

5/28/83

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

.....	:	
HAROLD WEISBERG,	:	
	:	
Plaintiff,	:	
	:	
V.	:	
FEDERAL BUREAU OF INVESTIGATION,	:	CIVIL ACTION NOS. 78-0322
	:	and 78-0420
Defendant	:	Consolidated
.....	:	

AFFIDAVIT

My name is Harold Weisberg. I reside at 7627 Old Receiver Road, Frederick, Maryland. I am the plaintiff in these consolidated cases. My subject-matter expertise, professional experience and my medical and physical limitations are stated in my earlier affidavits.

1. I have read the FBI Dallas and New Orleans field offices' Answers to Interrogatories 12(a), 32 and 33, filed, respectively, on May 13 and 16, 1983.

2. I could not prepare this affidavit sooner because (a) the Answers were late in reaching me because the FBI abandoned its practice of providing me with duplicate copies of filings, for which I have always offered to pay; and b) because I had the third recent recurrence of bronchitis and pleurisy that, along with my morning therapy reported in prior affidavits, left me too exhausted for much such work. Ultimately, in order to draft this affidavit, I did it while running a fever. After completing the draft I saw my family doctor, whose

prescriptions include bed rest.

3. As I show in detail below, these Answers confirm what I have stated earlier, that the FBI has not and never intended to search in compliance with my actual requests; that the FBI has distorted and misrepresented my requests in order not to comply with them and to prolong this litigation; that its alleged searches are phony; that it has ignored and continues to ignore the extensive information I provided pertaining to searches, searches not made and for records known to exist; that when compelled to give the appearance of searching it "searched" in the wrong place; and that none of this is accidental.

h. The Dallas Answer to Interrogatory 12(a) is evasive and nonresponsive and is keyed to the FBI's persisting refusal to search in compliance with my actual requests. This Interrogatory pertains to searches of any special file rooms. It is now admitted that Dallas has what "might be considered or construed to be a special file room," but it was not searched, allegedly because its contents are indexed. However, there is no attestation in this litigation and there can be no attestation to any index search to comply with my actual requests. The FBI admits that, instead of making the required searches, it sent my request to FBIHQ where SA Thomas Bresson decided what would be provided instead of any search being made or directed. As my undisputed earlier affidavits state "in detail, in its unauthorized substitution for my actual request the FBI knew it would not and could not comply with my request. Thus, even if it were true that a search of the Dallas general indices were required for the recovery of pertinent information, no such search has been made and attested to and there has been no

search of the Dallas special repositories, of which this is not the only one I have identified in this litigation.

5. The second and third paragraphs of these Answers are based on the FBI's misrepresentation, that my request is limited to what the FBI chooses to regard as its "Kennedy assassination files." My actual request is not limited to this permeating and oft-corrected misrepresentation of it. My actual request, rather than the FBI's substitution to which I have never agreed, "includes all records on or pertaining to persons and organizations who figured in the investigation into the assassination..." With particular reference to the files that the FBI regards as of the Kennedy assassination, my request is quite specific. Based on extensive personal experience and knowledge of the FBI's filing practices and evasive FOIA responses, I correctly anticipated its noncompliance ploy. I therefore requested this information regardless of whether the FBI filed it as Kennedy assassination information. I stated that my request includes records "that are not contained within the file(s) on that assassination as well as those that are." (Emphasis added)

6. By "oft-corrected" in the preceding paragraph I mean throughout my many almost entirely undisputed affidavits and beginning before the first record was processed.

7. Among the pertinent records still not searched for and provided in this litigation are those classified as "research matters" and "laboratory research matters" which actually include pertinent FBI records pertaining to its lobbying and propaganda activities and persons such as Jim Garrison, who is included in a separate item of my New

Orleans request. Among the arcane FBI filing practices with which I was familiar is filing my FOIA requests as "subversive" information, in its 100 classification file on me.

