

BRIEF FOR PLAINTIFF-APPELLANT
AND JOINT APPENDIX

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

NO. 71-1829

Committee to Investigate Assassinations, Inc.,
Plaintiff-Appellant

V.

U.S. Department of Justice,
Defendant-Appellee

On Appeal From The United States District Court For The
District of Columbia

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BRIEF FOR PLAINTIFF-APPELLANT

STATEMENT OF ISSUES

- 1) Whether federal records, within the meaning of the Freedom of Information Act (5 U.S.C. 552), once legally disclosed to private parties, can be reclassified and withheld from other private parties as privileged; or, phrased slightly differently, whether prior disclosure of the federal records sought to selected private individuals bars Defendant Department of Justice from asserting privilege under 5 U.S.C. 552 (b) (7) as against Plaintiff.
- 2) If not barred from assertion of the privilege under 5 U.S.C. 552 (b) (7), whether the Defendant met the burden of proof required by 5 U.S.C. 552 (a) (3) in establishing affirmatively that the records sought currently fall within one of the nine exemptions in the statute and therefore are still privileged from disclosure.
- 3) Whether the Court below erred in granting summary judgment for Defendant without a hearing and based solely on motions, memoranda, statements of facts and affidavits.
- 4) Whether the Court below erred in dismissing without a hearing Plaintiff's Motion to Determine the Sufficiency of Defendant's Responses to Requests for Admission.
- 5) Whether the Court below erred in denying Plaintiff's Motion for Summary Judgment and in granting Defendant's

Motion for Summary Judgment.

REFERENCE TO RULINGS

The bases for the decision of the Court below in granting the Government's Cross-Motion for Summary Judgment are set forth in the Court's "Memorandum and Order" dated July 29, 1971, reproduced at page JA-36 in the appendix to this brief.

This case has not previously been before this Court.

STATEMENT OF THE CASE

I. Procedural Summary

Plaintiff, Committee to Investigate Assassinations, a non-profit corporation organized under the laws of the District of Columbia for the purposes of investigating the assassinations of several important national leaders, brought this action in the District Court for the District of Columbia by filing a complaint against the Department of Justice on December 15, 1970.

The Complaint [JA-1 a] seeks to enjoin the Department of Justice from withholding The Federal Bureau of Investigation file designated Office File 56-156, Bureau File No. 62-587, which constitutes the in-depth study of the murder of

Senator Robert Kennedy in Los Angeles in June, 1968.

On Feb. 19, 1971, Defendant filed a motion to dismiss [JA-4].

On Feb. 23, 1971, Plaintiff filed an answer to the Defendant's Motion to Dismiss and moved for summary judgment [JA-8].

On April 15th, the Defendant filed a Cross-Motion for Summary Judgment [JA-17]. In this motion, the Defendant withdrew its earlier Motion to Dismiss stating that Plaintiff had exhausted its administrative remedies. Defendant cited an appeal to the Attorney General by an individual not party to this suit and the Attorney General's letter of denial dated April 2, 1971.

Subsequently, Plaintiff served Defendant with a Request for Admissions under Rule 36 of the Federal Rules of Civil Procedure [JA-24]. Defendant responded to the request on May 28, 1971 [JA-30]. Plaintiff then filed a Motion to Determine the Sufficiency of Defendant's Responses to Requests for Admissions [JA-32].

On July 29, 1971, the Honorable Judge Aubrey E. Robinson, Jr., without hearing, denied Plaintiff's Motion to Determine the Sufficiency of Defendant's Responses to Requests for Admissions and the Plaintiff's Motion for Summary Judgment and granted the Defendant's Motion for Summary Judgment.

ment [JA-36]. On September 10, 1971, Plaintiff filed a Notice of Appeal to this Court along with its appeal bond.

II. The Complaint

The Complaint [JA-1] states a cause of action under the Freedom of Information Act, 5 U.S.C. 552 (a) (3) for failure of the Department of Justice to make available to Plaintiff records to which the Plaintiff is entitled under the terms of said Act.

The Complaint alleges that the FBI file on the assassination of Senator Robert Kennedy was made available to Sirhan B. Sirhan, to his counsel, and to Robert B. Kaiser, a writer; that Plaintiff requested equal access to said file but was denied it by the Defendant Department of Justice; and that said file is being illegally withheld from Plaintiff. The Complaint requests the Court to order the Defendant to produce and make available for copying by Plaintiff the records sought.

III. Motions

Defendant Department of Justice set forth as grounds in support of its Motion for Summary Judgment:

There is no issue as to any material fact and the

Defendant is entitled to judgment as a matter of law.

In addition to the above grounds, the Defendant claimed that the records sought were exempt under exception (7) of the Freedom of Information Act [5 U.S.C. 552 (b)(7)] because they were investigative files compiled for law enforcement purposes.

IV. Facts

Early on the morning of April 5, 1968, only minutes after the public learned that Senator Robert Kennedy had won the California Democratic primary election for President, the Senator was assassinated in Los Angeles. Although the crime was that of murder, an offense under state (but not federal) law, and although a suspect, Sirhan B. Sirhan, was apprehended immediately, the Federal Bureau of Investigation entered the arena and conducted an extensive inquiry of its own into the event.

Sirhan B. Sirhan was later tried in a state court and convicted of murder in the first degree. During the course of his trial, the FBI file herein sought was made available to the defense "team" by discovery, the records having been given earlier to local authorities by the FBI.

In a letter dated October 19, 1970, to the Attorney General of the United States, Plaintiff requested access

to the FBI file under 5 U.S.C. 552 (a) and 28 C.F.R. Part 16. Receiving no response, Plaintiff wrote again on December 8, 1970. Soon thereafter, Plaintiff received a letter dated December 7, 1970 in which the Deputy Attorney General, Richard G. Kleindienst, denied the request on the grounds that the files were not subject to disclosure under the provisions of 5 U.S.C. 552 (b) (7).

On April 22, 1971, the Attorney General denied a request similar to Plaintiff's for access to the FBI file made by Michael James Clark of Reading, Pennsylvania, who is not a party to this cause of action. The Attorney General's denial was predicated on the investigatory file exemption of 5 U.S.C. 552 (b) and on Mr. Clark's failure to demonstrate sufficient reason for "discretionary release" or "sufficient interest."

SUMMARY OF ARGUMENT

The Freedom of Information Act was passed as a disclosure act, not a withholding act. Its whole legislative history indicates that all government records are to be shown to any enquiring citizen unless the records fall into one of nine specific exemptions. The exemptions are to be strictly construed, and the burden of showing that a particular record falls within one of the nine categories is

specifically placed on the government if and when it refuses to make the record available to a citizen.

The act stresses equality: what one citizen can see, all can see. The old requirements of "properly and directly concerned" were pointedly omitted from the new Freedom of Information Act.

The file in question in the instant case is the complete FBI file in the RFK assassination. The file was given by the FBI freely and voluntarily to the District Attorney of Los Angeles. In turn, and under court order, it was made available to Sirhan B. Sirhan, his lawyers, and at least one other on his "team," i.e., Robert B. Kaiser, a writer, who based his book RFK Must Die at least in part on this file. [See Kaiser Affidavit, JA-41].

Until the file was made available to Sirhan under discovery, the file was probably exempt from disclosure under the Act's 7th exemption, i.e., "investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency." However, once disclosed, there are three reasons why the file must be made available to any person upon request:

- 1) that is what the statute provides;
- 2) The reason for withholding is no longer valid; the identity of informants, police techniques, and other alleged-

8.

ly confidential material is no longer confidential once the defendant in a criminal case has access to it; and

3) that there should be equality of access; what one private person is entitled to see, all are entitled to see.

Plaintiff contends that there are no disputed facts in the case and that the Court below erred in not giving Summary Judgment to Plaintiff as a matter of law.

I. THE FREEDOM OF INFORMATION ACT PROVIDES THAT ONCE RECORDS ARE MADE AVAILABLE TO A PARTY OTHER THAN AN AGENCY THEY MUST THEREAFTER BE MADE AVAILABLE TO ANY PERSON.

In denying Plaintiff access to the FBI files on the investigation into Senator Robert F. Kennedy's assassination, the Department of Justice has relied upon exemption (7) of the Freedom of Information Act which provides that investigatory files compiled for law enforcement purposes are not subject to disclosure "except to the extent available by law to a party other than an agency."

Many of the files which Plaintiff now seeks were made available under court ordered discovery to Sirhan B. Sirhan, the defendant who stood trial for the murder of Senator Kennedy. Other persons, including authors and a television news director, also received access to these FBI files.

Plaintiff contends that once records are generally and legally made available to one private person, and especially to a defendant under discovery rules, they are then available to any person who seeks access to them under the Freedom of Information Act.

The legislative history of the Freedom of Information Act clearly indicates that exemption (7) was intended to prevent premature discovery. Thus, the House Report on S.1160, the bill which became the Freedom of Information Act, declares in its note on exemption (7) that:

"S.1160 is not intended to give a private party indirectly any earlier or greater access to investigatory files than he would have directly in such litigation or proceedings." (H.R. No. 1497, 89th Cong., 2nd Session., p. 11 (1966) (Emphasis added))"

A similar intent is also reflected in the Senate Report's note on exemption (7):

"... disclosure of such files, except to the extent they are available by law to a private party, could harm the Government's case in court." (S. Rep. No. 813, 89th Cong., 1st Sess., p. 9 (1965))

Judicial interpretation of exemption (7) has frequently held that the Congressional intent behind the exemption was to prevent premature disclosure. Thus, one court has written that:

"... a primary purpose of the exemptive provision in question is to avoid premature disclosure of an agency's case when engaged in law enforcement activities. Thus, under the subsection, files or portions thereof, need not be disclosed during the investigative stages of a contemplated litigation or enforcement proceeding, and statements of witnesses need not be disclosed prior to the time that these witnesses have testified in formal proceedings. Cooney v. Sun Shipbuilding and Drydock Co., 288 F. Supp. 708 (E.D. Pa., 1968) at 711-712."

The Court then went on to discuss the Barceloneta Shoe and Clement Bros., cases relied upon by the Government, saying:

"I concur with the holding of the above cases, but only within the context in which they were rendered. For in cases in which an agency hearing or judicial litigation is impending, the situation is often rife with possibilities for a defendant to intimidate witnesses, or anticipate and avoid the Government's case; thus, a rule limiting disclosure in such cases has an obvious rationality. But in a situation such as is presented here, long beyond the

time in which investigation would have culminated in action, the rationale of the above-cited cases has no relevance. (Emphasis added) Cooney, supra, at 712." The rationale of the above-cited cases has no relevance. (Emphasis added) Cooney, supra. The Committee to Investigate Assassinations submits

that if the rationale behind the rule limiting disclosure of investigative files had no relevance in the Cooney case, it is even less applicable to the present case. In Cooney, the records sought by the Plaintiff had not been disclosed under discovery proceedings and the Government maintained that enforcement proceedings were still possible. But in the present case, the records sought by the Committee to Investigate Assassinations have already been disclosed, not only to the Defendant but also to authors, writers, and newsmen as well. In addition, there is no prospect of further law enforcement proceedings because the Defendant was tried and convicted... after being given access to the file.

The decision delivered by Judge Northrop in Wellford v. Hardin lends additional weight to the position taken by the Committee to Investigate Assassinations. The Plaintiff in Wellford was associated with the Center for Study of Responsive Law, and he sought certain letters of warning and detention actions which were maintained in records kept by the Pesticides Regulation Division of the Agricultural Research Service, Department of Agriculture. The Department of Agriculture invoked exemption (7) as grounds

to disclose the files sought. As Judge Northrop's opinion bears directly on several matters relevant to the position taken by the Committee to Investigate Assassinations, his discussion of exemption (7) is here quoted at length:

"In the case before this court, the defendant has refused to produce material relating to numerous letters of warning and detention actions. It is clear that this is not a situation, as envisioned by the House Report, where a party to an enforcement action is seeking to obtain investigatory material prematurely; in fact, the parties directly affected by the material sought in this action are fully aware of the contents. In Bristol-Myers v. FTC... the investigatory-files exception was characterized as 'intended to limit persons charged with violations of the federal regulatory statutes to the discovery available to persons charged with violations of federal criminal law.' 424 F.2d at 939. With this policy in mind, it is clear that the specific material sought in this action is not within the exception for investigatory files compiled for law-enforcement purposes. Disclosure of material already in the hands of potential parties to law enforcement proceedings can in no way be said to interfere with the agency's legitimate law-enforcement functions. This conclusion is based on this court's reading of the legislative history surrounding this exception, which reveals that its purpose was to prevent premature discovery by a defendant in an enforcement proceeding. Whatever valid policy reasons there may be for extending this exception to other situations cannot serve to alter this court's result. Such a judgment must be made by Congress." Wellford v. Hardin, 315 F. Supp. 175 (D.C., Md., 1970) at 178. (Emphasis added.)

The Committee to Investigate Assassinations reiterates that the Federal records which it seeks have already been made available to both the defense and the prosecution, and that the law enforcement proceeding has long since terminated. Once these records were made available to the defense, there

remained no legitimate law enforcement interest in suppressing public access to them. The names of informers, police techniques, and other formerly confidential matter was no longer confidential. In fact, no restrictions on the use or further distribution of these records was placed upon the defense by the court nor requested by the FBI or the prosecution, and neither did any law enforcement agency act to halt such distribution once it had occurred.

Although the records sought may have been privileged once, they are no longer so.

II. THE FREEDOM OF INFORMATION ACT GUARANTEES EQUALITY OF ACCESS TO GOVERNMENT RECORDS; RECORDS MADE AVAILABLE TO ANY MEMBER OF THE PUBLIC ARE AVAILABLE TO ALL.

Prior to the enactment of the Freedom of Information Act, the availability of agency records was governed by Section 3 of the Administrative Procedure Act. Subsection (c) of that Act read:

"(c) Public records.-- Save as otherwise required by statute, matters of official record shall in accordance with published rule be made available to persons properly and directly concerned except information held confidential for good cause found."

The availability of records under the current Act is governed by 5 U.S.C. 552 (a)(3), which states:

"... every agency shall upon request for identifiable records made in accordance with published rules... make such records promptly available to any person."(Emphasis added)

When S.1160, the bill which became the Freedom of Information Act, was reported to the Senate, the Chairman of the Subcommittee on the Judiciary, which handled the bill, Senator Edward V. Long, authored the Senate report on the bill. In that report, Senator Long stated that the existing statute had "serious deficiencies." One of these serious deficiencies related to the provisions of the above quoted section 3(c) of the Administrative Procedure Act:

"As to public records generally, subsection (c) requires their availability 'to persons properly and directly concerned except information held confidential for good cause found.' This is a double-barrelled loophole because not only is there the vague phrase 'for good cause found,' there is also a further excuse for withholding if persons are not 'properly and directly concerned.'" (S. Rep. No. 813, 89th Cong., 1st Sess., p. 5 (1965))

The Senate Report on S.1160 makes it quite clear that the Senate intended that this bill would drastically revise the existing law and practice on withholding government records:

"S.1160 would emphasize that section 3 of the Administrative Procedure Act is not a withholding statute but a disclosure statute by the following major changes:

(2) It eliminates the test of who shall have the right to different information. For the great majority of different records, the public as a whole has a right to know what its Government is doing." (Emphasis added) (S. Rep. No. 813, 89th Cong., 1st Sess., p. 5 (1965))

The Congressman who floor-managed the Freedom of Information Act in the House was Representative John Moss, a long-time champion of the legislation and Chairman of the Government Infor-

mation Subcommittee of the Committee on Government Operations, which handled the legislation.

Addressing the House after he had moved that S.1160 be passed, Chairman Moss reiterated the conclusion of the Senate Report. Noting that S.1160 would make three major changes in the existing law, Moss stated:

"First. The bill would eliminate the 'properly and directly concerned' test of who shall have access to public records, stating that the great majority of records shall be available to 'any person.'" (Cong. Rec., June 20, 1966 at p. 13007)

Thus, the Congressional intent in employing the phrase 'to any person' is clear; it reflected a deep-seated congressional dissatisfaction with a specific provision in the existing law which gave access to records on a very qualified and unequal basis.

A noted authority on administrative law, Professor Kenneth Culp Davis, has described the Act's concern with equality of access:

"The Act's sole concern is with what must be made public or not made public. The Act never provides for disclosure to some private parties and withholding from others. The main provision of section 3 says that information is to be made available 'to the public' and the central provision of subsection (c) requires availability of records "to any person".... That required disclosure under the Act can never depend upon the intent or lack of interest of the party seeking disclosure is emphasized by the history.... But under the Act, Uncle Sam's information is either made public or not made public." (Emphasis added) Kenneth Culp Davis, The Information Act: A Prelim-

inary Analysis, 34 U. Chi. L. Rev. 761 (1967)
at 765.

