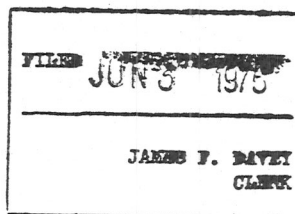


UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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HAROLD WEISBERG, : :
: :
Plaintiff, : :
: :
v. : :
: :
Civil Action No. 75-0226 : :
: :
: :
UNITED STATES DEPARTMENT OF : :
JUSTICE, and : :
: :
U. S. ENERGY RESEARCH AND DEVEL- : :
OPMENT ADMINISTRATION, : :
: :
Defendants : :
: :
.....

Civil Action No. 75-0226



AFFIDAVIT OF HAROLD WEISBERG

I, Harold Weisberg, being first duly sworn, depose as follows:

1. I am an author. I live at Route 8, Frederick, Maryland.
2. For the past eleven years I have devoted myself to an intensive study of political assassinations. I am author of five published books on the investigation into President Kennedy's assassination: Whitewash: The Report on the Warren Report; Whitewash II: The FBI-Secret Service Coverup; Photographic Whitewash: Suppressed Kennedy Assassination Pictures; Whitewash IV: Top Secret JFK Assassination Transcript; and Oswald in New Orleans: Case For Conspiracy with the CIA. I have also written one book on the assassination of Dr. Martin Luther King: Frame-Up: The Martin Luther King-James Earl Ray Case.
3. In the 1930's I was an investigator for and editor of the record of a subcommittee of the Senate Labor Committee. After

Pearl Harbor I served in the OSS, where my primary responsibilities were as an intelligence analyst. I have also worked with the FBI and several divisions of the Department of Justice in connection with my work for the Senate Labor Committee or through my writing.

4. I have filed five Freedom of Information lawsuits and made numerous requests for information on the assassinations of President Kennedy and Dr. Martin Luther King. In each lawsuit which I have filed the government has responded with various degrees of dishonesty and deception, including perjury. I have been told repeatedly by government agencies that the records I sought did not exist and could not be disclosed where, in the end, they did exist, could be disclosed, and were given to me.

5. The most recent example of this is the transcript of the executive session of the Warren Commission held on January 22, 1964, where even the records say the transcript was destroyed. However, after I requested it under the new Freedom of Information Act, that transcript was given to me. [See Attachment A]

6. The first Freedom of Information Act suit I filed, Weisberg v. U.S. Department of Justice and U.S. Department of State, is a good example of the way in which dishonesty permeates the government's responses to my information requests. In that suit I sought the records used in the Bow Street Magistrate's Court in London, England to obtain the extradition of James Earl Ray. I had requested copies of these public court records from the Department of Justice after I learned that the official British copies had been confiscated by the United States from the Chief Magistrate's clerk and the Home Office. Deputy Attorney General Richard Kleindienst replied that the Department of Justice did not

have these records, and even if it did, they would be withheld as "investigatory files compiled for a law enforcement purpose."

7. Even after the State Department wrote that it had in fact retrieved these records, for all the world as though the Department of Justice did not have its own copies, and said specifically that they had been give to Kleindienst and we so wrote him, Kleindienst still maintained the same position.

8. Only have I could be stalled no longer and the case had been filed did Attorney General Mitchell suddenly, months late, pretend to rule on the appeal he had ignored, stating that I would be given the records I sought. I was allowed to inspect a list of the documents I wanted. I got some but not all. There then ensued a series of written assurances that what I had seen did not exist. After I returned to court, the Department of Justice suddenly found other than I had asked for, even other files than I had been shown. When the Department of Justice did not deliver all the documents I had requested by the time Chief Judge Curran had directed, I was awarded summary judgment.

9. One of the documents I requested was a copy of the file cover showing that this file, which contained only public court records, had been improperly classified, with a notation referring to the letter which I had received from the Department of State. After repeated written assurances of its nonexistence, I was finally sent a fabricated copy of the file cover. The file cover had been xeroxed and then cut up to omit what the Department of Justice wanted to suppress.

10. When Chief Judge Curran chided the government attorney, David Anderson, for noncompliance and gave the Department of Justice seven days to complete delivery of the requested materials,

Mr. Anderson filed an affidavit in which he falsely swore that he had given me what he had not. I asked for a photograph attached to affidavits submitted in evidence at the extradition proceedings which stated that this photograph of the scene of the crime represented what witnesses saw at the time the crime was committed. When this photograph was finally delivered to me--after I won summary judgment--it turned out that it was a staged photograph not taken at the time of the crime. Contrary to what these affidavits asserted, this was not a photograph of the evidence as found and the fact that the evidence was handled, rearranged and physically moved was also hidden. My own investigation, which located the actual, unstaged photographs, proved this.