(The FBI also has information on me filed under bank robberies, with which I never had any connection, and even as an applicant for government employment, which I was not.) The "main" files on Lee Harvey Oswald and his widow also are "subversive" files, rather than of any assassination classification. Indeed, even the FBI's main assassination file is classified differently by FBIHQ and these field offices. At FBIHQ the classification is "62. Miscellaneous - including Administrative Inquiry (formerly Misconduct in Office)" and at these two field offices, "89. Assaulting or Killing a Federal Officer; Congressional Assassination Statute," although at the time assassinating the President was not included within that or any other federal statute.

8. It is precisely because of my knowledge of how the FBI files and misfiles and precisely because it had always in the past rewritten those of my requests that it did not entirely ignore that I was specific in these requests and stated that they include not only what the FBI regards as "Kennedy assassination information" but also its other information on persons and organizations involved in the investigation (which is not at all the same as the assassination itself) and all such information that it not in the assassination "main" files.

9. Throughout this long-stonewalled litigation I have repeated the language of my actual requests, repeated that the FBI has never searched to comply with my actual requests (and needs no help from me in making such searches), yet the FBI continues to ignore my actual

requests and my frequent corrections of its misrepresentation of them. Despite this, these Answers are keyed to the FBI's misrepresentation of my requests and thus are nonresponsive, deceptive and misleading. These Answers actually admit that the required searches still have not been made, after more than five years. Dallas actually admits that it still has not searched its special file room and other such repositories to comply with my request.

10. In this regard, Dallas does not claim to have made any search until October 15, 1980, which is two years after complete compliance was first claimed. My earlier affidavits stating this are undisputed.

11. When Dallas was finally compelled to give the appearance of making some searches, two years after compliance was claimed, it made virtually no searches. Two of its seven search slips are blank. Yet in its Answer, as in the past, the FBI describes its nonsearching as "exhaustive" searching.

12. Because of relevance to the Dallas Answer to Interrogatory 32, which pertains to ELSUR searches, I repeat some of my undisputed prior attestations pertaining to these so-called "exhaustive" Dallas searches. The "exhaustive" Lee Harvey Oswald search consists of reference to the two main files, on him and his killing; to two pages only in the large main assassination file in which he is the central character, which is incredible; to two records noted as sent to FBIHQ at a later date; and to two pages allegedly destroyed. There is, for example, no citation of the "Fair Play for Cuba" file in which the FBI does have pertinent Oswald records. The reported search for records

on his wife includes the main file on her, a reference to a record allegedly destroyed after my request was received, only two references to her in the main file on her husband, one reference to her in the main assassination file, a reference to the (unidentified) file on the FBI's wiretapping of her (but no reference to its bugging file on her), and three other individual pages references. The so-called "exhaustive" George De Mohrenschildt search includes a main file on him (originally withheld), a single reference to the Marina Oswald wiretap file, another single-page reference to a "subversive" file, and not a single reference to any of the main assassination files throughout all of which he appears extensively. The Hosty search slip is entirely blank. Not a single entry or record is posted on it, it represents that "exhaustive" a search. There is a single reference to the President's Commission, to the main file created only when it went out of existence. Here the FBI was so "exhaustive" it did not include a single one of the Commission references that abound in the main files. And while there are a few more entries on the Jack Ruby search slip, they include, beside the main Ruby file, only two page citations in the enormous main assassination file, not a single reference to any page of the also enormous Lee Harvey Oswald file, and a few miscellaneous citations, mostly to allegedly destroyed records.

13. There is no single entry on any of these search slips either asking for or reporting any ELSUR search. The same is true of the New Orleans search slips. No other search slips have been provided and the FBI has sworn that these are not phony and that it has provided me with all its search slips. Thus the FBI swears that it made ELSUR

searches in both field offices and that it has provided me with all search slips, yet it still has not provided any search slip pertaining to ELSUR and/or ELSUR index searches. All these FBI attestations cannot be true. Either it made no ELSUR searches or it has not provided me with all search slips.