A similar assessment was reached in a Harvard Law

Review note:

"According to the amendment, "any person is entitled to disclosure; a logical conclusion is that Congress did not intend to distinguish among the various types of interest seeking government information. Accordingly, agency records will be equally available to litigants, newspapers, and officious inquirers unless the courts interpret 'any person' restrictively to mean 'any person with a legitimate interest'.

* * * * *

However, the purpose of the Act, as shown by legislative history, would seem to preclude such an interpretation of 'any person'.... (I)t seems the Congress intended to make government information available to all those who seek to act in the public interest by permitting any member of the public to base an action on his general interest in informed voting and good government..." (Emphasis added) 80 Harvard Law Rev. at 911.

The same Harvard Law Review note interprets this general principle of equality of public access as specifically extending to exemption (7):

"The common law and the Federal Rules would also seem to be important in the interpretation of subsection.... (7), which exempts 'investigatory files compiled for law enforcement purposes except to the extent available by law to a private party.' The limitation is justified on the ground that agencies cannot effectively carry out their enforcement duties under public surveillance, but it should be kept in mind that public surveillance can help to increase agency efficiency. It seems that such investigatory files could be made available after the enforcement activity in question has been completed." 80 Harvard L. Rev. at 914.

In the instant case, the Committee to Investigate Assassinations has been denied access to the same FBI documents which have been made available to other members of the public, a fact which is public knowledge and specifically supported by the affidavit of author Robert Blair Kaiser (see JA-41). This denial of equality of access to Government records is contrary to public policy and the intent of Congress as expressed in the Freedom of Information Act.

III. THE COURT ERRED IN GRANTING SUMMARY JUDGMENT FOR THE GOVERNMENT ON THE BASIS OF THE MOTIONS, MEMORANDA, AND STATEMENTS OF MATERIAL FACTS BEFORE IT.

The Freedom of Information Act creates a presumption of disclosure and places the burden on the Government to show that it is entitled to the privilege of withholding records under one of the exemptions of subsection (b). Section (a)(3) of 5 U.S.C. §552 states in part:

"... the court shall determine the matter de novo and the burden is on the agency to sustain its action."

In Cowles Communications, Inc. v. Department of Justice, (D.C. N. Cal., April 26, 1971), the court said:

"I think the Government should not be allowed to file an affidavit stating the conclusion and by doing so foreclose any other determination of fact."

In Davis v. Braswell Motor Freight Lines, Inc. 362 F.2d 600 (C.A. Tex. 1966), the court held that ultimate determination

of privilege remains with the court. Epstein v. Resor, 421 F.2d 930, (C.A. Cal., 1970), the court addressed itself to the matter of determination and held that agency determination under subsection (b) was final only with respect to records required to be kept secret in the interests of national defense or foreign policy; that otherwise, the agency assertion is open to judicial review.

The Government has offered no rationale to support its assertion of privilege under exemption 7, and a bare claim of confidentiality to immunize agency files from scrutiny is not permitted by the statutory scheme. Bristol Myers v. Federal Trade Commission, 424 F.2d 935 (C.A.D.C., 1970) at 939.

IV. THE ASSASSINATION OF A UNITED STATES SENATOR IS A MAJOR NATIONAL EVENT IN WHICH THE PUBLIC HAS AN OVERRIDING INTEREST AND NEED FOR FULL DISCLOSURE OF THE FACTS.

The nation has a right to be apprised of the facts surrounding major events which affect the future course and well being of the Government of the United States. This right is at least implicitly recognized in the Constitution itself, where the President is required to give to the Congress, from time to time, "Information of the State of the Union." (Article II, Section 3). It is recognized explicitly, with certain exceptions, in such statutes as the Freedom of Information Act, 5 U.S.C. §552, cited throughout this brief. It

is recognized in the public hearings conducted by Congress in pursuit of its legislative functions, and to a very large extent in its investigative hearings as well.

The nation's right to know has also been recognized by the Executive through such actions as the appointment of special commissions to investigate and publish findings concerning events of transcendent public importance, such as crime and race relations. One particularly appropriate example is the appointment of the Warren Commission to investigate the assassination of President Kennedy in 1963.

Short of disclosures which truly endangers national security, the entire mechanism of our Government, in principle at least, is geared to the concept of an informed electorate and a policy of public access to information in which the electorate has a legitimate and proper interest. The Supreme Court has recently recognized this principle again in the Pentagon Papers case.

The assassination of a President is clearly in the category of major events which affect the future course and the well being of the United States Government. Similarly, the assassination of a United States Senator, particularly one of such prominence as to be a prospective nominee for the Presidency, is also in this category. Indeed, Congressional con-

cern for and recognition of this vital national interest has been recognized by law. (P.L. 90-331, 18 U.S.C. §351, 3056).

The public invests a substantial measure of faith and hope for the future course of the nation in its choice of governmental leaders. The characteristics of these leaders and the actions of the Government they lead are inextricably bound together. Accordingly, the public has a right to know all the facts surrounding the assassination of such leaders, for exactly the same reasons as it has the right to know what laws the Congress has passed, or what policies and actions the Executive has adopted.

Defendants' arguments for withholding of the investigative file in the assassination of Senator Robert F. Kennedy are those which might apply, when pendency of prosecution still exists, to routine cases such as violations of Federal Trade Commissions regulations, in which there is no general public interest and no overriding national need to be fully informed of all the facts. The assassination of a United States Senator and a candidate for the Presidency itself is clearly distinguishable from such pedestrian events, and contrary to defendants' apparent lack of recognition, demands the fullest public accounting.

CONCLUSION

The text of the Freedom of Information Act and its legislative history establish that once records, though previously privileged, are made available to one person, they are thereafter available to any person. Judicial construction of exemption (7) of the Act also supports this contention.

Therefore, inasmuch as the documents sought by the Committee to Investigate Assassinations have been made available to Sirhan B. Sirhan and, in addition, to persons who can only be described as members of the public, such records must also be made available to Plaintiff in this case.

Wherefore, Appellant requests that the order of the District Court be vacated and that the court order that summary judgment be granted Plaintiff.

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(JOINT APPENDIX)

In The
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 3651-70

Committee To Investigate Assassinations,
927 15th St., N.W., Washington, D.C.

Plaintiff,

v.

United States Department of Justice,
Washington, D.C.

Defendant,

RELEVANT DOCKET ENTRIES

1. Complaint [JA-1]
2. Defendant's Motion To Dismiss [JA-4]
3. Plaintiff's Opposition To Motion To Dismiss and Motion For Summary Judgment [JA-8]
4. Defendant's Cross-Motion For Summary Judgment [JA-17]
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7. Plaintiff's Motion To Determine The Sufficiency Of Defendant's Response To Requests and Admissions [JA-32]
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9. Notice of Appeal [JA-40]
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11. Opposition to Filing of Affidavit of Robert Blair Kaiser [JA-43]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....;

COMMITTEE TO INVESTIGATE :
 ASSASSINATIONS, INC. :
 927 15th St., N.W. :
 Washington, D.C. 20005 :

Plaintiff :

v. :

U.S. DEPARTMENT OF JUSTICE :
 10th & Constitution Ave., N.W. :
 Washington, D.C. :

Defendant :

.....;

ROBINSON

2651-70

Civil Action No. _____

C O M P L A I N T

(Pursuant to Public Law 89-487; 5 U.S.C. §552)

1. Plaintiff brings this action under Public Law 89-487; 5 U.S.C. §552.
2. Plaintiff is a non-profit corporation, organized under the laws of the District of Columbia, for the purposes of investigating the assassinations of several of our more important national leaders, discovering the identity of those responsible for these assassinations, the reasons why the whole truth relating to them is suppressed, and educating the public and Congress as to true facts regarding these various matters.
3. Defendant is the U.S. Department of Justice.
4. Senator Robert Francis Kennedy, one of our national leaders, was assassinated in Los Angeles in June, 1968.

(JOINT APPENDIX)

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UNITED STATES DISTRICT COURT
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Civil Action No. 3651-70

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927 15th St., N.W., Washington, D.C.

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5. The defendant Department of Justice, by and through its investigative arm, the Federal Bureau of Investigation, made an in-depth study of the murder, which was compiled into a file of approximately 6,000 pages and designated as Office File 56-156, Bureau File No. 62-587.

6. Said FBI file was made available to Sirhan B. Sirhan and his counsel (Messrs. Russell Parsons, Grant Cooper, and E. Z. Berman) for preparation of his defense against a charge of First Degree Murder in Los Angeles County, California, in the wrongful death of Senator Robert Francis Kennedy.

7. Said FBI file was also made available to Mr. Robert F. Kaiser, who paid Sirhan B. Sirhan approximately \$32,000.00 for the privilege of writing his "inside story."

8. Mr. Robert F. Kaiser is neither an attorney nor licensed investigator, but rather a journalist and self-styled free lance writer.

9. Mr. Kaiser's "inside story" was published as R.F.K. Must Die: a History of the Robert Kennedy Assassination and Its Aftermath, E.P. Dutton, New York, 1970 (Library of Congress Catalogue Number 74-86074).

10. On page 11, 12, 321, 322 of RFK Must Die, Mr. Kaiser acknowledges the availability to him of FBI Office File 56-156, Bureau File No. 62-587. [See Exhibit A, appended hereto.]

11. On October 19, 1970, plaintiff wrote to the Attorney General requesting access to the same FBI File under 5 U.S.C. §552 and 28 CFR 16. As required by regulations of the Department of Justice, the latter was accompanied by a completed form DJ-118 and a check for \$3.00. [For a copy of the letter, see Exhibit B, appended hereto.]

12. In a letter dated December 8, 1970, plaintiff again wrote defendant, renewing his petition to see the FBI file. [See Exhibit C, appended hereto.]

13. In a letter dated December 7, 1970, defendant Department of Justice, over the signature of the Hon. Richard G. Kleindienst, Deputy Attorney General, refused to make the said FBI file available as it is "not subject to disclosure under the provisions of 5 U.S.C. §552(4)(b)(7)." [Exhibit D, appended hereto.]

14. The request remaining denied after exhaustion of administrative remedies, plaintiff files this complaint pursuant to Public Law 89-487, 5 U.S.C. §552, further alleging that, pursuant to this law, the records must be made available to it, and the Court shall determine the matter de novo, and the burden is on the defendant to sustain its refusal.

Wherefore, Plaintiff prays this honorable Court for the following relief: that Defendant be ordered to produce and make available for copying FBI Office File No. 56-156, Bureau File No. 62-587 and such other relief as this Court may deem just and equitable.

BERNARD FENSTERWALD, JR.
905 16th St., N.W.
Washington, D. C. 20006
Tel. 347-3919
Attorney for Plaintiff

Dated Dec 15, 1970

EXHIBIT A

COMMITTEE TO INVESTIGATE
ASSASSINATIONS927 15TH STREET, N. W.
WASHINGTON, D. C. 20005
(202) 247-3837BERNARD FENSTERWALD, JR.
EXECUTIVE DIRECTOR
WASHINGTON, D. C.BOARD OF DIRECTORSFRED COOK, INTERLAKEN, NEW JERSEY
JOHN HENRY FAULK, AUSTIN, TEXAS
BERNARD FENSTERWALD, JR., WASH.
PARIS FLAMMONDE, NEW YORK, N. Y.
JIM GARRISON, NEW ORLEANS, LA.
RICHARD POPKIN, LA JOLLA, CALIF.
RICHARD SPRAGUE, HARTSDALE, N. Y.
LLOYD TUPPING, WASH., D. C.
WILLIAM TURNER, MILL VALLEY, CALIF.

October 19, 1970

Attorney General John Mitchell
Department of Justice
Washington, D. C.

Dear Mr. Attorney General:

Attached hereto is a completed form DJ-118, a request for access to official records under 5 U.S.C. 552(a) and 28 CFR Part 16.

The records sought are an FBI file with respect to Sirhan B. Sirhan.

If it were not for the fact that the file in question had been made available to writer Robert Blair Kaiser, and had not Mr. Kaiser made this fact known in his new book, RFK Must Die, [please see Attachment], you might be inclined to answer that the records in question were within an exemption in 5 U.S.C. 552. However, as they have been made available to a commercial writer and are the basis, at least in part, for his published book, we can see no reason why they should not be made equally available to our Committee, as 5 U.S.C. 552 require equality of treatment in access to records.

Therefore, we hope that the records can be made available without serious delay.

Most respectfully yours,

Bernard Fensterwald, Jr.
Executive Director

EXHIBIT C



OFFICE OF THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

DEC 7 1970

Mr. Bernard Fensterwald, Jr.
Executive Director
Committee to Investigate Assassinations
925 15th Street, N.W.
Washington, D. C. 20005

Dear Mr. Fensterwald:

Reference is made to your letter of October 19, 1970 with attachments requesting access to the files of the Federal Bureau of Investigation in the matter of Sirhan B. Sirhan.

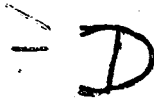
I am unable to comply with your request for the reason that such files are not subject to disclosure under the provisions of 5 U.S.C. 552 (4)(b)(7).

Your check dated October 19, 1970 and drawn on the Riggs National Bank is returned herewith.

Sincerely,

RICHARD G. REINDENST
Deputy Attorney General

3c

EXHIBIT 

"R.F.K. Must Die!"

A History of
the Robert Kennedy Assassination
and Its Aftermath
by
Robert Blair Kaiser



E. P. DUTTON & CO., INC., NEW YORK, 1970

Preface

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When yet another assassin's bullet took the life of yet another Kennedy, the whole world demanded to know who did it and why. They soon discovered who. It was a young Palestinian Arab refugee with a strange double name: Sirhan Sirhan. But the story of why he killed—which he propounded at the trial—didn't make any sense.

This is a book that tries to make sense of it. It is a book about the assassin and about those who probed him: police, prosecutors, defense attorneys, psychiatrists, psychologists, reporters.

I was one of those reporters. Out of curiosity, mainly, and out of a suspicion that the public would learn something less than the whole truth if it had to rely on either the assassin's unchallenged version or even the police estimate, I wangled my way inside the case.

Once I was inside, I was really in. I was able to talk to Sirhan's family and some of his friends, to sit in on the defense attorneys' conferences with Sirhan, to become a participant-observer in the attorneys' own private working sessions, confer closely with the psychologists and psychiatrists in the case. I had access to police and FBI files, and, most important of all, I was able to visit Sirhan in his cell two or three times a week until he left Los Angeles for San Quentin, condemned to die.

I doubt whether any reporter has ever gotten so deeply inside a major murder case.

Why was I given such entrée? I hesitate to say the answer was simply money. I did promise to provide funds for Sirhan's legal defense, and I probably would have gotten nowhere without such a promise—and delivery. Sirhan wanted a good private attorney and I made it possible for him to hire one. It wasn't that Attorney Grant Cooper demanded a big fee, or any fee at all. In fact, Cooper renounced any proceeds from my writings on the case

in favor of the University of Southern California Law School. Still, he needed some resources: the district attorney's office spent \$203,656 to prosecute Sirhan. Simple fairness would dictate that Sirhan's attorneys should have a fraction of that for their expenses (otherwise, the expression "fair trial" would have been a sham). And simple common sense told me that there was only one sure source for those expenses, the world press. The world wanted to know, the news media would pay. They did, in a modest way. By the end of the case, I was able to turn some \$32,000, approximately half of what I had then received, over to Sirhan's attorneys.

But I provided more than money. I gave myself. The defense attorneys received most of the Los Angeles Police Department files and all of the FBI reports on the case through a legal "motion for discovery." But neither they nor their investigator had time to read and digest all this material. I did. They didn't have the time or the patience to draw out the assassin. I did. Soon, the attorneys began to need me, for, in my total curiosity, I soon knew more about the case than they did themselves. My reporter's dream was complete when Dr. Bernard L. Diamond, the chief psychiatrist for the defense, turned to me as the chief repository of knowledge about the case and began taking me into Sirhan's cell with him for his analysis of Sirhan under hypnosis.

I am not at all sure that every case would lend itself to such heightened personal involvement by a reporter who is trying to write about it. In this case, however, I got access to the assassin, without giving up the right to tell the story as I saw it.

... and anybody pay you to shoot Kennedy? 321

"Of course it does," said Berman, wondering to himself just how the judge could be persuaded to let that happen.