11. In Weisberg v. General Services Administration, Civil Action No. 2569-70, the deception and misrepresentation was even more extensive, perhaps because I was pro se. In that suit I asked for pictures of certain of the Warren Commission evidence. I was told they could not be given to me under the terms of a contract which actually provided that photographs would be taken to avoid handling the objects themselves. When the case went to court, however, the government offered to take these pictures for me, and that was done. Before that, however, the Department of Justice produced an affidavit from the Archives in which he swore that I had not made the request, a prerequisite for my bringing suit. Yet the actual request had been put into the record by both sides and the rejection of it was put there by the government!

12. In Weisberg v. General Services Administration, Civil Action No. 2052-73, I sought disclosure of the transcript of the executive session of the Warren Commission held on January 27,

1964. The national Archives claimed that the January 27 transcript was exempt from disclosure because it was classified Top Secret pursuant to Executive Order 10501 and was part of an investigatory file compiled for law enforcement purposes. The Archives made no attempt to substantiate its claim to the investigatory files exemption and its answers to interrogatories admitted that the transcript had not been seen by any law enforcement official until at least three years after the Warren Commission went out of existence.

13. The Archives did attempt to substantiate its claim that the transcript was classified according to Executive Order by filing two affidavits, one by the Archivist, the other by the Warren Commission's General Counsel, Mr. J. Lee Rankin. Rankin's affidavit claimed that the Warren Commission had ordered him to classify the January 27 transcript pursuant to Executive Order 10501. I filed a counter-affidavit stating that this was false and attached documentary evidence proving it. Accordingly, Judge Gerhart Gesell ruled that the government had failed to show that the transcript had ever been properly classified. After Judge Gesell made his ruling the Archives "declassified" the transcript and, ignoring the transcript's exempt status as an "investigatory file", made it public. Once public an examination of its content showed that there never was any basis for its alleged classification.

14. The government's bad faith in these suits also pervades the history of my nine-year struggle to gain access to the spectrographic analyses. I initially requested the spectrographic analyses in a letter to FBI Director J. Edgar Hoover dated May 23, 1966. When there was no response, I filed suit for these documents on August 3, 1970. My request in that suit--Weisberg v. Department of Justice, Civil Action No. 2301-70--was for the final typed re-

ports of the spectrographic testing. At no time during the next four years of expensive and time-consuming litigation was I told that such final reports did not exist. That is, however, what the FBI now claims.

15. I have read the affidavit of FBI Special Agent John W. Kilty submitted by the Department of Justice in support of its claim that it has fully complied with my request for the reports of certain scientific tests conducted on items of evidence pertaining to the shooting of President Kennedy. I state categorically that this is not a good faith affidavit and that the FBI has not complied with my request.

16. On February 19, 1975, I filed this suit for the spectrographic and neutron activation analyses and any other scientific tests performed on items of evidence relating to the shooting of President Kennedy. Six days later, in a response which ignored the filing of this suit but referred to a letter written by my attorney on January 15, 1975, Attorney General Edward H. Levi stated:

Under these circumstances, Director Kelley felt constrained to defer final disposition of Mr. Weisberg's request, though the Bureau has proceeded with the task of identifying the requested materials. Some, which are clearly responsive, are contained in the National Archives and will be made available. [Emphasis added. For the full text of Mr. Levi's February 25 letter, see Attachment B]

17. In point of fact, this has not happened. The FBI has subsequently taken the position that it will not provide me with copies of any of these documents in its possession if the National Archives also has copies of them. Since I initially requested these documents from the FBI and Attorney General Levi promised to

provide them, I view the FBI's refusal to do so as evidence of a lack of good faith.

18. Because the FBI has refused to provide me with copies of documents which it says the Archives has, I have had to ask the Archives for copies. Although the Archives has stated to my attorney that all such reports in its possession are publicly available and I requested them nearly a month ago, the Archives did not provide them until after the May 21 hearing on this cause. [See Attachments F, G, and H]

19. After implying in his February 25th letter that the FBI does not have the final reports which were the subject of my 1970 suit for the spectrographic analyses, the Attorney General stated:

There is . . . a great bulk of material which does not reasonably come within Mr. Weisberg's specification of "final reports". The Bureau is willing to discuss with Mr. Weisberg the nature of these materials to ascertain whether he is interested in having access to them.

20. By letter dated March 6, 1975, my attorney advised the Attorney General that I was willing to meet with the FBI to discuss the implementation of my requests but would prefer that both sides be allowed to tape record the conference. [See Attachment C] However, the FBI vetoed my suggestion that this conference be tape recorded.