14. In its claimed ELSUR searches the FBI represents that the only persons involved in its investigation of the assassination are the two Oswalds, Jack Ruby and (at the insistence of the appeals office) the FBI's Oswald case agent, James P. Hosty, Jr., and George DeMohrenschildt; and the only organization involved in the assassination investigation was the President's Commission. It knows better.

15. Who did the alleged ELSUR searching is not stated and there is no attestation from anyone who claims to have requested or made the searches. Instead, there are the entirely meaningless attestations by FBIHQ SAs Willis A. Newton and John N. Phillips (who neither have nor claim to have any knowledge and who did not and could not have made the Dallas searches) that "the answers are true and correct," and the additional attestation of the Dallas SA whose name the FBI has persisted in withholding even after I correctly identified him as both case agent and in a public role, Udo H. Specht, who states that the alleged ELSUR searches were under his "direction." (I can claim that I "directed" the Metropolitan Opera because I waved my arms to its music.)

16. Specht's name does not appear on any of the search slips provided me. In all instances the search requests were not by him. They were all by Sheila Waldman. In no case was any search by Specht.

17. The FBI's printed search request form has places for these names to be written in: "Requested by," "Searched by," "Consolidated by," and "Reviewed by." In none of these spaces does Specht's name appear.

18. There are nine printed boxes in which the nature of the search requested is to be indicated plus an additional line on which any other search requested is to be written in. In not one instance is "ELSUR" written in.

19. If the FBI were now to claim that ELSUR searches are included under "All References," which is not consistent with having a blank line for any other kind of search to be requested, then the FBI did not even request "All Reference" searches on a third of these slips.

20. Moreover, it is probable that there are ELSUR entries not provided because the FBI regularly misinterprets surveillance information requests to be limited to the "subject" of such surveillances. It also has a consistent record of refusing to provide me with such information if the person is not what it calls the subject of the surveillance.

21. If the FBI were to make a new claim, that the ELSUR entries appear in the general indices anyway, then it has been on notice for years that it did not include the Marina Oswald bugging file in its "exhaustive" searches - even after I identified it correctly by its file number and description.

22. Moreover, as I have previously attested without denial, there were multiple approved wiretaps during this investigation, as



Arthur Schlesinger reported in his book on Robert Kennedy. There could well have been and in at least one instance there was more electronic surveillance than was approved by Robert Kennedy as Attorney General. Wiretapping is not limited to what is approved and there was not even an FBI request for approval to bug Marina Oswald.

23. I illustrate this further from the case record and my prior experiences with the FBI in other FOIA litigation. The FBI tapped a phone call by Jerry Ray, brother of the alleged assassin of Dr. Martin Luther King, Jr., to me. There just is no other way in which it could have obtained the information it withheld from me from its main King assassination file. However, the FBI inadvertently disclosed this in a large tickler it had sworn repeatedly did not exist. The FBI does not deny that it obtained this information from a wiretap. Yet its requests for Ray family taps were not granted by Attorney General Ramsey Clark and the FBI later, in a huff, withdrew its request. In C.A. 75-1996, there is an item pertaining to surveillances of me. The FBI's response is that I was not the "subject" of its surveillance. To this day it has refused to state that I was not surveilled, to admit that I was or to provide the existing records. (More that is pertinent is addressed below in connection with the New Orleans Answers.)

24. Returning to how the FBI files and why I worded my request as quoted above, this is how I got into not fewer than five of its "bank robbery" files - without their being searched in response to either my King assassination subject requests or personal records requests, the latter made of all 59 FBI field offices. Yet undisputedly

the FBI picked me up through electronic surveillance and then swore that it had not by swearing to the wrong thing, to me as the "subject" of the surveillance. In addition, although this was part of the FBI's King assassination investigation, the records were not included in its King assassination main files, which it represented held all information pertaining to the King assassination. And with regard to all the members of the Ray family, all of whom are included in that surveillance request in the other litigation, the FBI has not, after more than seven years, provided its electronic surveillance records on any one of them, Jerry or any others.

