

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

G. ROBERT BLAKEY, :
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 Plaintiff, :
 :
 V. : Civil Action No. 81-2174
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 DEPARTMENT OF JUSTICE :
 :
 and :
 :
 FEDERAL BUREAU OF INVESTIGATION, :
 :
 Defendants. :
 :

AFFIDAVIT

My name is Harold Weisberg. I reside at 7627 Old Receiver Road, Frederick, Maryland. I am the author of six books on the assassination of President Kennedy and its official investigation. I have made numerous FOIA requests and filed a number of FOIA suits against the Department of Justice and the FBI and am generally regarded as an expert on both the assassination and its investigation. The only scholarly bibliography in the field describes me as the "preeminent" authority. In C.A. 75-226, the FBI informed that court that I know more about this assassination and its investigation than anyone employed by the FBI. The Department persuaded another court to have me act as its consultant in my suit against it (C.A. 75-1996) for records pertaining to the assassination of Dr. Martin Luther King, Jr., and its investigation. I have been used as a consultant in this field by lawyers, by book and magazine publishers, newspaper and magazine editors and writers, and by TV and radio networks and stations in this country and abroad.

1. FBI SA John N. Phillips, whose declaration of September 16, 1982, in this instant cause I have read, also is supervisor in two of my current FOIA cases. From personal experience (he recently provided an eighth declaration in my C.A. 78-0322), I am familiar with his many declarations, his truthfulness and in general the dependability of his word.

2. These major political assassinations were investigated by the FBI. Its record in these investigations, which I am quite familiar with, is embarrassing to

it. I have detailed and documented these statements under oath in several other cases and, if desired, can provide ample illustrations. To date my allegations in this regard remain entirely unchallenged by the Department, by the FBI and, as they address his accuracy and truthfulness, by Phillips.

3. Because the FBI has been embarrassed and because it is vindictive with regard to those who have caused it embarrassment, of whom I am one and the plaintiff in this instant cause is another, it stonewalls requesters. I have information requests of the FBI going back to 1969 that are without compliance, for the most part without even acknowledgment. In January 1978, in C.A. 77-2155, FBI counsel assured that court that it would comply with these some 25 ignored requests expeditiously. Then, in an effort to deny me a fee waiver, it assured that court that copies of the records I sought would be deposited at the Library of Congress and at other points throughout the country. (It now turns out that, in an unsuccessful effort to deny me this fee waiver for which, without question, I qualified, the government spent much more than providing copies would have cost. As it did not inform that court or me, even then it already had extra copies for which it then had and since has had no need, the copies reportedly destroyed.) A few months later, when a public interest group with which I have had no contact, called this extraordinarily large number of ignored requests to the attention of the Senate's FOIA committee, the Department's witnesses informed the Senate that those requests would be taken care of promptly. Despite these promises to a court and the Senate, the fact is that, except in a few instances in which I complained about the identical information having been disclosed to much later requesters without copies being offered to me, these requests remain ignored for as long as 13 years.

4. It is because I did not believe that the FBI had any intention of depositing any copies throughout the country that I asked my counsel, who also is plaintiff's counsel in this case, to make the January 28, 1978, request that is attached to the Phillips declaration. I was correct: the FBI lied to that court. As is now clear, not only were such deposits not made but, if Phillips' attestation is truthful - and much personal experience cautions me not to accept his unsupported word on anything - it also is obvious that when the FBI had extra copies for which it claims it had no other need, it destroyed them rather than making any deposit in a suitable university or other place accessible to scholars.

5. Within my extensive experience, SA Phillips' word cannot be taken. He is regularly evasive and untruthful, he distorts and misrepresents and he not uncommonly swears to what he knows absolutely nothing about and makes no effort to learn anything about. He boilerplates his vague and generalized self-qualification in this declaration, as he has in the past, and as also is within my personal experience, he makes neither claim to personal knowledge nor to any effort to consult anyone with personal knowledge. I have repeatedly made such allegations because it has become necessary for me to document bad faith, and they remain without contradiction, the record is that clear and unequivocal.

6. Based on my personal study of so many FBI records and its regulations and publications and what I have learned in my many FOIA cases, I state that it is possible for the FBI to provide first-person attestation to everything Phillips states without any personal knowledge - if he states the truth. Based on personal experience, I state that the FBI regularly avoids first-person attestations. While it is not uncommonly untruthful in such matters, it prefers a fig-leaf pretense of not being untruthful. By having someone who does not know anything at all attest to what he does not know anything about, it has its fig leaf. This also further reduces the already remote risk of any perjury accusation.

7. Those who have not studied the many thousands of pages of FBI internal records I have studied may find this difficult to believe, but it is not uncommon for the Director to be told - and persuaded - that left is right and right is wrong. I mean this literally and, if desired, will provide examples.

8. However, the FBI does order that false affidavits be executed. In C.A. 75-1996 the proofs of this that I provided are entirely unchallenged. These proofs include the FBI order, the false affidavit that was ordered, and the proof that the affidavit was false, all FBI records.

9. The FBI estimates that I have about a third of a million pages of its records. I have read most of them. I have also read about 5,000 pages of FBI records pertaining to the destruction of records, which really means the nondestruction of records. Everything to which Phillips attests without personal knowledge - or even the claim to have sought knowledge from those who have it - is strongly contradicted by undeviating FBI practice. I am familiar with this practice from having read so many of its records and its copies of applicable law and regulations.