21. Contrary to the assertion in paragraph three of the Kilty affidavit, the purpose of the March 14 conference was not to determine the scope of my request but rather to see if the FBI was going to implement it. At that conference, the FBI claimed there was a "semantical difference" between its interpretation of "final reports" and mine. The FBI claimed it had made no final reports comparing all the chemical components of each and every one of the various items of evidence tested and stating conclusions as to which ones could or could not have been of common origin.

22. Two weeks after I filed my 1970 suit for the spectrographic analyses, FBI Agent Marion Williams executed an affidavit which stated that he had reviewed this file and that the disclosure of "raw data" contained in it would seriously interfere with the functioning of the FBI and in general "do irreparable damage". However, at the March 14 conference the FBI freely offered to give me this "raw data".

23. Contrary to what Agent Kilty asserts, I did not request the items which he specifies in the fourth paragraph of his affidavit. Rather the FBI offered to provide me with copies of unidentified batches of "raw data" which, however, the FBI would not permit me to examine. In order to save time and copying costs, I proposed that I examine all the spectrographic and neutron activation materials and select which documents I wanted copied. This suggestion was rejected out-of-hand by the FBI, which stated it would select the materials I was to be given.

24. I then asked for the FBI's estimate of how many pages of "raw data" they were offering me. To avoid squabbling over whether I had the right to select what I wanted copied, I asked for everything they had except: 1) the spectrographic plates, 2) nitrate tests, and 3) materials related to the slaying of Police Officer J. D. Tippit. The FBI gave me the Tippit materials anyway and charged me for them.

25. Paragraph four of the Kilty affidavit lists specific materials which Agent Kilty says I requested at the March 14 conference. This gives the false impression that I eliminated from my original request the neutron activation analyses and other scientific testing. I did not. I specifically asked the cost of the NAA materials and specifically ordered them. I have never

waived my claim to the neutron activation analysis (NAA) of the clothing of President Kennedy and Governor Connally as is suggested by the wording of paragraph 4-b.

26. Paragraph five of the Kilty affidavit refers to the materials listed by Agent Kilty in paragraph four and then states: "All available data relating to the above consists of 22 pages also furnished Mr. Lesar by SA Bresson on March 31, 1975." Unless there has been destruction of evidence, this is false. For example, one of the documents given me is a partially masked copy of a letter from J. Edgar Hoover to Warren Commission General Counsel J. Lee Rankin. Attached to that letter is a laboratory work sheet which reports that "small foreign metal smears" on a piece of curbing "were run spectrographically (Jarrell-Ash)". I have not been given this spectrographic testing. Nor have I been given the microscopic study referred to at the bottom of page two of this same Hoover letter. Similarly, another document provided me refers to a lab report apparently dated "12/5/63". I have not been given that report either.

27. Nor has the FBI provided me with all the materials relating to the neutron activation analyses which were made. All of the NAA documents which I have been given bear a date of May 15. However, in his January 10, 1964, letter to Mr. Rankin, FBI Director J. Edgar Hoover stated:

The FBI Laboratory is well acquainted with the analytical technique of neutron activation analysis. Through arrangements worked out with Dr. Glenn T. Seaborg, Chairman of the Atomic Energy Commission, work is already in progress applying this technique to certain phases of the current investigation. [Emphasis added. See Attachment D]

From this it is evident that NAA testing was performed long before the May 15 date on the documents which the FBI has given me. This

is further corroborated by the reference to these tests made by Warren Commission General Counsel J. Lee Rankin at the Commission's January 27, 1964, executive session:

Now, the bullet fragments are now, part of them are now, with the Atomic Energy Commission, who are trying to determine by a new method, a process that they have, of whether they can relate them to various guns and the different parts, the fragments, whether they are a part of one of the bullets that was broken and came out in part through the neck, and just what particular assembly of bullet they were part of.

They have had it for the better part of two and a-half weeks and we ought to get an answer. [See Exhibit F to the Complaint]

28. In addition, I also have reason to believe that other NAA testing should have been done after May 15th. Yet I have not been given any NAA testing done after that date.

29. FBI Director Kelley's April 10, 1975, letter to Mr. Lesar, a copy of which is attached to the Kilty affidavit, states that the FBI has responded fully to my request for the spectrographic and NAA testing. Director Kelley's letter also lists the NAA-tested items on which I have been given "irradiation data and calculations". This list does not include NAA tests performed on the clothing of President Kennedy or Governor Connally. Yet Special Agent Kilty's affidavit states in its seventh paragraph that: "Neutron activation analysis and emission spectroscopy were used to determine the elemental composition of the borders and edges of holes in clothing . . ." Because I have not been given any NAA testing of any clothing, Mr. Kilty's affidavit is false and deceptive. It also contradicts Mr. Kilty's and Director Kelley's assertions that the FBI has fully complied with my request for the NAA testing. I believe this court should address itself to the question of perjury.