"And I've got some books," said Jabara fiercely, "that ought to go in evidence."

"I'd like to have them right away," said Berman. "And anything else you've got on the subject."

Jabara smiled and relaxed enough to enjoy the greatest fried shrimp in town. "Okay," he said. "Okay."

"Here," I said, pushing a plate at Jabara, "have a fortune cookie and see what the fates have in store."

Jabara took a sip of tea, opened his cookie carefully and burst into a roar of laughter. He handed over a tiny scrap of paper imprinted with the message: "DON'T LET YOUR ENTHUSIASM OVERRIDE THE REALITY AROUND YOU." Jabara laughed again.

While the lawyers settled down to the weary task of picking twelve jurors and six alternates, I continued to read the Federal Bureau of Investigation's Office File 56-156, Bureau File No. 62-587. It was impressively heavy, comprising at least 4,000 pages of reports from special agents all over the United States who looked into the case of Sirhan Bishara Sirhan "upon request of the Attorney General of the United States under the Civil Rights Act of 1968 and the Voting Rights Act of 1965."

And it was well written. The report of the assassination itself by Amadee O. Richards, Jr., of the Los Angeles office was a model of telegraphic clarity.

At approximately 12:15 A.M., 6/5/68, Senator ROBERT F. KENNEDY proclaimed victory in California primary election in crowded Embassy Room, Ambassador Hotel, 3400 Wilshire Boulevard, Los Angeles. As SENATOR KENNEDY and party were leaving Embassy Room through kitchen exit, a series of shots were fired by an unknown individual, subsequently identified as SIRHAN BISHARA SIRHAN. SENATOR KENNEDY fell backward onto floor, critically wounded with bullet in brain. SIRHAN wrestled to floor, disarmed and turned over to Los Angeles, California, police department (LAPD).

The reports gave me a chance to verify many of the associations Sirhan had already told me about. Here were summaries of FBI interviews with persons who had known Sirhan in school and with some of those who had

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known him at the ranch in Norco-Corona. Strangely, the FBI couldn't seem to find Frank Donnarauma, the man who had hired Sirhan at Corona, who also had an alias, Henry Donald Ramistella. (The FBI didn't find him until April 6, 1969.) But all these persons seemed to have been processed in an automatic way with no real guiding intelligence behind the perfunctory series of questions they were asked.

The reports then, added up to very little, except where they disclosed the identity of certain persons associated with Sirhan whom he had concealed from McCowan and me. But there was no indication in the reports that any of these persons had less than the greatest love for Robert Kennedy.

What the robots seemed to do best was compile all the numbers that various bureaucrats had conferred upon Sirhan in his short and mostly anonymous life. His passport number: 142 026. His visa number: 1669, issued under Public Law 203-4 (A)1(14). His alien registration number: A 10 711 881. His unit number in the California Cadet Corps: 138 Battalion, B Company. His Social Security number: 569-30-3104. His number at the State Racing Board: 1-031944. His California driver's license: M-238867. His booking number at the Los Angeles Police Department: 495 139. His booking number at the Los Angeles County Jail: 718 486. And, of course, the serial number of his Iver-Johnson revolver: 53725.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COMMITTEE TO INVESTIGATE ASSASSINATIONS, INC.,

Plaintiff,

v.

U. S. DEPARTMENT OF JUSTICE,

Defendant.

Civil Action

No. 3651-70

MOTION TO DISMISS

Defendant, by its attorney, the United States Attorney for the District of Columbia, respectfully moves to dismiss the action herein on the ground that the Court lacks jurisdiction over the subject matter in that plaintiff has failed to exhaust the administrative remedies available to it.

Attached hereto, incorporated herein, and made a part hereof is the affidavit of Richards Rolapp, Special Assistant to the Deputy Attorney General of the United States.

/s/

THOMAS A. FLANNERY
United States Attorney

/s/

JOSEPH M. HANNON
Assistant United States Attorney

/s/

ARNOLD T. AIKENS
Assistant United States Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COMMITTEE TO INVESTIGATE ASSASSINATIONS, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action
)	
U. S. DEPARTMENT OF JUSTICE,)	No. 3651-70
)	
Defendant.)	

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF DEFENDANT'S MOTION
TO DISMISS

This is an action filed pursuant to the Public Information Act, 5 U.S.C. 552. The Court, however, lacks jurisdiction of this matter because plaintiff has failed to exhaust the administrative remedies available to it.

Title 5 U.S.C. 552(a)(3) provides in pertinent part:

"Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, on request for identifiable records made in accordance with published rules stating the time, place, fees to the extent authorized by statute, and procedure to be followed, shall make the records promptly available to any person. On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." [Emphasis added].

Thus, only if a request pursuant to agency regulations for a particular record has been finally denied prior to instituting suit does the District Court have jurisdiction to enjoin the withholding. 5 U.S.C. 552(a)(3). Jurisdictional prerequisites set forth in 5 U.S.C. 552 must, of course, be strictly followed since the sovereign may be sued only in the manner, and subject to the conditions, stated in the statute granting consent. United States v. King, 395 U.S. 1(1969); United States v. Sherwood, 312 U.S. 584 (1941).

Only "[I]f the agency refuses to furnish information in its files to a member of the public the District Court is given jurisdiction to enjoin the agency from withholding such information."

Farrell v. Ignatius, 283 F. Supp. 58, 59 (SD N.Y., 1968). Likewise,

"It should also be noted that district court review is designed to follow final action at the agency head level. The House report states that 'if a request for information is denied by an agency subordinate the person making the request is entitled to prompt review by the head of the agency.' (H. Rept., 9.) In reviewing this action, the district court is granted 'jurisdiction to enjoin the agency from the withholding of agency records and to order the production of any agency records improperly withheld from the complainant.'" [Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act, page 28].

The affidavit of Richards Rolapp, Special Assistant to the Deputy Attorney General, establishes that plaintiff has never appealed denial of his request for the records it seeks from defendant. (Rolapp's Affidavit, Par. 4). Pertinent regulations require persons seeking records from the Department of Justice to appeal from the initial denial to obtain a final administrative decision. 28 C.F.R. 16.7(c).

Title 5 U.S.C. 552 does not permit plaintiff to use judicial proceedings to obtain records where, as here, he has not exhausted his administrative remedies. The 7th Circuit Court of Appeals has so held. Tuchinsky v. Selective Service System, 418 F.2d 155,158 (7th Cir. 1969). The Court of Appeals holding in Tuchinsky applies with equal force here:

"The exhaustion of administrative remedies rule required that plaintiff seek the personal information initially from appropriate local boards which might either by reason of consent of members involved or discretion of board chairman provide him the information. In the event of an adverse

decision denying plaintiff the information, he can appeal to the appeal board, and finally seek the administrative review of the national director. 32 C.F.R. 1606.56(a). Only by this method is the administrative process exhausted and the judicial process available for suit. The exhaustion of remedy rule is not satisfied by leapfrogging over any substantive step in the administrative process."

Plaintiff's failure to utilize the mandatory administrative procedures for requesting records requires dismissal of this action. It is accordingly requested that the Court grant defendant's motion to dismiss.

/s/

THOMAS A. PLANNERY
United States Attorney

/s/

JOSEPH M. HANNON
Assistant United States Attorney

/s/

ARNOLD T. AIKENS
Assistant United States Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED
23 FEB 1971
JAMES T. BERRY
CLERK

.....
COMMITTEE TO INVESTIGATE
ASSASSINATIONS, INC.
927 15th St., N.W.
Washington, D.C. 20005

Plaintiff

v.

Civil Action No. 3651-70

U.S. DEPARTMENT OF JUSTICE
10th & Constitution Ave., NW
Washington, D. C.

Defendant
.....

OPPOSITION TO MOTION TO DISMISS

AND

MOTION FOR SUMMARY JUDGMENT FOR PLAINTIFF

Plaintiff, by its attorney, respectfully urges the Court to deny defendant's MOTION TO DISMISS the action herein.

Plaintiff, by its attorney, also respectfully moves that the Court grant SUMMARY JUDGMENT in its behalf, averring that there are no material facts in issue in this matter.

Attached hereto, incorporated herein, and made a part hereof is a Memorandum of Points and Authorities against Defendant's MOTION TO DISMISS and in support of Plaintiff's MOTION FOR SUMMARY JUDGMENT.

BERNARD FENSTERWALD, JR.
905 16th St., N.W.
Washington, D.C.
Tel. 347-3919
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....
 :
 COMMITTEE TO INVESTIGATE :
 ASSASSINATIONS, INC. :
 927 15th St., N.W. :
 Washington, D.C. 20005 :
 :
 Plaintiff :
 :
 :
 v. :
 :
 U.S. DEPARTMENT OF JUSTICE :
 10th & Constitution Ave., N.W. :
 Washington, D.C. :
 :
 Defendant :
 :
 :

Civil Action No. 3651-70

STATEMENT OF MATERIAL FACT AS TO WHICH
THERE IS NO GENUINE ISSUE

Pursuant to Local Rule 9(h) the material facts in the instant action are summarized below.

1. Plaintiff brought this action under Public Law 89-487; 5 U.S.C. §552.
2. Plaintiff is a non-profit corporation, organized under the laws of the District of Columbia, for the purposes of investigating the assassinations of several of our more important national leaders.
3. Defendant is the U.S. Department of Justice.
4. Senator Robert Francis Kennedy, one of our national leaders, was assassinated in Los Angeles in June, 1968.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....

COMMITTEE TO INVESTIGATE	:	
ASSASSINATIONS, INC.	:	
927 15th St., N.W.	:	
Washington, D.C. 20005	:	
	:	
Plaintiff	:	
	:	
	:	
v.	:	Civil Action No. <u>3651-70</u>
	:	
	:	
U.S. DEPARTMENT OF JUSTICE	:	
10th & Constitution Ave., N.W.	:	
Washington, D.C.	:	
	:	
Defendant	:	
	:	
	:	
.....	:	

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3. Defendant is the U.S. Department of Justice.
4. Senator Robert Francis Kennedy, one of our national leaders, was assassinated in Los Angeles in June, 1968.

5. The defendant Department of Justice, by and through its investigative arm, the Federal Bureau of Investigation, made an in-depth study of the murder, which was compiled into a file of approximately 6,000 pages and designated as Office File 56-156, Bureau File No. 62-587.

6. Said FBI file was made available to Sirhan B. Sirhan and his counsel (Messrs. Russell Parsons, Grant Cooper, and E. Z. Berman) for preparation of his defense against a charge of First Degree Murder in Los Angeles County, California, in the wrongful death of Senator Robert Francis Kennedy.

7. Said FBI file was also made available to Mr. Robert E. Kaiser, who paid Sirhan B. Sirhan approximately \$32,000.00 for the privilege of writing his "inside story."

8. Mr. Robert E. Kaiser is neither an attorney nor licensed investigator, but rather a journalist and self-styled free lance writer. He is in no way employed by the Government.

9. Mr. Kaiser's "inside story" was published as R.F.K. Must Die: a History of the Robert Kennedy Assassination and Its Aftermath, E.P. Dutton, New York, 1970 (Library of Congress Catalogue Number 74-86074).

10. On page 11, 12, 321, 322 of RFK Must Die, Mr. Kaiser acknowledges the availability to him of FBI Office File 56-156, Bureau File No. 62-587. (See Exhibit D, appended hereto.)

11. On October 19, 1970, plaintiff wrote to the Attorney General requesting access to the same FBI file under 5 U.S.C. §552 and 28 CFR 16. As required by regulations of the Department of Justice, the letter was accompanied by a complete form DJ-118 and a check for \$3.00. [For a copy of the letter, see Exhibit E, appended hereto.]

12. In a letter dated December 8, 1970, plaintiff again wrote defendant, renewing his petition to see the FBI file. [See Exhibit B, appended hereto.]

13. In a letter dated December 7, 1970, defendant Department of Justice, over the signature of the Hon. Richard G. Kleindienst, Deputy Attorney General, refused to make the said FBI file available to plaintiff. [Exhibit C, appended hereto.]

14. The instant action was filed on December 15, 1970.

BERNARD FENSTERWALD, JR.
905 16th St., N.W.
Washington, D.C. 20006
Tel. 347-3919
Attorney for Plaintiff

Dated _____

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....
COMMITTEE TO INVESTIGATE
ASSASSINATIONS, INC.
927 15th St., N.W.
Washington, D.C. 20005

Plaintiff

v.

Civil Action No. 3651-70

U.S. DEPARTMENT OF JUSTICE
10th & Constitution Ave., N.W.
Washington, D. C.

Defendant
.....

MEMORANDUM OF POINTS AND AUTHORITIES
IN OPPOSITION TO MOTION TO DISMISS
AND IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT FOR PLAINTIFF

I. EXHAUSTION OF ADMINISTRATIVE REMEDIES.

On October 19, 1970, plaintiff wrote to the Department of Justice requesting access under the Freedom of Information Act PL-89-487, 5 U.S.C. §552 to FBI Office File 56-156, Bureau File No. 62-587, to which journalist Robert B. Kaiser had been given access. (See Exhibit D hereto). As required by regulations of the Department of Justice, the letter was accompanied by a completed form DJ-118 (See Exhibit A) appended hereto.)

Subsection (a) (3) of 5 U.S.C. §552 states:

(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, on request for identifiable records made in accordance with published rules stating the time, place, fees to the extent authorized by statute, and procedure to be followed, shall make the records promptly available to any person. [*Italics added*].

Despite the admonition to make the records available promptly, no acknowledgment or reply to the request of October 19 had been received by Plaintiff by December 8.

Therefore, on December 8, Plaintiff directed a second written request to the Attorney General. (See Exhibit B appended hereto.) No acknowledgment of or answer to this letter has been received to date, some two and a half months later.

At a date subsequent to December 8, the exact date not known, Plaintiff received a reply to his letter of October 19th from Deputy Attorney General Kleindienst, dated December 7th.

As Plaintiff had already (on December 8th) addressed a second appeal specifically to the Attorney General, it would have been redundant to address a third appeal to the Attorney General, as Defendant would imply in his Motion to Dismiss, citing 28 CFR 16.7(c).

Further, arguendo, even if Plaintiff's letter to the Attorney General of December 8, 1970, might not be considered to comply with the letter of 28 C.F.R. 16.7(c), it is the contention of the Plaintiff that the regulations of the Department of Justice are in direct conflict with the language and spirit of 5 U.S.C. §552(a), calling for prompt access. Not only must a person seeking access to records file a form and tender payment, he must also get a written refusal by the Deputy Attorney General, then a written refusal by the Attorney General before he can file a legal action.

We are dealing here, not with the refusal of a lowly employee, but the refusal of the Attorney General's only Deputy. Presumably, he is a trained lawyer and the Attorney General's most immediate agent. Is it reasonable to require that, after receiving a written refusal from the Deputy, that a citizen must then begin again and seek the personal written opinion of the Attorney General?

The only purpose that this might serve is to delay compliance with 5 U.S.C. §552(a) and to discourage citizens from demanding their rights. [For a case in which Chief Judge Curran granted summary judgment for plaintiff after dilatory tactics by the Department of Justice, see Weisberg v. Department of Justice, Civil Action 718-70 in this Court, decided August 19, 1970.]

It is therefore the contention of Plaintiff that he exhausted all reasonable administrative remedies before filing suit, that the Court has jurisdiction, and that the MOTION TO DISMISS should be denied.

II. ARGUMENTS IN FAVOR OF SUMMARY JUDGMENT FOR PLAINTIFF.

As stated in the complaint, the records sought by Plaintiff were made available to Mr. Robert B. Kaiser, a journalist and was used extensively in the preparation of his book, REX Must Die. (See Exhibit D, appended hereto).

Under the Freedom of Information Act (5 U.S.C. §552), records made available to one person (outside the government) must be made available to all other persons on an equal basis.

Prior to the enactment of the Freedom of Information Act, the availability of agency records was governed by Section 3 of the Administrative Procedure Act. Subsection (c) of that Act reads:

"(c) Public records.-Save as otherwise required by statute, matters of official records shall in accordance with published rule be made available to persons properly and directly concerned except information held confidential for good cause found."

The availability of Records under the current Act is governed by 5 U.S.C. §552 (a) (3), which states:

"....every agency shall upon request for identifiable records made in accordance with published rules.... make such records promptly available to any person." (emphasis added).