10. At the time of the Warren Commission inquiry, for which the FBI conducted most of the investigation, the FBI made numerous extra copies of a large number of records. Each copy was carefully accounted for to FBIHQ, as was the distribution of each copy. FBIHQ keeps careful tabs on such matters. When the field offices, particularly the Dallas Field Office, which is the Office of Origin, wanted to save space by destroying some of these extra copies, years after the Warren inquiry, it had to ask and it did ask the permission of FBIHQ. This is the practice. Even when there is standing authority for the destruction of material the FBI regards as duplicative, the field offices report the destruction and use a printed FBI form to report this and provide citations to the sources of the same information in other records. Even with ticklers, and at FBIHQ, although the official FBI party line is that they are destroyed willy-nilly, as Phillips has sworn in one of my cases, the fact is that they are preserved where there is possible usefulness for them but they are not permitted to be transferred from the office in which they are without permission being sought and obtained.

11. Based on my extensive study and knowledge and my reading of this Phillips declaration, it appears to me to be unlikely that these duplicate copies were destroyed, certainly not without permission requested and granted in writing. In historical cases, according to law, regulation and practice, the permission of the National Archives is required for any such FBI record destruction, and the Archives has the right to request the copies the FBI wants to destroy.

12. Much of the Warren Commission information at the National Archives consists of FBI records, sometimes in duplicate and sometimes only copies. In addition, a large number of FBI records that the Commission had disappeared and were in need of replacement. Thus, the Archives could have use for any extra FBI copies.

13. Phillips makes no reference to any law or regulation and he says nothing of practice.

14. Based on my extensive study and experience, it is inconceivable to me that any such copies would have been destroyed without at the very least there being a written request of proper authority and a written response granting or denying permission. Phillips makes no reference to this. In fact, he does not even state why he has reason to believe these duplicate copies were destroyed. He

does not report any search for them and there is no reason to believe that he made any search. If he did, again based on personal experience, he certainly should have made a thorough search in his own FOIPA Branch because I have many copies of records not its that are carefully marked for return to that branch. That branch is part of the Records Management Division, which is the custodian of FBI central records. Phillips does not report even a phone call to anyone in it to learn anything about these allegedly destroyed duplicates or to see if they are stored elsewhere.

15. Phillips' account of what happened beginning with initial receipt of plaintiff's request is entirely inconsistent with the testimony of a number of FBI FOIPA supervisors in my C.A. 75-1996. It was their testimony that on receipt the request is given to the Initial Processing Unit (IPU), which almost immediately makes a search to determine the extent of the records sought and the approximate cost involved. This is then reported to the Disclosure Unit. If this practice had been followed - and it is the FBI's own testimony that it is followed without deviation - it then would have been known whether or not there were existing extra copies and if they had not already been destroyed, they certainly would not have been destroyed, as Phillips now states they were. Such a search, the standard practice testified to, was also necessary because the FBI's regulations require that the requester be notified of the cost as promptly as possible. Although this procedure appears to be necessary, Phillips says nothing at all about it and attests instead to what is contrary to it and unreasonable, that plaintiff's "request remained with IPU through the FBI's denial of his fee waiver request and his appeal of that denial to the DOJ." He thus has the FBI and the DOJ acting arbitrarily and capriciously in denying a fee waiver for excess paper that, he attests, was destroyed when, at no cost to the government, these important historical records would have been of permanent value in a major university archive. (This also would have avoided the cost and trouble of litigation, which is certainly greater than the cost of destruction, if not also of xeroxing new copies.)

16. I have prior experience with FBI allegations that records did not exist, followed by allegations that they could not be located after search, and I have then informed the appeals office where to look for those allegedly nonexistent/allegedly unlocatable records and thus I have obtained them. On more than one occasion I have

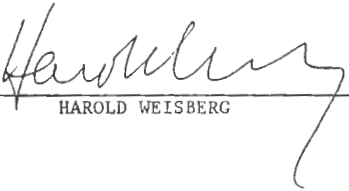
informed the FOIPA Branch where it would find records it claimed did not exist and then also have obtained them, usually after additional stonewalling and, in one instance, only after an unnecessary but costly and time-consuming trip to the appeals court. Based on these and similar experiences, I anticipate that if this Court now orders a search, the FBI will be as evasive in its account of its search and as lackadaisical in that search as it can be. I have no recollection of any attestation to any search in any of my cases by anyone claiming first-person knowledge, with a single exception. In that matter the SA who claimed to have made the search forced two trips to the appeals court for me before he finally provided the information he had claimed did not exist, could not be found, but ^{he} had had all along.

17. It may be difficult to believe for those who know the FBI's prized reputation but have not had my personal experiences with it in FOIA matters, but the FBI does have a long FOIA record of unfaithful and incompetent representations to federal courts. This is not at all uncommon in these matters that can be and have been so embarrassing to it, a matter I will address in any detail this Court may desire. However, an attachment to Phillips' declaration provides a modest illustration of this. In the FBI's February 27, 1978, response to my counsel's above-cited letter, it claimed to have to withhold information pertaining to requests for JFK assassination information under (b)(6). But precisely this kind of information also has been disclosed by the FBI when it suits FBI purposes. This happened in this instant cause when the FBI disclosed who asked for and purchased copies of the records in question and at what cost.

18. If this plaintiff had my prior experience with the FBI's reading room, where the FBI claims he can have access whenever he can travel to Washington from Indiana, he would not be hopeful of accomplishing much after traveling that distance. The FBI wrote me about its reading room and informed me that I must make a prior appointment to use it. In early 1978 I wrote and asked for such an appointment. The FBI never answered me. I then made an information request for the same material I had planned to examine. The FBI ignored my FOIA request. I then appealed. After more than three years, that appeal has not been acted on.

19. The reading room hours are limited to parts of the working day, and it would not be accessible to anyone who works in the daytime, as I presume a

lawyer/professor with business in Washington would need to do.

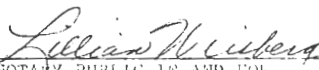

HAROLD WEISBERG

FREDERICK COUNTY, MARYLAND

Before me this 27th day of September 1982 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