25. It simply is not true that the FBI searched its ELSUR records and indices to comply with my requests and it is true that, prior to this newest untruthful attestation, I provided the FBI, in this litigation, with more information than could have been required for any good-faith search.

26. The New Orleans Answers are sworn to by the same FBIHQ SAs who neither claim nor have personal knowledge and by New Orleans SA Clifford H. Anderson. Anderson appears to have sworn in contradiction to himself, first in swearing that the 37 pages of search slips provided to me and in the case record are all of the pertinent searches and now to having "directed" the ELSUR searches for which no search slips are even now provided. With further regard to Anderson and his attestations, as I have stated before, based on personal knowledge and experience and without denial, he swears to whatever FBIHQ tells him to swear to. As I have stated earlier, it is false to represent that there are no ELSUR records pertaining to any of the persons he lists

in his Answer to Interrogatory 32. Unless the New Orleans ELSUR records and indices are as phony as a three-dollar bill, as I have already attested without dispute or even pro forma denial, there are wiretap and bugging records on and about Jim Garrison, whether or not on me, and he also was, in the FBI's terms, the "subject." This has already been disclosed officially. A large volume of transcripts were released in connection with the Department's effort to convict Garrison of a crime (he was acquitted) and it also was disclosed to me in the other case in which SA Phillips is supervisor, C.A. 75-1996. In that litigation, Anderson also is the New Orleans case agent. This is to say that, entirely aside from my uncontradicted and undisputed affidavits and appeals, both SAs should have personal knowledge of the disclosure to me in that case of transcription of electronic surveillance of Jim Garrison.

27. Moreover, although Interrogatory 33, to which all three agents pretend to respond, pertains exclusively to electronic surveillance of me and in New Orleans (and is not limited to my being its subject), Anderson is careful not to include my name among those he claims to have had searched through the New Orleans ELSUR records and indices. Thus, he admits that he did not have any ELSUR search made to determine whether or not I appear in any ELSUR records. Both Answers state not that any Weisberg ELSUR search was made in Dallas, the Office of Origin, or New Orleans but that "FBI Headquarters personnel did investigate the accuracy of the comments (sic) made by plaintiff." And in order to have some possible protection from sworn untruthfulness, both field offices, in the identical word-for-word language, pretend

not to know what I was talking about, even though I had provided great detail in a number of appeals and affidavits. Both pretend the sole reference is to an alleged Mafia "hit" on Garrison. But even that requires the New Orleans search not yet made and which cannot be made at FBIHQ.

28. In general, what I state above about Dallas ELSUR searches applies to those allegedly made by New Orleans. There is no reference to any ELSUR search, either the request or the making, in the search slips Anderson provided, those allegedly all of the search slips in this case. In fact, none of those so-called search slips is dated within two and a half years of the time Anderson now claims to have "directed" the New Orleans ELSUR searches. It appears to be impossible that a) ELSUR searches were requested and made and b) that I was provided with copies of all New Orleans search slips when those provided make no reference to any ELSUR searches.

29. My prior affidavits are quite explicit in stating that I used Jim Garrison's phones that were tapped, that he phoned me using those phones, and that I also used other phones that were used in this unsuccessful effort to put him in jail. I was no less specific in attesting that the former Garrison close associate used in the effort to put him away, who set up the bugging and tapping and engaged in conversations with Garrison that were tapped and taped, also made some of the phones he used in that operation available to me and that I had used them. Yet even now no search with regard to this information is claimed.

30. It simply is not possible that any real New Orleans

search did not turn up this electronic surveillance information pertaining to Garrison, all of which is in the case record and requires no discovery from me for searches to be made.

31. Anderson represents himself as having knowledge, although he merely attests to the identical meaninglessness to which Specht attested, that he "directed" the alleged ELSUR searches. The fact is that neither he nor Specht prepared their own Answers. Admittedly, they were prepared at FBIHQ, where there is no personal knowledge. And, dutifully, Anderson once again swears to what he is told to swear to, not to what he knows of personal knowledge coming from his searches.