When S.1160, the bill which became the Freedom of Information Act, was reported to the Senate, the Chairman of the subcommittee on the Judiciary, Senator Edward V. Long, submitted a report on the bill. In that report, Senator Long stated that the existing statute had "serious deficiencies." One of these serious deficiencies related to the provisions of the above quoted section 3(c) of the Administrative Procedure Act:

"As to public records generally, subsection (c), requires their availability 'to persons properly and directly concerned except information held confidential for good cause found.' This is a double-barrelled loophole because not only is there the vague phrase 'for good cause found,' there is also a further excuse for withholding if persons are not 'properly and directly concerned.'" [S. Rep. No. 813, 89th Cong., 1st Sess., p. 5 (1965)].

The Senate Report makes it quite clear that the Senate took a dismal view of the existing law:

"It is the conclusion of the committee that the present section 3 of the Administrative Procedure Act is of little or no value to the public in gaining access to records of the Federal Government. Indeed, it has had precisely the opposite effect: it is cited as statutory authority for the withholding of virtually any piece of information that an official or an agency does not wish to disclose." [S. Rep. No. 813, 89th Cong., 1st Sess., p. 5 (1965)].

More specifically, the Senate Report asserted that:

"S.1160 would emphasize that section 3 of the Administrative Procedure Act is not a withholding statute but a disclosure statute by the following major changes:

(2) It eliminates the test of who shall have the right to different information.. For the great majority of different records, the public as a whole has a right to know what its Government is doing." [S. Rep. No. 813, 89th Cong., 1st Sess., p. 5 (1965)]

The Congressman who floor-managed the Freedom of Information Act in the House was Representative Moss, a long-time champion

of the legislation and Chairman of the Foreign and Government Information Subcommittee of the Committee on Government Operations, which handled the legislation.

Addressing the House after he had moved that S.1160 be passed, Chairman Moss reiterated the conclusion of the Senate Report. Noting that S.1160 would make three major changes in the existing law, Moss stated:

"First, The bill would eliminate the 'properly and directly concerned' test of who shall have access to public records, stating that the great majority of records shall be available to 'any person.'" (Cong., Rec., June 20, 1966, p. 13067).

Thus, the Congressional intent in employing the phrase 'to any person' is clear; it reflected a deep-seated congressional dissatisfaction with a specific provision in the existing law.

Under the new law, the Freedom of Information Act, if the records sought were made available to one person outside the government, they must be made available to all, including Plaintiff herein, on an equal basis.

There is no basis for refusal by the Department of Justice and summary judgment should be granted in favor of Plaintiff.

Respectfully submitted,

BERNARD FENSTERWALD, JR.
905 16th St., N.W.
Washington, D.C. 20006
Tel. 347-3919
Attorney for Plaintiff

Dated: Feb 23, 1971

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED
APR 15 1971
JAMES F. DAVEY, Clerk

COMMITTEE TO INVESTIGATE
ASSASSINATIONS, INC.,

Plaintiff,

v.

U. S. DEPARTMENT OF JUSTICE,

Defendant.

Civil Action

No. 3651-70

DEFENDANT'S CROSS-MOTION
FOR SUMMARY JUDGMENT

Defendant through its attorney, the United States Attorney for the District of Columbia, respectfully moves this Court for summary judgment in its favor on the ground that there is no genuine issue as to any material fact and defendant is entitled to judgment as a matter of law.

Attached hereto, incorporated herein, and made a part hereof are the affidavits of William John Nolan, Federal Bureau of Investigation; Amedee O. Richards, Jr., Federal Bureau of Investigation; and the affidavit and attachments of John E. Howard, Chief Deputy District Attorney of Los Angeles, identified herein as Defendant's Exhibits 1, 2 and 3. Attached also is the letter of John N. Mitchell, Attorney General of the United States, dated April 2, 1971, identified as Defendant's Exhibit 4.

Thomas A. Flannery
THOMAS A. FLANNERY
United States Attorney

Joseph M. Hannon
JOSEPH M. HANNON
Assistant United States Attorney

Arnold T. Aikens
ARNOLD T. AIKENS
Assistant United States Attorney

CA 365 V K

A F F I D A V I T

1
2 STATE OF CALIFORNIA }
3 COUNTY OF LOS ANGELES } ss.

JAMES E. DIVER, JR.

4 WILLIAM JOHN HOLAN, being duly sworn, deposes and says

5 I am a Special Agent Supervisor, Federal Bureau of Inves-
6 tigation, Los Angeles, California, and had responsibility for
7 supervising the investigation of the assassination of Senator
8 Robert F. Kennedy in Los Angeles, California, June 5, 1968.

9 That, in connection with the investigation into the assassi-
10 nation of Senator Kennedy, Reports and Letterhead Memoranda were
11 prepared and were disseminated to the United States Attorney at
12 Los Angeles, and the District Attorney's Office for the County of
13 Los Angeles, State of California, the latter being the prosecuting
14 authority for this case, as follows:

- 15 1. Report of Special Agent AMEDEE O. RICHARDS, JR.,
16 dated June 9, 1968, at Los Angeles,
17 Total pages 1082.
- 18 2. Report of Special Agent AMEDEE O. RICHARDS, JR.,
19 dated June 15, 1968, at Los Angeles,
20 Total pages 618.
- 21 3. Report of Special Agent AMEDEE O. RICHARDS, JR.,
22 dated July 1, 1968, at Los Angeles,
23 Total pages 746.
- 24 4. Report of Special Agent AMEDEE O. RICHARDS, JR.,
25 dated August 7, 1968, at Los Angeles,
26 Total pages 1153.
- 27 5. Report of Special Agent AMEDEE O. RICHARDS, JR.,
28 dated October 10, 1968, at Los Angeles,
29 Total pages 414.
- 30 6. Report of Special Agent AMEDEE O. RICHARDS, JR.,
31 dated December 4, 1968, at Los Angeles,
32 Total pages 371.

1 7. Report of Special Agent AMEDEE O. RICHARDS, JR.,
2 dated February 7, 1969, at Los Angeles,
3 Total pages 206.

4 8. Report of Special Agent AMEDEE O. RICHARDS, JR.,
5 dated August 1, 1969, at Los Angeles,
6 Total pages 121.

7 In addition, Letterhead Memoranda were disseminated as
8 follows:


9 Letterhead memorandum dated April 24, 1969,
10 at Los Angeles, 34 pages;

11 Letterhead memorandum dated May 12, 1969,
12 at Los Angeles, 5 pages;

13 Letterhead memorandum dated June 20, 1969,
14 at Los Angeles, 9 pages.

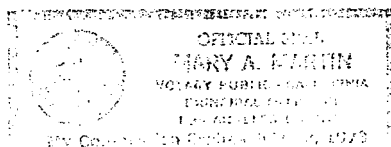
15 That the results of this investigation were reported at Los
16 Angeles under Bureau File Number 56-156 and were kept in Washing-
17 ton, D. C., at the Washington, D. C., Headquarters, File Number
18 62-587.

19 That at no time was any dissemination made by the Federal
20 Bureau of Investigation to Robert Blair Kaiser of any written
21 matter as listed above, nor was there any oral dissemination made
22 to Robert Blair Kaiser of any material that was prepared in
23 connection with this investigation.

24
25 
26 WILLIAM JOHN NOLAN
27 Special Agent Supervisor,
28 Federal Bureau of Investigation

29
30
31 SUBSCRIBED and SWORN to before
32 me this 26th day of March, 1971.

Notary Public in and for said
County and State



A F F I D A V I T1
2 STATE OF CALIFORNIA)

3 COUNTY OF LOS ANGELES }

ss.

4 AMEDEE O. RICHARDS, JR., being duly sworn, deposes and says:

5 I am a Special Agent, Federal Bureau of Investigation, Los
6 Angeles, California, and was a reporting Agent in connection with
7 the investigation of the assassination of Senator Robert F.
8 Kennedy in Los Angeles, California, June 5, 1968.9 That, in connection with the investigation into the assassi-
10 nation of Senator Kennedy, Reports and Letterhead memoranda were
11 prepared and were disseminated to the United States Attorney at
12 Los Angeles, and the District Attorney's Office for the County of
13 Los Angeles, State of California, the latter being the prosecutive
14 authority for this case, as follows:

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- 16 dated June 9, 1968, at Los Angeles,
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- 17 Total pages 1082.
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- 19 dated June 15, 1968, at Los Angeles,
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- 20 Total pages 618.
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- 21 3. Report of Special Agent AMEDEE O. RICHARDS, JR.,
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- 22 dated July 1, 1968, at Los Angeles,
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- 23 Total pages 746.
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- 24 4. Report of Special Agent AMEDEE O. RICHARDS, JR.,
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- 25 dated August 7, 1968, at Los Angeles,
-
- 26 Total pages 1153.
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- 27 5. Report of Special Agent AMEDEE O. RICHARDS, JR.,
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- 28 dated October 10, 1968, at Los Angeles,
-
- 29 Total pages 414.
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- 30 6. Report of Special Agent AMEDEE O. RICHARDS, JR.,
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- 31 dated December 4, 1968, at Los Angeles,
-
- 32 Total pages 371.

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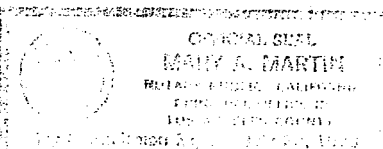
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16 Angeles under Bureau File Number 56-156 and were kept in Washing-
17 ton, D. C., at the Washington, D. C., Headquarters, File Number
18 62-587.

19 That at no time was any dissemination made by the Federal
20 Bureau of Investigation to Robert Blair Kaiser of any written
21 matter as listed above, nor was there any oral dissemination made
22 to Robert Blair Kaiser of any material that was prepared in
23 connection with this investigation.

24
25 Amedee O. Richards, Jr.
26 AMEDEE O. RICHARDS, JR.
27 Special Agent, Federal Bureau
of Investigation

28 SUBSCRIBED and SWORN to before
29 me this 26th day of March, 1971.

30
31 Notary Public in and for said
32 County and State



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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COMMITTEE TO INVESTIGATE)
ASSASSINATIONS, INC.,)
927 15th St., N. W.)
Washington, D. C. 20005)
Plaintiff,)
v.)
U. S. DEPARTMENT OF JUSTICE)
10th & Constitution Ave., N. W.)
Washington, D. C.)
Defendant.)

CIVIL ACTION No. 3651-70

AFFIDAVIT OF
JOHN E. HOWARD

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

JOHN E. HOWARD, being first duly sworn, deposes and says:

That affiant is an attorney licensed to practice in the State of California and is the Chief Deputy District Attorney of Los Angeles County.

That in June of 1968, affiant was a deputy district attorney of Los Angeles County, assigned as Head of the Special Investigations Division.

That in June of 1968, the then Chief Deputy District Attorney Lynn D. Compton, and David N. Fitts, Head Deputy District Attorney of

1 the Santa Monica Branch Office, and affiant were assigned to the prosecution
2 of Sirhan B. Sirhan.

3 That Lynn D. Compton is now a justice of the Second District
4 Court of Appeal for the State of California.

5 That David N. Fitts is now a judge of the Superior Court for
6 the County of Los Angeles.

7 That preliminary to the trial of Sirhan B. Sirhan, the defense
8 filed a motion for discovery and that the first hearing on said motion for
9 discovery occurred on or about October 14, 1968.

10 That a photographically reproduced copy of that motion for
11 discovery taken from the official transcript on appeal is attached hereto
12 and incorporated herein as Exhibit A.

13 That a copy of the Minute Order of the court relative to the
14 motion for discovery is attached and marked as Exhibit B.

15 That a supplemental discovery motion was thereafter made,
16 A photographically reproduced copy of the second motion for discovery
17 taken from the official appellate transcript is incorporated herein as
18 Exhibit C.

19 That a photographically reproduced copy of the Minute Order
20 of the court relative to the granting by the court of the supplemental
21 discovery motion is attached and marked as Exhibit D.

22 That at the hearings regarding the motions for discovery, the
23 court ruled that the defense would be provided the material requested in
24 the October 14 motion; that the prosecution would provide necessary copies
25 to the defense; that the prosecution additionally allow the defense to inspect
26 generally the material in the possession of the prosecution as requested in
27 the supplemental motion for discovery.

28 That during the investigative phase of the case, the Federal
29

1 Bureau of Investigation delivered to the prosecution team, extensive reports
2 covering their investigation of the activities of Sirhan B. Sirhan.

3 That these reports were collected into volumes prior to the
4 delivery. Upon receipt of the material, the prosecution reviewed the
5 material and compiled approximately 450 individual witness files based
6 upon reports received from the FBI, Los Angeles Police Department,
7 Los Angeles County Sheriff's Office, as well as the Bureau of Investigation
8 of the District Attorney's Office.

9
10 That pursuant to the motions granted by the court regarding
11 discovery, the prosecution delivered to the defense copies of all requested
12 witness files. Such delivery by the prosecution was done in open court
13 and reflected in the transcript of the pretrial hearing.

14
15 That pursuant to the supplemental motion for discovery,
16 Exhibit C, members of the defense team were allowed access to the
17 prosecution's files for the purpose of instituting requests to the court
18 for delivery of material.

19 That Sirhan B. Sirhan was represented by Attorneys Grant B.
20 Cooper, Emile Z. Berman, and Russell Parsons, and that the said
21 material was delivered in open court to one of the said attorneys.

22
23 That the defense team retained the investigative services of
24 Ron Allen & Assoc. and that the said agency assigned as investigators,
25 Mike McGowan and Robert Blair Kaiser.

26 That affiant believed that said Robert B. Kaiser was not a
27 licensed investigator but was acting under the license of the Ron Allen &
28 Assoc. agency and was so accepted by the court and authorized to act as
29 an investigator for the defendant.

30 That the delivery of the material to the defense was for the
31 preparation of the defense and that there was no understanding that the
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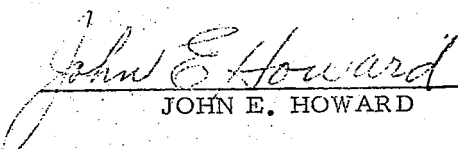
material would be used for literary purposes.

That at no time did the prosecution deliver in toto the copy of the FBI report, but only those portions as requested in the motions of discovery.

That at the completion of the trial, the prosecution entered into evidence a list of witnesses who had been interviewed and considered as witnesses but who had not actually been called to testify. A list of said witnesses is photographically reproduced and attached and incorporated herein as Exhibit E. Many of said files contained photographically reproduced copies of FBI interviews.

That the prosecution did not deliver the FBI file to any individuals except under the order of discovery and only to the defense team.

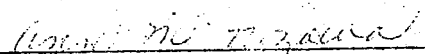
Affiant certifies under penalty of perjury that the foregoing is true and correct.


JOHN E. HOWARD

Subscribed and sworn to before me

this 1st day of April, 1971

WILLIAM G. SHARP, County Clerk

By 
Deputy

A
53

1 RUSSELL B. F. BONE
2 235 South Broadway
2 Los Angeles, California 90011
3 Madison 3 9187
4 Attorney for Defendant

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

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PROPEY OF THE STATE OF CALIFORNIA,
Plaintiff,
SIRHAN BISHARA SIRHAN,
Defendant.

NO. LA 233, 421
MOTION FOR DISCOVERY

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Comes now the defendant Sirhan B. Sirhan and respectfully
moves the court for an order directing:

I

The District Attorney of the County of Los Angeles presenting
counsel for the said defendant to inspect and review certain
documents, statements, papers, books, booklets, tape recordings,
and any and all transcripts thereof, films of any photographs of
the said Sirhan B. Sirhan, or moving pictures or the films thereof
taken of the said Sirhan B. Sirhan while he was in the custody of
the Los Angeles Police Department, the District Attorney of the
County of Los Angeles, or any of his deputies, or any other police
agency, and any and all statements taken by the Federal Bureau of
Investigation or any of its officers or agents which have been deli-
vered to the possession of the District Attorney of the County of
Los Angeles, or any officer working under the direction and

1 supervision of the District Attorney of the County of Los Angeles.

2 II

3 Also any statements or reports by Dr. Marcus Crayhan, M.D.,
4 or any Deputy Sheriff, police officer, jail attendant, hospital
5 attendant, nurse or nurse's aid working with, under the direction
6 of, or in cooperation with either Dr. Marcus Crayhan or Dr. Phillip
7 Attalla.

8 Also the name of the reporter present at the time Dr. Cray-
9 han and/or Dr. Attalla interviewed Sirhan B. Sirhan, and the notes,
10 transcripts and reports of such reporter.

11 III

12 Also the statements of any person given to the Los Angeles
13 Police and in the possession of or under the direction of the
14 District Attorney of Los Angeles County of any such person who
15 claims to have seen Sirhan B. Sirhan at the Ambassador Hotel the
16 night of the shooting of Senator Robert F. Kennedy.

