

3/24/83

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

Civil Action Nos.
78-322 and 78-420
(Consolidated)

AFFIDAVIT OF HAROLD WEISBERG

My name is Harold Weisberg. I reside at 7627 Old Receiver Road, Frederick, Maryland. I am the plaintiff in these consolidated cases. My experience and expertise are stated in my earlier affidavits in this litigation.

1. Throughout this litigation the defendant has stonewalled for so many years I have detailed the untruthfulness of defendant's statements under oath by the FBI's FOIA supervisor, SA John N. Phillips, and on March 8, 1983, I asked that they be expunged. Throughout this litigation I also have detailed the means by which defendant avoided the required initial searches and in this, departed from FBI FOIA procedures and practises, and I have specified searches not made and identified pertinent records not processed.

2. I have read defendant's Motion for an Order Compelling Discovery and its attached Memorandum of Points and Authorities. In this affidavit I call to the Court's attention the fact that defendant's permeating untruthfulness extends to this newest pleading.

3. From the outset of this long litigation and in the present pleading the defendant pretends that the only evidence in this case is Phillips' untruthfulness. I have filed many detailed and documented affidavits that have not been rebutted.

*I have not in any other affidavits
that were filed*

Consistently, defendant's counsel now not only ignore them - they state the exact opposite of this undisputed fact in the case record.

4. The Memorandum states that the sole purpose of the FBI's discovery motion is "merely to ascertain the bases for plaintiff's claims that the FBI's search was inadequate." This is not true. This untruthfulness is compounded by the additional untruth, that my "objections to defendant's discovery are but another attempt to keep his (my) complaints obscure and unassailable." This, the defendant alleges falsely, is my "obfuscating tactic."

5. I address defendant's false representations about searches below. Here, leaving aside all considerations of ethics, morality and decency - considerations that from long experience with this defendant and its counsel in FOIA litigation I have no reason to believe they find other than strange and foreign - I deny that I suffered acute thrombophlebitis in both legs and thighs in 1975; subclavian arterial obstructions in 1977; underwent arterial surgery and an arterial implant in 1980; developed two seriously handicapping complications, each of which could have been fatal and one of which almost was; and then, recently, developed bronchitis, pneumonia and pleurisy - all for the purpose stated by defendant and defendant's counsel, of using my illnesses in this litigation as an "obfuscating tactic."

6. My allegation of burdensomeness - which the defendant has not addressed, responded to or denied - states that my age, health and handicaps make defendant's discovery burdensome.

7. In this long litigation I have filed many detailed and documented affidavits in which I allege that the defendant did not make the required initial searches and never intended to, that the search slips provided are phonies but nonetheless list pertinent records not yet processed, and that of those belated searches directed by the appeals office, only some were made. I also identified searches not made. I

provided lengthy, documented and fully explanatory appeals to the appeals office. In my affidavits and appeals, which run about two file drawers in size, I provided all the information and documentation of which I am aware that the defendant now falsely pretends I have not provided. It thus is simply and straight-forwardly untruthful for the defendant to state - I repeat, still, without even claiming any need for discovery - that the defendant and defendant's counsel's sole purpose is "merely to ascertain the bases for plaintiff's claim that the FBI's search was inadequate."

8. If the required initial searches had been made, defendant could prove this readily, without any discovery. If the search slips provided were not phonies, the defendant could also readily prove that although perhaps not without some difficulty with regard to those not listing known existing records and one entirely blank, and this also requires no discovery from me. If the defendant claims to have provided the records identified on search slips and not provided, defendant could file copies of the covering letters, without any discovery from me. However, if defendant claims to have made the searches I stated were not made and provides search slips reflecting this, then there is a problem because defendant has already sworn to having provided in full, complete and original search slips and such records are not listed on them. Where I have already identified such records, no discovery from me is required to make them - or for that matter any other searches.

9. The plain and simple truth is that, even if it were not inappropriate and even if the Act did not place the burden of proof on the defendant, no discovery from me is required for making any of the unmade searches and the defendant has not even claimed that it is.

10. I cite as an example of defendant's intended untruthfulness and ulterior purposes the sole reference to what I filed seven days earlier. The defendant seeks to pass all of this off with the claim that all I did then was "restate" what I had

stated earlier. My Motion to Strike of that date is entirely new and not a restatement of any kind because it moves to "Strike All Sworn Statements by" the FBI in this litigation because of their untruthfulness. My affidavit of March 1, 1983 attached to it raises what I believe is a substantial question of FBI perjury pertaining to the searches.

11. If the FBI and its counsel had not ignored all the evidence I provided in this case, the major matter addressed in my March 1 affidavit would not now be before the Court, and with it the question of official perjury.

12. Early in this case, first in appeals and then in affidavits, I stated that I knew that the FBI had pertinent records pertaining to the late David W. Ferrie, who is a specific item of my requests, that it had not provided. I stated that I knew this because the FBI had leaked them to a private organization with which it had cozy, under-the-table deals. I specifically identified as existing and leaked a "neutrality matters" file on Ferrie. Aside from not giving the name of my source, I could not have been more informative, or accurate. The FBI, Phillips and its counsel entirely ignored this and now pretend to need more information from me.