32. I do not suggest and do not mean that there is anything wrong in counsel revising an affidavit, even if in this case it is likely that the FBI's affiants are lawyers and/or are in everyday association with lawyers in their field offices. But in this case the drafts were not prepared by those who are supposedly attesting of personal knowledge. In requesting an extension of time on May 13, 1983, the FBI did not state that it had to send its revisions of Anderson's statement allegedly made of personal knowledge back to him for approval and signature. The FBI stated that it was sending its "proposed answers" to Anderson for his signature. And it is obvious that Anderson and Specht, separated as they were by hundreds of miles, would not just happen to use word-for-word the same language and resort to the same evasions, also word-for-word.

33. The language of my Interrogatory 33 eliminates the standard FBI evasion, whether or not I was the "subject" of electronic surveillance. It asks if any investigation was made of my allegation that I "had been

picked up on a wiretap in New Orleans." To this day there has been no response. All that now is claimed is that the wrong investigation was made in the wrong place, not in New Orleans but allegedly in Washington, allegedly by FBIHQ personnel.

34. However, no FBIHQ search slips of any kind have been provided in this case in which Phillips has sworn that I was given all search slips.

35. Once again it is obvious that no discovery or any other help was required of me for the proper searches to have been made and once again it is obvious that the completely accurate and entirely undenied information I voluntarily provided was more than enough and was and remains entirely ignored.

36. Pertaining to discovery, there is no evidence of which I am aware, no affidavit or declaration that has been provided to me that attests to any need for any discovery in this litigation. There certainly is no denial of my attestation that none is required and that voluntarily I have already provided all the information I can provide. The FBI's alleged desire for discovery, and to the best of my knowledge to the time of the FBI's May 18, 1983, Motion to Dismiss it was only a desire, was stated not under oath and as evidence by those who have personal knowledge and are competent. As I show below, the FBI's unsworn allegations shift and vary to conform not with truth and fact but with the FBI's steps in this litigation.

37. The FBI's Memorandum of Points and Authorities states on page 2 that the only "basis" of my refusal to comply with the discovery request is my "position (twice rejected by this Court) that the

Freedom of Information Act ("FOIA") precludes under any circumstances government agencies from conducting discovery of plaintiffs in FOIA cases." This representation is false. I have stated my position under oath and at some length. It also includes that this discovery is exceptionally burdensome and probably impossible for me, would require an extraordinary amount of time, is not necessary, was not even claimed to be necessary, and I have already provided the requested information and documentation to the degree I can.

38. At the same point the FBI states that its "discovery is merely designed to ascertain the facts and/or documentation which a (sic) plaintiff claims exists and which allegedly demonstrate that the agency's search was not adequate." This also is not truthful. In fact, it is contradictory of the representation made in seeking discovery.

39. It also is undenied that I have already provided the information I can provide that allegedly is the purpose of discovery, as now stated in the Memorandum. This formulation appears to be more likely to justify the signing of the proposed Order. But in fact, because I had undeniedly already provided the requested information, in seeking discovery the FBI represented not that I had not provided this information but that it wanted me to draw all that I had provided (over a long period of time and that it had ignored) together at one point for it. It demanded that I do its work that it had not done.

40. These two FBI versions of a single thing are not the same and they in fact contradict each other.

41. The FBI now represents (on page 4) that my failure to

comply with the discovery order deprives it "of a full and fair opportunity to prepare its case." This is obviously false because undeniably I have already provided that information. (If the FBI did not do its own work when it should have, that is not my fault or responsibility.)

42. On pages 4 and 5 the FBI now claims that my refusal to answer its discovery deprives it of a meaningful opportunity to demonstrate that my assertions about the adequacy of its search are baseless. This is obviously untrue for many reasons, not only that undeniably I have already provided the information demanded under discovery. It is obvious that the FBI requires nothing from me to know that to this day it has not made searches to comply with my actual requests, for example, and that it needs no discovery from me to tell it how it set out to circumvent and avoid my requests and substituted records of its own preference. It requires no documentation of these facts from me because it provided me with the documentation it already had, in the field office records and in the bald admission of the actuality to which Phillips swore in this litigation. This and my previous affidavits state and repeat what is undenied. Without refutation of it there cannot be any "demonstration" that the FBI's searches are "adequate."