17 Also the statements of any person given to the Los Angeles
18 Police and in the possession of or under the direction of the
19 District Attorney of Los Angeles County of any such person who
20 claims to have seen Sirhan B. Sirhan at any target or shooting
21 range within six months prior to the shooting of Senator Robert F.
22 Kennedy.

23 IV

24 Also any statement taken by the police, Federal Bureau of
25 Investigation, or an investigative agency including the Bureau of
26 Investigation attached to the office of the District Attorney of
27 the County of Los Angeles, from Dr. Jessie Kolti of the Pasadena
28 City College, from any students at the University of California at
29 Los Angeles who visited or called at the Kennedy headquarters at
30 Wilshire Boulevard, Los Angeles, some days before the assassination
31 of Senator Robert F. Kennedy.

32 V

1 Also any statement or transcript of an interview with
 2 Enrique Labago, one of two men Sirhan B. Sirhan says he talked with
 3 at the Ambassador Hotel on the night of Sept. 4, 1958.

VI

4
 5 Also any statement or report made by Mr. Alfred H. Nicolas,
 6 Counsellor at Pasadena City College.

VII

7
 8 Also any statement or report made by Mr. Olivier Angelino,
 9 a teacher of Anthropology at Pasadena City College.

VIII

10
 11 Also any statement or report made by Mrs. Harnick, Placement
 12 Service Offices, Pasadena City College.

IX

13
 14 Also any statement or report made by Mr. William Leveridge,
 15 a gardener, 167 North Sierra Madre, Pasadena, California.

X

16
 17 Also any statement or report made by Mr. William C. Beveridge
 18 employed at Parmenter Auto Supply, 2811 Sierra Grande, Pasadena,
 19 California.

XI

20
 21 Also any statement or report made by Dr. Richard J. Nelson,
 22 M.D., Corona, California, who treated Sirhan B. Sirhan after his
 23 injury at the Altalisch Ranch, Corona, California.

XII

24
 25 Also any statement or report made by the clerk or custodian
 26 of the official records concerning the treatment and care rendered
 27 Sirhan B. Sirhan at the Corona Community Hospital, Corona, Riverside
 28 County, California.

XIII

29
 30 Also any statement or report concerning statements taken by
 31 the Los Angeles Police Department, any representation of the District
 32 Attorney's office of the County of Los Angeles, State of California,

1 or any other police agency taken from Sirhan B. Sirhan for his
2 arrest.

XIV

3
4 Also any statement or report taken from Deputy Sheriff
5 Livingston, a Deputy Sheriff of the County of Los Angeles, at one
6 time assigned to the new County Jail, 441 Baudinet Street, Los
7 Angeles, California.

XV

8
9 Also any statement taken from the Range Master, Lloyd Hager,
10 and Carl Buckner, and any other person interviewed at the pistol
11 range (San Gabriel Valley Gun Club, 4001 Fish Canyon Road, Duarte,
12 California).

XVI

13
14 Also the name of the Federal Bureau of Investigation agent
15 who gave a lie detector test to the witness Buckner. We want both
16 his first statement and his second statement.

XVII

17
18 Also the statement or report of a girl whose name is unknown
19 to us who was at the target range.

XVIII

20
21 Also any statement or evidence of any person who saw Sirhan
22 B. Sirhan after he left the range in Fish Canyon on June 4, 1968.

XIX

23
24 Also any statements or reports taken from the person at the
25 gun shop or gun shops where it is contended that Sirhan B. Sirhan
26 purchased ammunition.

XX

27
28 Also the name of any person who claims to have seen Sirhan
29 B. Sirhan practicing with a gun prior to the date of the assassina-
30 tion of Senator Robert F. Kennedy.

XXI

31
32 Also a statement or report from anyone who saw Sirhan B.

1 Sirhan at the Ambassador Hotel, Los Angeles, California, at Senator
 2 Ruchell's party prior to the shooting or at the Rafferty party at the
 3 Ambassa Hotel in Los Angeles, California

XXVI

4
 5 Also the statements or reports of any person who claims to
 6 have seen Sirhan B. Sirhan in the kitchen at the Ambassador Hotel
 7 some minutes before the shooting.

XXVII

8
 9 Also the statements or reports of any person who claims to
 10 have been at the Ambassador Hotel at or about the time of the shoot-
 11 ing who claims to have had any part in the apprehension of Sirhan B.
 12 Sirhan shortly after the shooting of Senator Robert F. Kennedy.

XXIX

13
 14 Also any and all photographs and/or films thereof taken at,
 15 before, and after the shooting of Senator Robert F. Kennedy
 16 in the vicinity of the kitchen of the Ambassador Hotel, Los Angeles.

XXX

17
 18 Any statement or report by any student at the University of
 19 California at Los Angeles or any other person, or photos taken by
 20 such a person, or moving pictures, and delivered by the Los Angeles
 21 Police and the District Attorney of the County of Los Angeles show-
 22 ing the defendant, Sirhan B. Sirhan, at the political rallies or in
 23 and about the Ambassador Hotel on June 4, 1968 or June 5, 1968.

XXXI

24
 25 Also all statements of any officer or private person who
 26 claims to have seen Sirhan B. Sirhan after his arrest and apprehen-
 27 sion and until approximately 9 a.m. the morning of his arrest.

XXXII

28
 29 Also all reports: criminal, backing, evidence, logs, offi-
 30 cer's notes, individual's notes, or statements made by anyone re-
 31 garding Sirhan B. Sirhan's activities from the time of his arrest
 32 until 9 a.m. the morning of June 5, 1968.

Handwritten initials

XIII

1
 2 Also all medical reports made since June 5, 1938 concerning
 3 Sirhan B. Sirhan and the names of all persons who may have adminis-
 4 trated any medical treatment to Sirhan B. Sirhan and the results of
 5 any such medical treatment and/or tests and the names of the per-
 6 son or persons who administered such treatments or tests, namely
 7 blood tests or any other tests usually given by the local authori-
 8 ties such as Police Department, Sheriff's Department, District Attor-
 9 ney of Los Angeles County, or under their direction, to persons sus-
 10 pected of having drunk alcohol or taken drugs or stimulants of any
 11 kind.

XIV

12
 13 Also all statements or recordings made by Sirhan B.
 14 Sirhan or taken by any police agency or any other person in conjunc-
 15 tion with this case from the time of Sirhan B. Sirhan's arrest to
 16 this date.

XV

17
 18 Also the name of the Deputy Sheriff who pushed Sirhan B.
 19 Sirhan in the wheelchair directly after his arraignment, believed
 20 to have been Deputy Sheriff Livingston, and any statements made by
 21 such officer concerning anything he observed or saw about Sirhan B.
 22 Sirhan during that period.

XVI

23
 24 Also any report by the officer or person who saw Sirhan B.
 25 Sirhan kick the coffee cup out of Officer Willoughby's hand the
 26 night or morning he was interviewed, June 5, 1938.

XVII

27
 28 Also that we be permitted to examine and hear all copies of
 29 interviews by any police officer or officers of the District Attorney
 30 of Los Angeles County and that we be permitted to examine any and
 31 all manuscripts of such reports, some of such reports, or other inter-
 32 views of Sirhan B. Sirhan during the period of June 5, 1938 to this

Handwritten notes on the left margin

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

78

007 14 1966

Department No. 107 A
HERBERT V. MILYER Judge A. Nishikawa Clerk
V. Winnick Reporter

APPEARANCES:

(Parties and Counsel checked if present.
Counsel shown opposite parties represented.)

Case No. A233421

THE PEOPLE OF THE STATE OF CALIFORNIA vs X Etelle J. Younger, District Attorney by
L. Compton, D. Pitts and Deputy
J. Howard, Deputy District Attorneys
R. S. Buckley, Public Defender by

X SIRHAN BISHARA SIRHAN

X Russell E. Parsons

Cause is called for hearing on defendant's motions. Defendant's pretrial discovery motion is granted as set forth in his motion for discovery filed September 25, 1966 as contained in paragraphs II through XXXVII. No order is specifically issued as to paragraph I. In paragraph XXXIII, the month of "April" is stricken and corrected to "June" by underline. Available copies of statements of witnesses and copies of transcripts of tape recordings are handed to defense counsel by Deputy District Attorney D Pitts. Deputy District Attorney D Pitts indicates to Court, certain of requests contained in defendant's motion for discovery have already been complied with and that motion pictures may be viewed at the Los Angeles Police Department by mutual arrangement. Defendant's motion for continuance is argued and granted. Trial is reset for December 9, 1966, 9:30 am. Defendant personally waives time for trial. Pursuant to stipulation of all counsel, hearing on defendant's motion to suppress evidence is continued to October 22, 1966, 9:45 am. Defense counsel to submit written points and authorities with reference to the motion to suppress by tomorrow afternoon. Certain witnesses are instructed to return for the hearing on the motion to suppress evidence. The Court Reporter is directed to prepare an original and four copies of transcripts of these proceedings. The Court Reporter is further directed to prepare an original and three copies of transcripts of the conference of October 2, 1966. The Court states the order of August 2, 1966 with reference to publicity is still in full force and effect. Records.

FILED
OCT 2 1966
CLERK

GRANT B. COOPER, EMILE Z. BERMAN and
RUSSELL PARSONS (SPACE BELOW FOR FILING STAMP ONLY)

COOPER AND NELSEN
2910 GARWOOD AVENUE
LOS ANGELES 4
NORMALY 5-1291

RECEIVED
DECEMBER 1 1955
COURT CLERK
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

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Attorneys for Defendant

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA,) No. A-233421
Plaintiff,) SUPPLEMENTAL MOTION FOR
vs.) DISCOVERY
SIRHAN BISHARA SIRHAN,)
Defendant.)

TO THE HONORABLE EVELLE J. YOUNGER, DISTRICT ATTORNEY OF THE COUNTY
OF LOS ANGELES, LYON D. COMPTON, CHIEF DEPUTY DISTRICT ATTORNEY, AND
JOHN HOWARD AND DAVID FITTS, DEPUTY DISTRICT ATTORNEYS:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the aforesaid entitled
defendant will move the Court on Monday, the 2nd day of December, 1955, at the hour
of 2:00 p.m., for an Order permitting an inspection, copying and furnishing to the
defendant the following:

1. The statements of all or investigators' reports concerning the
following persons:

- Adel Sirhan;
- Munir Sirhan;
- Sahlan Sirhan;
- Sharif Sirhan;
- Mary Sirhan;
- Sandy Secord;

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- 1 Oliver Owen;
- 2 Bert Morse;
- 3 *Handwritten: 83* Walter Corwin;
- 4 Abraham Alex;
- 5 Gwen Gunn;
- 6 Peggy Osterkamp;
- 7 Terry Welch;
- 8 Edward Van Antwerp;
- 9 Genevieve Taylor;
- 10 Jeannie Green;
- 11 Burt Ahmillsch;
- 12 Frank Donnarauma;
- 13 Alvin Tokunow;
- 14 John Fahey;
- 15 Alvin Clark; and
- 16 Ivan Garcia (Alex Garcia or Ivan Alex);
- 17 Any other former associates of Sirhan.
- 18 *C.S.* 2. The statements of and/or investigators' reports concerning any
19 member of the family regarding threats on any high public officials;
- 20 *C.S.* 3. The statements of and/or investigators' reports concerning the
21 family since June 5 until the present time regarding the shooting of Senator Kennedy;
- 22 *C.S.* 4. The clinical reports of a blood test taken by a male nurse of the
23 Sheriff's Office, or by any other person, at the New County Jail, Saucher Street, at or
24 about 8:00 a.m., June 5, 1968, and copies of any other medical tests of any other kind
25 or character, taken or made of the defendant from said date to the present date;
- 26 *C.S.* 5. The original photostatic copies of Sirhan's diaries, two large note-
27 books, a small notebook, not limited to but including all evidence that the defense
28 attempted to suppress, and any other evidence taken from or near his house on June 5;
- 29 *C.S.* 6. To interview Deputy Sheriff Livingston and all other attendants,
30 either Deputy Sheriffs, civilian employees, or trustees, working at the medical facility
31 of the New County Jail on the morning of June 5 from 7:00 a.m. until 7:00 a.m., June 6;
- 32 *C.S.* 7. Photographs of all of the same personnel;

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8. Copies of the photographs taken of the Ambassador's kitchen area
and service pantry immediately after the shooting, and the copies of the photographs showing
the physical layout of the steam tables, etc., after the shooting, and any such
other photographs as might help the defense, taken of the Embassy Room, the kitchen
area and service pantry, possibly including the Colonial Room;
 9. Copies of any drawing done of the kitchen area, service pantry,
Colonial Room, and Embassy Room, done for the purposes of showing the different
physical locations of the fixtures and equipment located therein;
 10. Access to a scale model mock-up of the kitchen area that the Prosecu-
tion intends to use in Court at the time of trial;
 11. The names of all witnesses that the Prosecution intends to use at the
time of trial;
 12. The statements of and/or investigators' reports concerning the
trainers and co-workers of Sirhan at the time he was employed at Bart Akfillisch's
restaurant;
 13. The statements of and/or investigators' reports concerning other
persons in the Corona-Norco area who knew Sirhan;
 14. The statements of and/or investigators' reports concerning all
persons who know Sirhan and were connected with any Rastafarian Lodge and/or one in
the State of California;
 15. The statements of and/or investigators' reports concerning any
parties showing Sirhan or tending to show that Sirhan was involved in a conspiracy;
 16. The medical reports of Drs. V. Faustin Karlausks, Henry Cuneo,
Thomas V. Noguchi, Seymour Pollack, Marcus Crahan, and Lantz;
 17. Any and all other information or material in the possession of or
under the control of the District Attorney that may be of assistance to the defense of
this case, within the meaning and scope of the case of Bailey v. Maryland, 373 U.S. 83,
(1963).

Whenever in this motion the words "Statements of and/or investigators' reports"
are used, it is intended and shall mean to include and include statements or reports
transcribed by means of writing, shorthand or typewritten, or by means of mechanical,

1 photographic or electronic recording, or statements or reports, reported or trans-
2 scribed by any and all other possible means.

3 Whenever in this motion inspection of copies are called for, it is intended and
4 shall mean to include and include the originals of any such documents, pictures,
5 records, statements or reports.

6
7 Respectfully submitted,

8 GRANT B. COOPER, EMILE Z. BERMAN
9 and RUSSELL PARSONS

10 by 

11 GRANT B. COOPER
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19 *Note: In reproducing the above*
20 *exhibit C The Points and*
21 *Authorities in support of*
22 *the supplemental motion*
23 *for discovery was deleted*
24
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30

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

APR 25 1971
JAMES E. DAVEY, Clerk

COMMITTEE TO INVESTIGATE
ASSASSINATIONS, INC.,

Plaintiff,

v.

U. S. DEPARTMENT OF JUSTICE,

Defendant.

Civil Action

No. 3651-70

DEFENDANT'S OPPOSITION TO PLAINTIFF'S
STATEMENT OF MATERIAL FACTS PURSUANT
TO LOCAL RULE 9(h)

Comes now defendant by its attorney, the United States Attorney, in opposition to plaintiff's statement of material facts pursuant to Local Rule 9(h).

In order to avoid the possibility of this Court assuming, pursuant to the third paragraph of Local Rule 9(h), that defendant agrees plaintiff's statement of facts contains material facts, the Court is respectfully informed as follows:

Insofar as paragraphs 7 and 10 of plaintiff's statement of material facts may be understood to imply that the investigation reports were made available to Robert B. Kaiser by the Federal Bureau of Investigation, the implication is emphatically denied by defendant. Affidavits of Richards, Nolan, and Howard, filed with defendant's motion for summary judgment controvert plaintiff's statement and the implication.

Thomas A. Flannery
THOMAS A. FLANNERY
United States Attorney

Joseph M. Hannon
JOSEPH M. HANNON
Assistant United States Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COMMITTEE TO INVESTIGATE
ASSASSINATIONS, INC.,
Plaintiff,
v.
U. S. DEPARTMENT OF JUSTICE,
Defendant.

U.S. DISTRICT COURT
15 1971
JAMES L. DAVEY, Clerk

Civil Action

No. 3651-70

STATEMENT OF MATERIAL FACTS
PURSUANT TO LOCAL RULE 9(h)

1. This action is filed pursuant to the Public Information Act, 5 U.S.C. 552.

2. Plaintiff has exhausted the administrative remedies available to it, the Attorney General of the United States having ruled on plaintiff's administrative appeal April 2, 1971. The Attorney General's decision is adverse to plaintiff's interests. (Defendant's Exhibit 4).

