheets in a case in which SA Beckwith was involved as he is involved in this instant cause I assure this Court that I have not seen any classification stamp on those worksheets as I have not seen any on those in this instant cause and that I have never to my knowledge heard of any claim to ~~exceptional~~ classification of the worksheets themselves.

64. In this connection I call to the Court's attention the fact that SA Beckwith does not represent that these worksheets are classified, even that they are classifiable. Instead he states that the records are classified. This bears no relevance to the worksheets, which are not classified. If they are not classified the executive order is inapplicable.

65. In prior cases I have been able to go over records in which the claim to (b)(1) was made - the records themselves, not the worksheets - and fill in the ~~material~~ material that was withheld and was public domain.

66. The foregoing paragraph also relates to prior FBI claims to various parts of exemption (b)(7). Of these the most ridiculous of the many that come to mind is the elimination of the name of an FBI agent 10 times in a single ~~xxxxxxxxxxxxxxx~~ newspaper story. The same claim to "privacy" for this agent, whose career is of public testimony, was made with regard to newspaper stories reporting that he had been cited for contempt - in open court.

67. In the claim that next follows in the Beckwith affidavit, to (b)(2), it is represented that the "sole" use of this exemption is to withhold what is referred to as "informant file numbers." In all prior cases within my experience the withheld identifications are of the FBI's code number identification of its informants. No requester has any knowledge of can have any knowledge of the name of the informant identified only by his code number. There is no hazard to either "the FBI Informant Program" or "the FBI's administration of its informants" from the disclosure of coded identifications. From prior experience with such records and such withholdings there are other reasons for such withholding and these reasons are not related "solely" to internal FBI matters, as required by the exemption. Withholding the code identification of informants makes it impossible to pinpoint those who regularly supplied bad information of those who engaged in illicit practices. Misconduct, provocations and various kinds of improper activities by FBI informants are not "solely" a matter of interest to the FBI. Within my experience this exemption is misused with regularity and is misused to withhold what cannot be withheld or is appropriate under another exemption. Of all the countless thousands of FBI records I have read I have not seen any content that meets the "solely" standard of this exemption. I have never known it to be claimed until after the 1974 amendments to the Act. And the fact is that the FBI has provided countless records in which the code identification of informants is notwithstanding.

68. The privacy claim is made with regard to "third parties" and to those FBI "Special Agents responsible for producing the inventory worksheets..." With regard to the heroic Special Agents Beckwith represents that "to release those names" to no

"could cause public exposure or harassment of Special Agents and their families."

I am 65, am weakened by illness and have a long record of never once having ever called an FBI agent at his home, of never having called any member of the family of any Agent, and of phoning only one Agent at this office, then to arrange a date for picking up records. Moreover, as stated above the withholding the the names of FBI SA's is contrary to the directives of Defendant Kelley. It is contrary to the orders and desires of the Founding FBI Director, the late J. Edgar Hoover. I know of no single instance of the withholding of any such names in any of the more than 300 cubic feet of Warren Commission records in the National Archives or in the 26 printed volumes of its evidence. In my prior experience with FBI worksheets, which covers many thousands of pages, these names were not withheld.

69. I do have other experience with FBI worksheets and the names of the processing agents that I believe explains the spurious claim to exemption in this instant case. I have been able to specify and prove gross violations of the Act repeated by the same agents. I have, in fact, in one case, refused to read another record processed by that agent, demanded his removal from FOIA work and my demand was met. The FBI then acknowledged that because of these abuses I was able to specify it should reprocess something in the order of 10,000 pages that had been processed improperly.

70. Within my extensive personal experience abuse of the privacy exemption by the FBI is commonplace. During the week of April 17, 1978 I obtained an FBI record in which it did not withhold the name of a woman who checked into a cheap hotel with a known FBI records criminal. I have countless pages in which the most intimate details of the personal lives of black women, including their out-of-wedlock pregnancies, were not withheld by the processing crew of which SA Beckwith was part. I have had to removed identifications of those who were alleged to be homosexuals in freshly-available FBI reports. And with regard to me if released fabrications of extremely defamatory nature despite my filing of corrections and it failed to respond to the letter written in advance of the release by my counsel, Mr. Jim Lesar. I have FBI records, again of the Beckwith processing team,

team, in which this Beckwith team did not withheld the description of a black man, repeated by FBI agents, as "monkey faced." Of the same team, no privacy concern for black man against whom other unproven allegations were made, such as "pimp" and "drug Fisher." In fact I know of no FBI interest in the privacy of blacks of either sex except those who were informers. I do know of instances in which the privacy claims were made to withhold the names of known and exposed informers, however, even when the FBI's own record discloses the public knowledge.

71. Whatever his reasons SA Beckwith does not use the language of (b)(7)(D) and (E). Neither is applicable on worksheets in an historical case, especially not when the Attorney General himself stated that he would rather face law suits from disclosure than to withhold unnecessarily. The claim to any need is missing in the Beckwith affidavit. In substitution there is such equivocation as "information furnished only by the confidential source and not pp apparently (emphasis added) to the public."

72 This is the evasion of SA Beckwith who as stated above participated in the processing of which in which such claims were made for the contents of phone books and even for the contents of my own book.

73. There is further misrepresentation, if the offense is not more serious, in alleging that what is withheld from the worksheets, which I repeat are merely a list of records and the exemptions claimed, is what was withheld in the records themselves, those itemized in the worksheets. The Beckwith language is "corresponding to the same information as excised in the original documents."

74. It is impossible for a record of 100 pages or more to be identical with a single-line entry on a worksheet. Besides, improper withholdings are so commonplace the Director of Appeals in the Department has sworn to overruling the FBI is half or more instances of his review of its withholdings. That the information, whether or not "identical", is withheld in the "original documents" does not establish that any withholding is proper or under the Act or necessary or in accord with the policy statements of the Attorney General himself.

75. The Beckwith affidavit does not state what is required by the meaning of "reveal" with regard to 9BO(7)(E), to disclose what is unknown. There are remarkably few "investigative techniques and procedures" that are not known. The Department had released many records reporting them. These include bugging, wiretapping and mail interceptions. All these, in my possession, were also processed by the Beckwith team. I believe unless what is withheld on the worksheets would make known some method or technique that is not known the exemption cannot apply. That these conditions are or even can be met in this instant cause is carefully skirted in the Beckwith affidavit.

76. Where he slips in in his penultimate paragraph, There SA Beckwith swears falsely that "These worksheets represent the only documents available within the FBI which are responsive to Plaintiff's request." ^{This is false, knowingly false.} (Emphasis added.) As stated earlier the worksheets are not the only records requested and SA Beckwith, who has qualified himself as an expert and who attaches my requests to this affidavit, knows the worksheets are not the only records I requested.

77. I also believe that all government counsel who read and/or signed ~~therein~~ the Motion and the Beckwith affidavit were fully aware that the Beckwith affidavit was falsely sworn.

78. Such false swearing is the rule, not the exception, in my FOIA experiences which, as stated above, are extensive. It is also my experience that in no instance has any false swearing ever been denied by those who swear falsely for the FBI and other agencies in my FOIA cases.

79. "It is my experience that such false representations deny me of my rights under the Act, delay my work and thus interfere with my ability to make available to others what records I receive and the added meaning and explanation I can add to them, and in general are part of a systematic and successful to "stop" my writing."