13. Exhibit 1 to my March 1 affidavit is an FBI New Orleans record provided to another litigant but still withheld from me in this case. It is filed in New Orleans as a neutrality matter, exactly as ^Iattested. It also states that New Orleans has other references to Ferrie. They, like the neutrality matters file, are not listed on the search slips provided to me and sworn to as full and complete by the FBI. Moreover, this false attestation to their fullness and completeness was not sworn to until long after I correctly and uncontestedly identified its unsearched Ferrie records to the FBI.

14. Based on long experience, I state that if the FBI had not intended not to comply with my requests, at the very least, after I fully and accurately informed it

with regard to the above-described and still withheld Ferrie records, it would have processed them, provided search slips and avoided the question of perjury, which I have raised and the FBI and its counsel ignore.

15. As I stated earlier, I have much experience with the FBI and its counsel in FOIA litigation. My first information request of it was on May 23, 1966. Thanks to official dishonesty that matter is still before the courts - and that more than eight years after the Congress amended the investigatory files exemption over it. In this long experience I do not recall a single instance in which the FBI ever made the required initial searches. In every case it unilaterally rewrote my requests to avoid the searches they required.

16. It is simply not true that the FBI does not know the bases of my complaints. I have made them repeatedly, under oath and in those many appeals. The FBI never asked me for any clarification or explanation. It merely ignored my affidavits and appeals. This newest in the long series of official untruths that prolong, characterize and taint this case is merely the newest of endless official stonewalling and non-compliance Cointelproing operations against the Act, my counsel and me.

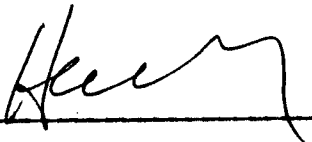
17. If the FBI had not intended not to comply and to stonewall, it would have provided the withheld Ferrie information as soon as I fully and correctly informed the FBI of its existence. (The only thing different about the Ferrie information I provided recently is that it was accompanied by records withheld from me that the FBI knew it had. I had provided the information itself in my earlier and ignored affidavits.) Also bearing on intent not to comply and the ulterior purposes of its discovery ploy are countless other such illustrations included in my many and detailed affidavits and many documented and fully-explained appeals. In just the appeals I spent an ~~enormous~~ ^{extraordinary} amount of time informing the defendant, ^{that} even their volume and extensive documentation (almost all from FBI files) do not fully illustrate, because I also spent a great amount of time with the then head of the appeals office and his

staff, hours on end, day after day, at the additional daily cost of a rental car and someone to drive it the 100 miles to and from Washington. At no time did anyone representing the defendant even suggest that the information I provided was inadequate or not fully comprehensible.

18. Another of the many illustrations in the case record of the complete lack of need for any discovery and of the FBI's consistent practise of disregarding anything and everything showing that it did not search and did not comply is the matter of the tapes it made of the Dallas police radio broadcasts. First of all, as my prior affidavits addressing this make clear, I provided it with all the information I have. This includes the information in its Dallas index, which reflects filing outside the JFK assassination files, although it belongs in them. The FBI needs no discovery from me for information it has and I do not, where it misfiled these important JFK assassination records. An obvious place is under the Dallas police. It needs no discovery from me for it to know that the transcripts of these broadcasts it prepared from the tapes it made, has and withholds, was published by the Warren Commission as its Exhibit 1974. Without these tapes, the destruction of which is strictly prohibited, it cannot support its transcription of them.

19. One of the causes of embarrassment to the FBI in this matter is the fact that, although it knew of that quite extraordinary thing, the obliteration of all police assassination broadcasts for the period of the assassination only on the special channel set aside for such broadcasts, it did nothing about this. It reported nothing about it, and it conducted no investigation of any kind about it. If it were not the FBI's intent not to search and not to comply it would have made a good-faith search after it received the information I provided, albeit this was information it did not require of me because it comes from the FBI's own records disclosed to me in this instant cause.

20.- The foregoing are only a few of the large number of illustrations in the case record of the fact that I did long ago what the FBI now wants me to do under discovery; that my doing it was a complete waste of very much time because the FBI never intended to search and comply and did not after I provided this information; and of the fact that, aside from the untruthfulness of its present representations, it has ulterior purposes in them and in any event requires no discovery from me for it to be able to do what it has steadfastly refused to do from the outset of this litigation, make the required searches and process the records identified in those searches.

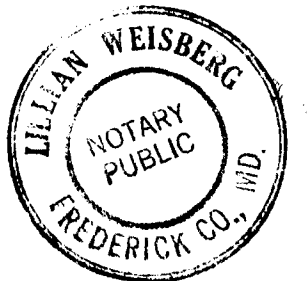



 HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 24th day of March 1983 Deponent Harold Weisberg has appeared and signed this affidavit, first having sworn that the statements made therein are true.

My commission expires July 1, 1986.





 NOTARY PUBLIC IN AND FOR
 FREDERICK COUNTY, MARYLAND