3. In connection with the assassination of Senator Robert F. Kennedy in Los Angeles, California, on June 5, 1968, the Federal Bureau of Investigation conducted an investigation.

4. The reports of the investigation of the Federal Bureau of Investigation were disseminated by that agency to the United States Attorney in Los Angeles and to the District Attorney's Office for the County of Los Angeles, State of California, the latter office being responsible for the prosecution of Sirhan B. Sirhan, who was charged with the assassination.

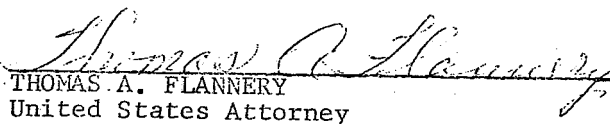
5. The Federal Bureau of Investigation did not disclose its investigative reports or the contents to Robert B. Kaiser or anyone other than the aforementioned agencies. (See affidavits of Nolan and Richards, Defendant's Exhibits 1 and 2).

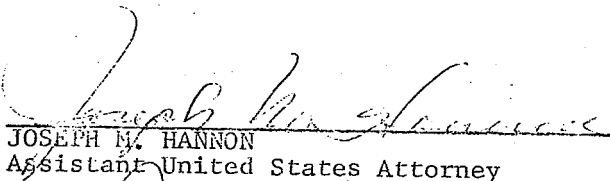
6. Preliminary to the trial of Sirhan B. Sirhan, the defense filed motions for discovery seeking inter alia portions of the Bureau's investigative reports. Pursuant to an order of the Superior Court of the State of California for the County of Los Angeles, the prosecution furnished the defense counsel in open court those portions of the Bureau's investigation required by the order. (Howard affidavit and exhibits, Defendant's Exhibit 3).

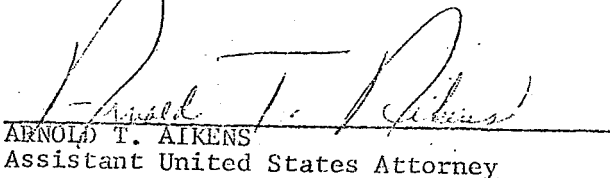
7. Robert B. Kaiser was not an attorney representing the defendant Sirhan B. Sirhan. The prosecution did not provide Kaiser with the investigative reports and did not authorize him to use them for literary purposes.

8. The District Attorney's Office for the County of Los Angeles did not make the reports of the Federal Bureau of Investigation to any individual except under the order of discovery and only to the defendant, Sirhan, and his defense lawyers. (Howard affidavit).

9. In the present action filed in the District Court December 15, 1970, plaintiff, a non-profit corporation, seeks production of the investigation reports of the Federal Bureau of Investigation relating to the assassination of Senator Robert Kennedy.


THOMAS A. FLANNERY
United States Attorney


JOSEPH M. HANNON
Assistant United States Attorney


ARNOLD T. AIKENS
Assistant United States Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

(Handwritten mark)

COMMITTEE TO INVESTIGATE
ASSASSINATIONS, INC.,

Plaintiff,

v.

U. S. DEPARTMENT OF JUSTICE,

Defendant.

JAMES E. DAVELY, CLERK

Civil Action

No. 3651-70

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF DEFENDANT'S CROSS-MOTION
FOR SUMMARY JUDGMENT

Preliminary Statement

This is an action filed pursuant to the Public Information Act, 5 U.S.C. 552. Plaintiff allegedly is a non-profit corporation organized under the laws of the District of Columbia for the purpose of investigating assassinations of national leaders. In this action they seek production of the entire investigative file of the Federal Bureau of Investigation relating to its investigation of the assassination of Senator Robert F. Kennedy.

Initially, defendant filed a motion to dismiss the instant action on the ground that plaintiff had not exhausted the administrative remedies available to it. Defendant's motion to dismiss was specifically based upon plaintiff's failure to seek an administrative appeal and a decision at that level as required by the Act and the regulations promulgated by the Department of Justice pursuant to the Act. However, while this action has been pending, an administrative appeal has been taken. On April 2, 1971, the Attorney General of the United States denied plaintiff's request in a written decision. (See Defendant's Exhibit 4). In view of the foregoing, defendant's motion to dismiss is withdrawn. This matter is now before the Court on cross-motions for summary judgment.

Argument

Title 5 U.S.C. 552(b) 7 of the Public Information Act expressly exempts "investigatory files compiled for law enforcement purposes except to extent available by law to a private party." The legislative history of the Act discloses this exemption was designed to preclude production of "files prepared by Government agencies to prosecute law violators." S. Rep. No. 813, 89th Cong., 1st Sess. (1965); see also H. R. Rep. No. 1497, 89th Cong., 2nd Sess. (1966).

Of this exemption, the Attorney General has stated:

"It should be noted that the language 'except to the extent available by law to a private party' is very different from the phrase, 'which would not be available by law to a private party in litigation with the agency,' used in exemption (5). The effect of exemption (5) is to make available to the general public those internal documents from agency files which are routinely available to litigants, unless some other exemption bars disclosure. The effect of the language in exemption (7), on the other hand, seems to be to confirm the availability to litigants of documents from investigatory files to the extent to which Congress and the courts have made them available to such litigants. For example, litigants who meet the burdens of the Jencks statute (18 U.S.C. 3500) may obtain prior statements given to an FBI agent or an SEC investigator by a witness who is testifying in a pending case; but since such statements might contain information unfairly damaging to the litigant or other persons, the new law, like the Jencks statute, does not permit the statement to be made available to the public. In addition, the House report makes clear that litigants are not to obtain special benefits from this provision, stating that 'S. 1160 is not intended to give a private party indirectly any earlier or greater access to investigatory files than he would have directly in such litigation or proceedings.' (H.Rept., 11.) (Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act, p. 38.)

There is no dispute between the parties here that the investigation reports of the Federal Bureau of Investigation are "investigatory reports compiled for law enforcement purposes." They are thus expressly exempt from disclosure by the Public Information Act. Since plaintiff makes no mention of the exemption, it apparently concedes the applicability of it.

Instead, plaintiff bases its claim to production of these investigative reports solely on the ground that one Robert B. Kaiser, a journalist, has seen some of the reports. Plaintiff thus erroneously concludes from this that it is entitled to see the reports if one member of the general public has seen some of them. This contention deserves closer examination.

The complaint alleges and unsupported assertions in plaintiff's statement filed pursuant to Local Rule 9(h) state the FBI file was "made available" to Robert B. Kaiser. Plaintiff carefully avoids saying the records were made available by the FBI or the prosecution staff in the Sirhan B. Sirhan trial. An explanation of plaintiff's assertion is partially apparent from the preface of Kaiser's book which is appended to the complaint.

Kaiser states in the preface to his book "R.F.K. Must Die! " that he was a reporter who "wangled my way inside the case." Nowhere does he state in the material provided by plaintiff that the FBI or the prosecution staff made the investigative reports available to him. He affirmatively says the FBI reports were produced for the defense attorneys pursuant to a motion for discovery. (Preface, pp. 11-12). He then relates that in exchange for funds provided for Sirhan's defense, he was given "entree" to the defense lawyers and their case. He implies that his perusal of the reports in issue was with the permission of defense counsel and was limited to those reports furnished the defense.

Clarification is provided in the sworn affidavits of Richards and Nolan of the Federal Bureau of Investigation and of Howard, who served on the prosecution staff in the Sirhan trial. These are appended to defendant's motion.

The assassination of Senator Robert F. Kennedy was a matter of great public concern. The matter was extensively investigated by the FBI and consistent with its policy of assisting State law enforcement agencies in matters of joint interest, the Bureau provided the reports of its investigation to the United States Attorney in Los Angeles and the District Attorney's Office in Los Angeles County, which was responsible for the prosecution of Sirhan. The affidavits of Nolan and Richards make clear that these reports were furnished only to the aforementioned law enforcement authorities. They were not made available to the public or to Robert B. Kaiser.

The affidavit of John Howard, Chief Deputy District Attorney of Los Angeles County and a member of the prosecution team in the Sirhan trial, establishes that portions of the FBI reports were furnished to the defense pursuant to motions for discovery and upon order of the Court. The records were provided to Sirhan and his defense counsel in open court. The District Attorney's Office in Los Angeles did not make them available to the public, nor did it make them available to Kaiser.

Thus, neither the Federal Bureau of Investigation nor the District Attorney's Office in Los Angeles has made the reports available to anyone other than a law enforcement agency except pursuant to a court order.

If Kaiser saw the reports, as he claims, he reviewed only a portion of the reports - those provided Sirhan and his defense - and these were seen only as a result of his own unofficial intervention in the trial. It is not clear whether his conduct was with the approval of the defense lawyers. However, it is of little consequence whether the defense lawyers authorized Kaiser to see the reports or not, their decision on such a matter is not that of the governmental agencies possessing the

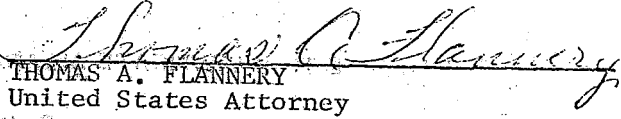
records and cannot impute authorization to the United States or the State of California. Moreover, if Kaiser personally engineered his own access to the documents, his actions do not transform the reports into public records.

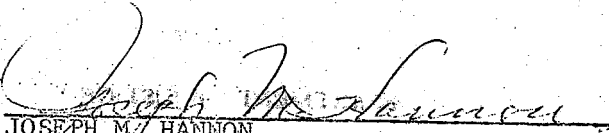
As noted earlier, the Public Information Act did not change the earlier law with respect to disclosure of investigatory files for law enforcement. The language embodied by Congress in the exemption "except to the extent available by law to a private party" limits disclosure to the defendant and his attorney; it does not permit the information to be made available to the general public. Congress did not intend "to give a private party indirectly any earlier or greater access to investigatory files than he would have directly in such litigation or proceedings." H.R. Rep. 1497, 89th Cong. 2nd Sess. p. 11 (1966). It follows that Congress did not accord the general public greater rights than the litigant.

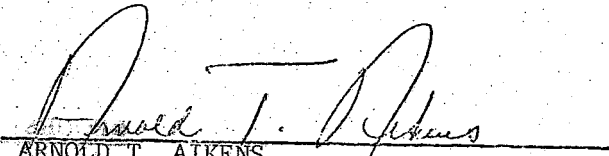
In his decision denying plaintiff's request for production of the investigation the Attorney General acknowledged the intent of Congress, stating:

"There are strong reasons of public policy against unnecessary distributions of exempt investigative files, and there are strong policy considerations for the protection of the personal reputations and the personal privacy of defendants who have obtained such files under court order. It must also be borne in mind that the privacy and other interests of persons other than defendants may be involved in such files. In short, the fact that a defendant may have obtained access to such records by a court order that is designed to protect his interests clearly does not mean the records should therefore be made public. And if the defendant or his lawyers make such records available to persons of their own choosing for uses which they hope will be helpful to the defense, that fact does not necessarily mean that this Department should make the same records generally available."
(Defendant's Exhibit 4).

For the foregoing reasons, it is respectfully submitted that the Court grant defendant's motion for summary judgment.


THOMAS A. FLANNERY
United States Attorney


JOSEPH M. HANNON
Assistant United States Attorney


ARNOLD T. AIKENS
Assistant United States Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COMMITTEE TO INVESTIGATE ASSASSINATIONS, INC.)

Plaintiff)

v)

U. S. DEPARTMENT OF JUSTICE)

Defendant)

Civil Action
No. 3651-70

REQUEST FOR ADMISSIONS

Pursuant to Rule 36 of the Federal Rules of Civil Procedure plaintiff, Committee to Investigate Assassinations, Inc., requests defendant, U. S. Department of Justice, within 30 days after service of this request to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial; that each of the following statements is true:

1) that exhaustion of administrative remedies by anyone with respect to particular government records sought under the Freedom of Information Act (5 U. S. C. 552) obviates the need for exhaustion by anyone else seeking the exact same records (since the government has cited exhaustion by Michael Clark, not a party to this suit, as exhaustion of plaintiff's remedies).

2) that copies of some of the FBI^{records} sought in this case were given under court order to Sirhan's attorneys.

3) that no restrictions were placed upon the use to be made of the records by Sirhan's defense attorneys.

4) that copies of all of the records sought in this case were given without court order to the Los Angeles District Attorney's office.

5) that, once copies were given to the DA's office, the FBI and Department of Justice lost effective control over their availability to persons outside the sphere of law enforcement.

6) that the DA's office made all of the subject records available to Robert Kaiser.

7) that Robert Kaiser was not and is not either an attorney, licensed investigator, or an employee of any attorney.

8) that Robert Kaiser was and is a free-lance writer.

9) that no restriction was placed on Robert Kaiser's use of the subject records.

10) that Miss Janet Ward, an employee of the DA's office, made copies for Robert Kaiser of pages of said records upon his request.

11) that FBI Agent Roger La Jeunesse was aware of Robert Kaiser's access to the records and his plans to publish a book, which was to be based in part upon such records, at the conclusion of the Sirhan trial.

12) that the Federal Government made no attempt to enjoin Robert Kaiser's access to the records or his use of them for literary purposes.

13) that the Federal Government made no effort to suppress publication and distribution of Robert Kaiser's book, RFK Must Die.

14) that Theodore Taylor, another free-lance writer and co-author of the book, Special Unit Senator: the Investigation of the Assassination of Senator Robert F. Kennedy (Random House, 1970), also had access to the records in question and made literary use of same.

15) that Pete Noyes, chief of CBS News in Los Angeles, had access to the records in question.

16) that psychiatrists, Drs. Bernard Diamond and Seymour Pollack, had access to the records in question.

17) that any FBI "secrets", if any, contained in the documents are already compromised.

18) that any FBI - informant relationship will not be further compromised by making available to plaintiff records which have already been read and/or copied and/or publicized by a number of people outside of law enforcement.

Bernard Fensterwald, Jr.
Attorney for Plaintiff

Date:

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COMMITTEE TO INVESTIGATE
ASSASSINATIONS, INC.,

Plaintiff,

v.

U. S. DEPARTMENT OF JUSTICE,

Defendant.

Civil Action

No. 3651-70

DEFENDANT'S RESPONSE TO
REQUEST FOR ADMISSIONS

Defendant, by its attorney, the United States Attorney for the District of Columbia, submits the following responses to plaintiff's request for admissions filed pursuant to Rule 36, F.R.C.P. :

1. Within the context of this case and with respect to the particular documents sought, the request for admission is admitted.
2. Defendant admits some copies of the F.B.I. records were turned over to Sirhan's defense attorneys pursuant to an order of the Superior Court of the State of California for the County of Los Angeles.
3. The sole issue involved in the subject matter of this litigation is whether the Department of Justice authorized any of its agents to reveal or turn over to any private person the government investigatory reports sought in this proceeding so as to thereby waive the statutory protection and exemption afforded these reports by 5 U.S.C. 552(b) 7. Thus, whether the Superior Court of the State of California for the County of Los Angeles placed restrictions on the use to be made of the records turned over to Sirhan's defense attorneys is irrelevant as provided in

Rule 26(b)(1), which is incorporated in Rule 36, F.R.C.P. Defendant therefore objects to request for admission #3.

4. Defendant admits that consistent with the Department of Justice policy to cooperate with other law enforcement agencies copies of the records sought were loaned to the District Attorney's Office of Los Angeles County for the purpose of prosecuting Sirhan.

5.-10. Defendant objects for reasons asserted in its response to request for admission #3.

11. Request for admission #11 is denied.

12. Defendant denies any knowledge of Kaiser's alleged access to the documents sought herein and further denies knowledge of his intention to use them, if he did gain access to the records.

13. Defendant admits request for admission #13.

14. Defendant objects to request for admission #14 for reasons asserted in its response to #3. If request for admission #14 contains the implication that access to the records in question was made available by a Federal official, then request for admission #14 is denied.

15. Defendant objects and incorporates herein its response to request for admission #13.

16. Defendant objects and incorporates herein its response to request for admission #13.

17.-18. Defendant objects for reasons asserted in its response to request for admission #3.

/s/

THOMAS A. FLANNERY
United States Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COMMITTEE TO INVESTIGATE
ASSASSINATIONS, INC.,

Plaintiff

v.

CIVIL ACTION NO. 3651-70

U.S. DEPARTMENT OF JUSTICE,

Defendant.

