

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

FILED  
JUL 10 1975  
JAMES P. DAVEN  
CLERK

.....  
HAROLD WEISBERG,

Plaintiff,

v.

Civil Action No. 75-226

UNITED STATES DEPARTMENT OF  
JUSTICE, and

U.S. ENERGY RESEARCH AND DEVEL-  
OPMENT ADMINISTRATION,

Defendants  
.....

FOURTH AFFIDAVIT OF HAROLD WEISBERG

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

1. I am the plaintiff in the above-entitled action.
2. I have read the supplemental affidavit of FBI Special Agent John W. Kilty dated June 23, 1975.
3. In this action I seek the final reports on the results of scientific tests conducted upon items of evidence pertaining to the shooting of President Kennedy and Governor Connally. As of this date, nearly five months after I filed this suit, I still have not received a single page of the documents requested in my complaint. There has been no compliance with my request at all!
4. No FBI agent or ERDA employee with personal knowledge of the tests actually conducted has stated under oath that the reports which I seek do not exist. If any FBI agent with personal knowledge of <sup>all</sup> the tests actually conducted/does state under oath and their purposes that there were no final reports on the results of these tests, I have reason to believe that will be perjury.

5. I have stated that FBI Agent Robert A. Frazier is one person who could properly execute such an affidavit based on personal knowledge. Contrary to the misrepresentation on page three of defendants' "Opposition," I have not stated that Agent Frazier is the only person who could properly execute such an affidavit. The government's pretense is that because Frazier conveniently "retired" from the FBI not long after my March 14 meeting with him, he cannot give an affidavit. As counsel for the government well knows, this is false. In Weisberg v. General Services Administration, Civil Action No. 2052-73, the government was represented by Assistant United States Attorney Michael Ryan, who also represents the defendants in this action. In that suit the government claimed that the transcript of the Warren Commission's January 27, 1964 executive session was properly classified Top Secret pursuant to Executive Order 10501. When I challenged that claim, the government procured an affidavit from Mr. J. Lee Rankin of New York City, who ten years before had been General Counsel for the Warren Commission. Mr. Rankin's affidavit falsely claimed that he had ordered the January 27 transcript classified Top Secret pursuant to Executive Order 10501 as directed by the Warren Commission. In a subsequent affidavit which relied heavily upon Warren Commission documents retrieved from my files, I proved that Mr. Rankin's affidavit was perjurious. It is that experience, not the fact that Frazier is an ex-government employee, as was Rankin, which makes the government afraid to have him swear to what tests were conducted and what reports were made.

6. Agent Kilty's May 13, 1975 affidavit flatly states that "Neutron activation analysis and emission spectroscopy were used to determine the elemental composition of the borders and edges of

of holes in clothing and metallic smears present on a windshield and a curbstone." Because I asserted in my June 2, 1975 affidavit that I had not been given the NAA tests admitted to by this statement by Agent Kilty, Agent Kilty now says in his June 23, 1975 affidavit: "further examination reveals emission spectroscopy only was used to determine the elemental composition of the borders and edges of holes in clothing and metallic smears present on a windshield and a curbstone." So Mr. Kilty now swears that what he earlier said was done, was not done at all. Mr. Kilty's own prior affidavit makes him out a liar. This graphically demonstrates why the government's affidavits cannot be taken "in good faith," as the government insists.

7. Agent Kilty's June 23rd affidavit states, in its sixth paragraph:

Concerning plaintiff's allegation that, although the date of all the neutron activation analysis (NAA) documents furnished him is May 15, 1964, there is an indication that this technique was already being utilized as early as January 10, 1964: the earlier NAA, the quote from Mr. Rankin in Paragraph 27 of plaintiff's affidavit to the contrary notwithstanding, was conducted upon paraffin casts taken of Lee Harvey Oswald's hands and cheek. Plaintiff requested NAA material concerning metal fragments only. No neutron activation analysis of the metal fragments was made prior to May 15, 1964.

The statement that I requested NAA material concerning "metal fragments only" is false and Agent Kilty knows that it is false. With respect to Agent Kilty's attack on "the quote from Mr. Rankin," I note that during the January 27, 1964 executive session of the Warren Commission Mr. Rankin stated that the AEC was conducting tests on some of the bullet fragments. I find it difficult to believe that Mr. Rankin would lie or misinform the members of the Warren Commission about this. I note that Agent Kilty does not state any basis for his assault on Mr. Rankin's credibility.

8. Paragraph 7 of Agent Kilty's June 23rd affidavit reads:

Concerning plaintiff's allegation that there may have been NAA testing subsequent to May 15, 1964: to prevent any further misunderstanding concerning NAA technique, it should be noted that the date written on the NAA documents furnished plaintiff refers to the date irradiation of the metal fragments was conducted. The compilation of other data appearing on these documents would have of necessity occurred after the date of irradiation.