30. Paragraph eight of the Kilty affidavit states: "The FBI files to the best of my knowledge do not include any information requested by Mr. Weisberg other than the information made available to him." [Emphasis added] Not only is this false swearing (see paragraph 29), but Mr. Kilty's affidavit does not establish that he is competent to make this determination in this and other respects. He does not state that he knows what these tests are or that he has personal knowledge of all the tests which were conducted. He does not even attest that he knows of and has searched all relevant FBI files. The fact is that the documents already given me refer to other documents and files obviously included within my request and to Mr. Kilty's knowledge not yet given to me. This is not the first time that the FBI, the Department of Justice and the United States Attorney have resorted to the shameful device of having the wrong man swear falsely in the hope of avoiding perjury and its subornation and with the clear intent of frustrating the law and the will of Congress.

31. Special Agent Robert Frazier does have personal knowledge of the tests which were performed. He testified before the Warren Commission in regard to the spectrographic analyses. He is still an active agent with the FBI Laboratory and was present at the March 14 conference. He is an official who could execute a proper affidavit. The use of the wrong agent to execute this affidavit is a bad faith ploy to avoid an affidavit by anyone with personal knowledge of the materials relevant to my request.

32. It is instructive here to recall the letter which the AEC's Associate General Counsel, Mr. Bertram Schur, wrote to my counsel last October 16. In that letter Mr. Schur flatly stated: "No other tests such as you described were performed by AEC or at

any AEC facility." Mr. Schur's statement was based not on personal knowledge but in reliance upon information "from the former FBI agent who participated in the work described." After my lawyer provided Mr. Schur with proof that this was not true, he retracted his statement. [See Attachment E]

33. The FBI deceived, stonewalled, and withheld information from the Warren Commission. For example, FBI field reports were re-written at Headquarters so as to state the opposite of what the original field reports said, and the Warren Report relied upon and reprinted the incorrect Headquarters' version.

34. At the Commission's January 22nd executive session, General Counsel J. Lee Rankin noted the FBI's suspicious and atypical behavior:

A: I thought first you should know about it. Secondly, there is this factor too that a [blank space in transcript] consideration, that is somewhat an issue in this case, and I suppose you are all aware of it. That is that the FBI is very explicit that Oswald is the assassin or was the assassin, and they are very explicit that there was no conspiracy, and they are also saying in the same place that they are continuing their investigation. Now in my experience of almost nine years, in the first place it is hard to get them to say when you think you have got a case tight enough to convict somebody, that that is the person who committed the crime. In my experience with the FBI they don't do that. They claim that they don't evaluate, and it is my uniform prior experience that they don't do that. Secondly, they have not run out all kinds of leads in Mexico or in Russia and so forth which they could probably--It is not our business, it is the very--

Dulles: What is that?

A: They haven't run out all the leads on the information and they could probably say--that isn't our business.

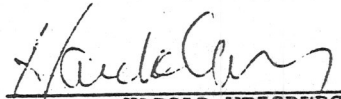
Q: Yes.

A: But they are concluding that there can't be a conspiracy without those being run out. Now that is not [blank space in transcript] from my experience with the FBI.

Q: It is not. You are quite right. I have seen a great many reports. [See Attachment A for full text of the January 22, 1964 transcript]

35. In the context of the foregoing affidavit which addresses the court's statement that it takes the government's word in good faith, I believe it appropriate respectfully to call this court's attention to the agreed-to statement of former CIA Director and Warren Commission member Allen Dulles: "I think this record ought to be destroyed." [See Attachment A] At the January 27, 1964 executive session, Dulles stated that FBI Director J. Edgar Hoover would lie about Lee Harvey Oswald's having had any connection with the FBI. Mr. Dulles, expecting perpetual secrecy, assured his fellow Warren Commission members at that same executive session that government officials do and should swear falsely and that as Director of the CIA he personally might not tell the Secretary of Defense certain matters. I also call attention to Attorney General Levi's recent revelation that the FBI withheld the existence of five "cointelpro" programs from five Attorney Generals.

36. The FBI has not complied with my request for all of the spectrographic and neutron activation analyses or other scientific testing of the specified evidence. The pretense that it has is made in bad faith and raises questions of misrepresentation, perjury and its subornation. For this, those responsible must be called to account.


 HAROLD WEISBERG

MONTGOMERY COUNTY, MARYLAND

Before me this 2nd day of June, 1975, deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires July 1, 1978

Carl J. McKernan
NOTARY PUBLIC IN AND FOR
MONTGOMERY COUNTY, MARYLAND
CARL J. MCKERNAN