PLAINTIFF'S MOTION TO DETERMINE
THE SUFFICIENCY OF DEFENDANT'S RESPONSES
TO REQUESTS FOR ADMISSIONS

1. Under Rule 36, F.R.C.P., plaintiff, by its attorney, on April 28, 1971, made requests for admissions of eighteen specific matters.

2. On May 28, defendant responded to this request by admitting the correctness of four assertions (Nos. 1, 2, 4, and 13), by denying the correctness of one assertion (No. 11), by denying knowledge as to one assertion (No. 12), and by objecting to the relevancy of twelve assertions (Nos. 3, 5, 6, 7, 8, 9, 10, 14, 15, 16, 17, and 18).

3. As to item No. 12 in which "defendant denies any knowledge of Kaiser's alleged access to the documents sought herein and further denies knowledge of his intention to use them, if he did gain access to the records," plaintiff would refer to Exhibit D of the complaint in this action, a reproduction of

certain pages of Kaiser's book, RFK MUST DIE, and specifically to page 321 where Kaiser writes "while the lawyers settled down to the weary task of picking twelve jurors and six alternates, I continued to read the Federal Bureau of Investigation's Office File 56-156, Bureau File No. 62-587. It was impressively heavy, comprising at least 4,000 pages of reports from special agents all over the United States who looked into the case of Sirhan Bishara Sirhan 'upon request of the Attorney General of the United States under the Civil Rights Act of 1968 and the Voting Rights Act of 1965.'" Kaiser went on to say that "it was well written. The report of the assassination itself by Amadee O. Richards, Jr., of the Los Angeles office was a model of telegraphic clarity." Then Kaiser quotes from Agent Amadee's report as follows:

"At approximately 12:15 a.m., 6/5/68, Senator ROBERT F. KENNEDY proclaimed victory in California primary election in crowded Embassy Room, Ambassador Hotel, 3400 Wilshire Boulevard, Los Angeles. As SENATOR KENNEDY and party were leaving Embassy Room through kitchen exit, a series of shots were fired by an unknown individual, subsequently identified as SIRHAN BISHARA SIRHAN, SENATOR KENNEDY fell backward onto floor, critically wounded with bullet in brain. SIRHAN wrestled to floor, disarmed and turned over to Los Angeles, California, Police Department. (LAPD)."

From this alone, Defendant Department of Justice should be able to state whether Kaiser did or did not have access to the file in question and whether or not they attempted to enjoin his access or use.

Further, Rule 36 states: "An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny." Defendant has many many

agents in the Los Angeles area, any one of whom could enquire of Kaiser and/or the District Attorney's office as to Kaiser's access to the file if there is any real doubt as to it. Further, defendant must of its own knowledge know whether it attempted to enjoin Kaiser's access or use.

4. As to items 3, 5, 6, 7, 8, 9, 10, 14, 15, 16, 17, 18, defendant objects on the ground of irrelevancy. He reaches this position solely on the conclusion of law that "the sole issue involved in the subject matter of this litigation is whether the Department of Justice authorized any of its agents to reveal or turn over to any private person the government investigatory reports sought in this proceeding so as to thereby waive the statutory protection and exemption afforded these reports by 5 U.S.C. §552(b)(7)."

Plaintiff contends that defendant is in error in defining what it claims as the "sole issue" in the litigation. Nowhere in the text or legislative history of 5 U.S.C. §552 is there mention of authorization or waiver. The statutory provision and its history speaks clearly in terms of the equal availability of government documents to citizens. If one citizen legally gets access to documents, they must be, according to the provisions of the statute, equally made available to all citizens.

Defendant Department of Justice admits a) that it voluntarily and without court order "loaned" the documents to the Los Angeles District Attorney, and b) that a court order compelled release by the District Attorney of the documents to Sirhan's defense. Yet it will not admit or deny "that no restrictions were placed upon the use to be made of the records by Sirhan's defense attorneys" (No. 3) which is a matter of court record.

It will not admit or deny "that, once copies were given to the District Attorney's office, the FBI and Department of Justice lost effective control over their availability to persons outside the sphere of law enforcement" (No. 5).

It is the plaintiff's contention that items Nos. 3, 5, 6, 7, 8, 9, 10, 14, 15, 16, 17, and 18 are directly relevant to legal issues in litigation and the defendant either has or can easily obtain the knowledge necessary to admit or deny each and every one of the requests for admissions.

5. Specifically as to items Nos. 15 and 16, "Defendant objects and incorporates herein its response to request for admission No. 13." Yet, in reply to No. 13 defendant replied simply that it "admits requests for admission No. 13"; nothing more.

WHEREFORE, plaintiff prays that this honorable court will order defendant Department of Justice either to admit or deny all of the requests for admissions forthwith or withdraw its Motion for Summary Judgment; if there are substantial factual matters in dispute, plaintiff prays that this honorable court will set the matter down promptly for trial.

RESPECTFULLY SUBMITTED,

BERNARD FENSTERWALD, JR.
905 16th St., N.W.
Washington, D.C. 20006
Tel: 347-3919
Attorney for Plaintiff

FILED

July 29, 1971

JAMES F. DAVEY
CLERK

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

COMMITTEE TO INVESTIGATE :
ASSASSINATIONS, INC., :
Plaintiff :

vs. : Civil Action

UNITED STATES DEPARTMENT : No. 3651-70
OF JUSTICE, :
Defendant :

MEMORANDUM AND ORDER

This is an action for injunctive relief sought under the provisions of 5 U.S.C. § 552 (Supp. 1967), popularly known as the Freedom of Information Act. The plaintiff organization seeks an order of this Court directing the Justice Department to produce and make available for copying FBI Office File No. 56-156, Bureau File No. 62-587, the FBI study of the assassination of Senator Robert F. Kennedy. Pending before the Court at this time are Plaintiff's Motion to Determine the Sufficiency of Defendant's Responses to Requests for Admissions and cross motions for summary judgment. Upon consideration of these motions, the memoranda in support thereof and in opposition thereto, the statements of material facts as to which there is no genuine issue and the affidavits filed herein, it is the conclusion of this Court that plaintiff is not entitled to the relief sought.

Preliminarily, it should be noted that as this Court views the facts set forth in defendant's statement and the applicable law, defendant's answers to plaintiff's

requests for admissions are sufficient. As to the cross motions for summary judgment, the uncontested facts are that the FBI made this file available to the Los Angeles, California, law enforcement agency that prosecuted Sirhan B. Sirhan and that agency made available to Sirhan's defense counsel only those parts of the file which were ordered disclosed by the California Court as a result of a defense motion for discovery in that criminal trial. Plaintiff does not assert nor do the facts indicate that the FBI ever made the file available to the writer Robert B. Kaiser.

Plaintiff does contend, however, and the statements of fact of both parties indicate that the writer did gain access to the file as is evidenced by various passages in the book eventually written about the assassination. Plaintiff contends that because this writer somehow gained access to the file, the Freedom of Information Act exception relied upon by the defendant herein, no longer applies. Defendant Justice Department relies on exception (7), that is:

(b) This section does not apply to matters that are--

(7) investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency.

10 U.S.C. § 552(b) (7) (Supp. 1967).

It is clear to this Court that the file sought by plaintiff herein is an investigatory file that was only made available to a party in criminal litigation as

required by law. It is still covered by exception (7) of the Act and is therefore, not subject to disclosure pursuant to that Act.

There may be some question of fact as to whether the file was made available to the writer through Sirhan's defense counsel. There is no question, however, that the FBI did not disclose it to the writer. This investigatory file is clearly within the exception as stated, and it is, therefore, by the Court this 29th of July, 1971,

ORDERED, that Plaintiff's Motion to Determine the Sufficiency of Defendant's Responses to Requests for Admissions be and the same hereby is denied; and it is

FURTHER ORDERED, that Plaintiff's Motion for Summary Judgment be and the same hereby is denied; and it is

FURTHER ORDERED, that Defendant's Motion for Summary Judgment be and the same hereby is granted; and it is

FURTHER ORDERED, that this case be and hereby is dismissed.


Judge

July 29, 1971
(Date)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COMMITTEE TO INVESTIGATE
ASSASSINATIONS, INC.,

Plaintiff,

v.

U. S. DEPARTMENT OF JUSTICE,

Defendant.

Civil Action

No. 3651-70

ORDER

Upon consideration of defendant's motion to extend time to respond to plaintiff's motion for summary judgment, plaintiff's opposition thereto, and it appearing that good cause for the extension of time has been shown, it is by the Court this _____ day of April, 1971,

ORDERED that defendant's motion for an extension of time be and it hereby is granted, and defendant is granted to and including April 15, 1971 to respond to plaintiff's motion for summary judgment.

UNITED STATES DISTRICT JUDGE

Certificate of Service

I HEREBY CERTIFY that service of the foregoing proposed Order has been made upon plaintiff by mailing a copy thereof to attorney for plaintiff, Bernard Fensterwald, Jr., 905 16th St., N.W., Washington, D.C., on this 21st day of April, 1971.

/s/

ARNOLD T. AIKENS

Assistant United States Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....
Committee to Investigate
Assassinations
927 15th St., N.W.
Washington, D.C. 20005,

Plaintiff

v.

File Number 3651-70

United States Department
of Justice,

Defendant
.....

NOTICE OF APPEAL

Notice is hereby given that the Committee to Investigate
Assassinations, plaintiff above named, hereby appeals to the
United States Court of Appeals for the District of Columbia from
the Summary Judgment entered in this action on the 29th day of
July, 1971.

Bernard Fensterwald, Jr.
BERNARD FENSTERWALD, JR.

905 16th St., N.W.
Washington, D.C. 20006
Tel: 347-3919

Attorney for the Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Notice of Appeal was
served by mail this 10th day of September, 1971, upon the U.S.
Attorney for the District of Columbia, Attorney for Defendant.

Bernard Fensterwald, Jr.
BERNARD FENSTERWALD, JR.

AFFIDAVIT OF ROBERT BLAIR KAISER

ROBERT BLAIR KAISER, being duly sworn, deposes and says:

That I am a free-lance journalist, presently residing at 4711 Natick, Sherman Oaks, California, and author of the book, RFK MUST DIE, a book about the assassination of Senator Robert F. Kennedy.

That, in connection with my investigation into the assassination of Senator Robert F. Kennedy, I was given complete unlimited, and unrestricted access to FBI Office File No. 56-156, Bureau File No. 62-587.

That these files dealt exclusively with the said assassination and consisted of more than 4,000 pages of reports, photographs, etc.

That access was given to me to examine the files without limitation in the offices of the District of Attorney of Los Angeles County.

That I was told that the whole FBI file on the assassination was being made available to me.

That I conducted my lengthy examination of the FBI file over a period of months under the custodial supervision of the employees of the staff of the District Attorney of Los Angeles County.

That I was permitted to take notes and make xerox copies of the material contained in the FBI file; a few samples of xeroxes are attached to this affidavit.

That my knowledge gained from the examination, as well as my notes and xerox copies were used extensively in the preparation of my book RFK MUST DIE.

That I am unaware of any court order requiring that access to the whole FBI file be made; it is my belief and information that the complete file was voluntarily given by the FBI to the District Attorney's office and that the latter agreed to make it all available to the Sirhan defense after the court ordered that certain parts of the file be made available under the right of discovery.

That no one, either from the District Attorney's office, the FBI, or elsewhere, indicated in any way that there was any limitation on the use to be made by me of the examination of the FBI file, and particularly as to literary use.

That, in addition to complete physical access to the file, I received from FBI Agent Roger La Jeunesse oral dissemination of certain information and material developed in connection with the federal government's investigation into the death of Senator Kennedy.

That another author, Robert Houghton, was given complete access to the file by the FBI and that he made use of it in writing SPECIAL UNIT SENATOR, which he co-authored with Theodore Taylor. Author Houghton's access was given without any court order. It is not known to affiant whether said Theodore Taylor had physical access to the file, but the book reveals reliance on the content of the file. Specifically, affiant asserts that the part of the Houghton-Taylor book dealing with Crispin Curiel Gonzalez relies heavily on the FBI investigation and file.

ROBERT BLAIR KAISER

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COMMITTEE TO INVESTIGATE
ASSASSINATIONS,

Plaintiff,

v.

DEPARTMENT OF JUSTICE,

Defendant.

Civil Action

No. 3651-70

OPPOSITION TO FILING OF
AFFIDAVIT OF ROBERT BLAIR KAISER

Comes now defendant by its attorney, the United States Attorney for the District of Columbia, and opposes the filing of the affidavit of Robert Blair Kaiser for the following reasons:

On July 29, 1971, this Court entered an order granting summary judgment for defendant. Plaintiff subsequently filed a notice of appeal on September 16, 1971. The affidavit plaintiff now seeks to file was not before the Court at the time of its ruling although plaintiff had ample opportunity to present it since the complaint in this action was originally filed December 15, 1970. The affidavit was thus not a part of the record at the time of the Court's ruling and may not appropriately be added to supplement the record at this juncture.

Moreover, the affidavit adds no information which would affect the memorandum opinion and ruling of the Court in this action. Kaiser, in the affidavit, reaffirms the fact already established that his access to the files in question was permitted by the District Attorney's Office in Los Angeles County and not the Federal Bureau of Investigation. Although he does not make reference to his appointment as an investigator for the defense team of Sirhan, this

(JOINT APPENDIX)

In The
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 3651-70

Committee To Investigate Assassinations,
927 15th St., N.W., Washington, D.C.

Plaintiff,

v.

United States Department of Justice,
Washington, D.C.

Defendant,

RELEVANT DOCKET ENTRIES

1. Complaint [JA-1]
2. Defendant's Motion To Dismiss [JA-4]
3. Plaintiff's Opposition To Motion To Dismiss and Motion For Summary Judgment [JA-8]
4. Defendant's Cross-Motion For Summary Judgment [JA-17]
5. Plaintiff's Request For Admissions [JA-27]
6. Defenant's Response To Request For Admissions [JA-30]
7. Plaintiff's Motion To Determine The Sufficiency Of Defendant's Response To Requests and Admissions [JA-32]
8. Memorandum and Order Granting Defendant Summary Judgment and Denying Plaintiff's Motion to Determine Sufficiency of Responses to Requests For Admissions [JA-36]
9. Notice of Appeal [JA-40]
10. Affidavit of Robert Blair Kaiser [JA-41]
11. Opposition to Filing of Affidavit of Robert Blair Kaiser [JA-43]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

.....:

:

COMMITTEE TO INVESTIGATE :

ASSASSINATIONS, INC. :

927 15th St., N.W. :

Washington, D.C. 20005 :

:

Plaintiff :

:

v. :

:

U.S. DEPARTMENT OF JUSTICE :

10th & Constitution Ave., N.W. :

Washington, D.C. :

:

Defendant :

:

:

.....:

RUBINSON

3651-70

Civil Action No. _____

C O M P L A I N T

(Pursuant to Public Law 89-487; 5 U.S.C. §552)

1. Plaintiff brings this action under Public Law 89-487; 5 U.S.C. §552.
2. Plaintiff is a non-profit corporation, organized under the laws of the District of Columbia, for the purposes of investigating the assassinations of several of our more important national leaders, discovering the identity of those responsible for these assassinations, the reasons why the whole truth relating to them is suppressed, and educating the public and Congress as to true facts regarding these various matters.
3. Defendant is the U.S. Department of Justice.
4. Senator Robert Francis Kennedy, one of our national leaders, was assassinated in Los Angeles in June, 1968.

5. The defendant Department of Justice, by and through its investigative arm, the Federal Bureau of Investigation, made an in-depth study of the murder, which was compiled into a file of approximately 6,000 pages and designated as Office File 56-156, Bureau File No. 62-587.

6. Said FBI file was made available to Sirhan B. Sirhan and his counsel (Messrs. Russell Parsons, Grant Cooper, and E. Z. Berman) for preparation of his defense against a charge of First Degree Murder in Los Angeles County, California, in the wrongful death of Senator Robert Francis Kennedy.

7. Said FBI file was also made available to Mr. Robert F. Kaiser, who paid Sirhan B. Sirhan approximately \$32,000.00 for the privilege of writing his "inside story."

8. Mr. Robert F. Kaiser is neither an attorney nor licensed investigator, but rather a journalist and self-styled free lance writer.

9. Mr. Kaiser's "inside story" was published as R.F.K. Must Die: a History of the Robert Kennedy Assassination and Its Aftermath, E.P. Dutton, New York, 1970 (Library of Congress Catalogue Number 74-86074).

10. On page 11, 12, 321, 322 of RFK Must Die, Mr. Kaiser acknowledges the availability to him of FBI Office File 56-156, Bureau File No. 62-587. [See Exhibit A, appended hereto.]