43. The plain and simple truth is that searches to comply with my requests were never made and there is no attestation that such searches were made.

44. Pertaining to the FBI's omission of my attestation that my age, impaired health and physical limitations make compliance with



its discovery demands a practical impossibility is its citation (footnote 2, page 4) of authority that the sanction it seeks "is not an appropriate sanction" where "the plaintiff's failure to obey the discovery order 'was due to inability fostered neither by (his) own misconduct nor circumstances within (his) control.'" To make this appear to be in point and pertinent, the FBI states what is not true and it knows is not true: "Such is not the case here for Mr. Weisberg's failure to obey the Court's discovery orders is premised, not on an inability to do so, but on his position that those orders are in conflict with his view of discovery in FOIA cases."

45. I have not stated that my opposition to discovery against me in this litigation is based solely on the language and intent of the Act and I have always provided the reasons stated above for opposing the FBI's undeniably unnecessary discovery against me in this litigation.

46. The FBI has yet to allege that I developed: serious and potentially fatal circulatory ailments; had arterial surgery and two dangerous and severely limiting emergencies and surgeries afterward; acute thrombophlebitis in both legs and thighs; atherosclerosis; cataracts on both eyes, prostate enlargement that may require surgery at any time; and less permanent ailments like pneumonia, pleurisy, bronchitis and ecchymosis "due to" my own "conduct" or in any way through "circumstances within (my) control."

47. My quotations are the FBI's quotations of what it represents is controlling case law. The language of this prior decision closely coincides with what I have sworn to are my present

and permanent limitations and the FBI, neither now nor in the past, has disputed this in any way. I believe that to pretend applicability accounts for the FBI's present gross misrepresentation and its omission of all that I have alleged, particularly my medical and physical limitations, which are the subject to which I devoted most time and space in my affidavits pertaining to discovery, particularly that of February 20, 1983. The FBI's omission, which is basic to its misrepresentation, cannot be accidental. My counsel also has informed me that this matter also was discussed in court.

48. Having ignored the facts and resorted instead to what is false, the FBI states the exact opposite of the truth at the end of this footnote, that my opposition "is premised not on an inability to do so" but is based solely on what the FBI refers to as my "position" that this FBI discovery is "in conflict with his (my) view of discovery in FOIA cases."

49. If what the FBI really wants is to have this case dismissed, it would not have refused my offer to dismiss it several years ago. Instead, it insisted that, come hell or high water, it was going to do a totally unnecessary Vaughn index, which I specifically offered to waive in my offer to dismiss.

50. This raises still again questions of bad faith. I offer to dismiss and waive any Vaughn index and the FBI rejects my offer and insists on making such a costly and time-consuming index, and thus it drags the litigation on entirely without any legitimate need to do so. Now, having wasted so much of what remains of my life and so much time for the Court and my counsel - and thereby inflating its statistics

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on FOIA costs - the FBI demands as a sanction what it rejected as a voluntary offer on my part.

51. There is no doubt about what prompted me to offer to dismiss because I was specific about it. I am aging, am unwell, am not able to spend much time on my work of the past two decades and want to complete more of it, and the FBI has succeeded in its scheme to "stop" me and my writing by stalling all requests and litigation. These, of course, coincide with the reasons I advanced in opposing the FBI's discovery, particularly the references to my impaired health and physical limitations.

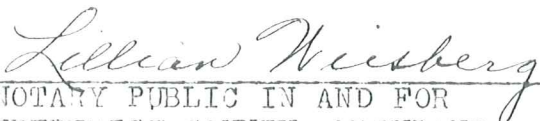
  
HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 28th day of May 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