This statement does not deny that NAA tests were performed after May 15, 1964. Nor has there been any "misunderstanding concerning NAA technique." There were tests supposed to have been made after May 15, 1964. The government has provided neither the results of these tests nor the government's substitute, the raw materials. Nor has the government provided a plain statement that no tests were made after May 15, 1964. Furthermore, paragraph 7 of Mr. Kilty's affidavit addresses only NAA testing done on "metal fragments." Aside from the fact that I have not been given tests for all the bullet fragments, this formulation eliminates testing done on the windshield, the curbstone, and the clothing of President Kennedy and Governor Connally, all of which are covered by the complaint.

9. Paragraph 3 of Agent Kilty's June 23rd affidavit states:

Concerning plaintiff's allegation that he has not been given the "spectrographic testing" of "small foreign metal smears on a piece of curbing": the Laboratory work sheet which was previously furnished plaintiff and from which he quotes is the notes and results of this test. A thorough search has uncovered no other material concerning the spectrographic testing of the metal smear on the curbing.

The statements in this paragraph are palpable falsehoods. The very beginning of spectroscopic examination is a listing of

the elements and measurements of them. The laboratory worksheet given me--which isn't even complete, the content having been partially masked--gives neither. There is not a single reference to the figures that are indispensable in spectroscopy. Bullets are not composed of only lead and antimony, even if they lack a jacket. To say that this "smear" is tested by the simple comment that it is "lead with a trace of antimony" is not even a proper conclusion in comment on a spectroscopic examination. Since Mr. Kilty's June 23rd affidavit declares the nonexistence of the NAA testings which his May 13th affidavit asserts were made, it is not surprising that he now states that "A thorough search has uncovered no other material concerning the spectrographic testing of the metal smear on the curbing." Mr. Kilty's affidavit does not state that he has personal knowledge of what tests were made or even where to look for them. There are, however, several FBI agents who could give affidavits stating their personal knowledge of what tests were conducted. These include agents Robert A. Frazier, John F. Gallagher, and Marion Williams. [See attached copy of affidavit by FBI Agent Marion Williams] In addition, members of the Warren Commission staff such as Arlen Specter and J. Lee Rankin and the Department of Justice liaison with the Warren Commission, Howard P. Willens, could also give affidavits based on personal knowledge. They have not done so because they cannot without either committing perjury or destroying the Warren Commission's theory of President Kennedy's assassination.

10. Paragraph 4 of Agent Kilty's June 23rd affidavit states:

Concerning plaintiff's allegation that he has not been given the "microscopic study" referred to at the bottom of page two of an August 12, 1964, letter from J. Edgar Hoover to J. Lee Rankin, which letter has also been furnished plaintiff: a thorough search has

uncovered no additional documents concerning a study of this type.

Since the existence of this study is undisputed, it is clear that the search was not thorough or was done by someone who did not know where to look. Or the study has been "misfiled" or destroyed. These alternatives illustrate the need for affidavits and answers to interrogatories based on first person knowledge of the tests made and how the reports or studies on them were filed. Affiant Kilty does not state that he has such personal knowledge. It was the practice of the FBI to make microscopic photographs of this kind of evidence and it provided the Warren Commission with a number of these photographs. There can not have been the thorough search alleged by Agent Kilty without consultation with the pictures, yet no reference to any pictures is made.

11. Paragraph 5 of Agent Kilty's June 23rd affidavit states:

Concerning plaintiff's allegation that he has not been furnished "a Laboratory report apparently dated December 5, 1963": inasmuch as plaintiff has indicated he did not wish to receive our reports which are already available to the public, but rather the data compiled as input to these reports, this report was not furnished to him. This material is available to the public as Commission Document No. 205, pages 153-154.

Agent Kilty's statement that "plaintiff has indicated he did not wish to receive our reports which are already available to the public" is false. Agent Kilty knows this is false because he was present at the March 14 conference when I expressly asked for the FBI's copies of these reports. At that meeting the FBI refused to provide me with copies of these reports, referring me instead to the National Archives. The FBI did not specify the reports or documents which it would not give me but which I was to obtain

from the National Archives. More than two months ago my attorney requested that the Archives provide me with copies of all such reports. [See Attachment F to the Motion to Strike Affidavit of Agent Kilty] As of this date I have not yet received Commission Document No. 205, pages 153-154, which Agent Kilty asserts is the laboratory report dated December 5, 1963.