11. On October 19, 1970, plaintiff wrote to the Attorney General requesting access to the same FBI File under 5 U.S.C. §552 and 28 CFR 16. As required by regulations of the Department of Justice, the latter was accompanied by a completed form DJ-118 and a check for \$3.00. [For a copy of the letter, see Exhibit B, appended hereto.]

12. In a letter dated December 8, 1970, plaintiff again wrote defendant, renewing his petition to see the FBI file. [See Exhibit C, appended hereto.]

13. In a letter dated December 7, 1970, defendant Department of Justice, over the signature of the Hon. Richard G. Kleindienst, Deputy Attorney General, refused to make the said FBI file available as it is "not subject to disclosure under the provisions of 5 U.S.C. §552(4)(b)(7)." [Exhibit D, appended hereto.]

14. The request remaining denied after exhaustion of administrative remedies, plaintiff files this complaint pursuant to Public Law 89-487, 5 U.S.C. §552, further alleging that, pursuant to this law, the records must be made available to it, and the Court shall determine the matter de novo, and the burden is on the defendant to sustain its refusal.

Wherefore, Plaintiff prays this honorable Court for the following relief: that Defendant be ordered to produce and make available for copying FBI Office File No. 56-156, Bureau File No. 62-587 and such other relief as this Court may deem just and equitable.

BERNARD FENSTERWALD, JR.
905 16th St., N.W.
Washington, D. C. 20006
Tel. 347-3919
Attorney for Plaintiff

Dated Dec 15, 1970

EXHIBIT A

COMMITTEE TO INVESTIGATE
ASSASSINATIONS

927 15TH STREET, N. W.
WASHINGTON, D. C. 20005
(202) 347-3837

BERNARD FENSTERWALD, JR.
EXECUTIVE DIRECTOR
WASHINGTON, D. C.

BOARD OF DIRECTORS

FRED COOK, INTERLAKEN, NEW JERSEY
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LLOYD TUBING, WASH., D. C.
WILLIAM TURNER, MILL VALLEY, CALIF.

October 19, 1970

Attorney General John Mitchell
Department of Justice
Washington, D. C.

Dear Mr. Attorney General:

Attached hereto is a completed form DJ-118, a request for access to official records under 5 U.S.C. 552(a) and 28 CFR Part 16.

The records sought are an FBI file with respect to Sirhan B. Sirhan.

If it were not for the fact that the file in question had been made available to writer Robert Blair Kaiser, and had not Mr. Kaiser made this fact known in his new book, RFK Must Die, [please see Attachment], you might be inclined to answer that the records in question were within an exemption in 5 U.S.C. 552. However, as they have been made available to a commercial writer and are the basis, at least in part, for his published book, we can see no reason why they should not be made equally available to our Committee, as 5 U.S.C. 552 require equality of treatment in access to records.

Therefore, we hope that the records can be made available without serious delay.

Most respectfully yours,

Bernard Fensterwald, Jr.
Executive Director

EXHIBIT C

OFFICE OF THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

DEC 7 1970



Mr. Bernard Fensterwald, Jr.
Executive Director
Committee to Investigate Assassinations
925 15th Street, N.W.
Washington, D. C. 20005

Dear Mr. Fensterwald:

Reference is made to your letter of October 19, 1970 with attachments requesting access to the files of the Federal Bureau of Investigation in the matter of Sirhan B. Sirhan.

I am unable to comply with your request for the reason that such files are not subject to disclosure under the provisions of 5 U.S.C. 552 (4)(b)(7).

Your check dated October 19, 1970 and drawn on the Riggs National Bank is returned herewith.

Sincerely,

A handwritten signature in cursive script, reading "Richard G. Kleindienst", is written over a faint, illegible typed name.

RICHARD G. KLEINDIENST
Deputy Attorney General

3c

EXHIBIT D

"R.F.K. Must Die!"

A History of
the Robert Kennedy Assassination
and Its Aftermath
by
Robert Blair Kaiser



E. P. DUTTON & CO., INC., NEW YORK, 1970

Preface

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When yet another assassin's bullet took the life of yet another Kennedy, the whole world demanded to know who did it and why. They soon discovered who. It was a young Palestinian Arab refugee with a strange double name: Sirhan Sirhan. But the story of why he killed—which he propounded at the trial—didn't make any sense.

This is a book that tries to make sense of it. It is a book about the assassin and about those who probed him: police, prosecutors, defense attorneys, psychiatrists, psychologists, reporters.

I was one of those reporters. Out of curiosity, mainly, and out of a suspicion that the public would learn something less than the whole truth if it had to rely on either the assassin's unchallenged version or even the police estimate, I wangled my way inside the case.

Once I was inside, I was really in. I was able to talk to Sirhan's family and some of his friends, to sit in on the defense attorneys' conferences with Sirhan, to become a participant-observer in the attorneys' own private working sessions, confer closely with the psychologists and psychiatrists in the case. I had access to police and FBI files, and, most important of all, I was able to visit Sirhan in his cell two or three times a week until he left Los Angeles for San Quentin, condemned to die.

I doubt whether any reporter has ever gotten so deeply inside a major murder case.

Why was I given such entrée? I hesitate to say the answer was simply money. I did promise to provide funds for Sirhan's legal defense, and I probably would have gotten nowhere without such a promise—and delivery. Sirhan wanted a good private attorney and I made it possible for him to hire one. It wasn't that Attorney Grant Cooper demanded a big fee, or any fee at all. In fact, Cooper renounced any proceeds from my writings on the case

in favor of the University of Southern California Law School. Still, he needed some resources: the district attorney's office spent \$203,656 to prosecute Sirhan. Simple fairness would dictate that Sirhan's attorneys should have a fraction of that for their expenses (otherwise, the expression "fair trial" would have been a sham). And simple common sense told me that there was only one sure source for those expenses, the world press. The world wanted to know, the news media would pay. They did, in a modest way. By the end of the case, I was able to turn some \$32,000, approximately half of what I had then received, over to Sirhan's attorneys.

But I provided more than money. I gave myself. The defense attorneys received most of the Los Angeles Police Department files and all of the FBI reports on the case through a legal "motion for discovery." But neither they nor their investigator had time to read and digest all this material. I did. They didn't have the time or the patience to draw out the assassin. I did. Soon, the attorneys began to need me, for, in my total curiosity, I soon knew more about the case than they did themselves. My reporter's dream was complete when Dr. Bernard L. Diamond, the chief psychiatrist for the defense, turned to me as the chief repository of knowledge about the case and began taking me into Sirhan's cell with him for his analysis of Sirhan under hypnosis.

I am not at all sure that every case would lend itself to such heightened personal involvement by a reporter who is trying to write about it. In this case, however, I got access to the assassin, without giving up the right to tell the story as I saw it.

... and anybody pay you to shoot Kennedy?" 321

"Of course it does," said Berman, wondering to himself just how the judge could be persuaded to let that happen.

"And I've got some books," said Jabara fiercely, "that ought to go in evidence."

"I'd like to have them right away," said Berman. "And anything else you've got on the subject."

Jabara smiled and relaxed enough to enjoy the greatest fried shrimp in town. "Okay," he said. "Okay."

"Here," I said, pushing a plate at Jabara, "have a fortune cookie and see what the fates have in store."

Jabara took a sip of tea, opened his cookie carefully and burst into a roar of laughter. He handed over a tiny scrap of paper imprinted with the message: "DON'T LET YOUR ENTHUSIASM OVERRIDE THE REALITY AROUND YOU." Jabara laughed again.

While the lawyers settled down to the weary task of picking twelve jurors and six alternates, I continued to read the Federal Bureau of Investigation's Office File 56-156, Bureau File No. 62-587. It was impressively heavy, comprising at least 4,000 pages of reports from special agents all over the United States who looked into the case of Sirhan Bishara Sirhan "upon request of the Attorney General of the United States under the Civil Rights Act of 1968 and the Voting Rights Act of 1965."

And it was well written. The report of the assassination itself by Amadee O. Richards, Jr., of the Los Angeles office was a model of telegraphic clarity.

At approximately 12:15 A.M., 6/5/68, Senator ROBERT F. KENNEDY proclaimed victory in California primary election in crowded Embassy Room, Ambassador Hotel, 3400 Wilshire Boulevard, Los Angeles. As SENATOR KENNEDY and party were leaving Embassy Room through kitchen exit, a series of shots were fired by an unknown individual, subsequently identified as SIRHAN BISHARA SIRHAN. SENATOR KENNEDY fell backward onto floor, critically wounded with bullet in brain. SIRHAN wrestled to floor, disarmed and turned over to Los Angeles, California, police department (LAPD).

The reports gave me a chance to verify many of the associations Sirhan had already told me about. Here were summaries of FBI interviews with persons who had known Sirhan in school and with some of those who had

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known him at the ranch in Norco-Corona. Strangely, the FBI couldn't seem to find Frank Donnarauma, the man who had hired Sirhan at Corona, who also had an alias, Henry Donald Ramistella. (The FBI didn't find him until April 6, 1969.) But all these persons seemed to have been processed in an automatic way with no real guiding intelligence behind the perfunctory series of questions they were asked.

The reports then, added up to very little, except where they disclosed the identity of certain persons associated with Sirhan whom he had concealed from McCowan and me. But there was no indication in the reports that any of these persons had less than the greatest love for Robert Kennedy.

What the robots seemed to do best was compile all the numbers that various bureaucrats had conferred upon Sirhan in his short and mostly anonymous life. His passport number: 142 026. His visa number: 1669, issued under Public Law 203-4 (A)1(14). His alien registration number: A 10 711 881. His unit number in the California Cadet Corps: 138 Battalion, B Company. His Social Security number: 569-30-3104. His number at the State Racing Board: 1-031944. His California driver's license: M-238867. His booking number at the Los Angeles Police Department: 495 139. His booking number at the Los Angeles County Jail: 718 486. And, of course, the serial number of his Iver-Johnson revolver: 53725.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COMMITTEE TO INVESTIGATE ASSASSINATIONS, INC.,

Plaintiff,

v.

U. S. DEPARTMENT OF JUSTICE,

Defendant.

Civil Action

No. 3651-70

MOTION TO DISMISS

Defendant, by its attorney, the United States Attorney for the District of Columbia, respectfully moves to dismiss the action herein on the ground that the Court lacks jurisdiction over the subject matter in that plaintiff has failed to exhaust the administrative remedies available to it.

Attached hereto, incorporated herein, and made a part hereof is the affidavit of Richards Rolapp, Special Assistant to the Deputy Attorney General of the United States.

/s/
THOMAS A. FLANNERY
United States Attorney

/s/
JOSEPH M. HANNON
Assistant United States Attorney

/s/
ARNOLD T. AIKENS
Assistant United States Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COMMITTEE TO INVESTIGATE ASSASSINATIONS, INC.,)
Plaintiff,)
v.)
U. S. DEPARTMENT OF JUSTICE,)
Defendant.)

Civil Action

No. 3651-70

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF DEFENDANT'S MOTION
TO DISMISS

This is an action filed pursuant to the Public Information Act, 5 U.S.C. 552. The Court, however, lacks jurisdiction of this matter because plaintiff has failed to exhaust the administrative remedies available to it.

Title 5 U.S.C. 552(a)(3) provides in pertinent part:

"Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, on request for identifiable records made in accordance with published rules stating the time, place, fees to the extent authorized by statute, and procedure to be followed, shall make the records promptly available to any person. On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." [Emphasis added].

Thus, only if a request pursuant to agency regulations for a particular record has been finally denied prior to instituting suit does the District Court have jurisdiction to enjoin the withholding. 5 U.S.C. 552(a)(3). Jurisdictional prerequisites set forth in 5 U.S.C. 552 must, of course, be strictly followed since the sovereign may be sued only in the manner, and subject to the conditions, stated in the statute granting consent. United States v. King, 395 U.S. 1(1969); United States v. Sherwood, 312 U.S. 584 (1941).

Only "[I]f the agency refuses to furnish information in its files to a member of the public the District Court is given jurisdiction to enjoin the agency from withholding such information."

Farrell v. Ignatius, 283 F. Supp. 58, 59 (SD N.Y., 1968). Likewise,

"It should also be noted that district court review is designed to follow final action at the agency head level. The House report states that 'if a request for information is denied by an agency subordinate the person making the request is entitled to prompt review by the head of the agency.' (H. Rept., 9.) In reviewing this action, the district court is granted 'jurisdiction to enjoin the agency from the withholding of agency records and to order the production of any agency records improperly withheld from the complainant.'" [Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act, page 28].

The affidavit of Richards Rolapp, Special Assistant to the Deputy Attorney General, establishes that plaintiff has never appealed denial of his request for the records it seeks from defendant. (Rolapp's Affidavit, Par. 4). Pertinent regulations require persons seeking records from the Department of Justice to appeal from the initial denial to obtain a final administrative decision. 28 C.F.R. 16.7(c).

Title 5 U.S.C. 552 does not permit plaintiff to use judicial proceedings to obtain records where, as here, he has not exhausted his administrative remedies. The 7th Circuit Court of Appeals has so held. Tuchinsky v. Selective Service System, 418 F.2d 155,158 (7th Cir. 1969). The Court of Appeals holding in Tuchinsky applies with equal force here:

"The exhaustion of administrative remedies rule required that plaintiff seek the personal information initially from appropriate local boards which might either by reason of consent of members involved or discretion of board chairman provide him the information. In the event of an adverse

decision denying plaintiff the information, he can appeal to the appeal board, and finally seek the administrative review of the national director. 32 C.F.R. 1606.56(a). Only by this method is the administrative process exhausted and the judicial process available for suit. The exhaustion of remedy rule is not satisfied by leapfrogging over any substantive step in the administrative process."

Plaintiff's failure to utilize the mandatory administrative procedures for requesting records requires dismissal of this action. It is accordingly requested that the Court grant defendant's motion to dismiss.

/s/

THOMAS A. FLANNERY
United States Attorney

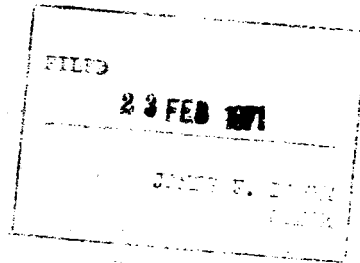
/s/

JOSEPH M. HANNON
Assistant United States Attorney

/s/

ARNOLD T. AIKENS
Assistant United States Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA



.....
COMMITTEE TO INVESTIGATE :
ASSASSINATIONS, INC. :
927 15th St., N.W. :
Washington, D.C. 20005 :

Plaintiff :

v. :

Civil Action No. 3651-70

U.S. DEPARTMENT OF JUSTICE :
10th & Constitution Ave., NW :
Washington, D. C. :

Defendant :

.....

OPPOSITION TO MOTION TO DISMISS

AND

MOTION FOR SUMMARY JUDGMENT FOR PLAINTIFF

Plaintiff, by its attorney, respectfully urges the Court to deny defendant's MOTION TO DISMISS the action herein.

Plaintiff, by its attorney, also respectfully moves that the Court grant SUMMARY JUDGMENT in its behalf, averring that there are no material facts in issue in this matter.

Attached hereto, incorporated herein, and made a part hereof is a Memorandum of Points and Authorities against Defendant's MOTION TO DISMISS and in support of Plaintiff's MOTION FOR SUMMARY JUDGMENT.

BERNARD FEINSTERWALD, JR.
905 16th St., N.W.
Washington, D.C.
Tel. 347-3919
Attorney for Plaintiff

factor was previously established in the record and provides a basis for access to the files from the District Attorney. The remaining statements in the affidavit alluding to access by other individuals are wholly based upon hearsay knowledge, not personal knowledge. Hearsay information is not the proper basis for an affidavit. See Rule 50(e), F.R.C.P.

For the foregoing reasons, it is respectfully requested that the Court reject plaintiff's request to file the Kaiser affidavit.

/s/

 THOMAS A. FLANNERY
 United States Attorney

/s/

 JOSEPH M. HANNOX
 Assistant United States Attorney

/s/

 ARNOLD T. AIKENS
 Assistant United States Attorney

Certificate of Service

I HEREBY CERTIFY that service of the foregoing Opposition to Filing of Affidavit of Robert Blair Kaiser has been made upon plaintiff by mailing a copy thereof to attorney for plaintiff, Bernard Fensterwald, Jr., Esquire, 905 16th Street, N. W., Washington, D. C. 20006 on this 13th day of October, 1971.

/s/

 ARNOLD T. AIKENS
 Assistant United States Attorney