12. In Civil Action No. 2301-70, I sued for the results of the spectrographic analyses. It is obvious that if the results for which I sued in that action did not exist, the government could have mooted the case by providing an affidavit to that effect. I believe this was not because it was not true and could not be sworn to as true without fear of being caught committing perjury.

13. After this suit was filed on February 19, 1975, the FBI invited me and my attorney in for a conference on the unsubtle pretence that it is incapable of comprehending plain English. Because what I seek in this action is clearly specified in it and in the prior suit, Civil Action No. 2301-70, I could not conceive of any need for this conference consistent with honesty or compliance with the law. I therefore asked my attorney to request that both sides be permitted to tape-record this proposed March 14, 1975 conference. The FBI rejected this request. Had the FBI not rejected that request, an undeniable record would exist of what transpired at the March 14 conference, a record which would show the FBI's representations about what I seek in this action to be deliberate falsehoods.

14. The FBI "reports which are already available to the public" referred to in paragraph 5 of Agent Kilty's June 23rd affidavit are not the reports for which I sued. The reports alluded to by Agent Kilty are paraphrases that really say nothing

but which were "reported" to the Warren Commission. In no sense are these so-called "reports" the documents sought in my complaint and in no sense does any one of them include the actual results of actual spectroscopic or neutron activation examination.

15. Spectrographic and neutron activation analysis require the precise identification, listing, and recording of measurement of all the components of each and every one of the elements identified and required to be measured in such tests. In order to perform either of these tests and learn and compile results, the purposes of these tests, it is necessary to identify, tabulate, and measure each component of the specimens which serve as the bases for comparisons as well as each component of the specimens compared with them. In this case the comparisons are required to be made with the fired and unfired bullets, Commission Exhibits 399 and 141, respectively. None of the papers so far given me includes any such tabulations or comparisons.

16. I have, however, received a large volume of materials not specified by my request. On June 30, 1975, Assistant United States Attorney Michael Ryan personally delivered to my attorney an envelope containing 244 uncollated sheets of paper and 15 photographs. Not a single one of these 244 pages has a source indicated on it or a file. Some are blank, some illegible, some partly illegible, and some are taped together. Nearly all of these papers apparently relate to the testing of Oswald's paraffin casts, which I had expressly indicated I did not want.

17. As directed by the Court, immediately after the hearing on May 21, 1975, I specified to Mr. Ryan that which the papers given to me by the FBI showed was still being withheld from me. At that time I also told Mr. Ryan that any FBI Agent who stated in



under oath that the FBI does not have and never had what is called for in my complaint, "results" as distinguished from the raw material of the spectrographic and neutron activation analyses, would be swearing falsely.

*Harold Weisberg*  
HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 10th day of July, 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

*James M. [Signature]*  
NOTARY PUBLIC IN AND FOR  
FREDERICK COUNTY, MARYLAND

I, Marion E. Williams, a Special Agent of the Federal Bureau of Investigation, being duly sworn depose as follows:

1. I am an official of the FBI Laboratory and as such I have official access to FBI records.
2. I have reviewed the FBI Laboratory examinations referred to in the suit entitled "Harold Weisberg v. Department of Justice USDC D. C., Civil Action No. 2301-70," and more specifically, the spectrographic examinations of bullet fragments recovered during the investigation of the assassination of President John F. Kennedy and referred to in paragraphs 6 and 17 of the complaint in said case.
3. These spectrographic examinations were conducted for law enforcement purposes as a part of the FBI investigation into the assassination. The details of these examinations constitute a part of the investigative file, which was compiled for law enforcement purposes and is maintained by the Federal Bureau of Investigation concerning the investigation of the assassination of President John F. Kennedy.
4. The investigative file referred to in paragraph "3" above was compiled solely for the official use of U.S. Government personnel. This file is not disclosed by the Federal Bureau of Investigation to persons other than U.S. Government employees on a "need-to-know" basis.
5. The release of raw data from such investigative files to any and all persons who request them would seriously interfere with the efficient operation of the FBI and with the proper discharge of its important law enforcement responsibilities, since it would open the door to unwarranted invasions of privacy and other possible abuses by persons seeking information from such files. It could lead, for example, to exposure of confidential informants; the disclosure out of context of the names of innocent parties, such as witnesses;

the disclosure of the names of suspected persons on whom criminal justice action is not yet complete; possible blackmail; and, in general, do irreparable damage. Acquiescence to the Plaintiff's request in instant litigation would create a highly dangerous precedent in this regard.

SIGNED Marion E. Williams

Washington  
District of Columbia

Before me this 20<sup>th</sup> day of August, 19 70,

Deponent Marion E. Williams has appeared and signed this affidavit first having sworn that the statements made therein are true.

My commission expires August 14, 1973.

Louise L. Kasten  
Notary Public in and for the District of Columbia